

Terms of Trade

General

1. These terms and conditions for the delivery and/or provision of Goods and/or Services (as amended by us from time to time) (**Terms**) and the Application Form (if completed) are the terms and conditions on which This is Electric NZ Limited (**we, us, our**) will provide Goods and/or Services to or for you (**Agreement**).
2. If you sign the Application Form, or otherwise accept a Quotation or Estimate given by us and/or we receive instructions from you to provide Goods and/or Services, you will be deemed to have accepted these Terms.
3. In the event that conflict arises between these Terms and a Quotation or Estimate, these Terms shall prevail. Any other trade arrangement, agreement, or course of dealing between you and us at variance with these Terms will have no effect.
4. Your instructions to provide Goods and/or Services cannot be cancelled or varied without our consent. You will pay the cost of any variations or cancellations.

Meanings of terms used

5. In this Agreement:
 - (a) **Customer** means the Customer in the Application Form or any person acting for or on behalf of the Customer;
 - (b) **Goods** means any goods provided, supplied and/or manufactured by us, and includes components, materials, equipment, products and other items;
 - (c) **Goods and/or Services** means all Goods (as described above), services, recommendations and advice provided from time to time by us to you, and shall include, without limitation, all contracting and maintenance services, all charges for labour, vehicle/travel charges, hire charges, insurance charges, or any other fee or charge associated with the supply of Goods and/or Services to you;
 - (d) **Estimate** means an indication only of the cost based on your known requirements and the information you provide and our current hourly rates;
 - (e) **Quotation** means a written offer from us to you to supply Goods and/or Services to you as explained under "Price, GST and Quotations";
 - (f) **Property** means the Physical Address specified in the Application Form where the Goods and/or Services are to be delivered and/or provided, or an address otherwise provided by you.

Price, GST and Quotations

6. Unless otherwise expressly stated, all prices will be those applying at the date of delivery and/or provision of the Goods and/or Services.
7. Unless otherwise stipulated in writing, all prices, rates and fees are exclusive of goods and services tax (**GST**). GST will be payable by you in addition to the price of the Goods and/or Services.
8. Where we give a Quotation, unless otherwise agreed, the Quotation shall be valid for thirty (30) days from the date of issue. We reserve the right to withdraw any Quotation prior to providing the Goods and/or Services.
9. Quotations are based on the cost of labour, materials and equipment, travel, freight, duties, taxes, variable and fixed expenses and, where appropriate, rates of currency exchange operating at the date of Quotation. You acknowledge that any increase in these costs after the date of Quotation may be added to the final invoice payable by you.
10. You acknowledge and agree that a Quotation may be altered by us, and that any increase in the Quotation shall be at your expense, including where:
 - (a) your original requirements are changed or added to by you;
 - (b) any plans, specifications or information provided by you and relied upon by you for the purpose of providing the Quotation prove to be inaccurate or unreliable;
 - (c) any product supplied by you proves not to be suitable or of sufficient quality or standard;
 - (d) any work or services provided by you or any sub-contractor, employee or agent engaged by you are not completed at the

agreed time, cause delays or are not suitable or are of insufficient quality or standard;

- (e) any other change or variation which is recommended by us and/or requested by you;
- (f) where conditions outside of our control cause delays to either the commencement or completion of work covered under this Agreement;
- (g) any additional or unanticipated requirements are imposed by council or any other statutory or regulatory body;
- (h) unknown or unforeseen conditions or problems are discovered after commencement of work;
- (i) damage is done which is unavoidable and not our fault due to conditions such as those in clause 10(b) or (c), or because of the age or condition of existing building components and materials which make them unable to be retained or unsuitable to be re-installed or re-fitted;
- (j) Goods and/or Services are required in addition to the Quotation;
- (k) there is a variation to the quality of the Goods and/or Services supplied to you after the date of the Quotation.

