

NZ Electrical Solutions Ltd. Terms & Conditions

1 Definitions

- 1.1 "NES", NZ Electrical Solutions Limited and its successors and assigns or any person acting on behalf of, and with the authority of, NZ Electrical Solutions Limited.
- 1.2 "Agreed Quotation" means the quotation provided by NES and accepted by the Customer (whether in writing or orally), setting out the Goods and Services to be provided, the Price and the payment terms.
- 1.3 "Customer" means the person to whom NES supplies Goods and/or provides Services.
- 1.4 "Default Interest Rate" means the rate that is 5% above the rate charged by NES' bank on commercial overdrafts from time to time.
- 1.5 "Goods" means goods within the meaning set out in section 119 of the Contracts and Commercial Law Act 2017 to be supplied by NES to Customer.
- 1.6 "PPSA" means the Personal Property Securities Act 1999.
- 1.7 "Price" shall mean the cost of the Goods or Services payable by the Customer to NES as determined in accordance with clause 4 of these terms and conditions.
- 1.8 "Services" means the services to be provided by NES to the Customer from time to time, as set out in and as more particularly described in the Agreed Quotation.

2 Acceptance and Application of Terms

- 2.1 Any instructions received by NES from the Customer for the supply of Goods or Services, including the approval of the Agreed Quotation by the Customer, shall constitute acceptance of these terms and conditions. Acceptance of an Agreed Quotation is irrevocable and cannot be cancelled other than with the agreement of NES in writing.
- 2.2 The Agreed Quotation and these terms and conditions shall form the entire agreement between NES and the Customer. To the extent that any provisions in the Agreed Quotation are contrary to those contained in these terms, the provisions in the Agreed Quotation shall prevail.
- 2.3 Agreed Quotations will be either a fixed quotation or an estimate. Unless stated as a fixed quotation, an Agreed Quotation will be an estimate.
- 2.4 Fixed quotations are valid for 30 days from the date of issue. NES may give notice to the Customer at any time prior to the acceptance of a fixed quotation altering or amending the fixed quotation where there has been an increase in any costs or expenses applicable to NES. Where the fixed quotation is amended, the Customer may cancel its acceptance of the Agreed Quotation by notice in writing, but shall still be liable for any reasonable costs incurred by NES prior to the date of cancellation.
- 2.5 These terms and conditions may only be amended with NES's consent in writing.
- 2.6 Unless otherwise specified in an Agreed Quotation, all quotations are exclusive of GST.

3 Supply of Goods and provision of Services

- 3.1 NES will supply the Goods and provide the Services to the Customer as specified in the relevant Agreed Quotation, and in a professional and competent manner in accordance with good industry practice.
- 3.2 Any timeframes, or delivery dates, specified by NES for the supply of Goods or provision of Services are an estimate only and NES will not be liable for any loss or damage incurred by the Customer as a result of any delays in the provision of the Goods and Services. The Customer acknowledges that delivery of Goods or the provision of Services may be dependent on the performance by other suppliers or contractors of NES which are beyond the control of NES.
- 3.3 The Customer shall arrange access to its property to allow NES and its employees, agents and subcontractors to supply the Goods and to perform the Services and NES agrees to comply (and to procure that its employees, agents and subcontractors comply) with all reasonable restrictions, conditions and directions of the Customer in relation to such access.
- 3.4 Where any procedures or protocols are to be followed by NES in the supply of the Goods or provision of the Services, NES will only be bound by those procedures and protocols that are in writing and have been agreed to by it.
- 3.5 If NES raises with the Customer any concern regarding the state of the property on which Goods or Services are to be provided (on health and safety or other grounds):
- NES may withdraw from providing the Goods and Services and will not be liable for any loss or damage whatsoever arising from such withdrawal; or
 - if NES elects to continue to provide the Goods and Services following agreement with the Customer, NES shall have no liability whatsoever in respect of those Goods and Services and the Customer must make payment in full on the due date regardless of the outcome.
- 3.6 If the Agreed Quotation includes any preconditions which are the responsibility of the Customer (including but not limited to any regulatory or other consents or approvals), NES shall not be required to commence the supply of Goods or the performance of the Services until such preconditions have been completed, and NES shall not be responsible for any loss or damage to the Customer arising from any delay by Customer in failing to complete such preconditions.
- 3.7 NES may engage subcontractors or other service providers to provide or assist with some or all of the supply of Goods and the provision of Services without the Customer's consent. NES is not required to disclose details of any subcontractors or service providers to the Customer.
- 3.8 Where there is any dispute over the extent of the Goods or Services to be provided by NES to the Customer, the Goods and Services as described in the Agreed Quotation shall be determinative.

