

1. Definitions

- 1.1. **“Supplier”** means Electrical Inspection Services Ltd its successors and assigns or any person acting on behalf of and with the authority of Electrical Inspection Services Ltd.
- 1.2. **“Client”** shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Supplier to the Client.
- 1.3. **“Guarantor”** means that person (or persons) who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4. **“Goods”** means all Goods supplied by the Supplier to the Client (including, but not limited to reports and certificates, and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by the Supplier to the Client.
- 1.5. **“Equipment”** means all Equipment including any accessories supplied on hire by the Supplier to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Supplier to the Client.
- 1.6. **“Services”** means all services supplied by the Supplier to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.7. **“Price”** means the price payable for the Goods as agreed between the Supplier and the Client in accordance with clause 4 of this contract.
- 1.8. **“Terms”** means these terms and conditions.

2. Acceptance

- 1.1. Any instructions received by the Supplier from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Supplier shall constitute acceptance of the Terms unless such acceptance is expressly excluded.
- 1.2. Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable under these Terms.
- 1.3. Variations to the Terms may only be made with the written consent of the Supplier.
- 1.4. If there is anything in the Client's order that contradicts these Terms, the specific terms shall apply.
- 1.5. Any third party acting on behalf of the Client shall also be held liable for the payment of the invoice in the event the Client defaults on payment.

3. Client Acknowledgements

- 1.1. The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.
- 1.2. The Client acknowledges and agrees that the Supplier's inspection and certificates/reports are based on the condition of the structure, appliance or property on the day and time of the inspection. Any modification or changes made to the electrical systems in the structure, appliance or property may invalidate the certificate and/or report provided by the Supplier. The Client further agrees that any re-inspection Services required after modification shall incur additional charges.
- 1.3. The Client acknowledges that Thermal Image Technology cannot display all hidden faults, as operational conditions can affect the results and the Supplier cannot guarantee that all faults will show up in the test results. Use of any image testing results supplied to the Client is at the Client's risk. The Supplier has no liability to the Client in any way whatsoever out of the client's use of, or reliance on, image testing results.

4. Price And Payment

- 1.1. At the Supplier's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Supplier to the Client in respect of Goods supplied by the Supplier; or
 - (b) the Supplier's quoted Price (subject to clause 3.2) which shall be binding upon the Supplier provided that the Client shall accept the Supplier's quotation in writing within thirty (30) days.
- 1.2. The Supplier reserves the right to change the Price in the event of a variation to the Supplier's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation due to unforeseen circumstances, or due to a lack of or restricted access to the worksite or required area of the worksite, or as a result of increases to the Supplier in the cost of materials and labour) will be charged at the cost incurred by the Supplier, to the extent such variations were not allowed for in the Supplier's quotation, and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 1.3. At the Supplier's sole discretion:
 - (a) payment shall be due on delivery of the Goods; or
 - (b) payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices.
- 1.4. Time for payment is of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 1.5. Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Supplier.
- 1.6. All payments will be without deduction or set off.
- 1.7. 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.

5. Delivery Of Goods

- 1.1. At the Supplier's sole discretion, delivery of the Goods shall take place when the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by the Supplier or the Supplier's nominated carrier).
- 1.2. At the Supplier's sole discretion the costs of delivery are
 - (a) in addition to the Price; or
 - (b) for the Client's account.
- 1.3. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged, or the Supplier is unable to access the site to carry out the Services, then the Supplier shall be entitled to charge a reasonable cancellation fee, and the additional costs incurred by the Supplier in redelivering the Goods or revisiting the site to commence the Services.
- 1.4. Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 1.5. The failure of the Supplier to deliver shall not entitle either party to treat this contract as repudiated.
- 1.6. The Supplier shall not be liable for any loss or damage whatsoever suffered by the Client due to failure by the Supplier to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of the Supplier.

