

Silver Fern Electrical Limited – Terms & Conditions of Trade © Copyright

1. Definitions

1.1 “Electrician” means Silver Fern Electrical Limited, and assigns or any person acting on behalf of and with the authority of Silver Fern Electrical Limited.

1.2 “Client” means the person/s buying the Service 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 “Goods” means all Goods or Services supplied by the Silver Fern Electrical Limited to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).

1.4 “Price” means the Price payable for the Goods as agreed between the Electrician 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 Installation of the Goods.

2.2 These terms and conditions may only be amended with the Electrician’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Electrician.

3. Change in Control

3.1 The Client shall give the Electrician 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 Electrician as a result of the Client’s failure to comply with this clause.

4. Price and Payment

4.1 At the Electrician’s sole discretion the Price shall be either: (a) as indicated on any invoice provided by the Electrician to the Client; or (b) the Electrician’s quoted price (subject to clause

4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

4.2 The Electrician reserves the right to change the Price if a variation to the Electrician’s quotation is requested. 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, inaccurate measurements provided by the Client or as a result of increases to the Electrician in the cost of materials and labour) will be charged for on the basis of the Electrician’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.

4.3 At the Electrician's sole discretion a non-refundable deposit may be required.

4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Electrician, which may be:

- (a) on Installation of the Goods;
- (b) by way of instalments/progress payments in accordance with the Electrician's payment schedule;
- (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 Electrician.

4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card or by any other method as agreed to between the Client and the Electrician.

4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Electrician an amount equal to any GST the Electrician must pay for any supply by the Electrician under this or any other agreement for the sale of the Goods. 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. Installation of Goods 5.1 Installation ("Installation") of the Goods is taken to occur at the time that:

- (a) the Client or the Client's nominated carrier takes possession of the Goods at the Electrician's address; or
- (b) the Electrician (or the Electrician's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.

6. Risk

6.1 Risk of damage to or loss of the Goods passes to the Client on Installation and the Client must insure the Goods on or before Installation.

6.2 If any of the Goods are damaged or destroyed following Installation but prior to Ownership passing to the Client, the Electrician is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Electrician is sufficient evidence of the Electrician's rights to receive the insurance proceeds without the need for any person dealing with the Electrician to make further enquiries.

6.3 Where the Client is to supply the Electrician with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. The Electrician shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the

Client. 7

7.1 The Client shall ensure that the Electrician has clear and free access to the work site at all times to enable them to undertake the works. The Electrician 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 Electrician.

8. Title

8.1 The Electrician and the Client agree that Ownership of the Goods shall not pass until:

- (a) the Client has paid the Electrician all amounts owing to the Electrician; and
- (b) the Client has met all of its other obligations to the Electrician.

8.2 Receipt by the Electrician 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.

8.3 It is further agreed that:

- (a) until Ownership of the Goods passes to the Client in accordance with clause 8.1 that the Client is only a bailee of the Goods and must return the Goods to the Electrician on request.
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Electrician and must pay to the Electrician the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (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 of any such act on trust for the Electrician and must pay or deliver the proceeds to the Electrician on demand.
- (d) the Client should 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 benefit of the Electrician and must sell, dispose of or return the resulting product to the Electrician as it so directs.
- (e) the Client irrevocably authorises the Electrician to enter any premises where the Electrician believes the Goods are kept and recover possession of the Goods.
- (f) the Electrician may recover possession of any Goods in transit whether or not Installation has occurred.
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Electrician.
- (h) the Electrician may commence proceedings to recover the Price of the Goods sold notwithstanding that Ownership of the Goods has not passed to the

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

9.1 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 Goods previously supplied by the Electrician to the Client (if any) and all Goods that will be supplied in the future by the Electrician to the Client.

9.2 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 Electrician 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 Electrician 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 Electrician; and
- (d) immediately advise the Electrician 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 Electrician and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

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

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

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

10. Security and Charge

10.1 In consideration of the Electrician agreeing to supply the Goods, 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).