11. The Goods and/or Services shall be priced at either the price applicable to the original quantity under the Quotation or such other price as we may determine in our absolute discretion. This will include any additional labour charges at our current hourly rates for additional time we spend providing additional Goods and/or Services. This includes Goods included in a Quotation which are not available when required (and are substituted with a similar product).
12. If you choose to request an Estimate of the cost of Goods and/or Services (as opposed to a Quotation), you acknowledge that our final invoice may exceed the Estimate provided to reflect actual requirements, price of any Goods, and the time it takes us to provide the Goods and/or Services based on our current hourly rates. The provisions of clause 10 also apply to an Estimate.
13. Where no Quotation is given or where price is agreed to orally, the Goods and/or Services shall be deemed to be sold at the recommended prices, rates and fees at the date of delivery (in the case of Goods) or the date the Services are provided.
14. Labour costs may also include our time spent travelling to and from our address to you, including any time taken to procure any Goods required.
15. We charge a minimum of one hours labour for Goods and/or Services provided.

Your payments to us

16. We may at our sole discretion require you to pay a deposit of 50% before we provide any Goods and/or Services to you. Deposits are non-refundable unless we agree otherwise.
17. We will invoice you either on completion of the provision of the Goods and/or Services or on a regular basis at our discretion.
18. You must pay each invoice we issue in full and without deduction or set-off within 7 days of the date of that invoice (**Due Date**) unless we agree otherwise.
19. You must pay all amounts payable to us by direct credit to our bank account number provided on the invoice or through PayPal.
20. If payment is not received by the Due Date:
 - (a) we will be entitled to charge interest on all amounts outstanding at a rate of 5% per annum from the Due Date to the date we receive payment in full. Interest will be calculated on a daily basis; and
 - (b) we may suspend provision of Goods and/or Services until payment has been made in full. This will not entitle you to cancel the Goods and/or Services and you will still be liable for the full amount in the Quotation or otherwise agreed.

Delivery/provision of Goods and/or Services

21. We will endeavour to provide the Goods and/or Services to you within a reasonable time of our Quotation being accepted and/or your instruction to provide Goods and/or Services, however you acknowledge that any dates we provide for the provision of Goods and/or Services are estimates only and that the late delivery or provision of Goods and/or Services does not entitle you to cancel this Agreement.
22. Unless we otherwise agree in writing, any Goods supplied by us will be delivered to the Property.

23. Risk in any Goods we supply passes to you immediately on delivery.

Materials or products supplied by you

24. Where you have chosen to use products or materials which are not provided or supplied by us, or which are not one of the brands recommended by us, then we cannot confirm that these products or materials meet applicable or relevant standards and requirements. If this occurs you agree and acknowledge that:

- (a) you have decided to use those products or materials despite our recommendations to use brands or products or materials purchased from recommended retailers;
- (b) our provision of Goods and/or Services does not include the provision of those products or materials and you are not relying on our skill and judgment in the selection of those products; and
- (c) in addition to the above, and to the extent permitted by law, you will not hold us liable for any failures, costs or losses arising from those materials or products.

25. We may reject any products or materials supplied or specified by you or your agent which we consider to be unsuitable. Additional costs incurred by us if materials are found to be unsuitable during the provision of the Goods and/or Services may be charged at our hourly rate.

26. We shall have no liability in respect of any Goods and/or Services of less than reasonably satisfactory quality as a result of defects in, or the unsuitability of, materials supplied or specified by you or your agent.

27. We shall assume that quantities of materials supplied by you or your agent shall be adequate to cover normal spoilage accordingly. If the quantities of materials supplied are not sufficient to cover normal spoilage (**Insufficient Supply**) then we shall have no liability for any shortfall in quantity to the extent that such shortfall arises as a result of such Insufficient Supply.

Your obligations

28. You must provide to us all necessary plans, specifications and other information required for us to provide the Goods and/or Services. We are entitled to rely on the accuracy of that information provided and shall not be obliged to check it. In the event that any of this information provided by you is inaccurate, we accept no responsibility for any loss, damages, or costs resulting from this inaccurate information.

29. You will provide, at no cost to us, clear and free access to the Property, and ensure that all necessary power and any other services that we specify are required. These include but are not limited to passenger lifts, cranes, hoists and builder's scaffolding. These must comply with all legal requirements including health and safety legislation and regulations. If convenient access is not supplied for any reason we may charge you the resulting additional costs incurred, including time wasted, at our current hourly rates.

30. You warrant that you have the right to grant us access to the Property to carry out and/or deliver the Goods and/or Services.

31. You will be responsible for obtaining all local authority consents and other necessary authorities for the performance of the Goods and/or Services and will provide copies of those to us on our request. We will assist with that if required but we will charge a fee for doing so based on our current hourly rates. If any consent is refused, you will be liable for our costs incurred up to that point.

