

TERMS OF TRADE

Terms incorporated into each contract between the Customer and Nind for the supply of Goods and/or Services.

1. DEFINITIONS

- 1.1 "Nind" means Nind Electrical Services Limited, Nind Electrical Services (Queenstown) Limited, Nind Electrical Services (Dunedin) Limited, Nind Electrical Services (Christchurch) Limited, Nind Dairy Services Limited and Nind Electrical Properties Limited, including their successors and assigns.
- 1.2 "Customer" means the person purchasing the Goods and/or receiving the Services from Nind pursuant to these terms of trade, including that person's successors and assigns.
- 1.3 An "Event of Default" means an event where:-
- the Customer fails to comply with these terms of trade or any other contract with Nind; or
 - the Customer commits an act of bankruptcy; or
 - the Customer enters into any composition or arrangement with its creditors; or
 - if the Customer is a company:-
 - the Customer does anything which would make it liable to be put into liquidation; or
 - a resolution is passed or an application is made for the liquidation of the Customer; or
 - a receiver or statutory or official manager is appointed over all or any of the Customer's assets.
- 1.4 "Force majeure event" means any event or circumstance which is beyond the reasonable control of the affected party and which results in or causes the failure of that party to perform any of its obligations under these terms of trade, provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of either party.
- 1.5 "Goods" means all goods ordered by the Customer and supplied by Nind from time to time under these Terms of Trade (as detailed on each invoice issued to the Customer) and includes any services forming part of the supply of such goods.
- 1.6 "Person" includes a corporation, association, firm, company, partnership or individual.
- 1.7 "Price" means the purchase price of the Goods and/or Services and any costs payable by the Customer under clause 3 of these Terms of Trade.
- 1.8 "Services" means all services requested by the Customer and supplied by Nind from time to time under these terms of trade (as detailed on each invoice issued to the Customer).
- 1.9 References to the Personal Property Securities Act 1999, the Consumer Guarantees Act 1993 and the Privacy Act 1993 include such legislation from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.

2. ACCEPTANCE

- 2.1 Any instructions received by Nind from the Customer for the supply of Goods and/or Services shall constitute acceptance by the Customer of these Terms of Trade, and the Customer agrees that no further acceptance, signing or notification is required for enforcement of the provisions herein.

3. PRICE

- 3.1 These factors may result in price alterations, such alterations to take effect from the date Nind specifies when giving notice to the Customer:
- the amount of any applicable GST, other taxes, and duties, except to the extent that such are expressly included in any quotation given;
 - the amount of any increase or decrease in costs of any items affecting the cost of supply, production and/or delivery of the Goods and/or Services between the date of Nind's acceptance of the Customer's order/instructions and the date of delivery of Goods and/or provision of Services;
 - any variation in the quantity of Goods and/or Services from the original quantity specified in the quotation; and
 - an amount necessary to take account of any costs incurred by Nind as a result of the method of payment used by the Customer, including, without limitation, any credit card transactions costs.
- 3.2 The Customer is bound to pay the price from the time Nind accepts the customer's order/instructions in writing. Each accepted order/instruction constitutes a separate contract.
- 3.3 Nind reserves the right to change the Price where additional work is required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, obscured building defects, change of design and/or specifications, hard rock barriers below the surface or iron reinforcing rods in concrete, hidden pipes, or hidden wiring in walls) which are only discovered on commencement of the work.

4. QUOTATIONS

- 4.1 A quotation does not give rise to a binding contract until the Customer places an order/gives instruction that Nind subsequently accepts.
- 4.2 Where a quotation is given by Nind to the Customer for the Goods and/or Services, unless otherwise agreed, the quotation shall be valid for thirty (30) days from the date of issue.
- 4.3 Quotations are based on the cost of labour, materials and equipment, freight and variable and fixed expenses known by Nind at the time the quotation is given.
- 4.4 Any quotation given by Nind is subject to clause 3.

5. PAYMENT

- 5.1 Payment is due by the 20th of the month following the date of the invoice unless otherwise agreed in writing.
- 5.2 Where work continues from one calendar month to the next Nind may issue a progress claim or invoice in relation to the Goods and/or Services started, completed and organised to date, for an amount as Nind may determine in its absolute discretion.
- 5.3 Nind may impose a credit limit at its discretion, and alter the credit limit without notice. Where the credit limit is exceeded, Nind reserves the right to refuse to supply goods/services to the Customer.
- 5.4 Nind may deduct or withhold any amount (whether by way of counterclaim, set-off or otherwise) from any money owing by Nind to the Customer on any account whatsoever. Nind also has the discretion to apply any payments received from or on behalf of the Customer in reduction of the Customer's indebtedness.
- 5.5 The Customer may not withhold payment, deduct from, or set off any amount against any amount owing without Nind's prior written consent.