6. Risk

- 1.1. If the Supplier retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery. The Client is responsible for insuring the Goods upon delivery.
 - 1.2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- 7.7. Access**
- 1.1. The Client shall ensure that the Supplier has clear and free access to the work site at all times to enable them to perform the Services.
 - 1.2. The Supplier shall not be liable for any loss or damage to the work site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Supplier.
- 8. Underground Locations**
- 1.1. Prior to the Supplier commencing any work, the Client must advise the Supplier of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client 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.
 - 1.2. The Client indemnifies the Supplier in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 8.1.
- 9. Title**
- 1.1. The Supplier and Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid the Supplier all amounts owing for the particular Goods; and
 - (b) the Client has met all other obligations due by the Client to the Supplier in respect of all contracts between the Supplier and the Client.
 - 1.2. Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Supplier's ownership or rights in respect of the Goods shall continue.
 - 1.3. It is further agreed that until ownership of the Goods passes:
 - (a) where practicable the Goods shall be kept separate and identifiable;
 - (b) the Supplier may give notice in writing to the Client to return the Goods or any of them to the Supplier. Upon such notice being given the rights of the Client to obtain ownership or any other interest in the Goods shall cease;
 - (c) the Client is only a bailee of the Goods and the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to the Supplier for the Goods, on trust for the Supplier; and
 - (d) if the Goods are converted into other products, the parties agree that the Supplier will be the owner of the end products; and
 - (e) if the Client fails to return the Goods to the Supplier then the Supplier or the Supplier's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated and take possession of the Goods, and the Supplier will not be liable for any reasonable loss or damage suffered as a result of any action by the Supplier under this clause.
- 10. General Security Agreement**
- 1.1. The Client acknowledges that the Supplier is irrevocably authorised by the Client to register a General Security Agreement over all of the Client's assets, together with a General Security Agreement over all of the assets of any Guarantor. The terms of such General Security Agreement shall be on the terms contained in the most recent General Security Agreement produced by the Auckland District Law Society.
- 11. Personal Property Securities Act 1999 ("PPSA")**
- 1.1. The Client acknowledges and agrees that:
 - (a) these Terms constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods previously supplied by the Supplier to the Client (if any) and all Goods that will be supplied in the future by the Supplier to the Client.
 - 1.2. The Client undertakes to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of the Supplier; and
 - (d) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
 - 1.3. Nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms.
 - 1.4. The Client waives its rights as a debtor under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131, 132 and 148 of the PPSA.
 - 1.5. The Client unconditionally ratifies any actions taken by the Supplier under clauses 11.1 to 11.4.
- 12. Security and Charge**
- 1.1. Despite anything to the contrary contained herein or any other rights which the Supplier may have howsoever
 - (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Supplier or the Supplier's nominee to secure all amounts and other monetary obligations payable under these terms and conditions.
 - (b) should the Supplier elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Supplier or the Supplier's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.
- 13. Client's Disclaimer**
- 1.1. The Client hereby disclaims any right to rescind, or cancel any contract with the Supplier or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Supplier and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.
- 14. Defects**

