

TERMS AND CONDITIONS OF TRADE



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1. Defined Terms

1.1 "the Electrician" means Beaumont Electrical Limited, its successors and assigns or any person acting on behalf of and with the authority of Christian Beaumont.

1.2 Customer" means the person/s or entity being provided Works as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally. The Customer includes any person or entity that the Customer introduces to the Electrician as their duly authorised representative. The Electrician may take instructions from the duly authorised representative as if they came directly from the Customer. The Customer may revoke this authorisation at any time by providing notice to the Electrician in writing of this revocation.

1.3 "Works" means all works, services or Materials supplied by the Electrician to the Customer from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).

1.4 "Price" means the Price payable and Charges for the Works as agreed between The Electrician and the Customer in accordance with clause 3 below.

2. Acceptance of these Terms and Conditions

2.1 Upon the Customer accepting a quote, placing an order for or accepting delivery of any Works the Customer is taken deemed to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions

2.2 The Customer accepts and acknowledges its obligation to provide all contract Works insurance unless otherwise agreed to in writing prior to commencement of the Works.

2.3 The supply of Materials by the Electrician to the Customer for accepted orders is subject to availability and if, for any reason, Materials are not or cease to be available, The Electrician reserves the right to vary the Price with alternative Materials as per clause 3.3. The Electrician also reserves the right to halt all Works until such time as The Electrician and the Customer agree to such changes.

3. Invoicing and Payment

3.1 At the Electrician's sole discretion, the Charges shall be, either:

(a) in accordance with any quote provided by the Electrician; or
(b) as indicated on any invoice provided by the Electrician to the Customer; or

3.2 subject to clause 3.3, the Charges as at the date of provision of the Services, according to the Electrician's written quote to the Customer, which will be valid for the period/s stated therein.

3.3 Unless otherwise stated in writing, the Customer shall be charged for the Electrician's travel costs by set fee, mileage fee or in any manner that the Electrician chooses.

3.4 The Electrician reserves the right to change the Price:

(a) if a variation to the Materials which are to be supplied is requested; or
(b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
(c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, hard rock barriers below the surface, iron reinforcing rods in concrete, hidden pipes and wiring in walls or poorly prepared surfaces etc) which are only discovered on commencement of the Works; or

(d) in the event of increases to the Electrician in the cost of labour or materials which are beyond The Electrician's control.

3.5 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by the Electrician, which may be:

(a) on completion of the Works; or
(b) by way of progress payments in accordance with the Electrician's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the worksite but not yet installed;
(c) the date specified on any invoice or other form as being the date for payment; or
(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Electrician.

3.6 Payment will be made by electronic/online banking, or by any other method as agreed to between the Customer and the Electrician.

3.7 At the Electrician's sole discretion a deposit may be required upon request.

3.8 Unless otherwise stated the Charges do not include GST. In addition to the Charges the Customer must pay to the Electrician an amount equal to any GST the Electrician must pay for any provision of Services by the Electrician under this or any other agreement. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Charges. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Charges, except where they are expressly included in the Charges.

4. Provision of Works

4.1 Subject to clause 4.2 the Electrician will ensure that the Works start as soon as it is reasonably possible or as otherwise as advised to the Customer.

4.2 The Works commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Electrician claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond The Electrician's control, including but not limited to any failure by the Customer to:

4.2.1 make a selection; or

4.2.2 have the site ready for the Works; or 4.2.3 notify The Electrician that the site is ready; or

4.3 where the Works are delayed by either the Customer or any other third party.

4.4 The Electrician may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

4.5 Any time or date given by the Electrician to the Customer is an estimate only. The Electrician shall not be liable for any loss or damage whatsoever due to failure by The Electrician to deliver the Works (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of the Electrician.

