

Terms of Trade

LANE ELECTRICAL LTD – TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

1.1 “LE” means Lane Electrical LTD, its successors and assigns or any person acting on behalf of and with the authority of Lane Electrical Ltd.

1.2 “Client” means the person/s or any person acting on behalf of and with the authority of the Client requesting LE to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:

- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
- (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
- (c) includes the Client’s executors, administrators, successors and permitted assigns.

1.3 “Works” means all Works or Materials supplied by LE 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 “Price” means the Price payable (plus any Goods and Services Tax (GST) where applicable) for the Works as agreed between LE and the Client in accordance with clause 6 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 consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Client and LE.

2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

2.4 Any advice, recommendation, information, assistance or service provided by LE in relation to the Works and/or Materials supplied is given in good faith, is based on LE's own knowledge and experience and shall be accepted without liability on the part of LE, and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Works and/or Materials.

3. AUTHORISED REPRESENTATIVES

3.1 The Client acknowledges that LE shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to LE, that person shall have the full authority of the Client to order any Works and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to LE for all additional costs incurred by LE (including LE's profit margin) in providing any Works or variation/s requested thereto by the Client's duly authorised representative.

4. ERRORS AND OMISSIONS

4.1 The Client acknowledges and accepts that LE shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

(a) resulting from an inadvertent mistake made by LE in the formation and/or administration of this contract; and/or

(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by LE in respect of the Works.

4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of LE; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

5. CHANGE IN CONTROL

5.1 The Client shall give LE 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, change of trustees, or business practice). The Client shall be liable for any loss incurred by LE as a result of the Client's failure to comply with this clause.

6. PRICE AND PAYMENT

6.1 At LE's sole discretion the Price shall be either:

(a) as indicated on invoices provided by LE to the Client in respect of Works performed or Materials supplied; or

(b) LE's quoted Price (subject to clause 6.2) which shall be binding upon LE provided that the Client shall accept LE's quotation in writing within thirty (30) days.

6.2 LE 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 or delays occur due to the discovery of hidden or unidentifiable difficulties (including, but not limited to inclement weather conditions, limitations to site accessibility, safety considerations and/or health hazards (such as the discovery of asbestos), prerequisite work by any third party not being completed, obscured building defects, hidden wiring in walls, or hard rock barriers etc.) which are only discovered on commencement of the Works; or

(d) in the event of increases to LE in the cost of labour or materials which are beyond LE's control.

6.3 Variations will be charged for on the basis of LE's quotation, and will be detailed in writing, and shown as variations on LE's invoice. The Client shall be required to respond to any variation submitted by LE within ten (10) working days. Failure to do so will entitle LE to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

6.4 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by LE, which may be:

(a) by way of progress payments in accordance with LE'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;

(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 LE.

6.5 Payment may be made by bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and LE.

6.6 No allowance has been included within the quotation for Works to be carried out outside of LE's normal working hours.

6.7 At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall hold the Retention Money for the agreed period following completion of the Works during which time all Works are to be completed and/or all defects are to be remedied. Any Retention Monies applicable to this contract are to be dealt with in accordance with section 18 of the Construction Contracts Act 2002.

6.8 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 LE nor to withhold payment of any invoice because part of that invoice is in dispute.

6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to LE an amount equal to any GST LE must pay for any supply by LE under this or any other contract 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.

7. PROVISION OF THE WORKS

7.1 Subject to clause 7.2 it is LE's responsibility to ensure that the Works start as soon as it is reasonably possible.

7.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that LE claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond LE'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 LE that the site is ready.

7.3 LE 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.

7.4 Any time specified by LE for delivery of the Works is an estimate only and LE will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that LE is unable to supply the Works as agreed solely due to any action or inaction of the Client, then LE shall be entitled to charge a reasonable fee for resupplying the Works at a later time and date, and/or for storage of the Materials.

8. RISK

8.1 If LE retains ownership of the Materials under clause 11 then:

(a) where LE 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 LE's address; or

(ii) the Materials are delivered by LE or LE's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address). At LE's sole discretion, the cost of delivery is included in the Price;

(b) where LE is to both supply and install Materials then LE 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.

8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests LE to leave Materials outside LE'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.

8.3 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 any 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 but not limited to, the structure not being watertight, the discovery of asbestos, defective or unsafe wiring, or dangerous access etc.) LE reasonably forms the opinion that the Client's property is not safe for the installation of Materials to proceed then LE shall be entitled to delay installation of the Materials (in accordance with clause 7.2) until LE is satisfied that it is safe for the installation to proceed. LE may in agreement with the Client bring the property up to a standard suitable for installation to proceed but all such Works undertaken and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.

