

# Maritime Electrical Limited – Terms & Conditions of Trade

1. **Definitions**
- 1.1 "Supplier" means Maritime Electrical Limited, its successors or assigns or any person acting on behalf of and with the authority of Maritime Electrical Limited.
- 1.2 "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting the Supplier to provide the Works as specified in any proposal, Statement of Works, quotation, order, invoice or other documentation, and:
  - (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
  - (b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.3 "Works" means all Works or Materials supplied by the Supplier to the Customer at the Customer's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).
- 1.4 "Statement of Works" means the details outlining the provision of the Works, which statement can be delivered either verbally or in writing (including via email) and may include (where applicable) an estimate or quotation (as specifically expressed as the case) of the Price.
- 1.5 "Price" means the Price payable (plus any Goods and Services Tax ("GST" where applicable) for the Works as agreed between the Supplier and the Customer in accordance with clause 5 below.
2. **Acceptance**
- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Customer and the Supplier.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.4 Any advice, recommendation, information, assistance or service provided by the Supplier in relation to the Works and/or Materials supplied is given in good faith, is based on the Supplier's own knowledge and experience and shall be accepted without liability on the part of the Supplier, and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Works and/or Materials.
3. **Errors and Omissions**
- 3.1 The Customer acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
  - (a) resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Works.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of the Supplier, the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.
4. **Change in Control**
- 4.1 The Customer shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause.
5. **Price and Payment**
- 5.1 At the Supplier's sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by the Supplier to the Customer in respect of Works performed or Materials supplied; or
  - (b) the Supplier's quoted Price (subject to clause 5.2) which shall be binding upon the Supplier provided that the Customer shall accept the Supplier's Statement of Works in writing within thirty (30) days.
- 5.2 The Supplier reserves the right to change the Price:
  - (a) if a variation to the Materials which are to be supplied is requested; or
  - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, in accordance with clause 7.2, irrelevant weather conditions, limitations to site accessibility, availability of machinery, safety considerations and/or health hazards (such as the discovery of asbestos), prerequisite work by any third party not being completed, obscured building defects, or hidden wiring/cabling in walls, etc.) which are only discovered on commencement of the Works; or
  - (d) in the event of increases to the Supplier in the cost of labour or materials which are beyond the Supplier's control.
- 5.3 Variations will be charged for on the basis of the Supplier's quotation as detailed in the Statement of Works, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Customer shall be required to respond to any variation submitted by the Supplier within five (5) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At the Supplier's sole discretion a non-refundable deposit of up to fifty percent (50%) may be required.
- 5.5 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by the Supplier, which may be:
  - (a) on completion of the Works; or
  - (b) by way of progress payments in accordance with the Supplier's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the worksite but not yet installed; and
  - (c) for certain approved Customer's, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices; and
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Supplier.
- 5.6 Payment may be made by cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and the Supplier.
- 5.7 No allowance has been included within the Statement of Works for Works to be carried out outside of the Supplier's normal working hours.
- 5.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other contract for the sale of the Materials. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
6. **Retentions**
- 6.1 At the agreement of both parties, payment of the Price may be subject to retention by the Customer of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Customer shall hold the retention money for the agreed period following completion of the Works during which time all Works are to be completed and/or all defects are to be remedied. Any Retention Monies applicable to this contract are to be dealt with in accordance with section 18 of the Construction Contracts Act 2002.
7. **Provision of the Works**
- 7.1 Subject to clause 7.2 it is the Supplier's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Supplier claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Supplier's control, including but not limited to any failure by the Customer to:
  - (a) make a selection; or
  - (b) have the site ready for the Works; or
  - (c) notify the Supplier that the site is ready.
- 7.3 At the Supplier's sole discretion, the cost of delivery is included in the Price.
- 7.4 The Supplier may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 Any time specified by the Supplier for delivery of the Works is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Works as agreed solely due to any action or inaction of the Customer, then the Supplier shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
8. **Risk**
- 8.1 If the Supplier retains ownership of the Materials under clause 12 then:
  - (a) where the Supplier is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
    - (i) the Customer or the Customer's nominated carrier takes possession of the Materials at the Supplier's address; or
    - (ii) the Materials are delivered by the Supplier or the Supplier's nominated carrier to the Customer's nominated delivery address as specified in the Statement of Works (even if the Customer is not present at the address).
  - (b) where the Supplier is to both supply and install Materials then the Supplier shall maintain appropriate insurances as required until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Customer.
