



**NEPTUNE ELECTRIC LIMITED**

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# Terms & Conditions

## 1. Definitions

- 1.1 "Contractor" shall mean **NEPTUNE ELECTRIC LIMITED** its successors and assigns or any person acting on behalf of and with the authority of **NEPTUNE ELECTRIC LIMITED**.
- 1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by the Contractor to the Customer.
- 1.3 "Guarantor" shall mean that person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall mean all Goods supplied by the Contractor to the Customer (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 Contractor to the Customer.
- 1.5 "Services" shall mean all services supplied by the Contractor to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the price payable for the Goods as agreed between the Contractor and the Customer in accordance with clause 3 of this contract.



## 2. Acceptance

- 2.1 Any instructions received by the Contractor from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Contractor shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of the Contractor.
- 2.4 The Customer shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by the Contractor as a result of the Customer's failure to comply with this clause.
- 2.5 Goods are supplied by the Contractor only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

## 3. Price & Payment

- 3.1 At the Contractor's sole discretion, the Price shall be either:
  - (a) as indicated on invoices provided by the Contractor to the Customer in respect of Goods supplied; or
  - (b) the Contractor's quoted Price (subject to clause 3.2) which shall be binding upon the Contractor provided that the Customer shall accept the Contractor's quotation in writing within ninety (30) days.



- 3.2 The Contractor reserves the right to change the Price in the event of a variation to the Contractor's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties or as a result of increases to the Contractor in the cost of materials and labour) will be charged for on the basis of the Contractor'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.
- 3.3 At the Contractor's sole discretion, a deposit may be required.
- 3.4 The Contractor may submit detailed progress payment claims in accordance with the Contractor's specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any materials delivered to the site but not yet installed.
- 3.5 At the Contractor's sole discretion:
- (a) payment shall be due on delivery of the Goods; or
  - (b) payment for approved Customers shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
- 3.6 Time for payment for the Goods shall be 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.**
- 3.7 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 Customer and the Contractor.
- 3.8 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.



## 4. Delivery of Goods

- 4.1 At the Contractor's sole discretion delivery of the Goods shall take place when:  
(a) the Customer takes possession of the Goods at the Contractor's address; or  
(b) the Customer takes possession of the Goods at the Customer's nominated address.
- 4.2 At the Contractor's sole discretion, the costs of delivery may be in addition to the Price and for the Customer's account.
- 4.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Contractor shall be entitled to charge a reasonable fee for redelivery.
- 4.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 4.5 The failure of the Contractor to deliver shall not entitle either party to treat this contract as repudiated.
- 4.6 The Contractor shall not be liable for any loss or damage whatsoever due to failure by the Contractor to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of the Contractor.

## 5. Risk

- 5.1 If the Contractor retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Contractor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds



without the need for any person dealing with the Contractor to make further enquiries.

- 5.3 Where the Contractor is required to install the Goods the Customer warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and the Contractor shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.

## 6. Access

- 6.1 The Customer 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 unless due to the negligence of the Contractor.

## 7. Hidden Mains & Services

- 7.1 Prior to the Contractor commencing any work the Customer must advise the Contractor of the precise location of all hidden services on the site and clearly mark the same. The hidden mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 7.2 Whilst the Contractor will take all care to avoid damage to any hidden services the Customer 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 7.1.



## 8. Title

- 8.1 The Contractor and Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Contractor all amounts owing for the particular Goods; and
  - (b) the Customer has met all other obligations due by the Customer to the Contractor in respect of all contracts between the Contractor and the Customer.
- 8.2 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 and until then the Contractor's ownership or rights in respect of the Goods shall continue.
- 8.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until the Contractor shall have received payment and all other obligations of the Customer are met;  
and
  - (b) until such time as ownership of the Goods shall pass from the Contractor to the Customer the Contractor may give notice in writing to the Customer to return the Goods or any of them to the Contractor. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods shall cease;  
and
  - (c) the Customer is only a bailee of the Goods and until such time as the Contractor has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to the Contractor for the Goods, on trust for the Contractor;  
and



- (d) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Contractor will be the owner of the end products;  
and
- (e) if the Customer fails to return the Goods to the Contractor, then the Contractor or the Contractor's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods, and the Contractor will not be liable for any reasonable loss or damage suffered as a result of any action by the Contractor under this clause.

## 9. Personal Property Securities Act 1999 ("PPSA")

9.1 Upon assenting to these terms and conditions in writing the Customer 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 Goods previously supplied by the Contractor to the Customer (if any) and all Goods that will be supplied in the future by the Contractor to the Customer.

9.2 The Customer 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 Goods 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 the Goods which would result in a change in the nature of proceeds derived from such sales.

9.3 The Contractor and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

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

9.5 Unless otherwise agreed to in writing by the Contractor, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

9.6 The Customer shall unconditionally ratify any actions taken by the Contractor under clauses 9.1 to 9.5.

## 10. Security and Charge

10.1 Despite anything to the contrary contained herein or any other rights which the Contractor may have howsoever:

- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer 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 Contractor or the Contractor's nominee to secure all amounts and other monetary obligations payable under these terms and conditions.





