

Laser Electrical Ashburton - Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "Seller" means Christie Electrical T/A Laser Electrical Ashburton, its successors and assigns or any person acting on behalf of and with the authority of Christie Electrical T/A Laser Electrical Ashburton.</p> <p>1.2 "Buyer" means the person buying the Goods as specified in any invoice, document or order, and if there is more than one Buyer is a reference to each Buyer jointly and severally.</p> <p>1.3 "Goods" means all Goods or Services supplied by the Seller to the Buyer at the Buyer's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).</p> <p>1.4 "Price" means the Price payable for the Goods as agreed between the Seller and the Buyer in accordance with clause 5 below.</p> <p>2. Acceptance</p> <p>2.1 The Buyer is taken to have exclusively accepted and is immediately bound, jointly and severally by these terms and conditions if the Buyer places an order for or accepts delivery of the Goods.</p> <p>2.2 These terms and conditions may only be amended with the Seller's consent in writing and shall prevail to the extent of any consistency with any other document or agreement between the Buyer and the Seller.</p> <p>3. Authorised Representatives</p> <p>3.1 Unless otherwise limited as per clause 3.2</p> <p>3.2 The Buyer agrees that should the Buyer introduce any third party to the Seller as the Buyer's duly authorised representative, that once introduced that person shall have the full authority of the Buyer to order any Goods or Services on the Buyer's behalf and/or to request any variation to the Services on the Buyer's behalf (such authority to continue until all requested Services have been completed or the Buyer otherwise notifies the Seller in writing that said person is no longer the Buyer's duly authorised representative).</p> <p>3.2 In the event that the Buyer's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Buyer's behalf then the Buyer must specifically and clearly advise the Seller in writing of the parameters of the limited authority granted to their representative.</p> <p>3.3 The Buyer specifically acknowledges and accepts that they will be solely liable to the Seller for any loss or damage (including the Seller's profit margin) in providing any Goods, Services or variations requested by the Buyer's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).</p> <p>4. Change in Control</p> <p>4.1 The Buyer shall give the Seller not less than fourteen (14) days or written notice of any proposed change of ownership of the Buyer and/or any other change in the Seller's details (including but not limited to, changes in the Buyer's name, address, contact phone or fax numbers, or business Practices). The Buyer shall be liable for any loss incurred by the Seller as a result of the Buyer's failure to comply with this clause.</p> <p>5. Price and Payment</p> <p>5.1 At the Seller's sole discretion the Price shall be either: (a) as indicated on any invoice provided by the Seller to the Buyer; or (b) the Seller's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.</p> <p>5.2 The Seller reserves the right to change the price: (a) if a variation to the Goods which are to be supplied is requested; or (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Services; or (d) in the event of increases to the Seller in the cost of labour or Goods which are beyond the Seller's control.</p> <p>5.3 At the Seller's sole discretion a non-refundable deposit may be required.</p> <p>5.4 Time for payment for the Services being of the essence, the Price will be payable by the Buyer on the date/s determined by the Seller, which may be: (a) on completion of the Services; or (b) by way of progress payments in accordance with the Seller's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Goods delivered to the worksite but not yet installed; (c) for certain approved buyers, on a monthly basis (not following the end of the month in which a statement is posted to the Buyer'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 Buyer by the Seller.</p> <p>5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two ays and/or any other method (2.5% of the Price, or by any other method as agreed to between the Buyer and the Seller.</p> <p>5.6 Unless otherwise stated the Price does not include GST. In addition to the price the Buyer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods. The Buyer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Buyer pays the Price. In addition the Buyer 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.</p> <p>6. Delivery and Risk</p> <p>6.1 At the Seller's sole discretion, any costs of delivery may be charged additionally to the Buyer.</p> <p>6.2 The Buyer must take delivery of the Goods, either by receipt or collection, whenever they are tendered for delivery. In the event that the Buyer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.</p> <p>6.3 Subject to clause 6.4 it is the Seller's responsibility to ensure that the Services start as soon as it is reasonably possible.</p> <p>6.4 The Services commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Seller claims an extension of time (by giving the Buyer written notice) where completion is delayed by an event beyond the Seller's control, including but not limited to any failure by the Buyer to: (a) make a selection; or (b) have the site ready for the Services; or (c) notify the Seller that the site is ready.</p> <p>6.5 Any time or date given by the Seller to the Buyer is an estimate only. The Buyer must still accept delivery of the Goods and the Seller will not be liable for any loss or damage incurred by the Buyer as a result of the delivery being late.</p> <p>6.6 Risk of damage to or loss of the Goods passes to the Buyer on delivery and the Buyer must insure the Goods on or before delivery.</p> <p>6.7 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, the Seller is entitled to receive all insurance proceeds payable to the Seller. The Production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.</p> <p>6.8 If the Buyer requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Buyer's sole risk.</p> <p>6.9 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Buyer then the Buyer agrees to notify the Seller immediately upon any proposed changes. The Buyer agrees to indemnify the Seller against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 5.2.