8.4 In the event asbestos or any other toxic substances are discovered at the property, that it is the Client's responsibility to ensure the safe removal of the same. The Client further agrees to indemnify LE against any costs incurred by LE as a consequence of such discovery. Under no circumstances will LE handle removal of asbestos product.

8.5 LE shall upon installation ensure that all Materials are to be installed in a manner that is fully compliant with industry standards. If, for any reason, the Client specifically requires the Materials to be installed in any way which goes against LE's recommendations and/or falls below industry standards; a request detailing that requirement must be made in writing to LE. Accordingly, LE offers no warranty in regards to the aforementioned.

8.6 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. All of the cabling work will comply with the Australian and New Zealand Wiring standards.

8.7 Where the Client has supplied materials for LE to complete the Works, the Client acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. LE shall not be responsible for any defects in the materials, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Client.

8.8 The Client acknowledges that LE is only responsible for Materials that are replaced/supplied by LE, and in the event that other parts/goods, subsequently fail, the Client agrees to indemnify LE against any loss or damage to the Works, or caused by the goods, or any part thereof howsoever arising.

8.9 LE accepts no responsibility for any damage or performance related problems with any Materials where they have not been used and/or maintained in accordance with LE's and/or the manufacturers' recommendations.

8.10 LE shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, LE accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

8.11 The Client acknowledges that all descriptive specifications, illustrations, drawings, data dimensions, and weights stated in LE's fact sheets, price lists or advertising material are indicative only and that they have not relied on such information.

8.12 Where LE requires that Materials, tools etc. required for the Works be stored at the site, the Client shall supply LE a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.

8.13 The Client warrants that no other tradesmen interfere with any Works and/or Materials supplied under this contract. LE shall not be liable for any costs, damages or loss however arising from the Client's failure to comply with this clause.

8.14 LE accepts no responsibility for:

(a) any damage or defects in any Materials caused by movement and/or interference of the said Materials;

(b) painting, re-decorating, re-sealing, carpentry or any other Works required for the restoration or making good of any surface/area where any Works have been carried out.

8.15 The Client acknowledges that they shall:

(a) not be entitled to withhold any payment due under this contract because of any delay in the connection of, or the supply of electricity to the Materials by an electrical distributor or any other third party;

(b) be responsible for any building work, excavation work, core drilling or any other non-standard surface penetrations that need to be carried out to enable LE to carry out the Works;

(c) provide and have erected scaffolding to enable the Works to be undertaken (where in LE's opinion it is deemed necessary). Any scaffolding must comply with industry safety standards and 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;

(d) remove any furniture or personal items from the vicinity of the Works, and agrees that LE shall not be liable for any damage caused to those items through the Client's failure to comply with this clause;

(e) be wholly responsible for animals and/or children on the worksite;

(f) be wholly responsible for the removal of rubbish from or clean-up of the worksite;

(g) supply electricity, temporary lighting, toilet, eating and first aid facilities if so required.

9. ACCESS

9.1 The Client shall ensure that LE has clear and free access to the work site at all times to enable them to undertake the Works (including carrying out site inspections, gain signatures for required documents, and for the delivery and installation of the Materials). LE 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 LE.

9.2 The Client agrees to be present at the worksite when and as reasonably requested by LE and its employees, contractors and/or agents.

10. UNDERGROUND LOCATIONS

10.1 Prior to LE commencing any work the Client must advise LE 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.

10.2 Whilst LE will take all care to avoid damage to any underground services the Client agrees to indemnify LE 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 10.1.

11. COMPLIANCE WITH LAWS

11.1 The Client LE 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, including any WorkSafe guidelines and the Health and Safety at Work Act 2015 relating to building/construction sites and any other relevant safety standards or legislation.

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

11.3 LE has not and will not at any time assume any obligation as the Client's agent or otherwise which may be imposed upon the Client from time to time pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") arising out of the engagement. The parties agree that for the purposes of the HSW Act, LE shall not be the person who controls the place of work in terms of the HSW Act.

11.4 If during the course of installation when the Works are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by LE, then LE shall notify the Client immediately. The power, if isolated, will not be re-energised 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 Works including any Materials and labour shall be to the Client's account.

11.5 Any live services or Works 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 Statutory Acts and Work Place Regulations". LE's live services procedures are designed to eliminate risk of injury to LE'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 Works for which additional charges may be applicable. This shall be invoiced in accordance with clause 6.2.

12. TITLE

12.1 LE and the Client agree that ownership of the Materials shall not pass until:

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

12.2 Receipt by LE 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.

12.3 It is further agreed that:

- (a) until ownership of the Materials passes to the Client in accordance with clause 12.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to LE on request.
- (b) the Client holds the benefit of the Client's insurance of the Materials on trust for LE and must pay to LE 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 LE shall be sufficient evidence of LE's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with LE 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 LE and must pay or deliver the proceeds to LE on demand.
- (e) the Client should not convert or process the Materials 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 LE and must sell, dispose of or return the resulting product to LE as it so directs.