4 Price and Payment

- 4.1 Unless agreed otherwise in writing, the Price shall be as specified in the Agreed Quotation, shall be in New Zealand dollars (unless otherwise specified) and payable on such dates or upon the occurrence of milestone events as detailed in the Agreed Quotation. If no payment terms are included in the Agreed Quotation:
- all deposits shall be due within seven days of acceptance of an Agreed Quotation, or prior to NES commencing provision of the Goods or Services, whichever is earlier;
 - all progress payments for the occurrence of a specified date or milestone event shall be due within seven days of that date or event occurring; and
 - all other invoices shall be payable by the 20th of the month following receipt of the relevant invoice by the Customer.
- 4.2 All payments must be made in full in New Zealand dollars and without any deduction or set off or counterclaim, even if a claim has been raised under clause 7.1, All payments received by NES shall be applied first to the oldest outstanding invoice.
- 4.3 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price specified in an Agreed Quotation.
- 4.4 Where the Price includes an hourly rate for the installation of Goods or the provision of Services, NES shall be entitled to amend its hourly rates for employees and sub-contractors no more frequently than 6 monthly. NES will use its reasonable endeavours to notify Customer of

any change to its hourly rates in advance, but a failure to notify will not affect the Customer's obligation to pay such revised hourly rates for Services.

- 4.5 Where the Customer has given notice to NES in accordance with clause 7.1 it shall be entitled to withhold payment of any disputed amount until the dispute has been resolved in accordance with this agreement. All other amounts due shall be paid in accordance with the payment terms agreed between NES and the Customer and the Customer shall not be entitled to withhold payment of any undisputed amounts.
- 4.6 If the Customer defaults in payment of any invoice when due:
- the Customer shall, upon demand, pay interest at the Default Interest Rate on the amount outstanding from the due date until the date payment in full is received;
 - the Customer shall indemnify NES from and against all costs, expenses and disbursements incurred by NES in collecting the outstanding amount (including legal costs on a solicitor and own client basis); and
 - NES may elect to suspend provision of the Services and the supply of any Goods until that overdue payment has been made in full. NES shall not be responsible for any loss or damage to the Customer arising from any suspension by NES under this clause.

5 Changes to Agreed Quotations

- 5.1 The customer may at any time request changes or variations to the terms of an Agreed Quotation, by submitting a request setting out the proposed variations ("Change Request").
- 5.2 Within 10 working days of receiving a Change Request from the Customer, NES must provide the Customer with a written notice executed by an authorised representative of NES agreeing to the proposed changes.
- 5.3 The Customer acknowledges and agrees that any changes that it requests may impact upon the timing, price and/or other aspects of the provision of the Goods and Services under this agreement.
- 5.4 If NES agrees to the Change Request, the relevant changes, including any changes to the timing, price and other aspects of the provision of the Goods and Services shall be incorporated into and constitute an amendment to the Agreed Quotation.

6 Return of Goods

- 6.1 No Goods may be returned to NES without its prior written approval. Approval will be contemplated by NES only in circumstances where:
- advice of any proposed return is given within 30 days after the date of delivery;
 - transportation and other costs for return are prepaid by the Customer; and
 - the goods are accompanied by a copy of NES' packing slip or invoice and a written explanation of reasons of return.
- NES will charge a handling fee for handling, inspection, disassembly or reconditioning stock items.