- 8.2 Notwithstanding the provisions of clause 8.1 if the Customer specifically requests the Supplier to leave Materials outside the Supplier's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Customer's expense.
- 8.3 The Supplier shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Supplier accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.4 The Customer warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) that the Supplier, its employees or contractors reasonably form the opinion that the Customer's premises is not safe for the installation of Materials to proceed then the Supplier shall be entitled to delay installation of the Materials (in accordance with clause 7.2) until the Supplier is satisfied that it is safe for the installation to proceed. The Supplier may at its sole discretion agree to bring the premises up to a standard suitable for installation to proceed but all such Works undertaken and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.
- 8.5 The Supplier shall upon installation ensure that all Materials are to be installed in a manner that is fully compliant with industry standards. If, for any reason, the Customer specifically requires the Materials to be installed in any way which goes against the Supplier's recommendations and/or falls below industry standards, a request detailing that requirement must be made in writing to the Supplier. Accordingly, the Supplier offers no warranty in regards to the aforementioned.
- 8.6 Where the Customer has supplied materials for the Supplier to complete the Works, the Customer acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. The Supplier shall not be responsible for any defects in the materials, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Customer.
- 8.7 The Customer acknowledges that the Supplier is only responsible for Materials that are replaced/supplied by the Supplier, and in the event that other parts/goods, subsequently fail, the Customer agrees to indemnify the Supplier against any loss or damage to the Works, or caused by the goods, or any part thereof howsoever arising.
- 8.8 The Supplier accepts no responsibility for:
  - (a) any damage or defects in any Materials caused by movement and/or interference of the said Materials; and
  - (b) any damage or performance related problems with any Materials where they have not been used and/or maintained in accordance with the Supplier's and/or the manufacturers' recommendations; and
  - (c) painting, plastering, re-decoration, re-sealing, carpentry or any other Works required for the restoration or making good of any surface/area where any Works have been carried out; and
  - (d) arranging any other licenced tradesmen as required (including, plumbers, gas fitters, builders, etc.) unless otherwise agreed between the Supplier and the Customer.
- 8.9 The Customer warrants that no other tradesmen interfere with any Works and/or Materials supplied under this contract. The Supplier shall not be liable
- 6.10 The Customer accepts that electronic security systems, smoke, heat and like detectors installed to / at their premises:
  - (a) are for monitoring and detection purposes and should not be seen as a life saving device and to report any faults or abnormalities to the Supplier immediately; and
  - (b) does not guarantee the site will be free from malicious damage or losses caused by attack, break and/or enter; and
  - (c) it shall be the Customer's responsibility:
    - (i) to ensure the security system equipment is tested and maintained to full operational condition; and
    - (ii) for all phone calls or data transmissions emanating from the security system panel; and
    - (iii) to ensure all electronically protected areas are free from obstacles which may impair the operation of the system.
- 6.11 The Customer acknowledges and agrees that:
  - (a) the Supplier does not guarantee the performance or transmission speed or quality of any data; and
  - (b) transmission of data may be unavailable from time to time due to scheduled maintenance and/or upgrades to websites, servers or networks by third parties; and
  - (c) there are inherent hazards in electronic distribution (including, but not limited to electrical interference, surges or spikes, high traffic volume affecting speed, etc) and as such the Supplier cannot warrant against delays or errors in transmitting data between the Customer and any person or entity the Customer conducts communications with including orders, and you agree that the Supplier will not be liable for any losses which the Customer suffers as a result of delays or errors in transmitting orders or other communications and/or documents; and
  - (d) all descriptive specifications, illustrations, drawings, data dimensions, and weights stated in the Supplier's fact sheets, price lists or advertising material are indicative only and that they have not relied on such information; and
  - (e) while the Supplier may have provided information or figures to the Customer regarding the performance of the Materials, the Customer acknowledges that the Supplier has given these in good faith, and are industry prescribed estimates under optimal operating conditions.
9. **Customer's Responsibilities**
- 9.1 In the event asbestos or any other toxic substances are discovered at the property, that it is the Customer's responsibility to ensure the safe removal of the same. The Customer further agrees to indemnify the Supplier against any costs incurred by the Supplier as a consequence of such discovery. Under no circumstances will the Supplier handle removal of asbestos product.
