

Platinum Electrical Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 "Contractor" means Platinum Electrical Limited, its successors and assigns or any person acting on behalf of and with the authority of Platinum Electrical Limited.
- 1.2 "Client" means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Works" means all Works or Materials supplied by the Contractor to the Client at the Client's request from time to time (where the context so permits the terms "Works" or "Materials" shall be interchangeable for the other).
- 1.4 "Prime Cost Item" shall mean an item that either has not been selected, or whose Price is not known, at the time this contract is entered into and for the cost of supply and delivery of which the Contractor must make a reasonable allowance in the contract.
- 1.5 "Provisional Sum" shall mean an estimate of the cost of carrying out particular Works under this contract for which the Contractor, after making all reasonable inquiries, cannot give a definite Price at the time this contract is entered into.
- 1.6 "Price" means the Price payable for the Works as agreed between the Contractor and the Client in accordance with clause 4 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with the Contractor's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Contractor.
- 2.3 In the event that the Contractor is required to provide the Works urgently, that may require the Contractor's staff to work outside normal business hours, (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then the Contractor reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between the Contractor and the Client.

3. Change in Control

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

4. Price and Payment

- 4.1 At the Contractor's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by the Contractor to the Client in respect of Works performed or Materials supplied; or
- (b) the Contractor's Price at the date of delivery of the Works according to the Contractor's current pricelist; or
- (c) the Contractor's quoted Price (subject to clause 4.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days.
- 4.2 The Contractor 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 (but not limited to, poor weather conditions, limitations to accessing the site, hard rock barriers below the surface or iron reinforcing rods in concrete, obscured building defects, unsound pre-existing construction Materials, safety considerations, prerequisite work by any third party not being completed, the effects of changes to wage rates due to industry awards or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Works; or
- (d) in the event of increases to the Contractor in the cost of labour or Materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges or adjustment in Price of Materials in accordance with movement in the copper price index) which are beyond the Contractor's control.
- (e) in the event of increases to the Contractor in the cost of labour or materials which are beyond the Contractor's control.
- 4.3 At the Contractor's sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:
- (a) on completion of the Works; or
- (b) by way of progress payments in accordance with the Contractor'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) for certain approved Client's, 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;
- (d) the date specified on any invoice or other form as being the date for payment; or
- (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Contractor.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Contractor.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Prime Cost Items and Provisional Sums

- 5.1 For the purposes of this clause 5, the following words shall have their corresponding meanings:
- (a) "Prime Cost Item" shall mean an item that either has not been selected, or the price of which is not known, at the time this contract is entered into, and for which the cost of supply, delivery and installation the Contractor must make a reasonable allowance for in this contract.
- (b) "Provisional Sum" shall mean an estimate of the cost of carrying out particular Works under this contract for which the Contractor, after making all reasonable inquiries, cannot give a definite price for at the time this contract is entered into.
- 5.2 If the Contractor advises the Client that a Prime Cost Item which the Client has selected is not available then the Client must advise the Contractor in writing within five (5) working days of such notice of an alternative choice of item, failing which the Contractor shall be entitled on the Client's behalf to select an item of similar

specification and quality as the unavailable item originally selected (providing details of the same to the Client).

- 5.3 If the actual cost of a Prime Cost Item or the actual cost of the Works for a Provisional Sum is less than the sum allowed for that item, then the difference shall be deducted from the Price and shall be shown by the Contractor as part of the next progress payment claim.
- 5.4 If the actual cost of a Prime Cost Item or the actual cost of the Works for a Provisional Sum is greater than the sum allowed for that item, then the difference shall be added to the Price and shall be claimed by the Contractor as part of the next progress payment claim.

6. Delivery of the Works

- 6.1 Delivery ("Delivery") of the Materials is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Materials at the Contractor's address; or
- (b) the Contractor (or the Contractor's nominated carrier) delivers the Materials to the Client's nominated address even if the Client is not present at the address.
- 6.2 At the Contractor's sole discretion the cost of delivery is in addition to the Price.
- 6.3 Subject to clause 6.4 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 6.4 The Works commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
- (b) have the site ready for the Works; or
- (c) notify the Contractor that the site is ready.
- 6.5 The Contractor 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.
- 6.6 Any time or date given by the Contractor to the Client is an estimate only. The Contractor shall not be liable for any loss or damage whatsoever due to failure by the Contractor to deliver the Works (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of the Contractor.