10.2 The Client indemnifies the Electrician from and against all the Electrician's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Electrician's rights under this clause.

10.3 The Client irrevocably appoints the Electrician and each director of the Electrician as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.

11. Defects

11.1 The Client shall inspect the Goods on Installation or upon installation and notify the Electrician within seven (7) days of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Electrician an opportunity to inspect the Goods within a reasonable time following Installation if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective

Goods, which the Electrician has agreed in writing that the Client is entitled to reject, the Electrician's liability is limited to either (at the Electrician's discretion) replacing the Goods or repairing the Goods.

12. Returns

12.1 Returns will only be accepted provided that:

- (a) the Client has complied with the provisions of clause 11.1; and
- (b) the Electrician has agreed in writing to accept the return of the Goods; and
- (c) the Electrician will not be liable for Goods which have not been stored or used in a proper manner; and
- (d) 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.

12.2 Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.

13. Consumer Guarantees Act 1993

13.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Electrician to the Client.

14. Default and Consequences of Default

14.1 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 Electrician's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

14.2 If the Client owes the Electrician any money the Client shall indemnify the Electrician from and against all costs and disbursements incurred by the Electrician in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Electrician's collection agency costs, and bank dishonour fees).

14.3 Without prejudice to any other remedies the Electrician 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 Electrician may suspend or terminate the supply of Goods to the Client. The Electrician will not be liable to the Client for any loss or damage the Client suffers because the Electrician has exercised its rights under this clause.

14.4 Without prejudice to the Electrician's other remedies at law the Electrician shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Electrician shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to the Electrician becomes overdue, or in the Electrician's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

15. Cancellation

15.1 The Electrician may cancel any contract to which these terms and conditions apply or cancel Installation of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Electrician shall repay to the Client any money paid by the Client for the Goods. The Electrician shall not be liable for any loss or damage whatsoever arising from such cancellation.

15.2 In the event that the Client cancels Installation of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Electrician as a direct result of the cancellation (including, but not limited to, any loss of profits).

15.3 Cancellation of orders for Goods 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. 16. Privacy Act 1993

16.1 The Client authorises the Electrician or the Electrician'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 Electrician from the Client directly or obtained by the Electrician 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.

16.2 Where the Client is an individual the authorities under clause

16.1 are authorities or consents for the purposes of the Privacy Act 1993.

16.3 The Client shall have the right to request the Electrician for a copy of the information about the Client retained by the Electrician and the right to request the Electrician to correct any incorrect information about the Client held by the Electrician.

17. Unpaid Seller's Rights

17.1 Where the Client has left any item with the Electrician for repair, modification, exchange or for the Electrician to perform any other service in relation to the item and the Electrician has not received or been tendered the whole of any moneys owing to it by the Client, the Electrician shall have, until all moneys owing to the Electrician 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 goods.

17.2 The lien of the Electrician shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Electrician having been obtained against the Client.

18. Construction Contract Act 2002

18.1 The Client hereby expressly acknowledges that:

(a) the Electrician 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 Electrician by a particular date; and

(iv) the Electrician 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 Electrician 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 Electrician 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 Electrician 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 Electrician suspending work under this provision.

19. General

19.1 The failure by the Electrician to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Electrician'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.

19.2 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 Auckland court of New Zealand.

19.3 The Electrician 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 Electrician of these terms and conditions (alternatively the Electrician's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

19.4 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 Electrician nor to withhold payment of any invoice because part of that invoice is in dispute.

19.5 The Electrician may license or sub-contract all or any part of its rights and obligations without the Client's consent.

19.6 The Client agrees that the Electrician may amend these terms and conditions at any time. If the Electrician makes a change to these terms and conditions, then that change will take effect from the date on which the Electrician 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 Electrician to provide Goods to the Client.

19.7 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.

19.8 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.