6. RISK AND OWNERSHIP

- 6.1 All risk (including, but not limited to, loss, damage or deterioration) in relation to any goods supplied passes to the Customer on delivery.
- 6.2 Subject to clause 8 and the following provisions, ownership of the goods remains with Nind and does not pass to the Customer until the Customer:-
- pays the amount owing and any other moneys owing by the Customer to Nind from time to time, whether in relation to any contract entered into on these terms of trade or on any other account whatever ("Customer's indebtedness"); or
 - resells the good pursuant to the authority granted by these terms.
- 6.3 Where goods are processed prior to repayment of the Customer's indebtedness, ownership of those products and/or such part or parts as are identifiable as being substantially derived from goods supplied by Nind ("processed goods") shall remain with Nind until the earlier of payment of the Customer's indebtedness or such time as such processed goods have been sold by the Customer pursuant to these terms of trade.
- 6.4 While ownership of the goods or processed goods remains with Nind:-
- the Customer must store them separately and clearly identify them as belonging to Nind;
 - Nind authorises the Customer in the ordinary course of its business to use the goods and the processed goods or sell them for full consideration. This authority is revoked at the time that:-
 - an event of default occurs; or
 - Nind notifies the Customer in writing that this authority is revoked.
 - the Customer must advise Nind immediately of any event of default or any action by third parties (including any of its creditors) affecting Nind's interest in the goods or the processed goods.
- 6.5 If the Customer resells or uses any goods or processed goods before ownership of the goods or the processed goods has passed to the Customer, the proceeds of such sale or use shall be received and held by the Customer (in whatever form) in trust for both the Customer and Nind. Nind's interest as beneficiary under that trust shall be that portion of the proceeds equal to the Customer's indebtedness to Nind and in the event that the proceeds of sale are less than the debt to Nind then the entire proceeds of sale. The balance of the proceeds (if any) shall be the Customer's beneficial interest under that trust.
- 6.6 Nind may bring an action for the price of the goods or processed goods sold even where ownership of the goods or any processed goods may not have passed to the Customer.

7. CHANGE IN CONTROL

- 7.1 The Customer shall give Nind not less than fourteen (14) days' prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice) or any material change in its business practices of selling the Goods which would result in a change in the nature of the proceeds derived from such sales. The Customer shall be liable for any loss incurred by Nind as a result of the Customer's failure to comply with this clause.

8. PERSONAL PROPERTIES SECURITIES ACT 1999 ("PPSA")

- 8.1 The Customer acknowledges and agrees that in consideration of the supply of Goods and/or Services on these Terms of Trade, the Customer grants to Nind a first ranking security interest under the PPSA in each and every supply of goods made by Nind to the Customer to secure to Nind the purchase price and the obligations in these Terms of Trade.
- 8.2 Where the Customer defaults in any way under these terms of trade, Nind may exercise all the rights of a secured party under the PPSA.
- 8.3 The Customer will sign any further documents or provide any further information to enable Nind to register a financing statement or financing change statement on the PPSA register.
- 8.4 The Customer will not register or permit to be registered a financing statement, or a financing change statement or change demand without the prior written consent of Nind.
- 8.5 Until ownership of the Goods pass, the Customer waives its rights under the PPSA to receive verification statements in accordance with section 148 of the PPSA in respect of any financing statement or any financing change statement relating to the security interest.
- 8.6 The Customer waives its rights under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 132, 133 and 134 of the PPSA.

9. DEFAULT

9.1 If an Event of Default occurs:-

- (a) Nind may suspend or terminate any contract;
- (b) the amount owing shall immediately become due and payable notwithstanding that the due date has not arisen;
- (c) Nind may, as the Customer's agent, enter any premises occupied by the Customer, or any other party on which Goods or processed Goods are situated, installed or stored, at any reasonable time after default by the Customer and remove and repossess those Goods, without being responsible for any damage caused in doing so, and Nind may resell any of the Goods or processed Goods if necessary to recover unpaid monies and apply the proceeds of sale in reduction of the Customer's indebtedness; and
- (d) Nind may recover from the Customer all costs (including solicitor-client costs) incurred in attempting to collect the amount owing and any other moneys owing by the Customer to Nind from time to time, whether in relation to any contract or any other account whatsoever.