</p> <p>6.10 The Buyer warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods 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 Goods once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) that the Seller, its employees or contractors reasonably form the opinion that the buyers premises is not safe for the installation of Goods to proceed then the Seller shall be entitled to delay installation of the Goods (in accordance with the provisions of clause 6.4 above) until the Seller is satisfied that it is safe for the installation to proceed. The Seller may at its sole discretion agree to bring the premises up to a standard suitable for installation to proceed but all such Services undertaken and any additional Goods supplied shall be treated as a variation and be charged for in addition to the Price.</p> <p>7. Accuracy of Buyer's Plans & Measurements for Orders</p> <p>7.1 The Seller shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Buyer. The Buyer acknowledges and agrees that in the event that any of this information provided by the Buyer is</p>	<p>inaccurate, the Seller accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.</p> <p>7.2 In the event the Buyer gives information relating to measurements and quantities of Goods required in completing the Services, it is the Buyer's responsibility to verify the accuracy of the measurements and quantities, before the Buyer or Seller places an order based on these measurements and quantities. The Seller accepts no responsibility for any loss, damages, or costs however resulting from the Buyer's failure to comply with this clause.</p> <p>8. Access</p> <p>8.1 The Buyer shall ensure that the Seller has clear and free access to the work site at all times to enable them to deliver the Goods. The Seller 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 Seller.</p> <p>9. Underground Locations</p> <p>9.1 Prior to the Seller commencing any work the Buyer must advise the Seller of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Buyer 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.</p> <p>9.2 Whilst the Seller will take all care to avoid damage to any underground services the Buyer agrees to indemnify the Seller in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 9.1.</p> <p>10. Title</p> <p>10.1 The Seller and the Buyer agree that ownership of the Goods shall not pass until: (a) the Buyer has paid the Seller all amounts owing to the Seller; and (b) the Buyer has met all of its other obligations to the Seller.</p> <p>10.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.</p> <p>10.3 It is further agreed that: (a) until ownership of the Goods passes to the Buyer in accordance with clause 10.1 that the Buyer is only a bailee of the Goods and must return the Goods to the Seller on request; (b) the Buyer holds the benefit of the Buyer's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed; (c) the Buyer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value; (d) the Buyer sells, disposes or parts with possession of the Goods then the Buyer must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand; (e) the Buyer should not convert or process the Goods or intermix them with other goods but if the Buyer does so then the Buyer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs; (f) the Buyer irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods; (g) the Seller may recover possession of any Goods in transit whether or not delivery has occurred; (h) the Buyer 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 Seller; (i) the Seller may commence proceedings to recover the price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Buyer.</p> <p>11. Personal Property Securities Act 1999 ("PPSA")</p> <p>11.1 Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that: (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and (b) a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Buyer to the Seller that the Seller believes the Goods are kept and delivered and that will be supplied in the future by the Seller to the Buyer.</p> <p>11.2 The Buyer 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 Seller 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 Seller 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, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Seller; and (d) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.</p> <p>11.3 The Seller and the Buyer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.</p> <p>11.4 The Buyer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.</p> <p>11.5 Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.</p> <p>11.6 The Buyer shall unconditionally ratify any actions taken by the Seller under clauses 11.1 to 11.5.</p> <p>12. Security and Charge</p> <p>12.1 In consideration of the Seller agreeing to supply the Goods, the Buyer 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 Buyer either now or in the future, to secure the performance by the Buyer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>12.2 The Buyer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own Buyer basis incurred in exercising the Seller's rights under this clause.</p> <p>12.3 The Buyer irrevocably appoints the Seller and each director of the Seller as the Buyer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Buyer's behalf.</p> <p>13. Buyer's Disclaimer</p> <p>13.1 The Buyer hereby disclaims any right to rescind, or cancel any contract with the Seller or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Buyer by the Seller and the Buyer acknowledges that the Goods are being supplied solely upon the Buyer's skill and judgment.</p> <p>14. Defects</p> <p>14.1 The Buyer shall inspect the Goods on delivery and shall within thirty (30) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer 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 Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods.</p> <p>14.2 Goods will not be accepted for return other than in accordance with 14.1 above.</p> <p>15. Consumer Guarantees Act 1993</p> <p>15.1 If the Buyer is acquiring Goods for the purposes of a trade or business, the Buyer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Seller to the Buyer.</p> <p>16. Intellectual Property</p> <p>16.1 Where the Seller has designed, drawn or developed Goods for the Buyer, then the copyright in any designs and drawings and documents shall remain the property of the Seller.</p> <p>16.2 The Buyer warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order and the Buyer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.</p> <p>16.3 The Buyer agrees that the Seller may (at no cost) use for the purposes of marketing or selling or only into any competition, any documents, designs, drawings or Goods which the Seller has created for the Buyer.