4.6 Any recommendations, advice, assistance or information provided by the Electrician is provided in good faith and the Electrician shall not be liable in any way for any damage, loss or other costs in relation to the Customer or their agent or other contractors reliance on the recommendations, advice, assistance or information. The Customer, their agent or contractors take this recommendations, advice, assistance or information at their own risk and using their own judgement.

5. Plans and Specifications

5.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Materials unless the Electrician and the Customer agree otherwise in writing.

5.2 The Electrician shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer or the Customers representatives or contractors.

5.3 If any reference to the position of any electrical installations is removed or covered up by the Customer or the Customers contractors, then the Electrician shall not be responsible for any damage caused in relation to the locating of the installations. In this instance the installations will be at the sole discretion of the Electrician.

5.4 Any additional costs caused by the Customer not providing an acceptable plan or scope of work, will be the responsibility of the Customer.

5.5 If the Customer requests the Electrician to decide on the positioning of any electrical installations the Customer shall be deemed to have accepted the positioning of such.

5.6 The Electrician will require at least (7) days' notice of any required completion date. The Electrician will use their best endeavours to meet such deadlines but will not be in any way liable in relation to such deadlines not being met.

6 Customer Responsibilities

6.1 Any scaffolding the Electrician considers is required to complete the works in a safe manner will be the responsibility of the Customer at the Customers cost. The scaffolding must be provided and erected by a professional scaffolding company and be acceptable to the Electrician at the Electricians sole discretion.

6.2 The customer must provide the area of the Works clear from all furniture and obstructions. If the Electrician has to move anything from the area of the works, if the Electrician chooses to do so, this will be done at the sole risk of the Customer and any damage to the Customers property will not be the responsibility of the Electrician.

6.3 The Customer is responsible for the clean-up of the site and removal of rubbish from the site.

6.4 The Customer shall ensure that the Electrician has clear and free access to the work site at all times to enable them to undertake the works. The Electrician 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 it is due to the negligence of the Electrician.

6.5 On request the Customer will advise and mark the precise location of all underground services on the site. The underground services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site. While the Electrician will take all due care, any damage caused by the Customer not correctly and precisely locating such underground services will be the responsibility of the Customer and the Customer will indemnify the Electrician from all liability, claims, loss, damage or fines.

6.6 The Customer is responsible for any materials or products that they supply. Any additional costs incurred because the materials provided are not fit for purpose for any reason including but not limited to bring the wrong:

(a) Size; (b) Colour; (c) Rating; (d) standard, (e) quality; (f) colour and finish; will be the Customers responsibility.

7. Title

7.1 The Electrician and the Customer agree that ownership of the Materials shall not pass to the Customer until:

7.1.1 the Customer has paid the Electrician all amounts owing to the Electrician; and

7.1.2 the Customer has met all of its other obligations to the Electrician.

7.2 Receipt by The Electrician of any form of payment other than cash shall be deemed to be received by the Electrician once they have cleared funds in their Bank account that cannot be reversed.

7.3 Risk for the materials shall move to the Customer as soon as they accept delivery.

7.4 It is further agreed that:

7.4.1 until ownership of the Materials passes to the Customer in accordance with clause 7.1 the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Electrician on request.

7.4.2 the Customer holds the benefit of the Customer's insurance of the Materials on trust for the Electrician and must pay to the Electrician the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.

7.4.3 the production of these terms and conditions by The Electrician shall be sufficient evidence of the Electrician's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Electrician to make further enquiries.

7.4.4 the Customer must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for the Electrician and must pay or deliver the proceeds to the Electrician on demand.

7.4.5 the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Electrician and must sell, dispose of or return the resulting product to the Electrician as it so directs.

7.4.6 unless the Materials have become fixtures the Customer irrevocably authorises the Electrician to enter any premises where the Electrician believes the Materials are kept and recover possession of the Materials.

