

1. Definitions

- 1.1 "OES" shall mean Osborne Electrical Services Limited, or any agents, or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from OES.
- 1.3 "Goods" shall mean:
- 1.3.1 all Goods of the general description specified on the attached quote and supplied by OES to the Customer; and
- 1.3.2 all Goods supplied by OES to the Customer; and
- 1.3.3 all inventory of the Customer that is supplied by OES; and
- 1.3.4 all Goods supplied by OES and further identified in any invoice issued by OES to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
- 1.3.5 all Goods that are marked as having been supplied by OES or that are stored by the Customer in a manner that enables them to be identified as having been supplied by OES; and
- 1.3.6 All of the Customer's present and after-acquired Goods that OES have performed work on or to or in which goods or materials supplied by OES have been attached or incorporated.
- 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Goods and Services" shall mean all goods, products, services and advice provided by OES to the Customer and shall include without limitation all contracting and maintenance services and the supply of components and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods and Services by OES to the Customer.
- 1.5 "Price" shall mean the cost of the Goods and Services as agreed between OES and the Customer and includes all disbursements eg charges OES pay to others on the Customer's behalf subject to clause 4 of this contract.

2. Acceptance

- 2.1 Any instructions received by OES from the Customer for the supply of Goods and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. Collection and use of Information

- 3.1 The Customer authorises OES to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Goods and Services provided by OES to any other party.
- 3.2 The Customer authorises OES to disclose any information obtained to any person for the purposes set out in clause 3.1.

4. Price

- 4.1 Where no price is stated in writing or agreed to orally the Goods and Services shall be deemed to be sold at the current amount as such Goods and Services are sold by OES at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods and Services that is beyond the control of OES between the date of the contract and delivery of the Goods and Services.

5. Payment

- 5.1 Payment for Goods and Services shall be made in full on or before the 20th day of the month following the date of the invoice ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by OES in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

6. Quotation

- 6.1 Where a quotation is given by OES for Goods and Services:
- 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
- 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
- 6.1.3 OES reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Goods and Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Goods and Services.

7. Risk

- 7.1 Risk in any Goods and Services supplied by OES shall pass when the Goods and Services are delivered to the Customer and it shall be the Customer's obligation to insure the Goods and Services from that time.

8. Title and Security (Personal Property Securities Act 1999)

- 8.1 Title in any Goods supplied by OES passes to the Customer only when the Customer has made payment in full for all Goods provided by OES and of all other sums due to OES by the Customer on any account whatsoever. Until all sums due to OES by the Customer have been paid in full, OES has a security interest in all Goods.
- 8.2 If the Goods are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Goods shall remain with OES 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 OES as security for the full satisfaction by the Customer of the full amount owing between OES and Customer.
- 8.3 The Customer gives irrevocable authority to OES to enter any premises occupied by the Customer or on which Goods are situated at any reasonable time after default by the Customer or before default if OES 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. OES shall not be liable for any costs, damages, expenses or 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 unless by statute such liability cannot be excluded. OES 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 thereof less such sum as OES reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 8.4 Where Goods are retained by OES pursuant to clause 8.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.
- 8.5 The following shall constitute defaults by the Customer:

- 8.5.1 Non payment of any sum by the due date.

- 8.5.2 The Customer intimates that it will not pay any sum by the due date.

- 8.5.3 Any Goods are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods.

- 8.5.4 Any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to OES remains unpaid.

- 8.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets.

- 8.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.

- 8.5.7 Any material adverse change in the financial position of the Customer.

9. Security Interest for Service Provider

- 9.1 The Customer gives OES a security interest in all of the Customer's present and after-acquired property that OES has performed services on or to or in which goods or materials supplied or financed by OES have been attached or incorporated.

10. Disputes

- 10.1 No claim relating to Goods and Services will be considered unless made within seven (7) days of delivery.

11. Liability

- 11.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon OES which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on OES, OES's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

- 11.2 Except as otherwise provided by clause 11.1 OES shall not be liable for:

- 11.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Goods and Services by OES to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods and Services provided by OES to the Customer; and

- 11.2.2 The Customer shall indemnify OES against all claims and loss 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 OES or otherwise, brought by any person in connection with any matter, act, omission, or error by OES its agents or employees in connection with the Goods and Services.

12. Warranty

- 12.1 Manufacturer's warranty applies where applicable.

13. Consumer Guarantees Act

- 13.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods and Services from OES for the purposes of a business in terms of section 2 and 43 of that Act.

14. Personal Guarantee of Company Directors or Trustees

- 14.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for OES agreeing to supply Goods and Services and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to OES the payment of any and all monies now or hereafter owed by the Customer to OES and indemnify OES against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

15. Miscellaneous

- 15.1 Force Majeure, OES shall not be liable for delay or failure to perform its obligations directly or indirectly if the cause of the delay or failure is beyond our control including "acts of god", wars or failure of third parties such as suppliers or subcontractors.

- 15.2 Failure by OES 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 OES has under this contract.

- 15.3 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.

- 15.4 Governing Law, these terms and conditions of trade shall be governed by the laws of New Zealand.

- 15.5 Reference to any Statutes includes any later amendments or changes to those Statutes.

16. Lien

- 16.1 The customer hereby acknowledges that OES has a Lien over all goods in its possession belonging to the Customer to secure payment of any or all amounts outstanding from time to time.

17. Cancellation

- 17.1 Orders placed with OES cannot be cancelled without the written approval of OES. In the event that OES accepts the cancellation of any order placed, it shall be entitled to charge a reasonable fee for any work done on behalf of OES to the date of the cancellation including a fee for the processing and acceptance of the Customer's order and request for cancellation.

- 17.2 OES reserves the right to cancel the order at any time by OES giving the Customer written notice. The Customer shall indemnify OES against all claims and loss of any kind whatsoever however caused or arising as a result of this clause brought by any person in connection with any cancellation by OES its agents or employees in connection with the cancelled Goods and Services.

18. Intellectual Property

- 18.1 All quotes, plans and other material supplied by OES contain intellectual property that cannot be copied or given to other parties without the written consent of OES. OES reserves the right to charge a consultancy fee and the customer agrees to pay the consultancy fee for misuse of this material.