

Bevan Martin Electrical Ltd – Works Terms and Conditions

- 1. Definitions**
 - 1.1 "Seller" shall mean Bevan Martin Electrical Ltd, or any agents, employees, successors or assigns thereof.
 - 1.2 "Buyer" shall mean the entity or person named on any form provided by the Buyer to the Seller (or any person acting on behalf of and with the authority of such entity or person) who buys or agrees to buy Works. If the Buyer includes two or more persons, those persons' liability is joint and several.
 - 1.3 "Works" shall mean all Works (including the supply of Materials) undertaken by the Seller and described in the quotation and includes any advice or recommendations.
 - 1.4 "Materials" shall mean goods (as defined by the Sale of Goods Act 1908) required to undertake the Works.
 - 1.5 "PPSA" shall mean the Personal Property Securities Act 1999.
 - 1.6 "Price" shall mean the cost of the Works as determined by the Seller and any other amounts owing to the Seller by the Buyer.
- 2. General**
 - 2.1 Headings are inserted for convenience and shall not affect the construction of this contract. The singular includes the plural and vice versa. Persons include incorporated and unincorporated entities. Words referring to one gender include the other.
 - 2.2 If any provision of this contract shall be invalid or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.
 - 2.3 This contract shall be subject to the laws and statutes of New Zealand and subject to the jurisdiction of the court geographically closest to the physical address of the Seller.
 - 2.4 The Seller may sub-contract any part of this contract. No subcontractor has any authority to agree to any variation of this contract on behalf of the Seller.
 - 2.5 The Seller's failure or delay in exercising or enforcing any right it has under this contract shall not operate as a waiver of the Seller's rights to exercise or enforce such rights or any other rights in the future.
 - 2.6 The Seller may, and the Buyer may not, vary or replace this contract and it will be a condition of the Seller continuing to supply Works to the Buyer that the Buyer agrees to sign any variation or replacement of this contract. Any waiver of these terms and conditions by the Seller must be made in writing.
 - 2.7 The Buyer may not assign all or any of the Buyer's rights or obligations under this contract without the written permission of the Seller.
 - 2.8 The Seller shall not be bound by any error or omission made by the Seller on any invoice, quotation, estimate, or any other document issued by the Seller.
 - 2.10 The Buyer shall notify the Seller of any change in the Buyer's name and/or contact details by giving at least seven (7) days notice in writing prior to any changes taking effect.
- 3. Acceptance**
 - 3.1 Any instructions received by the Seller from the Buyer for the supply of Works and/or the Buyer's acceptance of Works supplied by the Seller shall constitute acceptance of this contract.
 - 3.2 The Seller will only supply Works on these terms and conditions unless agreed otherwise in writing.
 - 3.3 These terms and conditions along with invoices, credit application, quotations, estimates, order forms, or any other documents issued by the Seller together form the contract and are the full agreement between the parties.
- 4. Quotations**
 - 4.1 Where a quotation is given for the Price then:
 - a) the quotation shall only be binding upon the Seller for thirty (30) days from the date of issue; and
 - b) where Works are required in addition to the quotation then the Buyer agrees to pay the additional Price of such Works; and
 - c) the Seller reserves the right to amend the quotation in the event of circumstances beyond the Seller's control (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties beyond the reasonable control of the Seller such as hard rock barriers below ground or iron reinforcing rods in concrete).
- 5. Price**
 - 5.1 The Seller may require a deposit of a percentage of the Price before delivering the Works.
 - 5.2 The Price of the Works shall be either:
 - a) as shown on the Seller's invoice; or
 - b) stipulated (subject to clause 4) in the Seller's quotation.
 - 5.3 Unless otherwise agreed no allowance has been made in the Price for the deduction of rebates.
 - 5.4 Unless otherwise agreed the Price is exclusive of Goods and Services Tax, and any other applicable taxes, duties, charges and costs payable by the Buyer in addition to the Price.
- 6. Payment**
 - 6.1 Unless otherwise agreed to in writing by the Seller, payment of any invoice shall be due (at the Seller's sole discretion) either upon completion of the Works or seven (7) days following the date on which an invoice is issued for the Price for 'non trade' Buyers, and 20th of the month following the date on which an invoice is issued for the Price for 'trade' Buyers.
 - 6.2 The Seller may submit a detailed payment claim at intervals not less than one (1) month for work performed to the end of each month. The value of Works so performed shall include the value of authorised variations and the value of materials delivered to the site but not installed.
 - 6.3 The Seller has the right to apply or appropriate any payment to any account of the Buyer. Should the Buyer have a number of accounts, then the Seller is hereby given the right to combine any account and also set-off any amount between such accounts.
 - 6.4 All payments by the Buyer must be made in full and without any deduction or right of set-off or counterclaim. The Buyer agrees, however, that any monies that the Seller may owe the Buyer on any account will however may, at the Seller's option, be set-off against payments due by the Buyer to the Seller.