7.4.7 The Electrician may recover possession of any Materials in transit whether or not delivery has occurred.

7.4.8 The Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of The Electrician.

7.4.9 The Electrician may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

8 Personal Property Securities Act 1999 ("PPSA")

8.1 The Customer agrees that the interest created in these terms in the materials is a security interest within the meaning

of the Personal Property Securities Act 1999 ("PPSA"). The Electrician shall have the right to register such interest with the Personal Property Securities Register.

8.2 Provide any information or sign any additional document to allow the Electrician to register its interest on the Personal Property Securities Register.

8.3 The Customer will reimburse the Electrician for any costs associated in the registration of the financing statement.

8.4 Nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

8.5 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

8.6 The Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

8.7 The Customer shall unconditionally ratify any actions taken by the Electrician under clauses 8.1 to 8.6.

9 Hazardous Substances

9.1 If the Electrician or anyone else identifies materials around the area that the works are being completed that they suspect may be hazardous, toxic or otherwise a danger to the Electrician, including but not limited to asbestos, then it will be the Customers responsibility to have the substance tested and if necessary removed. Until the Customer has provided evidence to the Electricians that the substance is not dangerous or has been removed by a suitably qualified person, the Electrician may take any steps that they see necessary including refusing to complete any further works.

10 Security and Charge

10.1 In consideration for the Electrician agreeing to supply the Materials, the Customer grants the Electrician an agreement to mortgage in all of the Customer's title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Customer now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money). Where a Customer is a Trustee of a Trust, such Customer acknowledges that they have the authority of all the Trustees of that Trust to sign these Terms of Trade and bind the Trustees of that Trust to these Terms of Trade.

10.2 The Customer indemnifies the Electrician from and against all of the Electrician's costs and disbursements including legal costs on a solicitor client basis incurred in exercising the Electrician's rights under this clause.

10.3 The Customer irrevocably appoints the Electrician and each director of the Electrician as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.

11 Customer's Disclaimer

11.1 The Customer hereby disclaims any right to rescind, or cancel any contract with the Electrician or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Electrician and the Customer acknowledges that the Works are bought relying solely upon the Customer's skill and judgement.

12 Warranties

12.1 The Electrician provides a one-year warranty on the quality or suitability of the Materials for any purpose. Thereafter, the Electrician shall not be liable or responsible for any loss suffered or caused by the materials in any way whatsoever.

13 Consumer Guarantees Act 1993

13.1 If the Customer is acquiring Materials for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Materials by the Electrician to the Customer.

14 Dispute Resolution

14.1 All disputes and differences between the Customer and the Electrician touching and concerning this agreement will be attempted to be resolved with good faith negotiations. If the dispute or difference can still not be resolved through good faith negotiations, it shall be referred to arbitration under a single arbitrator agreed upon by both parties. Failing agreement, by an arbitrator appointed by the president of the New Zealand Law Society for the time being. The arbitration is to be carried out in accordance with provisions of the Arbitration Act 1996.

15 Default and Consequences of Default

15.1 The Electrician may charge interest on overdue invoices daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month compounding monthly.

15.2 The Electrician may charge the Customer for, and the

Customer must indemnify the Electrician from, all costs and expenses incurred by the Electrician in the collection of unpaid sums under this Agreement or otherwise taking action to enforce the terms of this agreement. This includes but is not limited to legal costs on a full solicitor client basis.

15.3 Without prejudice to any other remedies the Electrician may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions, the Electrician may suspend or terminate the supply of Works to the Customer. The Electrician will not be liable to the Customer for any loss or damage the Customer suffers because the Electrician has exercised its rights under this clause.

15.4 Without prejudice to the Electrician's other remedies at law the Electrician shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Electrician shall, whether or not due for payment, become immediately payable if:

15.4.1 any money payable to the Electrician becomes overdue, or in The Electrician's opinion the Customer will be unable to make a payment when it falls due;

15.4.2 the Customer becomes insolvent or bankrupt, 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; or

15.4.3 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

16 Compliance with Laws

16.1 The Customer and the Electrician shall comply with the provisions of all statutes, regulations and bylaws that may be applicable to the works.