- 9.2 The Customer acknowledges that they shall:
  - (a) ensure that the premises has been made available on the agreed date/s and time/s and that the Supplier has clear and free access to the worksite at all times to enable them to undertake the Works (including carrying out site inspections, gain signatures for required documents, and for the delivery and installation of the Materials) and:
    - (i) the Supplier shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Supplier; and
    - (ii) if installation is interrupted by the failure of the Customer to adhere to the schedule of Works agreed to between the Supplier and the Customer, any additional costs will be invoiced to the Customer as in accordance with clause 5.2; and
  - (b) not be entitled to withhold any payment due under this contract because of any delay in the connection of, or the supply of electricity to the Materials by an electrical distributor or any other third party; and
  - (c) be responsible for any building work, excavation work, core drilling or any other non-standard surface penetrations that need to be carried out to enable the Supplier to carry out the Works; and
  - (d) remove any furniture or personal items from the vicinity of the Works, and agrees that the Supplier shall not be liable for any damage caused to those items through the Customer's failure to comply with this clause; and
  - (e) supply electricity, temporary lighting, toilet, eating and first aid facilities if so required.
10. **Hidden Services**
- 10.1 Prior to the Supplier commencing any work the Customer must advise the Supplier of the precise location of all hidden services on the site and clearly mark the same (including but not limited to any mains/services in wall cavities). The hidden mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 10.2 Whilst the Supplier will take all care to avoid damage to any services the Customer agrees to indemnify the Supplier in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.
11. **Compliance with Laws**
- 11.1 The Customer agrees that the site will comply with any WorkSafe guidelines and the Health and Safety Act at Work Act 2015 relating to building/construction sites and any other relevant safety standards or legislation.
- 11.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Materials.
- 11.3 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations 2002. All of the cabling work will comply with all relevant Australian and New Zealand Wiring standards.
- 11.4 If during the course of installation when the Works are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by the Supplier, then the Supplier shall notify the Customer immediately. The power, if isolated, will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations. The Customer accepts and agrees that any costs associated with the rectification Works including any Materials and labour shall be the responsibility of the Customer and will be shown as a variation on the invoice.
- 11.5 Any live services or services undertaken near live conductors where it is safe to do so shall be dealt with in accordance with Australian and New Zealand Wiring standards being "Safe working on Low Voltage Electrical Installations, relevant Commonwealth and Statutory Acts and Work Place Regulations". The Supplier's live services procedures are designed to eliminate risk of injury to the Supplier's employees, damage to the Customer's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Works for which additional charges may be applicable. This shall be invoiced in accordance with clause 5.2.
- 11.6 The Supplier has not and will not at any time assume any obligation as the Customer's agent or otherwise which may be imposed upon the Customer from time to time pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") arising out of the engagement. The parties agree that for the

Please note that a larger print version of these terms and conditions is available from the Supplier on request.

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- purposes of the HSW Act, the Supplier shall not be the person who controls the place of work in terms of the HSW Act.
- 12. Title**  
12.1 The Supplier and the Customer agree that ownership of the Materials shall not pass until:  
(a) the Customer has paid the Supplier all amounts owing to the Supplier; and  
(b) the Customer has met all of its other obligations to the Supplier.
- 12.2 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 12.3 It is further agreed that:  
(a) until ownership of the Materials passes to the Customer in accordance with clause 12.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Supplier on request.  
(b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.  
(c) the production of these terms and conditions by the Supplier shall be sufficient evidence of the Supplier's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Supplier to make further enquiries.  
(d) the Customer must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.  
(e) the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.  
(f) unless the Materials have become fixtures the Customer irrevocably authorises the Supplier to enter any premises where the Supplier believes the Materials are kept and recover possession of the Materials.  
(g) the Supplier may recover possession of any Materials in transit whether or not delivery has occurred.  
(h) the Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Supplier.  
(i) the Supplier may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.
- 13. Personal Property Securities Act 1999 ("PPSA")**  
13.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:  
(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and  
(b) a security interest is taken in all Materials and/or collateral (account) – being a monetary obligation of the Customer to the Supplier for Works – that have previously been supplied and that will be supplied in the future by the Supplier to the Customer.
- 13.2 The Customer undertakes to:  
(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;  
(b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;  
(c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of the Supplier; and  
(d) immediately advise the Supplier of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
- 13.3 The Supplier and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 13.1 to 13.5.
- 14. Security and Charge**  
14.1 In consideration of the Supplier agreeing to supply the Works, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).  
14.2 The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.  
14.3 The Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.
- 15. Defects In Materials**  
15.1 The Customer shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Supplier an opportunity to inspect the Materials within a reasonable time following delivery if the Customer believes the Materials are defective in any way. If the Customer shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which the Supplier has agreed in writing that the Customer is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Materials or repairing the Materials.
- 15.2 Materials will not be accepted for return other than in accordance with 15.1 above.