- 7. Default**
 - 7.1 Without prejudice to any other rights or remedies that the Seller may have against the Buyer, the Buyer agrees that in the event of default in payment by the Buyer then the Buyer agrees to pay on demand:
 - a) all costs (including, but not limited to, collection agency fees, commission, charges and any other costs on a solicitor and own client basis) incurred by the Seller in recovering any amounts payable by the Buyer to the Seller; and
 - b) interest on the amount outstanding at the end of each month in which the Buyer's account is in arrears at the rate of two percent (2%) per month (compounding) with such interest as well as before any judgement; and
 - c) a monthly administration fee of twenty five dollars (\$25) by way of damages payable on the last day of each month in which the Buyer's account is in default.
 - 7.2 The Seller may at the Seller's sole discretion stop further performance of this contract, require payment in cash before further performance of this contract, or terminate this contract without notice to the Buyer upon the happening of any of the following events:
 - a) the Buyer makes default in payment due under this contract or in payment of any moneys due by the Buyer to the Seller on any account whatsoever; or
 - b) the Buyer is insolvent or takes any proceedings to reschedule any indebtedness; or
 - c) in the Seller's opinion the Buyer is unable to pay any indebtedness as it falls due; or
 - d) a receiver, administrator, or manager is appointed to any property of the Buyer.
- 8. Privacy Act**
 - 8.1 The Buyer acknowledges that personal information collected or held by the Seller is provided and may be held, used and disclosed for the following purposes:
 - a) administering, whether directly or indirectly, the Seller's contracts and enforcing the Seller's right thereunder; and
 - b) ascertaining at any time the Buyer's creditworthiness and obtaining at any time credit reports, character references or credit statements; and
 - c) enabling the Seller to notify any credit agency of any application for credit or default on any obligation of the Buyer to the Seller and enabling the Seller to provide such personal information to any credit agency so such credit agency can maintain correct accounting records; and
 - d) enabling the Seller to communicate with the Buyer for any purpose.
 - 8.2 Where the Buyer and/or Guarantors are an individual the authorities under clause 8.1 are authorities or consents for the purposes of the Privacy Act 1993.
 - 8.3 The Buyer has the right under the Privacy Act 1993 to obtain access to and to request correction of any personal information concerning it held by the Seller.
- 9. Completion**
 - 9.1 The Works shall be deemed to be completed when (in the Seller's sole opinion and subject to clause 10) the Works carried out under this contract have been completed without any omissions or defects in accordance with the plans, specifications or instructions set out in the quotation or any work authority.
 - 9.2 The time agreed for delivery (if any) shall not be an essential term of this agreement unless the parties agree otherwise in writing to make time of the essence.
- 10. Defects & Shortages**
 - 10.1 Any claim by the Buyer as to incorrect performance or breach of this contract must be made to the Seller in writing within seven (7) days of completion (time being of the essence) of the Works otherwise the Seller shall be entitled to presume that the Works have been delivered in good order and without defect or shortage in quantity.
- 11. Workmanship Warranty**
 - 11.1 Subject to the conditions of warranty set out below the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within twelve (12) months of the date of completion (time being of the essence) then the Seller will either (at the Seller's sole discretion) replace or remedy the Seller's workmanship.
 - 11.2 No claim may be made by this warranty unless:
 - a) it is received by the Seller as soon as practicable after the defect complained of becomes apparent; and
 - b) the claim is confirmed in writing; and
 - c) the Seller is given reasonable opportunity to inspect and verify the Buyer's claim.
 - 11.3 This warranty does not cover:
 - a) any defect caused or contributed to by the Buyer (including but not limited to, a failure to properly maintain the Works or follow any instructions or guidelines given by the Seller); or
 - b) any Materials not manufactured by the Seller (in which case the Buyer shall only have the benefit of the warranty (if any) provided by the manufacturer); or
 - c) fair wear and tear; or
 - d) any act of God.
 - 11.4 This warranty is void in the event that:
 - a) any attempt is made to repair the Works by any person not authorised by the Seller; or
 - b) use of the Works continues after any defect becomes apparent; or
 - c) the Buyer's account is in default.
 - 11.5 To the extent permitted by statute the Seller excludes all other representations, warranties (whether express or implied) and liabilities whether in contract, tort, under any other legal principle, or otherwise.
- 12. Risk**
 - 12.1 Risk in the Works shall pass from the Seller to the Buyer upon completion of the Works.
 - 12.2 The Buyer shall keep the Works and Materials insured against fire, accident, theft and other risk as the Seller may require in the names of the Seller and the Buyer for their respective rights and interests as well as providing the payment of policy proceeds to the Seller until such time as payment is made in full and title in the Materials has passed to the Buyer.
- 13. Title**
 - 13.1 Property and ownership in the Materials will not pass to the Buyer, but will remain with the Seller until payment in full of the Price.
 - 13.2 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such instrument is paid in full.