</p> <p>17. Default and Consequences of Default</p> <p>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 two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>17.2 If the Buyer owes the Seller any money the Buyer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Buyer basis, the Seller's collection agency costs, and bank dishonour fees).</p> <p>17.3 Further to any other rights or remedies the Seller may have under this contract,</p>	<p>if a Buyer has made payment to the Seller by credit card, and the transaction is subsequently reversed, the Buyer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 17, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Buyer's obligations under this agreement.</p> <p>17.4 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Goods to the Buyer. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller has exercised its rights under this clause.</p> <p>17.5 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if: (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to make a payment when it falls due; (b) the Buyer 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 Buyer or any asset of the Buyer.</p> <p>18. Compliance with Laws</p> <p>18.1 The Buyer and the Seller shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.</p> <p>18.2 The Buyer shall obtain (at the expense of the Buyer) all licenses, approvals, applications and permits that may be required for the Services, and that are not included in the project documents provided by the Seller.</p> <p>18.3 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 all relevant Australian and New Zealand Wiring standards.</p> <p>18.4 If during the course of installation when the Services are being conducted within and around switchboards that if the same are found defective or deemed to be unsafe by the Seller, then the Seller shall notify the Buyer 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 Buyer accepts and agrees that any costs associated with the rectification Services including any Goods and labour shall be to the Buyer's account.</p> <p>18.5 Any live Services or Services undertaken near live conductors where it is safe to do so shall be dealt with in accordance with Australian and New Zealand Wiring standards being "Safe working on Low Voltage Electrical Installations, relevant Commonwealth and Statutory Acts and Work Place Regulations". The Seller's live Services procedures are designed to eliminate risk of injury to the Seller's employees, damage to the Buyer's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Services for which additional charges may be applicable. This should be invoiced in accordance with clause 5.2.</p> <p>18.6 The Buyer 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.</p> <p>19. Cancellation</p> <p>19.1 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time where the Goods are delivered by giving written notice to the Buyer. On giving such notice the Seller shall repay to the Buyer any money paid by the Buyer for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>19.2 In the event that the Buyer cancels delivery of Goods the Seller shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>19.3 Cancellation of orders for Goods made to order specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p>20. Privacy Act 1993</p> <p>20.1 The Buyer authorises the Seller or the Seller's agent to: (a) access, collect, retain and use any information about the Buyer; (b) including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Buyer's creditworthiness; or (c) disclose information about the Buyer, whether collected by the Seller from the Buyer directly or obtained by the Seller 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 Buyer.</p> <p>20.2 Where the Buyer is an individual the authorities under clause 20.1 are authorities or consents for the purposes of the Privacy Act 1993.</p> <p>20.3 The Buyer shall have the right to request the Seller for a copy of the information about the Buyer retained by the Seller and the right to request the Seller to correct any incorrect information about the Buyer held by the Seller.</p> <p>21. Construction Contracts Act 2002.</p> <p>21.1 The Buyer hereby expressly acknowledges that: (a) the Seller 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 Buyer; and (ii) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Buyer; or (iii) a scheduled amount stated in a payment schedule issued by the Buyer in relation to the payment claim is not paid in full by the due date for its payment; or (iv) the Buyer has not complied with an adjudicator's notice requiring the Buyer must pay an amount to the Seller by a particular date; and (v) the Seller has given written notice to the Buyer of its intention to suspend the carrying out of construction work under the construction contract; (b) if the Seller 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 Buyer or by any person claiming through the Buyer; 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 (v) any time lifted the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with; (c) if the Seller 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 Seller under the Contractual Remedies Act 1979; or (ii) enable the Buyer to exercise any rights that may otherwise have been available to the Buyer under that Act as a direct consequence of the Seller suspending work under this provision.</p> <p>22. General</p> <p>22.1 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, enforceability and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>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.</p> <p>22.3 The Seller shall be under no liability whatsoever to the Buyer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).</p> <p>22.4 The Buyer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Buyer by the Seller nor to withhold payment of any invoice because that invoice is in dispute.</p> <p>22.5 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.</p> <p>22.6 The Buyer agrees that the Seller may amend these terms and conditions at any time. If the Seller makes a change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Buyer of such change. The Buyer will be taken to have accepted such changes if the Buyer makes a further request for the Seller to provide Goods to the Buyer.</p> <p>22.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lockout, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>22.8 The Buyer 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.</p>
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