

TOPMARK ELECTRICAL LTD TERMS OF TRADE

1. GENERAL

In this agreement "the Company" means TopMark Electrical Ltd, trading as TopMark Electrical, its permitted assigns and successors, and where the context permits the entitlements of the Company shall extend to agents, employees or subcontractors of the Company as appropriate.

If any provisions of these terms are unenforceable, that term will be deemed modified to the extent necessary to make it enforceable or if modification is impractical, the provision will be deemed deleted but without affecting the remainder of these terms.

These terms may only be varied by the written agreement of the Company.

Any notice required to be served by either party shall be deemed to have been properly served if left at or posted in a pre-paid letter addressed to the other party at the place of business or residence of such party and any service by post shall be deemed to have been effected when the letter containing such notice would have been delivered in the ordinary course of post.

These terms shall be governed by and construed in accordance with the laws of New Zealand.

2. ENTIRE CONTRACT

(a) This agreement together with all quotes if supplied, supersede[s] all previous agreements, understandings, negotiations, representations and warranties about its subject matter and embodies the entire agreement between the Company and the customer about its subject matter.

(b) The customer acknowledges that no representations and warranties about the subject matter of this agreement have been made by or on behalf of the company except as expressly set out in this agreement and that the customer has not relied on any representations or warranties about the subject matter of this agreement and the quotes given by or on behalf of the company except as expressly provided in this agreement.

3. PAYMENTS

(a) All payments shall be made by the 20th day of the month following the issue of the invoice unless otherwise arranged in advance and confirmed in writing by the Company.

(b) The Company reserves the right to withdraw or refuse credit facilities or to require payment of a deposit before delivery or services are provided.

(c) Interest shall be paid at 5% per month calculated on a monthly basis on all outstanding amounts from the date on which the payment was due until actual date of payment. Any expenses, disbursements and costs (including solicitors fees or debt collection agency fees) incurred by the Company in the event of customer default are payable by the customer.

(d) Payment by bill of exchange or cheque shall not be deemed payment until the bill of exchange or cheque has been paid by the customer's banker and credited to the Company bank account.

(e) The Company reserves the right to change the price

a. if the Goods requested are changed; or

b. if the Services originally contracted for are changed ; or

c. where additional services are required due to the discovery of hidden or unidentified difficulties (including, but not limited to, poor weather conditions, poor access to the site, unavailability of machinery, unsafe conditions, work by any third party not being completed, hidden building defects, change of design and/or specifications, hard rock barriers below the surface or iron reinforcing rods in concrete, hidden pipes and wiring in walls etc) which are only discovered on commencement of the services; or

d. in the event of increases to the Company in the cost of labour or goods beyond the Company control.

4. SERVICES

"Services" shall include all labour, parts, expenses and sub-contractors' services supplied by the Company to you. All invoices rendered shall include services provided.

5. FREIGHT

All product prices exclude freight charges unless otherwise specified and advised in writing to the customer. The Company reserves the right to levy a freight surcharge where urgent delivery is requested by the customer. Under the Carriage of Goods Act all claims for loss of or damage to goods must be made on the carrier within 30 days from the date of invoice.

6. GOODS FOR RETURN

Goods shall only be returned to the Company with its prior written consent and within 14 days after delivery. Should the Company discover that there is not a material defect in the goods, the Company may charge the customer a handling fee.

Goods not returned in accordance with the above may be rejected by the Company

All costs for the return or delivery of the goods shall be payable by the customer.

7. SUPPLY AND DELIVERY

All services supplied shall be deemed to have been supplied when notified by the Company. If you claim that some services have not been supplied or rendered, you must notify the Company within 14 days of notification of supply.

a) Any claim by you must be made in writing.

b) Delivery of goods shall be deemed to be affected by the Company delivering the goods to the delivery address nominated by the customer, whether or not the customer is present at the time of the delivery to acknowledge receipt.

c) Any claim that goods are not as specified or are not delivered as stated in the Company invoice must be made to the Company in writing within seven days of delivery.

d) Goods will not be accepted for return for credit without the Company prior approval.

8. INSURANCE

The Company shall maintain a public liability insurance policy indemnifying the Company against claims in respect of loss or damage against any property or injury or death or illness to any of its subcontractors in connections with the execution of services.