- (f) unless the Materials have become fixtures the Client irrevocably authorises LE to enter any premises where LE believes the Materials are kept and recover possession of the Materials.
- (g) LE 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 LE.
- (i) LE may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

13. PERSONAL PROPERTY SECURITIES ACT 1999 (“PPSA”)

13.1 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 and/or collateral (account) – being a monetary obligation of the Client to LE for Works – that have previously been supplied and that will be supplied in the future by LE to the Client.

13.2 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 LE may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, LE 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, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of LE; and
- (d) immediately advise LE 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.

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

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

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

13.6 The Client shall unconditionally ratify any actions taken by LE under clauses 13.1 to 13.5.

14. SECURITY AND CHARGE

14.1 In consideration of LE agreeing to supply the Works, 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).

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

14.3 The Client irrevocably appoints LE and each director of LE as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.

15. DELECTS AND RETURNS

15.1 The Client shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify LE of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford LE 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 LE has agreed in writing that the Client is entitled to reject, LE's liability is limited to either (at LE's discretion) replacing the Materials or repairing the Materials.

15.2 Returns will only be accepted provided that:

- (a) the Client has complied with the provisions of clause 15.1; and
- (b) LE has agreed in writing to accept the return of the Materials; and
- (c) the Materials are returned at the Client's cost within seven (7) days of the delivery date; and
- (d) LE 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.

15.3 Returned Materials may (at LE's sole discretion), incur restocking and handling fees.

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

16. WARRANTIES

16.1 Subject to the conditions of warranty set out in clause 16.2 LE warrants that if any defect in any workmanship of LE becomes apparent and is reported to LE within twelve (12) months of the date of delivery (time being of the essence) then LE will either (at LE's sole discretion) replace or remedy the workmanship.

16.2 The conditions applicable to the warranty given by clause 16.1 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 LE; 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 LE shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without LE's consent.

(c) in respect of all claims LE 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.

16.3 For Materials not manufactured by LE, the warranty shall be the current warranty provided by the manufacturer of the Materials. LE 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.

17. CONSUMER GUARANTEES ACT 1993

17.1 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 LE to the Client.

18. INTELLECTUAL PROPERTY

18.1 Where LE 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 LE, and shall only be used by the Client at LE's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of LE.

18.2 The Client warrants that all designs, specifications or instructions given to LE will not cause LE to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify LE against any action taken by a third party against LE in respect of any such infringement.

18.3 The Client agrees that LE may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which LE has created for the Client.

19. DEFAULT AND CONSEQUENCES OF DEFAULT

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

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

19.3 Further to any other rights or remedies LE may have under this contract, if a Client has made payment to LE, 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 LE under this clause 19, 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.

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

(a) any money payable to LE becomes overdue, or in LE's opinion the Client will be unable to make a payment when it falls due;

(b) the Client has exceeded any applicable credit limit provided by LE;

(c) 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

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

20. DISPUTE RESOLUTION

20.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).

21. CANCELLATION

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

21.2 LE 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 LE shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to LE for Works already performed. LE shall not be liable for any loss or damage whatsoever arising from such cancellation.

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

21.4 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

22. CONSTRUCTION CONTRACTS ACT 2002

22.1 The Client hereby expressly acknowledges that:

(a) LE 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 LE by a particular date; and

(iv) LE has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.

(b) if LE 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 LE exercises the right to suspend work, the exercise of that right does not:

(i) affect any rights that would otherwise have been available to LE 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 LE suspending work under this provision

23. PRIVACY ACT 1993

23.1 The Client authorises LE or LE'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 LE from the Client directly or obtained by LE 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.

23.2 Where the Client is an individual the authorities under clause 23.1 are authorities or consents for the purposes of the Privacy Act 1993.

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

24. SERVICE OF NOTICES

24.1 Any written notice given under this contract shall be deemed to have been given and received:

- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this contract;
- (c) by sending it by registered post to the address of the other party as stated in this contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.

24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

25. TRUSTS

25.1 If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not LE may have notice of the Trust, the Client covenants with LE as follows:

- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- (c) The Client will not without consent in writing of LE (LE will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

26. GENERAL

26.1 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 the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

26.2 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.

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

26.4 LE may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.

26.5 The Client cannot licence or assign without the written approval of LE.

26.6 LE may elect to subcontract out any part of the Works 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 LE's sub-contractors without the authority of LE.

26.7 The Client agrees that LE may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for LE to provide Works to the Client.

26.8 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.

26.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.