

## TERMS AND CONDITIONS OF TRADE

These terms and conditions apply in respect of any electrical work carried out by us for you, except to the extent that we otherwise agree with you in writing.

### Definitions

“Act” means the Construction Contracts Act 2022 and its amendments.

“Contractor” is Concept Electrical Wanaka Limited.

“Client” is you and means the person contracting with us whether as principal or as agent for another.

“Work” means the electrical work you have asked us to do and includes where appropriate the provision and installation of materials and the supply of services as quoted or at our standard rates.

“Price” means the Price payable (plus Goods and Services Tax (GST)) where applicable for the Work.

“Invoice” includes a Payment Claim under the Act.

### Price and payment

1. Unless we have provided you with a quote for the Work, our standard rates and costs for the Work shall apply.
2. Invoices are rendered at the end of each month and shall cover work done and costs incurred including variations up to the end of each month. We may invoice you for the Work at intervals during the progress of the Work.
3. Invoices are deemed to be “payment claims” as per section 20 of the Act.
4. Invoices are payable by the 20th of the month following the date of the invoice (the due date).
5. You must examine each invoice and notify us within 7 days of the date of invoice of any alleged error. After such period, the invoice will be deemed for all purposes to be correct and no claim to the contrary may be brought by you against us.
6. If you wish to dispute the amount invoiced you must, within 7 days of the date of the invoice and, in accordance with sections 21(2) and (3) of the Act, respond to us in writing with a payment schedule: identifying the invoice to which the payment schedule relates; detailing a scheduled amount (the amount you propose to pay), the manner in which you calculated that amount, and your reasons for not paying the amount invoiced in full. You must also pay the scheduled amount by the due date.
7. If we disagree with your paymentschedule, we may refer the matter to adjudication in accordance with clause 33 of these Terms and Conditions.

### **Variation of Work**

8. Where we have provided a quote for the Work, a variation of Work may be agreed between the parties.
9. Variations may include by way of example:
  - (a) any change to the scope, quality or timing of Work, any circumstance that changes the cost of performing the Work from that reasonably foreseeable at the time of the quotation or due to the discovery of hidden, unidentifiable, or unforeseen difficulties. By way of example these may include (but not limited to):
    - Poor weather conditions.
    - Limitations to site access.
    - Unsafe work site.
    - Prerequisite work by a third party not being completed.
    - Inaccurate measurements supplied by you.
    - Hidden pipes and wiring.
    - Electrical wiring required to be re-positioned at the request of any third party contracted by the client.
  - (b) any other circumstance which is stated in these Terms and Conditions to be a variation.
10. We will advise you as soon as practicable of any change to our quotation price arising out of any variation.
11. We may at our sole discretion on written notice withhold doing any Work that we reasonably consider to be a variation until where we have your agreement to the price.

### **Accuracy of customers plans and measurement for orders**

12. We shall be entitled to rely on the accuracy of any plans, specifications and other information provided by you. We do not accept responsibility for any loss, damages or costs resulting from any inaccurate information provided by you.

### **Time for completion**

13. We will endeavour to complete the Work within a reasonable time. We will not be liable for any loss or damages for completion delays. Should it be necessary to engage other resources or to do work outside ordinary working hours (7.30am to 5pm) due to circumstances beyond our control, we will endeavour to meet your completion date but any extra cost so incurred will be a variation.

## **Default and consequences of default**

14. You will be in default:

- if any Invoice is not paid on the due date or,
- if you are placed into bankruptcy, liquidation, receivership, or administration, convene a meeting with creditors or propose or enters an arrangement with creditors, or make an assignment for the benefit of creditors or,
- if a payment schedule is not provided in accordance with these Terms and Conditions and payment is not made by the due date or,
- a payment schedule is provided but the scheduled amount is not paid by the due date or,
- because of adjudication, you have been ordered to pay an amount to us by a certain date and such is not paid accordingly or,
- otherwise, does not comply with any of these Terms and Conditions.

If you are in default, we may at our sole discretion and without prejudice to other rights or remedies:

- (a) give notice of our intention to suspend work pursuant to section 24A of the Act and if you fail to remedy the situation within 5 working days, suspend work;
- (b) terminate the contract;
- (c) claim and recover all costs and losses incurred as a result of our suspending and/or resuming work and/or terminating the contract including any loss of profit arising out of such termination;
- (d) charge default interest at the rate of 12% per annum on any amount not paid by the due date, calculated from the due date of each invoice until the date we receive payment in full; and
- (e) charge you all costs incurred by us in the collection of any overdue amount from you including, all legal costs on a solicitor/client basis and any collection agency charges incurred by us, up until the date of payment.

15. Any payment received by us will first be applied in reduction of interest and any costs incurred by us under this clause, the remaining balance will be used to reduce of any other amounts outstanding to us.

### **Suspension of Work**

16. If we elect to suspend Work we will, in addition to the rights specified above:
- (a) not be liable for any loss or damage suffered by you or any third party because of the suspension of Work;
  - (b) be entitled to an extension of time to complete the Work if we elect to complete such; and/or
  - (c) be entitled to lift the suspension even if the amount has not been paid, if we so elect.