9. ACCURACY OF CUSTOMER'S PLANS AND MEASUREMENTS

a) The Company is 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 Company accepts no responsibility for any loss, damages or costs howsoever resulting from these inaccurate plans, specifications or other information.

b) In the event the Customer gives information relating to measurements and quantities of goods required in completing the services, it is the Customer's responsibility to verify the accuracy of the measurements and quantities before the Company places an order based on these measurements and quantities.

10. ACCESS

The Customer shall ensure that the Company has unimpeded access to the work site at all times to enable the Company to deliver goods or services. The Company 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 Company.

11. UNDERGROUND LOCATIONS

Prior to the Company commencing any work the Customer must advise the Company of the precise location of all underground services on the site and clearly mark the location.

The underground mains and services the Customer must identify include, but are not limited to, telephone cables, fibre optic cables, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigations pipes, oil pumping mains and any other services that may be on site.

Whilst the Company will take all care to avoid damage to any underground services the Customer agrees to indemnify the Company in respect of all any liability claims, loss, damage, cost and fines as a result of damage to services not precisely located and notified pursuant to this clause.

12. TITLE AND SECURITY (Personal Property Security Act 1999)

Title in any goods supplied by the Company passes to the customer only when the customer has made payment in full for all goods provided by the Company and of all other sums due to the Company by the customer on any account whatsoever. Until all sums due to the Company by the customer have been paid in full, the Company has a security interest in all goods.

The customer grants to the Company a personal property security in the goods (by virtue of the Retention of Title clause in these terms) and all goods previously supplied by The Company to the customer (if any) and all after acquired goods supplied by The Company to the customer.

The customer agrees to:-

a. Sign any further document and provide any further information which the customer warrants to be complete, accurate and up-to-date in all respects, which the Company may reasonably require to register a financing statement or financing change statement on the personal property securities register.

b. Not register a financing change statement or a change demand without the prior written consent of The Company.

c. Give the Company no less than 14 days written notice of any change of the customer's name or other change in the customer's details (including but not limited to changes in address, facsimile number, trading name or business practice).

d. Indemnify the Company for any costs incurred by it in relation to the above.

TOPMARK ELECTRICAL LTD TERMS OF TRADE

e. Waive any rights to receive a copy of the verification statement under the Personal Property Securities Act and agrees to the extent permitted by law that under this contract-

(i) The customer will have no rights under (or by reference to) Section 114(1) or 133 of the Personal Property Securities Act.

(ii) The provisions of Part 9 of the Personal Property Securities Act which after the benefit of the customer or place obligations on The Company will apply only to the extent that they are mandatory.

(iii) Where the Company has rights under this contract additional to those in Part 9 of the Personal Property Securities Act, those rights will continue to apply.

In the event the customer refuses to comply with its obligations under the above clause, then by signing this document the customer grants to The Company power of attorney to sign all documents giving The Company a personal property security in the goods.

If the goods are attached, fixed or incorporated into any property of the customer, by way of any manufacturing or assembling process by the customer or any third party, title in the goods shall remain with The Company 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 products, title to these new products shall be deemed to be assigned to The Company as security for the full satisfaction by the customer of the full amount owing between The Company and the customer.

The customer gives irrevocable authority to the Company to enter any premises occupied by the customer or on which products are situated at any reasonable time after default by the customer or before default if the Company believes a default is likely and to remove and repossess any goods and any other property to which goods are attached or in which goods are incorporated. The Company shall not be liable for any costs, damages, expenses or losses incurred by the customer or third party as a result of this action, nor liable in contract or in tort or in otherwise in any way whatsoever unless by statute such liability cannot be excluded. The Company may either resell any repossessed goods and credit the customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed goods and credit the customer's account with the invoice value less such sum as The Company reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

13. CONSTRUCTION CONTRACTS ACT 2002

The Customer hereby expressly acknowledges that:

a. The Company 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 schedule 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

(iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Company by a particular date; and

(iv) The Company 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 Company 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 have 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 right 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 Company 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 Company 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 Company suspending work under this provision.