7. Risk

- 7.1 If the Contractor retains ownership of the Materials under clause 13 then:
- (a) where the Contractor is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
- (i) the Client or the Client's nominated carrier takes possession of the Materials at the Contractor's address; or
- (ii) the Materials are delivered by the Contractor or the Contractor's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
- (b) where the Contractor is to both supply and install Materials then the Contractor shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 7.2 Notwithstanding the provisions of clause 7.1 if the Client specifically requests the Contractor to leave Materials outside the Contractor's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 7.3 The Client acknowledges and accepts that the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, the Contractor reserves the right to vary the Price with alternative Materials as per clause 4.2. The Contractor also reserves the right to halt all Works until such time as the Contractor and the Client agree to such changes.
- 7.4 The Contractor shall not be liable for any loss or damage caused in accessing the work site beyond reasonable control of the Contractor (including, without limitation, to ceiling tiles and panels, face brickwork and rendered masonry services) which the Contractor may have to break into or disturb in performance of the Works), unless due to the negligence of the Contractor.
- 7.5 The Client acknowledges that in the event asbestos or any other toxic substances are discovered at the worksite that it is their responsibility to ensure the safe removal of the same. The Client further agrees to indemnify the Contractor against any costs incurred by the Contractor as a consequence of such discovery. Under no circumstances will the Contractor handle removal of asbestos product.
- 7.6 The Contractor is not responsible for the removal of rubbish from or clean-up of the building/constructions site/s. All rubbish generated by the Contractor will be placed in a designated areas appointed by the Client but the responsibility of removal of same is the Client or the Client's agent.

8. Air Conditioning Risk

- 8.1 Whilst the final location of the condensing unit is at the discretion of the Client, a charge will apply as a variation as per clause 4.2, if the Client requests the unit to not be located adjacent to the external wall, due to the underground piping required.
- 8.2 The final location of the wall, window or floor unit must be determined on site by the Client.
- 8.3 The Client acknowledges and agrees that the Contractor does not guarantee any noise levels (external or internal) and the Contractor shall not be held liable for any loss, damages, or costs, however resulting from noise levels.
- 8.4 In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Client shall be responsible for any and all costs involved.
- 8.5 The Client acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.
- 8.6 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify the Contractor immediately upon any proposed changes. The Client agrees to indemnify the Contractor against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 4.2.

9. Clients Responsibilities

- 9.1 It is the Client's responsibility to:
- (a) have all areas clean and clear to enable scheduled work to be completed in accordance with the schedule of installation; and
- (b) make the premises available on the agreed date and time. If installation is interrupted by the failure of the Client to adhere to the installation schedule agreed to between the Contractor and

the Client, any additional costs will be invoiced to the Client as an extra;

- (c) while at the site, provide adequate access to available water, electricity, toilet and washing facilities.
- 9.2 It is the intention of the Contractor and agreed by the Client that it is the responsibility of the Client to provide and have erected scaffolding to enable the Works to be undertaken (where in the Contractor's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed.
- 9.3 The Contractor may at its discretion notify the Client that it requires to store at the worksite Materials, fittings and appliances, or plant and tools required for the Works, in which event the Client shall supply the Contractor a safe area for storage and shall take all reasonable efforts to protect all items so stored from possible destruction, theft or damage. In the event that any such items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Client's responsibility.
- 9.4 The Client accepts and acknowledges their responsibility to ensure that all persons (including, but not limited to any gardening or lawn mowing contractors), are made aware of any low voltage cabling present within the garden, lawns, rockery beds and surrounds. The Contractor will under no circumstances be held liable for any damage to cabling installed by the Contractor caused by any third party.

10. Installation

- 10.1 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that all electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) that the Contractor, its employees or the Contractor's reasonably form the opinion that the Client's premises is not safe for the installation of Materials to proceed then the Contractor shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 6.4 above) until the Contractor is satisfied that it is safe for the installation to proceed.

11. Contracted Sub-contractors

- 11.1 The Contractor may at its discretion use or recommend contracted sub-contractor to install the Materials. The Contractor takes care to ensure that these sub-contractors are competent, trained and independently insured. Should the Client need to make any claim in regards to damage, loss, the performance or conduct of such a sub-contractor then the Client agrees to make such claim direct to the sub-contractor in the first instance and shall only involve the Contractor in such a claim if the Client is unable to resolve the issue with the sub-contractor.
- 11.2 The Client agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.

12. Access

- 12.1 The Client shall ensure that the Contractor has clear and free access to the work site at all times to enable them to undertake the Works. The Contractor 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 due to the negligence of the Contractor.

13. Underground Locations

- 13.1 Prior to the Contractor commencing any work the Client must advise the Contractor 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.
- 13.2 Whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor 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 13.1.