7 Defects and Liability

- 7.1 NES warrants that the Goods and Services it provides will comply with the description in the Agreed Quotation and subject to clause 7.8, that Goods supplied and/or installed by NES will be free from defects for a period of 12 months from the date of delivery, fair wear and tear excepted. No other express warranties are provided and all warranties, representations and/or guarantees implied by law are expressly excluded.
- 7.2 The Customer shall notify NES in writing of any alleged defect in the supply of Goods or provision of Services as soon as possible after becoming aware of the alleged defect and in any event within 30 days of becoming aware of the alleged defect (time being of the essence), including a detailed description of the alleged defect. The parties must act reasonably in attempting to resolve the issue as soon as is reasonably possible. The Customer shall afford NES a reasonable opportunity to rectify the defect. If the Customer fails to comply with these provisions the Goods or Services shall be conclusively presumed to be in accordance with the terms and conditions.
- 7.3 For defective services, which NES has agreed in writing that the Customer is entitled to reject, NES' liability is limited to (at NES' discretion) re-performing the Services, or rectifying the Services, or refunding the Price, provided that the Customer has complied with the provisions of clause 7.2.
- 7.4 For defective Goods, which NES has agreed in writing that the Customer is entitled to reject, NES' liability is limited to (at NES' discretion) replacing the Goods, or repairing or rectifying the defect, or refunding the Price, provided that the Customer has complied with the provisions of clause 7.2.
- 7.5 NES shall have no liability whatsoever to the Customer for any consequential or indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of any act or omission of NES or its permitted subcontractors in the provision of the Goods or Services or under these terms and conditions.
- 7.6 The Customer acknowledges and agrees that it is obtaining the Goods and Services for the purposes of trade or business, and as such the Consumer Guarantees Act 1993 does not apply to the supply of Goods or the provision of the Services by NES to the Customer.
- 7.7 The Customer must not endeavour to remedy any alleged defects in the Goods or Services, including by removal or modification of the Goods, or amendment to the systems serviced or designed by NES.
- 7.8 Where Goods supplied are not manufactured by NES, the manufacturer's warranty shall apply and NES shall pass on the benefit of those warranties if it is able to do so, but in all other respects NES shall have no liability for any defect. NES will use reasonable endeavours to assist the Customer to deal with warranty claims against the manufacturer, provided the Customer is not overdue in any of its payment obligations to NES. All costs associated with returning Goods as a result of a warranty claim against the manufacturer are for the Customer.
- 7.9 NES will not be liable for any loss suffered by the Customer as a result of:
- any inappropriate storage or treatment, or any mis-use by the Customer of the Goods or the systems serviced or designed by NES;
 - failure by the Customer to properly maintain any Goods or the systems serviced by NES or the manufacturer or original supplier of the Goods;
 - failure by the Customer to allow NES proper access to the Customer's site for the purposes of providing the Services and Goods, and inspecting and remedying any alleged defects;
 - any use of any Goods and/or the systems serviced or designed by NES after any defect becomes apparent or should have become apparent to a reasonably prudent operator or user; or
 - fair wear and tear, any accident or act of God or event that occurs which is otherwise outside of the reasonable control of NES.

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8 Title and Risk

- 8.1 Subject to clauses 8.2 and 8.5, ownership of any Goods provided by NES to the Customer shall not pass until the Customer has paid to NES all amounts owing to NES for the Services in connection with the relevant Goods.
- 8.2 Risk in any Goods supplied by NES shall pass to the Customer upon delivery by or on behalf of NES to the Customer, or as requested by the Customer, and the Customer agrees to take out and pay premiums for appropriate insurance in respect of Goods that are held by it as Bailee for NES.
- 8.3 The Customer agrees that it will use all reasonable endeavours to accept delivery of any Goods made within usual business hours.
- 8.4 The Customer acknowledges that until title in and to any goods passes to the Customer in accordance with this clause:
- the Customer holds the goods as Bailee of NES and that a fiduciary relationship exists between the Customer and that NES has a security interest (as that term is defined in the PPSA) in the Goods; and
 - NES shall be entitled to demand the return of the Goods and shall be entitled without notice or liability to the Customer to enter any premises occupied by the Customer in order to search for, and remove, the goods.
- 8.5 This clause shall not in any way limit NES' rights under the PPSA and clause 12 of these terms and conditions.

9 Intellectual Property

- 9.1 The Customer acknowledges that it does not acquire any right, title or interest in any designs, plans, schedule of work, computer code, software, products, systems, copyright, trade marks or other registered or unregistered intellectual property rights ("Intellectual Property") relating to any of the Goods or Services provided by NES unless specifically agreed in any Agreed Quotation and a license has been entered into between NES and Customer in respect of the Intellectual Property.
- 9.2 The Customer must not use any Intellectual Property which belongs to NES, or NES' suppliers or manufacturers, or cause, assist or permit anything to occur which may interfere with, damage or endanger those Intellectual Property rights and the Customer must advise NES immediately if it becomes aware of any unauthorised use or attempted use by any person of NES' Intellectual Property use or attempted use by any person of NES' Intellectual Property rights (or those of NES' suppliers or manufacturers).
- 9.3 Unless exclusivity is an agreed term of the Agreed Quotation between NES and the Customer, the Customer agrees that NES may at no cost use any Intellectual Property that NES has created for the Customer for its own purposes, including but not limited to the provision of Goods or Services to other customers of NES.

10 Default and Termination

- 10.1 In addition to all other right and remedies available to NES at law or pursuant to these terms, if the Customer is in default under these terms and that default results in NES incurring any direct additional costs or losses (including full solicitor client costs, and/or debt collection firm costs, in endeavouring to enforce its rights under these terms against the Customer), the Customer will:
- indemnify NES for all such costs and losses and
 - be liable for interest on those costs and losses at the Default Interest Rate as if they had been invoiced overdue amounts.
- 10.2 In the event that:
- any money payable to NES by the Customer is overdue for more than 30 days;
 - the Customer becomes insolvent, 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;
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer;
 - the Customer purports to assign an Order, or any of the Customer's rights under these terms, to any third party without NES' prior consent;
 - the Customer performs any acts, or allows any omission, constituting a repudiation of these terms;
 - there is any other breach of these terms by the Customer, then without prejudice to NES' other remedies at law:
- Then:
- NES shall be entitled to cancel all or any part of any Agreed Quotation which remains unperformed in addition to and without prejudice to any other remedies and may also repossess any Goods which have not been paid for;
 - all amounts owing to NES shall, whether or not due for payment, immediately become due and payable despite any contrary provision in these terms; and
 - Such cancellation shall not in any way restrict or rescind the ability of NES to enforce its rights under these terms.