32. Where a consent is required, and you have failed to obtain it, we may immediately cease work until such time as the consent is granted. We will be immediately entitled to charge for all work undertaken to the date that work ceased.

33. If you engage other contractors while we are performing and/or delivering the Goods and/or Services, you will be responsible for co-ordinating their work so as not to interfere with ours. Should we be delayed due to the actions of your other contractors we may in our discretion, charge an additional fee for lost time based on our hourly rate.

34. Unless expressly stated in writing by us, you are responsible for effecting and maintaining insurance in respect of all Goods and the Property.

Ownership and Security Interest

35. We are the legal and beneficial owner of any Goods until all amounts owing to us by you have been paid in full.

36. You grant us a continuing security interest any Goods and all your present and future rights to those Goods and all proceeds from any sale,

loss, theft or other disposition of them as security for payment of all amounts you owe us, and the performance of your obligations, under this Agreement (**Security**).

37. We may at your cost register our Security on the Personal Property Securities Register. You must do all things we may require to ensure we have a perfected first ranking Security, including giving us at least 14 days' notice in writing before you change your name or any of your other details.

38. You waive your right to receive any verification statement, financing statement or financing change statement and you agree that nothing in sections 114(1)(a), 133 and 134 of the Personal Property Securities Act 1999 (**PPSA**) will apply to this Agreement and to waive all your rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.

39. You agree that you will protect our interests in the Goods. In particular, you will put in place appropriate security precautions to protect the Goods from loss, damage and destruction including arranging suitable insurance, not permit any other security interest to attach to the Goods and not change the physical appearance of the Goods.

40. We may at any time, enter your Property or any site or premises where the Goods are located and remove them if we believe they are at risk.

Default/Termination

41. You may give seven days' notice to us at any time that you no longer wish for us to provide Goods and/or Services to you. If this occurs, you must immediately pay all fees for work done, and any other charges incurred, up until the date of termination.

42. Without prejudice to any of our other rights or remedies under this Agreement or at law, if you fail to pay any amount owing to us, or you breach this Agreement and the breach is not capable of remedy within seven days, or you become insolvent, commit an act of bankruptcy, enter into or are likely to enter into any arrangement with your creditors or in the case of a company do any act that would render it liable to be liquidated, or if a resolution is passed or proceedings commenced for the liquidation or voluntary administration of you or if a receiver is appointed in respect of all or part of your assets, then:

- (a) we may immediately cancel this Agreement and cease the delivery and/or provision of Goods and/or Services;
 - (b) any amounts payable by you to us whether due for payment or not, will become immediately due and payable;
 - (c) we may repossess any Goods without notice; and
 - (d) we may retain all or part of any deposit paid by you to cover our reasonable costs and/or as compensation for the early termination of the Agreement.
- (e) You agree that:
- (i) you will, upon receiving a written request from us and at your own cost and expense, promptly deliver all or any of the Goods to us. If you fail to deliver the Goods upon request, we may at any time enter into any place where the Goods are located and remove the Goods;
 - (ii) we will not be liable for any damage caused by our entry and repossession of the Goods, and you irrevocably indemnify us and our agents and representatives against any liability, action or claim (including claims made by third parties), made against, or any loss suffered or incurred by, us, arising from any act, such entry and/or repossession;
 - (iii) in the case of installed Goods, we will not be responsible for any damage caused in both entering the premises where the Goods are thought to be held or in the removal of any installed Goods;
 - (iv) we may sell all or any of the Goods without giving prior notice of the sale to you;
 - (v) you shall immediately notify us of any change in your name, address or contact person details; and
 - (vi) if you resell the Goods or any part of them or if they have become constituent parts of any other Goods sold by you before payment is made to us for them, then you shall ensure that you hold the sale proceeds for an account to us.

(f) You will pay all of our costs and expenses, including any debt collection costs and all legal costs and expenses (on a

solicitor/own client basis together with disbursements) as a result of your late payment and/or incurred by us in enforcing or attempting to enforce our rights and remedies under this Agreement or at law.