16.2 Unless otherwise agreed the Customer shall obtain any consents that may be required for the works.

16.3 The Customer will be responsible to ensure that the site where the works are to take place will comply with any occupational health and safety laws relating to building/construction sites to the satisfaction of the Electrician. Until the Electrician is satisfied that the site meets all health and safety requirements, they will not commence work.

17 Insurance

17.1 The Electrician will hold public liability insurance of at least \$5 million. It is the Customers responsibility to ensure that they are similarly insured.

18. Cancellation

18.1 The Electrician may cancel any contract or agreement that is subject to these terms and conditions by providing notice to the Customer. Once the Electrician has provided such notice to the Customer the Electrician will refund any amounts paid by the Customer for works that are not done. The Electrician will not be responsible or liable for any damage or loss whatsoever arising from the cancellation.

18.2 If the Customer cancels any contract or Agreement that is subject to these terms and conditions the Customer shall be liable for any loss that the Electrician may suffer as a direct result of the cancellation, including but not limited to profits. Any materials ordered by the Electrician to the specifications of the Customer will remain due and will not be refundable if paid.

19 Privacy Act 2020

19.1 The Customer authorises the Electrician or the Electrician's agent to:

19.1.1 access, collect, retain and use any information about the Customer;

19.1.1.1 (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or

19.1.1.2 for the purpose of marketing products and services to the Customer.

19.1.2 disclose information about the Customer, whether collected by The Electrician from the Customer directly or obtained by the Electrician 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.

19.2 Where the Customer is an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 2020.

19.3 The Customer shall have the right to request the Electrician for a copy of the information about the Customer retained by the Electrician and the right to request the Electrician to correct any incorrect information about the Customer held by the Electrician.

20 Construction Contract Act 2002

20.1 The Customer hereby expressly acknowledges that:

20.1.1 the Electrician 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:

20.1.1.1 the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or

20.1.1.2 a scheduled 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

20.1.1.3 the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Electrician by a particular date; and

20.1.1.4 the Electrician has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.

20.1.2 if the Electrician suspends work, it:

20.1.2.1 is not in breach of contract; and

20.1.2.2 is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and

20.1.2.3 is entitled to an extension of time to complete the contract; and

20.1.2.4 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.

20.1.3 if the Electrician exercises the right to suspend work, the exercise of that right does not:

20.1.3.1 affect any rights that would otherwise have been available to the Electrician under the Contract and Commercial Law Act 2017; or

20.1.3.2 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 Electrician suspending work under this provision.

21. General Terms

21.1 If the Electrician fails to enforce any term or provision contained in these terms and conditions or any other Agreement or contract between the Electrician and the Customer, it shall not be treated as a waiver of that term or provision. Such waiver will not affect the Electrician's right to enforce such term or provision.

21.2 The Agreement is governed by, and must be interpreted in accordance with, the laws of New Zealand and is subject to the jurisdiction of the Courts of New Zealand

21.3 The Electrician shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Electrician of these terms and conditions (alternatively The Electrician's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).

21.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Electrician nor to withhold payment of any invoice because part of that invoice is in dispute.

21.5 The Electrician may engage or sub-contract all or any part of its rights and obligations under these terms and conditions without the Customer's consent.

21.6 The Customer shall give the Electrician not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Electrician as a result of the Customer's failure to comply with this clause.

21.7 These terms and conditions may be amended by the Electrician at any time. If any changes are made to these terms and conditions the Electrician will notify the Customer of such changes in writing. The changes will not take effect until the Customer has been notified of the change. By instructing the Electrician to undertake further works the Customer will be deemed to have accepted the changes.

21.8 Neither party shall be liable for any default under these terms and conditions due to any act of God, pandemic, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

21.9 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

21.10 Any illegality, unenforceability or invalidity of a provision of the Agreement does not affect the legality, enforceability or validity of the remaining provisions of the Agreement.



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