11 Privacy

- 11.1 The customer authorises NES to:
- collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer, and
 - disclose information about the Customer, whether collected by NES from the Customer directly or obtained by NES 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.
- 11.2 Where the Customer is an individual, the authorities under clause 11.1 are authorities or consents for the purposes of the Privacy Act 1993 and the Credit Reporting Privacy Code 2004.

12 Security

- 12.1 The Customer grants to NES a security interest (as that term is defined in the PPSA) in all Goods supplied by NES to secure all obligations of the Customer under these terms and conditions.
- 12.2 The Customer undertakes to:
- sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which NES may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;

- indemnify, and upon demand reimburse, NES for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby; and
- not register a financing change statement or a change demand without the prior written consent of NES.

- 12.3 NES and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Customer waives its rights as a debtor under sections 116, 116A, 120(2), 121, 125, 129 and 131 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by NES, the Customer waives its right to receive a verification statement confirming registration of a financing statement or financing change statement relating to security interest created by these terms and conditions.

13 Confidentiality

- 13.1 Each party agrees to treat all information and ideas communicated to it by the other confidentially and agrees not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.

14 Health and Safety

- 14.1 The Customer shall, so far as is reasonably practicable:
- provide evidence of its Health and Safety plan and/or policies and its adherence to such plan upon request by NES;
 - comply with and work to any plan and/or policies relating to health and safety issued by NES from time to time, which have been communicated or made available for inspection to the Customer prior to or during the term of this agreement, insofar as they are applicable to the duties and obligations of the Customer;
 - comply with the Health and Safety at Work Act 2015 and any regulations currently in force under the Act insofar as they are applicable to the duties and obligations of the Customer, at the Customer's own cost and expense, and provide evidence of such compliance upon request by NES; and
 - Consult, co-operate with, and co-ordinate activities with NES when NES has a duty in relation to the same matter.
- 14.2 To the extent lawful, the Customer shall indemnify and keep indemnified NES against any liability whatsoever incurred by NES as a direct or indirect consequence of the Customer's failure to comply with the provisions contained in this clause, and any costs of any nature whatsoever which NES may incur in respect of that liability.
- 14.3 Promptly notify NES in the event the Customer is issued with any notice issued by Worksafe New Zealand or otherwise under the Health and Safety at Work Act 2015 or any regulations currently in force under the Act, where the subject matter of the notice is relevant to the Customer's health and safety obligations under this agreement.
- 14.4 The Customer agrees to undertake a risk assessment of any:
- machine;
 - part or system supplied by NES; or
 - machine that has had its operating limits changed as part of the Services provided by NES. This risk assessment will be carried out by a Suitably Qualified Independent Person before using the machine in production.

15 Disputes

- 15.1 If a dispute arises in connection with the subject matter of these terms and conditions, or the supply of Goods and Services by NES to the Customer, the party alleging the dispute must first notify the other of the subject matter of the dispute and representatives of the parties shall promptly meet to discuss and attempt to resolve the dispute by negotiation in good faith.
- 15.2 If the parties are unable to resolve any dispute within 30 days of that meeting, then either party may appoint a suitably qualified mediator to mediate the dispute, with the mediation to be held in Nelson within one month of the appointment, unless the parties mutually agree to an alternative location and timing.
- 15.3 If the parties are unable to resolve any dispute by mediation or agreement, the matter may be referred by either party to arbitration pursuant to the Arbitration Act 1996.
- 15.4 Nothing in this clause 15 shall prevent a party taking proceedings or other action to enforce its right at law, including to recover money due from the other, seek specific performance, or obtain injunctive relief, if it believes (acting reasonably) that there is no genuine basis for the dispute.

16 General

- 16.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity of existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 These terms and conditions and any Agreed Quotation to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 16.3 To the extent permitted by law, all conditions, warranties, guarantees and representations in respect of the Goods and/or Services, implied into this agreement, are excluded.
- 16.4 Neither party shall be liable for any default (other than the payment of money) due to any act of God, war, terrorism, strike, lockout, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 16.5 The failure by NES to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect NES' right to subsequently enforce that provision.