 - 13.3 Until property in the Materials passes to the Buyer:
 - a) the Buyer shall hold the Materials as fiduciary bailee and agent for the Seller; and
 - b) the Seller shall have a right of lien over any Materials, whether or not those Materials have been paid for by the Buyer. Such rights shall be additional to the Seller's rights referred to herein; and
 - c) if the Buyer is in default of payment then the Buyer shall deliver the Materials to the Seller upon demand and in the event the Buyer does not comply with such a demand then the Seller shall be entitled to enter upon the Buyer's premises at any time and do all things necessary in order to take possession of the Materials. The Buyer shall be liable for all costs of whatsoever nature associated with the exercise of the Seller's rights under this clause.
- 14. PPSA**
 - 14.1 The Buyer acknowledges that this contract creates a security interest in the Materials and, for avoidance of doubt, the proceeds of the sale of the Materials which the Seller may register on the Personal Property Security Register. The Buyer will, if requested by the Seller, sign all documents, provide all necessary information and do anything else required by the Seller to ensure that the security interest is a perfected purchase money security interest.
 - 14.2 The Seller and the Buyer agree that nothing in sections 114(1)(a), 117(1)(c), 120, 122, 133 and 134 of the PPSA shall apply to these terms and conditions.
 - 14.3 The Buyer waives its rights as a debtor under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
 - 14.4 Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15. Caveat and Mortgage**
 - 15.1 The Buyer and/or any guarantor of the Buyer agree that the Seller shall have the right to complete and register a mortgage over any property owned by the Buyer and/or any guarantor of the Buyer to secure any amount outstanding and that the Seller shall have the right at its discretion to place a caveat on any such property for the purpose of this clause and the Buyer and/or the guarantor hereby irrevocably appoint the Seller as the attorney of the Buyer and/or the guarantor for the purpose of the Seller exercising its rights under this clause whilst any amount remains in default.
 - 15.2 Should the Seller elect to proceed in any manner in accordance with clause 15.1, the Buyer and/or guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- 16. Limitation of Liabilities**
 - 16.1 The Seller shall not be liable to the Buyer, or to any other person, for any loss or damage either:
 - a) caused by any delay in delivery however that delay is caused; or
 - b) arising directly or indirectly from the Works or their use.
 - 16.2 The Seller shall not be liable for any consequential, indirect or special damages or loss of any kind suffered by the Buyer or any other person caused by any breach by the Seller of any of the Seller's obligations under this contract. To the extent permitted by statute if the Seller is ever liable to the Buyer, or any other person, and the Seller cannot rely on the exclusions or representations, warranties, or liabilities set out in these terms and conditions then the Seller's liability is in all cases limited to the Price of the Works.
 - 16.4 Neither party shall be deemed in default of this contract to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any Act of God, war, terrorism, fire, natural disaster, accident, act of government, strikes, unavailability of material, or any other cause beyond the reasonable control of such party.
 - 16.5 The Buyer acknowledges that the Works are bought relying solely upon the Buyer's skill and judgement and not as a result of any inducement, representation or promise made by the Seller.
- 17. Compliance with Laws**
 - 17.1 The Buyer and the Seller shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
 - 17.2 The Buyer shall obtain (at the expense of the Buyer) all licences and approvals that may be required for the Works.
 - 17.3 The Buyer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 18. Copyright**
 - 18.1 All copyright, patent and intellectual property of any designs, drawings, specifications, sketches, or samples provided by the Seller shall remain the property of the Seller and shall only be used by the Buyer for the use for which they were intended or supplied.
 - 18.2 Where the Seller has followed a design or instruction furnished by, or given by the Buyer, then the Buyer shall indemnify the Seller against all damages, penalties, costs and expenses of the Seller or in respect of which the Seller may become liable through any work required to be done in accordance with such instructions involving an infringement of a patent, trademark, registered design or common law right.
- 19. Dispute**
 - 19.1 For disputes arising between the parties under this contract where the price is twenty thousand dollars (\$20,000) or less the Buyer expressly acknowledges and agrees that this contract may be taken as agreement that both parties consent for the dispute to be referred to the Disputes Tribunal for resolution.
- 20. Construction Contracts Act 2002**
 - 20.1 In the event that the Buyer is a residential occupier as defined by the Construction Contracts Act 2002 the Buyer hereby expressly acknowledges that:
 - a) The Seller 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 Buyer, and the payment is not paid in full by the due date for payment and no payment schedule has been given by the Buyer, or a scheduled amount stated in a payment schedule issued by the Buyer in relation to the payment claim is not paid in full by the due date for its payment, or the Buyer has not complied with an adjudicator's notice that the Buyer must pay an amount to the Seller by a particular date, and the Seller has given written notice to the Buyer of its intention to suspend the carrying out of construction work under the construction contract.
 - b) If the Seller suspends work, it is not in breach of contract; and is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Buyer or by any person claiming through the Buyer; and is entitled to an extension of time to complete the contract; and 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 Seller exercises the right to suspend work, the exercise of that right does not affect any rights that would otherwise have been available to the Seller under the Contractual Remedies Act 1979; or enable the Buyer to exercise any rights that may otherwise have been available to the Buyer under that Act as a direct consequence of the Seller suspending work under this provision.