- 1.1. The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Supplier an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods or repairing the Goods.
 - 1.2. Goods will not be accepted for return other than in accordance with 14.1 above.
- 15. Warranty**
- 1.1. For Goods not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 16. Consumer Guarantees Act 1993**
- 1.1. If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Supplier to the Client.
- 17. Intellectual Property**
- 1.1. Where the Supplier has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in the Supplier, and shall only be used by the Client at the Supplier's discretion.
 - 1.2. The Client warrants that all designs or instructions to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
 - 1.3. The Client agrees that the Supplier may use any documents, designs, drawings or Goods created by the Supplier for the purposes of advertising, marketing, or entry into any competition.
- 18. Default & Consequences of Default**
- 1.1. Interest on payments due under clause 4 shall accrue 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 (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
 - 1.2. In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Supplier.
 - 1.3. If the Client defaults in payment of any invoice when due, the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in pursuing the debt including legal costs on a solicitor and own client basis and the Supplier's collection agency costs.
 - 1.4. Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) the Supplier may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
 - 1.5. If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10% of the amount overdue (up to a maximum of \$200.00) shall be levied for administration fees which sum shall become immediately due and payable.
 - 1.6. Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client 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; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 19. Compliance with Laws**
- 1.1. The Client and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.
 - 1.2. The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the works.
 - 1.3. The Client will ensure that the work site will comply with all applicable health and safety laws.
- 20. Cancellation**
- 1.1. The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
 - 1.2. In the event that the Client cancels delivery of the Goods the Client shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.
 - 1.3. Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will not be accepted once production has commenced.
- 21. Privacy Act 1993**
- 1.1. The Client and the Guarantor/s authorises the Supplier to:
 - (a) collect, retain and use any information about the Client and/or Guarantors, for the purpose of assessing the Client's and/or Guarantors creditworthiness or marketing products and services to the Client and/or Guarantors; and
 - (b) disclose information about the Client and/or Guarantors, whether collected by the Supplier from the Client and/or Guarantors directly or obtained by the Supplier 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 Client and/or Guarantors.
 - 1.2. Where the Client and/or Guarantors are an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 1993.
 - 1.3. The Client and/or Guarantors shall have the right to request the Supplier for a copy of the information about the Client and/or Guarantors retained by the Supplier and the right to request the Supplier to correct any incorrect information about the Client and/or Guarantors held by the Supplier.
- 22. Construction Contracts Act 2002**
- 1.1. Where the Construction Contracts Act applies to Goods supplied, the Client hereby expressly acknowledges that:
 - 1.1.1. the Supplier 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 Client, and:
 - (a) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
 - (b) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (c) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Supplier by a particular date; and
 - (d) the Supplier has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
 - 1.1.2. if the Supplier suspends work, it:

- (a) is not in breach of contract; and
 - (b) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (c) is entitled to an extension of time to complete the contract; and
 - (d) 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.
- 1.1.3. if the Supplier exercises the right to suspend work, the exercise of that right does not:
- (e) affect any rights that would otherwise have been available to the Supplier under the Contractual Remedies Act 1979; or
 - (f) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Supplier suspending work under this provision.

23. Equipment Hire

- 1.1. The Equipment shall at all times remain the property of the Supplier and is returnable on demand by the Supplier. If the Equipment is not returned to the Supplier in the same condition it was delivered, the Supplier may charge the Client the full cost of repairing the Equipment. In the event Equipment is not returned at all the Supplier may charge the Client the full cost of replacing the Equipment.
- 1.2. The Client shall:
 - (a) keep the Equipment in its possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.
 - (b) not alter or make any additions to the Equipment or in any way interfere with the Equipment.
 - (c) keep the Equipment, complete with all parts and accessories, clean and in good order, and comply with any maintenance schedule advised by the Supplier to the Client.
- 1.3. The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to obtain adequate insurance covering any loss or damage to the Equipment and any loss, damage or injury to property or persons arising out of the use of the Equipment.. The Client will not act in any way which would invalidate its insurance.

24. Limitation of Liability and Indemnification

- 1.1. The Supplier's liability to the Client in relation to any loss of any kind whatsoever (indirect or direct) suffered by the Client as a result of any breach of the Supplier of obligations (whether express or implied) pursuant to any contract between the Supplier and the Client, including (without limitation) any cancellation of any contract, any negligence by the Supplier (including the Supplier's servants, agents or contractors), and also including any loss of profit, damage or injury caused to the Client's servants, agents, contractors, buyers, visitors, tenants, trespassers or any other persons, shall not exceed the greater of either:
 - (a) The cover provided and paid out in relation to any claim by the Client by the Supplier's professional indemnity insurers; or
 - (b) The amount of the Supplier's invoice to you in relation to the Goods or Services in relation to the specific contract in question.
- 1.2. The Client indemnifies the Supplier for any loss suffered by the Supplier in connection with Goods supplied under these Terms.

25. General

- 1.1. If any provision of these Terms shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 1.2. These Terms and any contract 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.
- 1.3. The Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 1.4. The Supplier reserves the right to review these Terms at any time. If changes are made to these Terms, the Supplier will notify the Client of such change.
- 1.5. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 1.6. The failure by the Supplier to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.