The Customer and/or the Guarantor acknowledge and agree that the Contractor (or the Contractor's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

- (b) should the Contractor elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Contractor or the Contractor's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 10.1.

## 11. Customer's Disclaimer

- 11.1 The Customer 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 Customer by the Contractor and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

## 12. Defects

- 12.1 The Customer shall inspect the Goods on delivery and shall within seven (7) 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 Customer shall afford the Contractor an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way.  
If the Customer 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 Contractor has agreed in writing that the Customer is entitled to reject, the Contractor's liability is limited to either (at the Contractor's discretion) replacing the Goods or repairing the Goods.

12.2 Goods will not be accepted for return other than in accordance with 12.1 above.

## 13. Returns

13.1 Returns will only be accepted provided that:

- (a) the Customer has complied with the provisions of clause 12.1; and
- (b) the Contractor has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
- (d) the Contractor will not be liable for Goods which have not been stored or used in a proper manner; and the Goods 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

13.2 The Contractor may (at its discretion) accept the return of Goods for credit but this may incur a handling fee of ten percent (10%) of the value of the returned Goods plus any freight.

## 14. Warranty

14.1 Subject to the conditions of warranty set out in Clause 14.2 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.



14.2 The conditions applicable to the warranty given by Clause 14.1 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 Customer to properly maintain any Goods;
  - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by the Contractor;
  - (iii) any use of any Goods otherwise than for any application specified on a quote or order form;
  - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user;
  - (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 Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.

14.3 For Goods not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Goods. 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 Goods.

14.4 In the case of second-hand Goods, the Customer 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 Goods, or caused by the Goods, or any part thereof however arising.



## 15. Consumer Guarantees Act 1993

- 15.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Contractor to the Customer.

## 16. Intellectual Property

- 16.1 Where the Contractor has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings and documents shall remain vested in the Contractor, and shall only be used by the Customer at the Contractor's discretion.
- 16.2 The Customer warrants that all designs or instructions to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.
- 16.3 The Customer agrees that the Contractor may use any documents, designs, drawings or Goods created by the Contractor for the purposes of advertising, marketing, or entry into any competition.

## 17. Default & Consequences of Default

- 17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of five percent (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 judgement.
- 17.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by the Contractor.



- 17.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in pursuing the debt including legal costs on a solicitor and own client basis and the Contractor's collection agency costs.
- 17.4 Without prejudice to any other remedies the Contractor may have, if at any time the Customer is in breach of any obligation (including those relating to payment) the Contractor may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Contractor will not be liable to the Customer for any loss or damage the Customer suffers because the Contractor has exercised its rights under this clause.
- 17.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 17.6 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 Customer which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Customer will be unable to meet its payments as they fall due; or
  - (b) the Customer 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 Customer or any asset of the Customer.



## 18. Cancellation

- 18.1 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 Customer. On giving such notice the Contractor shall repay to the Customer any sums paid in respect of the Price. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.2 In the event that the Customer cancels delivery of the Goods the Customer shall be liable for any loss incurred by the Contractor (including, but not limited to, any loss of profits) up to the time of cancellation.
- 18.3 Cancellation of orders for Goods made to the Customer's specifications or non-stocklist items will not be accepted once production has commenced.

## 19. Privacy Act 1993

- 19.1 The Customer and the Guarantor/s (if separate to the Customer) authorises the Contractor to:
- (a) collect, retain, and use any information about the Customer and/or Guarantors, for the purpose of assessing the Customer's and/or Guarantor's creditworthiness or marketing products and services to the Customer and/or Guarantors; and
  - (b) disclose information about the Customer and/or Guarantors, whether collected by the Contractor from the Customer and/or Guarantors 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 Customer and/or Guarantors.
- 19.2 Where the Customer and/or Guarantors are an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.



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

## 20. Unpaid Contractor's Rights

20.1 Where the Customer has left any item with Contractor for repair, modification, exchange or for the Contractor to perform any other Service in relation to the item and Contractor has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Contractor shall have:

- (a) a lien on the item;
- (b) the right to retain the item for the Price while the Contractor is in possession of the item;
- (c) a right to sell the item.

20.2 The lien of the Contractor shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.

## 21. Construction Contract Act 2002

21.1 The Customer 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 Customer, and:
  - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
  - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
  - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Contractor by a particular date; and



- (iv) the Contractor has given written notice to the Customer 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 Customer or by any person claiming through the Customer; 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 Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of the Contractor suspending work under this provision.

## 22. General

- 22.1 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.
- 22.2 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 courts of New Zealand.





- 22.3 The Contractor shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Contractor of these terms and conditions.
- 22.4 In the event of any breach of this contract by the Contractor the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of Goods.
- 22.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 22.6 The Contractor may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 22.7 The Contractor reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Contractor notifies the Customer of such change.
- 22.8 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.
- 22.9 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.