

WH Electrical – Terms & Conditions of Trade

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| 1. | 1.1 | <p>Definitions</p> <p>"Contractor" means Williams and Harvey Electrical Limited T/A WH Electrical, its successors and assigns or any person acting on behalf of and with the authority of Williams and Harvey Electrical Limited T/A WH Electrical.</p> <p>"Client" means the persons buying the Goods 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.</p> <p>"Goods" means all Goods or Services supplied by the Contractor to the Client at the Contractor's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).</p> <p>"Price" means the price for the Goods as agreed between the Contractor and the Client in accordance with clause 5 below.</p> | | <p>sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil carrying mains, and any other services that may be on site.</p> <p>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 9.1.</p> | 18. | 18.1 | <p>Default and Consequences of Default</p> <p>The Contractor will invoice the Client 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.</p> <p>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 dishonour fees).</p> <p>Further to any other rights or remedies the Contractor may have under this contract, if a Client fails to pay the Contractor by the due date of payment, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 18, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.</p> <p>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 Goods 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.</p> <p>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 for the Contractor.</p> <p>(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;</p> <p>(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</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p> | 18.2 | 18.3 | <p>Title</p> <p>The Contractor and the Client agree that ownership of the Goods shall not pass until:</p> <p>(a) the Client has paid the Contractor all amounts owing to the Contractor; and</p> <p>(b) the Client has received the Goods from the Contractor.</p> <p>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.</p> <p>It is further agreed that:</p> <p>(a) until expiry of the Goods passes to the Client in accordance with clause 10.1 that the Client is only a bailee of the Goods and must return the Goods to the Contractor on request;</p> <p>(b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Contractor and the Contractor shall be entitled to the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;</p> <p>(c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds any such disposal on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand.</p> <p>(d) the Client shall not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the Contractor and must sell, dispose of or return the resulting product to the Contractor as its sole direct;</p> <p>(e) the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Goods are kept and recover possession of the Goods.</p> <p>(f) the Contractor may recover possession of any Goods in transit whether or not delivery has occurred;</p> <p>(g) the Client shall not charge or grant an encumbrance over the Goods nor grant otherwise give away any interest in the Goods while they remain the property of the Contractor;</p> <p>(h) the Contractor may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.</p> | 18.4 | 18.5 | <p>Personal Property Securities Act 1999 ("PPSA")</p> <p>Notwithstanding to these terms and conditions in writing the Client acknowledges and agrees that:</p> <p>(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and</p> <p>(b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Client to the Contractor for Services – that have previously been supplied and that will be supplied in the future by the Contractor to the Client.</p> <p>The Client undertakes to:</p> <p>(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;</p> <p>(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 Goods charged thereby;</p> <p>(c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Contractor; and</p> <p>(d) immediately advise the Contractor 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.</p> <p>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 in writing.</p> <p>The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.</p> <p>Unless otherwise agreed to in writing by the Contractor, the Client waives its right to rescind, vary or terminate the contract in reliance on section 148 of the PPSA.</p> <p>The Client shall unconditionally ratify any actions taken by the contractor under clauses 11.1 to 11.5.</p> | 18.6 | 19. | <p>Compliance with Laws</p> <p>The Client and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.</p> <p>The Client shall obtain (at the expense of the Client) all licences, approvals, applications and permits that may be required for the Services, and that are not included in the project documents provided by the Contractor.</p> <p>All work will be tested to ensure that it is electrically safe and is in accordance with the relevant standards and regulations applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with all relevant Australian and New Zealand Wiring standards.</p> <p>If during the course of installation when the Services are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by the Contractor, then the Contractor shall notify the Client immediately. The power if isolated will not be re-generated until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations. The Client accepts and agrees that any costs associated with the rectification Services including any Goods and labour shall be to the Client's account.</p> <p>Any live Services or Services undertaken near live conductors where it is safe to do so shall be dealt with in accordance with Australian and New Zealand Wiring standards being "Safe working on Low Voltage Electrical Installations, relevant Commonwealth and State Acts and Work Place Best Practices". The Contractor's live Services procedures are designed to eliminate risk of injury to the Contractor's employees, damage to the Client's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Services for which additional charges may be applicable. This shall be included in accordance with clause 5.2.</p> <p>The Client agrees that the site will comply with any WorkSafe guidelines relating to building/construction sites and any other relevant safety standards or legislation.</p> | 19.1 | 19.2 | <p>20. Cancellation</p> <p>The Contractor 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 Contractor shall repay to the Client any money paid in advance for the Goods, but the Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>In the event that the Client cancels delivery of Goods 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).</p> <p>Cancellation of orders for Goods not to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> | 19.3 | 19.4 | <p>21. Privacy Act 1993</p> <p>The Client authorises the Contractor or the Contractor's agent to:</p> <p>(a) access, collect, retain and use any information about the Client;</p> <p>(i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or</p> <p>(ii) for the purpose of assessing the Client's creditworthiness; or</p> <p>(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 on the Client or the Client's creditworthiness.</p> <p>Where the Client is an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 1993.</p> <p>The Client shall have the right to request the Contractor for a copy of the information about the Client held by the Contractor and to request the Contractor to correct any incorrect information about the Client held by the Contractor.</p> | 19.5 | 19.6 | <p>22. Construction Contracts Act 2002</p> <p>The Client hereby expressly acknowledges that:</p> <p>(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:</p> <p>(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</p> <p>(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</p> <p>(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</p> <p>(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.</p> <p>(b) if the Contractor suspends work, it:</p> <p>(i) is not in breach of contract; and</p> <p>(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</p> <p>(iii) is entitled to an extension of time to complete the contract; and</p> <p>(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.</p> <p>(c) if the Contractor exercises the right to suspend work, the exercise of that right does not:</p> <p>(i) affect any rights that would otherwise have been available to the Contractor under the Contract and Commercial Law Act 2017; or</p> <p>(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.</p> | 19.7 | 19.8 | <p>23. General</p> <p>The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision, if any provision of these terms and conditions shall be invalid, void, illegal or unenforceable by the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>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 courts of New Zealand.</p> <p>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 Goods).</p> <p>The Contractor may licence or assign all or any part of its rights and/or obligations under this contract without the Client's consent.</p> <p>The Client cannot licence or assign without the written approval of the Contractor.</p> <p>The Contractor may elect to subcontract any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, 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.</p> <p>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 Goods to the Client.</p> <p>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.</p> <p>Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.</p> |
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