14. RETURNS, CLAIMS, REFUNDS

The customer shall immediately upon receipt of goods supplied fully inspect such goods and satisfy itself that the goods are correct. If the customer is unsatisfied, the customer must immediately contact the Company and communicate all details of such dissatisfaction. Unless the above procedure is followed the Company is entitled to assume that the goods supplied are correct and no returns claims for refunds will be permitted or made.

15. CUSTOMER INFORMATION

In accordance with the Privacy Act 1993 the customer authorises the Company to obtain such information as it may require in response to their enquiries from any source in order

to determine the customer's credit worthiness and to be used as a guide concerning credit limits.

The Company will set a credit limit and reserves the right to alter the credit limit from time to time.

I [the individual] consent to you the Company collecting, using and disclosing my personal information for the following purposes:

a. Verifying any information that I give to you (or information that you may collect from other sources) with third parties and third-party databases, including Government agencies (for eg. NZ Transport Authority, Motor Vehicle Register, PPSR).

b. Carrying out credit checks on me with a credit reporting agency for a purpose of making a credit decision affecting me (including debt collection) or for the requirements of the Anti-Money Laundering and Countering Financing Terrorism Act 2009. This will require you to give my information to the credit reporting agency as well as the credit reporting agency providing information about me to you. (You may also disclose my positive credit information (including repayment history information) to a credit reporting agency).

c. Debt recovery including appointing an agent to collect any outstanding debts and listing defaults with a credit reporting agency.

d. Checking the Ministry of Justice fines database for any overdue fines I may have. This will require you to give my information to the Ministry of Justice. This check may be carried out by a credit reporting agency, which will require the search results to be disclosed to the credit reporting agency.

e. Verifying any information that I give to you (or information that you may collect from other sources) with third parties and third-party databases for the purposes of fraud prevention or the Anti-Money Laundering and Countering Financing Terrorism Act 2009.

f. Where I have voluntarily given you my driver licence information, this information may also be disclosed to a credit reporting agency and the Ministry of Justice as part of the checks you undertake with them.

g. I authorise any third party to provide my personal information to you for any of these purposes.

h. I understand that if you disclose my personal information to a credit reporting agency, they may hold my information on their credit reporting database and use it for providing credit reporting services and for any other lawful purpose and they may disclose my information to their subscribers for the purpose of credit checking or debt collection or for any other lawful purpose.

16. CONSUMER GUARANTEES ACT

Where the Company supplies the goods to the customer for the customer's use in a business for the purpose of the business, the customer agrees that the Consumer Guarantees Act does not apply. Where the Company supplies the product to a customer as a "consumer" as defined in the Consumer Guarantees Act for a non-business purpose, the Consumer Guarantees Act will apply and prevail over any contrary provision in these terms and conditions.

17. WARRANTIES/GUARANTEES

17.1 The Company guarantees that:

(a) The Works will conform to the Statement of Work; and

(b) The Goods will be free from material defects at the time of installation and for the period contained in the Manufacturer's Warranty ("Warranty Period").

17.2 The Company guarantees that it will repair or make good any defects in its Workmanship arising within one year following completion of the Services for which the defect is claimed, ("Workmanship Guarantee"). This Workmanship Guarantee is subject to the following conditions:

(a) The Workmanship Guarantee does not apply to the Goods provided (for which the Customer acknowledges clause 13.1 of this agreement applies);

(b) The Company's liability in respect of all claims arising from the Workmanship Guarantee will be limited to the labour value of the Workmanship;

(c) The Workmanship Guarantee does not cover any occurrence which would normally be covered by public liability insurance or any other form of insurance;

(d) The Workmanship Guarantee does not apply where alterations or repairs are made by the Customer or any third party to the Works without the knowledge and prior written consent of the Company (and without the Company first having the opportunity to remedy the same to its satisfaction);

(e) The benefit of the Workmanship Guarantee is not assignable by the Customer to any other person

(f) The Workmanship Guarantee does not apply for so long as the Works have not been completed in full or the Customer is in default in relation to any payment owing to the Company; and

(g) The Workmanship Guarantee does not apply to any appliance service repair work;

TOPMARK ELECTRICAL LTD TERMS OF TRADE

(h) The Workmanship Guarantee does not cover any loss or damage caused by the matters listed in clauses 14.3(c) to 14.3(k) (inclusive);

(i) The Workmanship Guarantee does not cover any indirect, special, incidental or consequential loss or damage, however caused; and
The Company is not liable to carry out any remedial work under the Workmanship Guarantee unless they receive written notice from the Customer of the claim within seven days after discovery of the defect.

the Company supplies to the customer or developed or contributed to by the Company in relation to any information, fault, repair or documentation that is supplied to the customer or as a result of the Company performing services or any other work for the customer.
The customer agrees not to use any trademarks or other intellectual property rights which are legally the Company except as authorised by the Company.