### **Warranty**

17. We will remedy any defect in the work completed by us that is reported to us in writing within 90 days of completion of the Work or any defined stage of the Work or within any longer period agreed or stated in our quotation. We will not be liable for any consequential costs arising directly or indirectly out of any defect or failure. This warranty is in addition to any rights you may have as a consumer under the Consumer Guarantees Act 1993 (if applicable).

### **Limitation of warranty and exclusion of liability**

18. To the extent permitted by law, we give no warranty as to the quality or suitability of materials or equipment supplied by us for any purpose and any implied warranty, is expressly excluded.
19. Our liability shall not in any circumstances, exceed the Price.

### **Consumer Guarantees Act 1993**

20. If you are acquiring goods or Services for the purposes of trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply by us to you.

### **Indemnity**

21. You will indemnify us against all damages, costs and losses incurred you because of any breach by you of this contract, tort including negligence, wilful act or omission or breach of statutory duty.

### **Materials**

22. Materials, equipment or systems nominated or specified by manufacturer, brand or model will be supplied and installed in accordance with the manufacturer's published literature or performance standards and will comply with the specified manufacturer's product literature.
23. Any goods or materials supplied by us shall remain our property until paid for in full. If any money remains unpaid or you are in breach of any obligation to us, we or our agents are authorised by you to enter your premises to recover and resell any or all those goods and materials. These terms and conditions constitute a security agreement for the purposes of the Personal Property Securities Act ("PPSA") in all materials and any other personal property supplied by you to us and you agree that we may register a Financing Statement under the Personal Property Securities Act 1999 to give us a perfected security in any goods or property supplied.

### **Access to worksite**

24. You shall ensure that we have clear and free access to the site to enable us to do the Work.
25. Prior to us commencing any Work you must advise us and clearly mark the precise location of all underground services such as 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 we will take all care to avoid damage to any underground services you agree to indemnify us in respect of all and any liability claims, loss, damage, costs, and fines because of damage to services not precisely located and notified.
26. You warrant that any structures to which we install, or affix equipment and materials are sufficiently durable to withstand the installation or affixation of the materials and equipment and any electrical connections such as meter boxes, main switches, circuit breakers and electrical cable are suitable capacity.

### **Health and safety**

27. We will perform the Work in accordance with all relevant health and safety requirements and with any site-specific safety requirements notified to us. You will inform us of any hazards in the workplace to which we may be exposed in working on your premises, and we will provide a sitespecific safety plan if so requested.
28. We may refuse to work if we are not satisfied that such work can be completed safely.

### **Insurance**

29. We carry public insurance cover of \$5,000,000.00

### **Force majeure**

30. If we cannot carry out any obligation under the contract either in whole or in part because of a force majeure event being anything outside our reasonable control including, without limitation, fire, storm, flood, earthquake, lightning, explosion, accident, road or rail closures, rail derailment, war, terrorism, sabotage, epidemic, pandemic, quarantine restriction, labour dispute or shortage, defaults of manufacturers and suppliers, the inability to obtain equipment, supplies or other facilities not caused by a failure to pay, or other similar events beyond our control then our obligations under the contract will be suspended for the duration of the event or waived to the extent applicable.

### **Termination**

31. Either party may terminate the contract by immediate notice if the other party materially breaches the contract and neglects to rectify the breach within three (3) working days.
32. Termination shall not prejudice or affect the accrued rights or claims or liabilities of the parties.

### **Dispute resolution**

33. If any dispute or difference arises in connection with the Work or payments claimed, or any other matter relating to this contract, both parties will endeavour to resolve the matter by negotiation. Either party may at any time refer any dispute to adjudication in the manner set out in section 28 of the Act and may refer any matter that is not resolved by adjudication to arbitration under the Arbitration Act 1996.
34. However, where any dispute or difference arises in connection with the payments claimed, payment is to be made in accordance with these Terms and Conditions pending a formal outcome of the dispute or difference.

### **Other matters which affect the contract**

35. We both acknowledge that the Construction Contracts Act 2002 applies to the electrical work. Where the Act's provisions are not mandatory and these Terms and Conditions say something different to what is in the Act, we have intentionally modified the provisions of the Act and these Terms and Conditions should be read accordingly.
36. If a condition or part of a condition is unenforceable, it must be severed from and does not affect the rest of the contract.
37. We are not bound by any waiver, discharge or release of a condition or any agreement which changes the contract, unless it is in writing and signed by or for us.

38. Except as expressly set out in the contract, you acknowledge that the contract records the entire understanding relating to the matters dealt with in the contract and that you are not relying on any other representations, warranties or statements regarding the nature, characteristic or quality of the services provided by us (with the intent that we will not be liable in any manner whatsoever for any errors or omissions in publications or schedules or for statements or representations made by our employees, agents or representatives that are not expressly recorded in the contract).
39. We may amend these Terms and Conditions from time to time without notice. The conditions applicable to the Work provided are our terms and conditions current at the time at which the Quotation is provided to you.
40. A reference to any law includes any statutory modification, substitution or re-enactment of it. The laws of New Zealand apply to the contract and these Terms and Conditions and any proceedings initiated by either party must be brought against the other party in a court in New Zealand.