



## TERMS AND CONDITIONS OF SUPPLY WITH NETWORK ELECTRICAL SERVICING LIMITED

Any instructions received by Network Electrical Servicing Limited ("NES") from the Customer for the supply of goods or services shall constitute acceptance of the terms and conditions contained herein.

### 1. COLLECTION AND USE OF INFORMATION

- 1.1 The Customer authorises NES to collect, retain and use any information about the customer, or for the purpose of assessing the Customer's credit worthiness, or for enforcing any rights under this contract.
- 1.2 The Customer authorises NES to disclose any information obtained to any person for the purposes set out in clause 1.1.
- 1.3 Where the Customer is a natural person the authorities under clauses 1.1 and 1.2 are authorities or consents for the purposes of the Privacy Act 1993.

### 2. PRICE

- 2.1 Where no price is stated in writing or agreed to orally the goods or services shall be deemed to be sold at the current amount such goods or services are sold or provided by NES at the time of the contract.
- 2.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the goods or services that is beyond the control of NES between the date of the contract and delivery of the goods or providing of the services.
  - 2.2.1 The Customer must pay the prices charged.

### 3. PAYMENT

- 3.1 Payment for goods or services is due on the date(s) specified in any quoted provided by NES and if no date specified then by the 20<sup>th</sup> of the month following the date of the invoice unless otherwise arranged between the parties prior to delivery of the goods or the providing of the services ("the due date").
- 3.2 NES may impose a credit limit on the Customer, and alter the credit limit without notice. Where the credit limit is exceeded NES may refuse to supply goods or services to the Customer.
- 3.3 NES may notify the Customer at any time that it has ceased to supply goods or services on credit to the Customer. This cessation does not relieve the Customer for amounts owing up to the date on which the contract was cancelled.
- 3.4 Interest may be charged by NES on any amount owing from time to time from the due date until the date of payment at 20% per annum compounding monthly.
- 3.5 Any expenses, disbursements and legal costs incurred by NES in the enforcement of any rights contained in this contract shall be paid by the customer, including any actual solicitor's fees or debt collection agency fees.
- 3.6 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 3.7 NES will apportion payments to outstanding accounts as it thinks fit.

### 4. RISK

- 4.1 The goods remain at NES' risk until the earlier of delivery to the customer or when title passes to the Customer pursuant to clause 6.1 of this contract, at which time the goods are at the Customer's risk, whether delivery has been made or not.
- 4.2 Delivery of goods shall be deemed complete when NES gives possession of the goods for delivery to the customer, or possession of the goods is given to a common carrier, or other bailee for the purposes of transmission to the customer.
- 4.3 The time agreed for delivery shall not be an essential term of this contract unless the customer gives written notice to NES making time of the essence.
- 4.4 Where NES delivers goods or provides services to the customer by instalments and NES fails to deliver or supply one or more instalments the customer shall not have the right to repudiate the contract but shall have the right to claim compensation as a severable breach.

### 5. AGENCY

- 5.1 The customer authorises NES to contract either as principal or agent for the provision of goods or services that are the matter of this contract.
- 5.2 Where NES enters into a contract of the type referred to in clause 5.1 it shall be read with and form part of this agreement and the customer agrees to pay any amounts due under that contract.

### 6. TITLE

- 6.1 If the goods are ascertained and in a deliverable state, title in the goods passes to the customer when the customer has made payment for all goods supplied by NES.
- 6.2 Where the customer has not paid for any goods in its possession property in such goods shall remain with NES and:
  - (a) The goods shall be held by the customer as bailee; and
  - (b) If the goods are attached, fixed, or incorporated into any property of the customer, by way of any manufacturing or assembly process by NES, the customer or any third party, title in the goods shall remain with NES until the customer has made payment for all goods, and where those goods are mixed with other property so as to be part of or a constituent of any new goods, title to these new goods shall be deemed to be assigned to NES as security for the full satisfaction by the Customer of the full amount owing between NES and the Customer.
- 6.3 The Customer gives irrevocable authority to NES to enter any premises occupied by the Customer, at any reasonable time, to remove any goods not paid for in full by the Customer. NES shall not be liable for costs,

damages or expenses or any other losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever.

## **7. RETURN OF GOODS**

- 7.1 NES' liability for any defect in the goods is limited to the purchase price of those goods. If goods are returned by the Customer, NES may, in its discretion repair or replace the goods or refund the purchase price to the Customer, provided that:
- (a) the goods must be returned to NES within seven (7) days of the date of delivery; and
  - (b) the Customer must supply the date and number of any invoice relating to the goods; and
  - (c) NES must have a reasonable opportunity to inspect the goods.
- 7.2 No goods will be accepted for return by NES without prior approval.