- 16. Warranties**  
16.1 Subject to the conditions of warranty set out in clause 16.2 the Supplier warrants that if any defect in any workmanship of the Supplier becomes apparent and is reported to the Supplier within twelve (12) months of the date of delivery (time being of the essence) then the Supplier will either (at the Supplier's sole discretion) replace or remedy the workmanship.
- 16.2 The conditions applicable to the warranty given by clause 16.1 are:  
(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:  
(i) failure on the part of the Customer to properly maintain any Materials; or  
(ii) failure on the part of the Customer to follow any instructions or guidelines provided by the Supplier; or  
(iii) any use of any Materials otherwise than for any application specified on a quote or order form; or  
(iv) the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or  
(v) fair wear and tear, any accident or act of God.  
(b) the warranty shall cease and the Supplier shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Supplier's consent.  
(c) in respect of all claims the Supplier shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 16.3 For Materials not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Materials. The Supplier shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.
- 17. Consumer Guarantees Act 1993**  
17.1 If the Customer is acquiring Materials for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Materials by the Supplier to the Customer.
- 18. Intellectual Property**  
18.1 Where the Supplier has designed, drawn, written plans or a schedule of Works, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Supplier, and shall only be used by the Customer at the Supplier's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.  
18.2 The Customer warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.  
18.3 The Customer agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Supplier has created for the Customer.
- 19. Default and Consequences of Default**  
19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.  
19.2 If the Customer owes the Supplier any money the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).  
19.3 Further to any other rights or remedies the Supplier may have under this contract, if a Customer has made payment to the Supplier, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 19, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.  
19.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:  
(a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to make a payment when it falls due;  
(b) the Customer has exceeded any applicable credit limit provided by the Supplier;  
(c) the Customer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or  
(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 20. Cancellation**  
20.1 Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Works to the Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.  
20.2 The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to the Supplier for Works already performed. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.  
20.3 In the event that the Customer cancels the delivery of Works the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).  
20.4 Cancellation of orders for products made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 21. Dispute Resolution**  
21.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 22. Construction Contracts Act 2002**  
22.1 The Customer hereby expressly acknowledges that:  
(a) the Supplier has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:  
(i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or  
(ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or  
(b) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Supplier by a particular date; and  
(c) the Supplier has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.  
(b) if the Supplier suspends work, it:  
(i) is not in breach of contract; and  
(ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and  
(iii) is entitled to an extension of time to complete the contract; and  
(iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.  
(c) if the Supplier exercises the right to suspend work, the exercise of that right does not:  
(i) affect any rights that would otherwise have been available to the Supplier under the Contractual Remedies Act 1979; or  
(ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of the Supplier suspending work under this provision.
- 23. Privacy Act 1993**  
23.1 The Customer authorises the Supplier or the Supplier's agent to:  
(a) access, collect, retain and use any information about the Customer:  
(i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or  
(ii) for the purpose of marketing products and services to the Customer.  
(b) disclose information about the Customer, whether collected by the Supplier from the Customer directly or obtained by the Supplier from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 23.2 Where the Customer is an individual the authorities under clause 23.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 23.3 The Customer shall have the right to request the Supplier for a copy of the information about the Customer retained by the Supplier and the right to request the Supplier to correct any incorrect information about the Customer held by the Supplier.
- 24. Service of Notices**  
24.1 Any written notice given under this contract shall be deemed to have been given and received:  
(a) by handing the notice to the other party, in person;  
(b) by leaving it at the address of the other party as stated in this contract;  
(c) by sending it by registered post to the address of the other party as stated in this contract;  
(d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;  
(e) if sent by email to the other party's last known email address.
- 24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 25. Trusts**  
25.1 If the Customer at any time upon or subsequent to entering into the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Customer covenants with the Supplier as follows:  
(a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;  
(b) the Customer has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.  
(c) the Customer will not without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any any of the following events:  
(i) the removal, replacement or retirement of the Customer as trustee of the Trust;  
(ii) any alteration to or variation of the terms of the Trust;  
(iii) any advancement or distribution of capital of the Trust; or  
(iv) any resettlement of the trust property.
- 26. General**  
26.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.  
26.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Courts of Auckland, New Zealand.  
26.3 The Supplier shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).  
26.4 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.  
26.5 The Customer cannot licence or assign without the written approval of the Supplier.  
26.6 The Supplier may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.  
26.7 The Customer agrees that the Supplier may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Supplier to provide Works to the Customer.  
26.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.  
26.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.

Please note that a larger print version of these terms and conditions is available from the Supplier on request.