Guarantees/warranties

43. If you have entered into this Agreement in trade, you acknowledge and agree that the provisions of the Consumer Guarantees Act 1993 are expressly excluded and that it is fair and reasonable to agree to such exclusion.
44. All warranties, guarantees or conditions, express or implied (including any implied warranties under the Contract and Commercial Law Act 2017) that may be excluded by any law of New Zealand or any other country are excluded to the maximum extent permitted by that applicable law.
45. We will use our reasonable endeavours to assign to you, the benefit of any warranty which we may obtain from suppliers of Goods we supply.

Limitation of Liability:

46. To the maximum extent permitted by law, our liability to you, whether in contract, tort (including negligence) or otherwise is limited, at our option, to one or more of the following:
 - (a) with respect to Goods:
 - (i) replacing Goods that we supply; or
 - (ii) paying the cost of replacing such Goods or of acquiring equivalent Goods; or
 - (b) with respect to Services:
 - (i) supplying the Services again; or
 - (ii) paying the costs of having the Services supplied again.
47. We will not be liable for any physical or financial injury, loss or damage, or consequential loss or damage, of any kind including any loss of profits arising out of any defect in the Goods and/or Services, or the supply, installation or use of the Goods and/or Services, or arising out of our negligence, or in any way whatsoever, to the maximum extent permitted by law.
48. To the maximum extent permitted by law and notwithstanding anything contained in this Agreement, our total maximum liability to you under them shall not exceed the price paid or payable under this Agreement.
49. We shall not be liable for any failure or delay in performance if it is caused by circumstances beyond our reasonable control, including weather and any labour dispute between our employees. Costs arising from such delay or stoppage will be borne by the party incurring those costs.

Indemnity

50. You irrevocably indemnifies us and will hold us harmless from and against all loss, costs, damages, expenses that (including all legal costs and expenses incurred on a solicitor/own client basis) that we incur and all claims, demands and other proceedings brought by any person, arising from the our failure to comply with the Agreement or with any legislation, regulation or bylaw, or from any act, omission or negligence committed by us or by any of our employees, agents, contractors or customers.

Health and Safety

51. You acknowledge that both you and us are responsible for providing a safe workplace for our employees, agents and contractors and for any other persons affected by our business operations. To assist us to comply with our obligations you:
 - (a) warrant that you will comply with your obligations under the Health and Safety in Employment Act 2015 and that you will enable us to comply with our obligations and associated regulations at all times;
 - (b) shall advise us prior to commencement of any hazards arising at the Property, including those which you a consider are unrelated to the Goods and/or Services we are providing;
 - (c) will comply with any directions or instructions we give you in respect to health and safety matters at the Property while we are supplying the Goods and/or Services; and
 - (d) indemnify us for any loss we incur due to any breach of that Act by you or any of your employees, contractors, agents or officers.

Collection and use of information

52. You agree that we may collect, retain and use information about you (collected directly from you and from others) for the purposes of:
 - (a) providing services to you and others;
 - (b) assessing your creditworthiness;
 - (c) sending invoices to you and to recover money owed to us, associated companies or contractors;
 - (d) marketing to you and Goods and/or Services available from us, unless you tell us not to; and
 - (e) exercising or enforcing any right that we have under this Agreement or at law.
53. You authorise us to disclose any information obtained for the purposes set out in clause 52, including sharing it with associated companies, contractors and with credit reference agencies and collection agencies.
54. You may ask to see any information held by us as long as it is readily retrievable and you may ask for any details that are wrong to be corrected.

General

55. All notices or other communications to be given under this Agreement will be given at your last known Postal Address or Physical Address or by sending the notice to your last known email address.
56. If any provision of this Agreement is invalid or unenforceable for whatever reason, the remaining provisions shall remain in full force and effect.
57. You must not assign or transfer any of their rights or obligations under this Agreement to any other person.
58. A reference to any legislation includes a modification and re-enactment of, legislation enacted in substitution for, and regulation, order-in-council and other instrument from time to time issued or made under, that legislation.
59. Each party will promptly do everything reasonable required to give effect to this Agreement.
60. If, at any time, we do not enforce any of this Agreement or grant you time or other indulgence, we will not be construed as having waived that term or its rights to later enforce that or any other term.
61. All intellectual property rights in the Goods or arising out of the performance of the Services are, and shall remain, the property of us. You warrant that any design or drawing provided by you does not infringe any intellectual property rights of any other person.
62. This Agreement is subject to and governed by the laws of New Zealand. Any dispute will be determined by the exclusion jurisdiction of the New Zealand Courts.