

# Lewins Electrical Limited – Terms & Conditions of Trade

## 1. Definitions

1.1 "LEL" means Lewins Electrical Limited ATF The Lewins Electrical Trading Trust, its successors and assigns or any person acting on behalf of and with the authority of Lewins Electrical Limited ATF The Lewins Electrical Trading Trust.

1.2 "Client" means the person's 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.

1.3 "Goods" means all Goods or Services supplied by LEL 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 LEL 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 the Goods.

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

## 3. Change in Control

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

## 4. Price and Payment

4.1 At LEL's sole discretion the Price shall be either LEL'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 LEL reserves the right to change the Price if a variation to LEL's quotation is requested. Any variation from the plan or scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentified difficulties (excluding concrete cutting and drilling) or as a result of increases to LEL in the cost of materials and labour) will be charged for on the basis of LEL'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 LEL's sole discretion a non-refundable deposit may be required.

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

- (a) by way of progress payments in accordance with LEL's payment schedule;
- (b) 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;
- (c) the date specified on any invoice or other form as being the date for payment; or
- (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by LEL.

4.5 Payment may be made by cash, cheque, bank cheque, electronic/online banking, or by any other method as agreed to between the Client and LEL.

4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to LEL an amount equal to any GST LEL must pay for any supply by LEL 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. Delivery of Goods

5.1 Delivery ("Delivery") of the Goods is taken to occur at the time that LEL (or LEL's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.

5.2 At LEL's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.

5.3 Delivery of the Goods to a third party nominated by the Client shall be deemed to be delivery to the Client for the purposes of this agreement.

5.4 LEL may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

5.5 Any time or date given by LEL to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and LEL will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

## 6. Risk

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

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

6.3 If the Client requests LEL to leave Goods outside LEL's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.

## 7. Access

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

## 8. Underground Locations

8.1 Prior to LEL commencing any work the Client must advise LEL 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.

8.2 Whilst LEL will take all care to avoid damage to any underground services the Client agrees to indemnify LEL 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 8.1.

## 9. Title

9.1 LEL and the Client agree that ownership of the Goods shall not pass until:

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

9.2 Receipt by LEL 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.

9.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Client in accordance with clause 9.1 that the Client is only a bailee of the Goods and must return the Goods to LEL on request.
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for LEL and must pay to LEL 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 LEL and must pay or deliver the proceeds to LEL 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 LEL and must sell, dispose of or return the resulting product to LEL as it so directs.
- (e) the Client irrevocably authorises LEL to enter any premises where LEL believes the Goods are kept and recover possession of the Goods.
- (f) LEL may recover possession of any Goods in transit whether or not delivery 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 LEL.
- (h) LEL may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

10.1 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 LEL to the Client (if any) and all Goods that will be supplied in the future by LEL to the Client.

10.2 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 LEL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, LEL 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 LEL; and
- (d) immediately advise LEL 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.

10.3 LEL and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

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

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

10.6 The Client shall unconditionally ratify any actions taken by LEL under clauses 10.1 to 10.5.

## 11. Security and Charge

11.1 In consideration of LEL 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).

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

11.3 The Client irrevocably appoints LEL and each director of LEL as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

## 12. Defects

12.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify LEL of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford LEL an opportunity to inspect the Goods within a reasonable time following delivery 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 LEL has agreed in writing that the Client is entitled to reject, LEL's liability is limited to either (at LEL'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. Warranty

13.1 Subject to the conditions of warranty set out in clause 13.2 LEL warrants that if any defect in any workmanship of LEL becomes apparent and is reported to LEL within twelve (12) months of the date of delivery (time being of the essence) then LEL will either (at LEL's sole discretion) replace or remedy the workmanship.

13.2 The conditions applicable to the warranty given by clause 13.1 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 Goods; or
  - (ii) failure on the part of the Client to follow any instructions or guidelines provided by LEL; or
  - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
  - (iv) the continued use of any Goods 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 LEL shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without LEL's consent.
- (c) In respect of all claims LEL 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.

13.3 For Goods not manufactured by LEL, the warranty shall be the current warranty provided by the manufacturer of the Goods. LEL 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. Consumer Guarantees Act 1993

14.1 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 LEL to the Client.

## 15. Default and Consequences of Default

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

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

15.3 Without prejudice to any other remedies LEL may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions LEL may suspend or terminate the supply of Goods to the Client. LEL will not be liable to the Client for any loss or damage the Client suffers because LEL has exercised its rights under this clause.

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

- (a) any money payable to LEL becomes overdue, or in LEL'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.

## 16. Dispute Resolution

16.1 All disputes and differences between the Client and LEL touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

## 17. Cancellation

17.1 LEL 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 LEL shall repay to the Client any money paid by the Client for the Goods. LEL shall not be liable for any loss or damage whatsoever arising from such cancellation.

17.2 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 LEL as a direct result of the cancellation (including, but not limited to, any loss of profits).

17.3 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.

## 18. Compliance with Laws

18.1 The Client and LEL shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.

18.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the works.

18.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

## 19. Privacy Act 1993

19.1 The Client authorises LEL or LEL'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 LEL from the Client directly or obtained by LEL 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.

19.2 Where the Client is an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.

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

## 20. Unpaid LEL's Rights

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

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

## 21. General

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

21.2 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.

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

21.4 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 LEL nor to withhold payment of any invoice because part of that invoice is in dispute.

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

21.6 The Client agrees that LEL may amend these terms and conditions at any time. If LEL makes a change to these terms and conditions, then that change will take effect from the date on which LEL notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for LEL to provide Goods to the Client.

21.7 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.

21.8 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.

Please note that a larger print version of these terms and conditions is available from LEL on request.