14. Surplus Materials

- 14.1 Unless otherwise stated elsewhere in this contract:
- (a) only suitable new Materials will be used; and
- (b) demolished Materials remain the Contractor's property; and
- (c) Materials that the Contractor brings to the site which are surplus remain the property of the Contractor.

15. Title

- 15.1 The Contractor and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid the Contractor all amounts owing to the Contractor; and
- (b) the Client has met all of its other obligations to the Contractor.
- 15.2 Receipt by the Contractor 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.
- 15.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Client in accordance with clause 15.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Contractor on request.
- (b) the Client holds the benefit of the Client's insurance of the Materials on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
- (c) the production of these terms and conditions by the Contractor shall be sufficient evidence of the Contractor's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Contractor to make further enquiries.
- (d) the Client 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 Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand.
- (e) the Client should not convert or process the Materials or intermix them with other Materials but if the Client does so then the Client holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs.
- (f) unless the Materials have become fixtures the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials.
- (g) the Contractor may recover possession of any Materials in transit whether or not delivery has occurred.
- (h) the Client 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 Contractor.

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- (j) the Contractor may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
- 16. Personal Property Securities Act 1999 ("PPSA")**
16.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
(b) a security interest is taken in all Materials previously supplied by the Contractor to the Client (if any) and all Materials that will be supplied in the future by the Contractor to the Client.
- 16.2 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 Contractor 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 Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;
(c) not register a financing change statement or a change demand without the prior written consent of the Contractor; and
(d) immediately advise the Contractor of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
- 16.3 The Contractor and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 16.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 16.5 Unless otherwise agreed to in writing by the Contractor, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 16.6 The Client shall unconditionally ratify any actions taken by the Contractor under clauses 16.1 to 16.5.
- 17. Security and Charge**
17.1 In consideration of the Contractor agreeing to supply the Materials, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 17.2 The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
- 17.3 The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Client's behalf.
- 18. Client's Disclaimer**
18.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Contractor or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Contractor and the Client acknowledges that the Works are bought relying solely upon the Client's skill and judgment.
- 19. Defects In Materials**
19.1 The Client shall inspect the Materials on delivery and shall within ten (10) days of delivery (time being of the essence) notify the Contractor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Contractor an opportunity to inspect the Materials within a reasonable time following delivery if the Client believes the Materials are defective in any way. If the Client shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which the Contractor has agreed in writing that the Client is entitled to reject, the Contractor's liability is limited to either (at the Contractor's discretion) replacing the Materials or repairing the Materials.
- 20. Returns**
20.1 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 19.1; and
(b) the Contractor has agreed in writing to accept the return of the Materials; and
(c) the Materials are returned at the Client's cost within fifteen (15) days of the delivery date; and
(d) the Contractor will not be liable for Materials which have not been stored or used in a proper manner; and
(e) the Materials are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 20.2 The Contractor may (in its discretion) accept the return of Materials for credit but this may incur a handling fee of ten percent (10%) of the value of the returned Materials plus any freight.
- 20.3 Non-stocklist items or Materials made to the Client's specifications are under no circumstances acceptable for credit or return.
- 21. Warranties**
21.1 Subject to the conditions of warranty set out in clause 21.2 the Contractor warrants that if any defect in any workmanship of the Contractor becomes apparent and is reported to the Contractor within twelve (12) months of the date of delivery (time being of the essence) then the Contractor will either (at the Contractor's sole discretion) replace or remedy the workmanship.
- 21.2 The conditions applicable to the warranty given by clause 21.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- (i) failure on the part of the Client to properly maintain any Materials; or
(ii) failure on the part of the Client to follow any instructions or guidelines provided by the Contractor; or
(iii) any use of any Materials otherwise than for any application specified on a quote or order form; or
(iv) the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
(v) fair wear and tear, any accident or act of God.
- (b) the warranty shall cease and the Contractor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Contractor's consent.
- (c) in respect of all claims the Contractor shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 21.3 For Materials not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Materials. The Contractor 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 Materials.
- 21.4 The conditions applicable to the warranty given on Materials supplied by the Contractor are contained on the "Warranty Card" that will be supplied with the Materials.
- 21.5 In the case of second hand Materials, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by the Contractor as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Contractor shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.
- 22. Works undertaken by Client**
22.1 In the event that any part of the Works is undertaken by, or is reliant upon Works undertaken by the Client then any Works undertaken by the Client shall be at the written permission of the Contractor and executed in accordance with a timetable provided to the Client by the Contractor and shall be undertaken strictly in accordance with the plans and specifications, the Building Act 2004 (in particular sections 14B(b) and (c)) and any relevant regulations made under that Act, and any direction given by the Contractor.