18. SERVICES INTERRUPTION

"Services Interruption Event" means any interruption to a Works caused by; a Force Majeure Event, the Customer's failure to carry out or perform any obligation required of it under this agreement which in the sole opinion of the Company does or may cause a delay in the Works and any other matter which in the reasonable opinion of the Company will cause an interruption or delay in the performance of the Works;

17.1 Without prejudice to any other right or remedy of the Company, the parties acknowledge that from time to time a Services Interruption Event may occur and, in that case, such occurrence will delay the Works and will entitle the Company to immediately cease the performance of all or any part of the Works until the Services Interruption Event ends or is remedied (as the case may be). The Customer acknowledges that there may be an Additional Expenses Charge relating to recommencement of the Works after the occurrence of a Services Interruption Event. The Customer agrees to pay the Additional Expenses Charge upon rendering of an invoice by the Company.

19. DISPUTES ACCOUNTS

The customer must notify the Company in writing within five days of receipt of any disputed invoice. The notification must quote the relevant invoice number and must include all the necessary details of the reason the invoice is being disputed. Should the customer fail to notify The Company of any dispute, defect or damage within five days of receipt of the invoice, the customer shall be deemed to have accepted the invoice and shall pay that invoice according to the terms and conditions contained in this document.

20. CONFIDENTIAL INFORMATION

Each party agrees to always keep the other party's confidential material confidential and not to use the confidential material for any purpose other than for the purpose for which it was supplied or copy or reproduce any of the confidential material in any way except whether disclosure is necessary to enable goods or services to be used under lease or where the party that owns the confidential material has consented to disclosure.

On request each party will ensure that any confidential material (including any copies) that it possesses or controls and that belongs to the other party is returned to that other party.

Confidential material means:-

- a. All information and other material relating to the Company business, employees, goods or services which we make available or have previously made available to you; or
- b. Any report or material which we produce as a direct or indirect result of any work that we carry out for you and anything that you derive from this information and material but excluding everything which is generally available to the public or you or a third party have independently developed or acquired this confidential material.

21. RESOLVING DISPUTES

The Company and the customer will use all reasonable endeavours to resolve any dispute between them. If they cannot resolve their dispute between them, they will:-

- a. Refer the dispute to mediation which will be conducted in accordance with the Resolution Institute New Zealand Standard Mediation Agreement; and
- b. If mediation is unsuccessful, the matter of dispute shall be referred to a single arbitrator in accordance with the provisions contained in the Arbitration Act 1996 and any amendments.

Nothing in this clause will preclude either party from taking immediate steps to seek urgent equitable relief before an appropriate Court.

22. ASSIGNMENT

The Company is entitled at any time to assign to any other person all or any part of the debt owing by the customer to the Company.

23. REVIEW OF TERMS

The Company reserves the right to review any of these terms at any time. Any change will take effect on the next transaction following the date on which the Company notified the customer of such change.

24. INTELLECTUAL PROPERTY

The customer acknowledges that the Company is the sole owner of all intellectual property (including business know how, ideas, methodologies, routines, systems and processes relating to or arising, directly or indirectly, out of the goods and services that

25. ACKNOWLEDGEMENT AND DECLARATION

I/We sign this declaration as the customer:-

- a. Accepting and agreeing to abide by the terms of trade specified above; and
- b. Giving the necessary approvals, consents, authorisations under the Privacy Act 1993; and
- c. Acknowledging that a copy of the terms of trade has been received, read and understood.
- d. Agreeing that these terms of trade will apply to all contracts between the Company and ourselves as the customer.

Signed by the Customer

Date

Signed by the Company

Date