## **8. PPSA SECURITY INTEREST**

- 8.1 Pursuant to clause 6 the Customer grants to NES a Security Interest in the goods and their proceeds, which shall secure the obligation of the customer to pay the purchase price of the goods and any other obligations of the customer to NES under this contract (together "the Indebtedness") and, where the goods and/or proceeds are not readily identifiable and/or traceable or their recoverable value is insufficient to pay the Indebtedness, the security interest shall also extend to all the Customer's present and after acquired property, to the extent required to secure the Indebtedness.
- 8.2 As and when required by NES the customer shall, at its own expense, provide all reasonable assistance and relevant information to enable NES to register a Financing Statement or Financing Change Statement and generally to obtain, maintain, register and enforce NES' Security Interest in respect of the goods supplied, in accordance with the Personal Property Securities Act 1999 ("PPSA").
- 8.3 The Customer shall not change its name without first notifying NES of the new name not less than 7 days before the change takes effect.
- 8.4 Nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to this contract.  
The customer waives their right to:
- (a) receive notice under section 120(2) and 129;
  - (b) receive a statement of account under section 116;
  - (c) receive surplus distributed under section 117;
  - (d) recover any surplus under section 119;
  - (e) object to any proposal of the Company to retain collateral under section 121;
  - (f) not have goods damaged in the event that NES were to remove an accession under section 125;
  - (g) apply to the Court for an order concerning the removal of an accession under section 131;
  - (h) redeem collateral under section 132;
- 8.5 The Customer and the Guarantor agree that NES shall have the right to complete and register a mortgage over any property owned by the customer and/or any Guarantor of the customer to secure the amount owing. The terms and conditions of the mortgage shall be those contained in Auckland District Law Society all obligations mortgage form. NES shall have the right at its discretion to place a caveat on any such property for the purpose of this clause and the Customer and/or Guarantor hereby irrevocably appoints NES as the attorney of the Customer and/or Guarantor for the purpose of NES exercising its rights under this clause whilst any amount owing remains outstanding.
- 8.6 In the event of Voluntary Administration of the Customer, the administrator may not sell any goods subject to the security interest granted by clauses 6 and 8 without prior written consent of NES.

## **9. DEFAULT**

- 9.1 The security interest created by clause 6 of this contract becomes enforceable if any of the following events occur:
- (a) the Customer fails to pay any amount owing on the due date;
  - (b) the Customer sells, parts with possession, leases or disposes of any goods or does anything inconsistent with NES' ownership of the goods prior to making payments in full to NES;
  - (c) NES believes the Customer has committed or will commit an act of bankruptcy, has had or is about to have a receiver, or voluntary administrator appointed, or is declared insolvent;
  - (d) The goods are at risk, as that term is defined in the PPSA;
  - (e) The Customer neglects or fails to carry on its business to the reasonable satisfaction of NES, or if there is a significant deterioration in the trading or asset position of the Customer.

## **10. LIABILITY**

- 10.1 Except as otherwise provided by statute NES shall not be liable for:
- (a) Any loss or damage of any kind whatsoever whether suffered or incurred by the customer or another person whether such loss or damage arises directly or indirectly from goods or services or advice provided by NES to the Customer and without limiting the generality of the foregoing of this clause NES shall not be liable for any consequential loss or damage of any kind including without limitation any financial loss; and
  - (b) Except as provided in this contract NES shall not be liable in contract, or in tort, or otherwise for any loss, damage, or injury beyond the value of the goods or services provided by NES to the Customer; and
  - (c) The Customer shall indemnify NES against all claims of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of NES or otherwise, brought by any person in connection with any matter, act, omission, or error by NES its agents or employees in connection with the goods or services; and

(d) any delay or failure to supply goods or services.

## **11. WARRANTY**

- 11.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires goods or services from NES for the purposes of a business in terms of section 2 and 43 of that Act.
- 11.2 Nothing in this contract is intended to contract out of the provisions of the Consumer Guarantees Act 1993, except to the extent permitted by that Act.
- 11.3 The only guarantees applying to the goods and services supplied by NES are those confirmed by NES in writing.

## **12. HEALTH AND SAFETY**

- 12.1 The customer shall ensure the health and safety of all NES employees, agents and invitees by taking all actions necessary to eliminate and minimise risks as far as reasonably practicable at the workplace. The customer and NES will cooperate with and coordinate activities with each other to ensure the safety of both the customer and NES employees, agents and invitees at the workplace.

## **13. CANCELLATION**

- 13.1 NES shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of goods or services to the Customer if the Customer fails to pay any amount owing after the due date or the Customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.
- 13.2 Any cancellation or suspension under clause 13.1 of this agreement shall not affect NES' claim for amount due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the Customer's obligations to NES under this contract.

## **14. NOTICE**

- 14.1 Any notice may be given by phone, in person, posted, or sent by facsimile to the Customer or where the Customer is a company, to any director of the company.

## **15. VARIATION**

- 15.1 NES shall be entitled at any time by notice in writing to the Customer to vary any provision of this contract and the Customer shall be bound thereby except as provided in clause 15.2
- 15.2 The Customer shall be entitled within seven (7) days of the Customer's receipt of the notice referred to in clause 15.1 to give one (1) months written notice to NES terminating this contract.
- 15.3 In the event of the Customer giving written notice pursuant to clause 15.2 to NES the purported variation of this contract shall have no effect as between NES and the Customer.

## **16. MISCELLANEOUS**

- 16.1 The Customer shall not assign all or any of its rights or obligations under this contract without the written consent of NES.
- 16.2 NES shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 16.3 Failure by NES to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations NES has under this contract.
- 16.4 The law of New Zealand shall apply to this contract except to the extent expressly negated or varied by this contract.
- 16.5 Where the terms of this contract are at variance with the order or instruction from the Customer, this contract shall prevail.
- 16.6 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.7 Any dispute between the parties is to be dealt with in accordance with the Arbitration Act 1996.

## **17. DEFINITIONS**

- 17.1 "amount owing" means the price charged by NES for the goods or services, and any other sums which NES is entitled to charge under this contract which remain unpaid.
- 17.2 "NES" shall mean Network Electrical Servicing Limited, or any agents or employees thereof.
- 17.3 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing goods or services from NES.
- 17.4 "goods" shall mean all goods, chattels supplied by NES to the Customer and shall include any fee or charge associated with the supply of goods by NES to the Customer.
- 17.5 "services" shall mean all services provided by NES to the Customer and shall include without limitation the provision of all communication services and supplies, all charges for labour and work, hire charges, insurance charges, or any fee or charge associated with the supply of services by NES to the Customer.
- 17.6 "price" shall mean the cost of the goods or services as agreed between NES and the Customer subject to clause 2 of this contract.