- 22.2 In the event of the Client failing to undertake any such Works strictly in accordance with clause 22.1, the Contractor shall be entitled to:
- (a) rectify any such failure to make good a defect; and
(b) charge the Client any extra costs incurred due to additional labour or material costs with any such costs being paid to the Contractor as invoiced prior to possession being given and taken.
- 22.3 The Contractor shall not be liable for any loss or damage howsoever caused as a result of any Works performed by the Client.
- 22.4 In the event of any loss arising out of any Materials supplied by the Client, the Client shall be liable for all such loss or damage.
- 22.5 During any period that the Client is working on the Works the Client shall take all practical steps to prevent harm to the Contractor and shall comply with the provisions of the Health and Safety in Employment Act 1992.
- 23. Consumer Guarantees Act 1993**
23.1 If the Client is acquiring Materials 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 Materials by the Contractor to the Client.
- 24. Intellectual Property**
24.1 Where the Contractor has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Contractor, and shall only be used by the Client at the Contractor's discretion.
- 24.2 The Client warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.
- 24.3 The Client agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Contractor has created for the Client.
- 25. Default and Consequences of Default**
25.1 Interest on overdue invoices 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 Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 25.2 If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's collection agency costs, and bank disbursement fees).
- 25.3 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Works to the Client. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.
- 25.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;
(b) the Client 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
(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 26. Compliance with Laws**
26.1 Both the Client and the Contractor agree that they will at all times ensure that they comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including occupational health and safety laws relating to building/construction sites, and any other relevant safety standards or legislation, particularly those in relation to Asbestos/Hazardous Materials and the safe removal and disposal of the same.
- 26.2 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical (Safety) Regulations 2010. All of the cabling work will comply with the New Zealand and Australian Wiring standards.
- 26.3 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 27. Insurance & Indemnity**
27.1 The Contractor shall have public liability insurance of at least \$5m. It is the Client's responsibility to ensure that they are similarly insured.
- 27.2 Indemnity, insofar as:
- (a) any injury or damage arising out of, or in the course of, or by reason of, the execution of the Work under this contract; and
(b) provided that the same is due to any act, negligence, omission or default of the Contractor, its servant, agent or any sub-contractor of its servant or agent.
- 27.3 The Client shall unconditionally and irrevocably indemnify the Contractor against:
- (a) any and all demands, claims, suits, actions, damage as, liabilities, or proceedings whatsoever to any real personal property; and
(b) any and all demands, claims, suits, actions, damages, liabilities, or proceedings whatsoever arising under any statute or at common law in respect of personal injury or to death of any person whomsoever.
- 28. Cancellation**
28.1 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 28.2 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 28.3 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 29. Privacy Act 1993**
29.1 The Client authorises the Contractor or the Contractor's agent to:
- (a) access, collect, retain and use any information about the Client;
(i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
(ii) for the purpose of marketing products and services to the Client.
(b) disclose information about the Client, whether collected by the Contractor from the Client directly or obtained by the Contractor 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.
- 29.2 Where the Client is an individual the authorities under clause 29.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 29.3 The Client shall have the right to request the Contractor for a copy of the information about the Client retained by the Contractor and the right to request the Contractor to correct any incorrect information about the Client held by the Contractor.
- 30. Unpaid Contractor's Rights**
30.1 Where the Client has left any item with the Contractor for repair, modification, exchange or for the Contractor to perform any other service in relation to the item and the Contractor has not received or been tendered the whole of any moneys owing to it by the Client, the Contractor shall have, until all moneys owing to the Contractor are paid:
- (a) a lien on the item; and
(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected Materials.
- 30.2 The lien of the Contractor shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Contractor having been obtained against the Client.
- 31. Construction Contract Act 2002**
31.1 The Client hereby expressly acknowledges that:
- (a) the Contractor 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
(i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
(ii) 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
(iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Contractor by a particular date; and
(iv) the Contractor has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if the Contractor suspends work, it:
- (i) is not in breach of contract; and
(ii) 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
(iii) is entitled to an extension of time to complete the contract; and
(iv) 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.
- (c) if the Contractor exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to the Contractor under the Contractual Remedies Act 1979; or
(ii) 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 Contractor suspending work under this provision.
- 32. General**
32.1 The failure by the Contractor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Contractor's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 32.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Northshore Courts of New Zealand.
- 32.3 The Contractor shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 32.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 32.5 The Contractor may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 32.6 The Client agrees that the Contractor may amend these terms and conditions at any time. If the Contractor makes a change to these terms and conditions, then that change will take effect from the date on which the Contractor notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Contractor to provide any Works to the Client.
- 32.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 32.8 The Client 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.