9.2 If the Customer does not pay the amount owing by the due date stated on the invoice and/or statement:-

- (a) Nind may charge the Customer a penalty of 2.5% per month calculated on a daily basis on the unpaid portion of the amount owing from due date until payment in full is received;
- (b) any discounts applicable to the Price may be disallowed; and
- (c) Nind may withhold any further supply of Goods and/or Services on credit.

9.3 If the Customer is in default the remedies provided above shall apply as well as all other remedies at common law or otherwise available to Nind. The Customer shall be liable for any losses, costs, expenses and liabilities incurred by Nind in exercising its remedies and the Customer hereby agrees to fully indemnify Nind in respect of any such losses, costs, expenses and liabilities.

10. DIMENSIONS, PLANS AND SPECIFICATIONS

10.1 All customary building industry tolerances shall apply to dimensions and measurements of Goods unless the parties otherwise agree in writing.

10.2 Nind shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer.

10.3 Prior to Nind commencing work the Customer must advise Nind of the precise location of all hidden services on the site and clearly mark the same. The hidden mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

10.4 While Nind will take all care to avoid damage to any hidden services, the Customer agrees to indemnify Nind 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 10.3.

10.5 If the giving of an estimate or quotation for the supply of Goods and/or Services involves Nind estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of such estimate before accepting such quotation.

10.6 Should the Customer require changes to Nind's estimated measurements and quantities, it shall request such changes in writing before placing an order/giving instructions based on an estimate, or before accepting a quotation.

10.7 Where the Customer requests changes to be made to estimated quantities or measurements after Nind has accepted the Customer's order/instructions in writing, the price shall be appropriately adjusted and any estimated supply date rescheduled.

11. FORCE MAJEURE

11.1 Without limiting any other provisions of these terms of trade, neither Nind or the customer shall be liable for any delay or failure in the performance of any obligation or the exercise of any right under these terms of trade or for any loss or damage (including indirect or consequential loss or damage) if such performance or exercise is prevented or hindered in whole or in part by reason of a force majeure event ("the event") or by reason of a cause reasonably beyond Nind's control. Nothing in this clause shall excuse payment of the amount owing as it becomes due under these terms of trade.

12. USE OF INFORMATION

12.1 The Customer agrees that Nind may obtain information about the Customer from the Customer or any other person (including debt collection agencies) in the course of Nind's business, including credit assessment, debt collecting and direct marketing activities, and the Customer consents to any person providing Nind with such information.

12.2 The Customer agrees that Nind may conduct credit checks on the Customer through Baycorp Advantage.

12.3 The Customer agrees that Nind may use any information it has about the Customer relating to the Customer's credit worthiness and give that information to any other person to facilitate the collection of debts from the Customer. The Customer agrees that any other information collected by Nind about the Customer is accessed or collected for the use by Nind in the course of its business.

12.4 The Customer must notify Nind of any change in circumstances that may affect the accuracy of the information provided by the Customer to Nind. If the Customer is an individual (i.e. a natural person), the Customer may access and request the correction of any personal information that Nind holds about the Customer, pursuant to the Privacy Act 1993.

13. OTHER AGREEMENTS

13.1 Subject to clause 13.2, if there is any inconsistency between these terms of trade and any order submitted by the Customer in any way, or any other arrangement between the parties, these terms of trade prevail unless otherwise agreed in writing.

13.2 Where the parties have entered into a credit arrangement on terms other than those detailed in clause 5.1 ("alternative credit arrangement") then, to the extent the alternative credit arrangement is inconsistent with these terms of trade, the alternative credit arrangement prevails.

14. CONSUMER GUARANTEES ACT

14.1 Nothing in these Terms of Trade limits any rights the Customer has under the Consumer Guarantees Act 1993 and these Terms of Trade must be read subject to these rights.

14.2 Where these Terms of Trade would otherwise be subject to the Act and the Customer is acquiring the Goods and/or Services supplied by Nind for business purposes, the Customer agrees that the Act will not apply.

15. PERSONAL GUARANTEE

15.1 In consideration for Nind agreeing to provide the Goods and/or Services at the request of the Customer, where the Customer is a company or a trust, the directors or trustees signing the Agreement or acceptance of the Terms of Trade also sign or accept in their personal capacity and jointly and severally undertake as principal debtors to Nind the payment of any and all monies owed by the Customer to Nind and indemnify Nind against non-payment by the Customer ("the Guarantor").

15.2 Where the Customer and/or the Guarantor is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Nind to secure all amounts and other monetary obligations payable under these said Terms of Trade. The Customer and/or the Guarantor acknowledge and agree that Nind shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

16. WAIVER

16.1 If Nind exercises or fails to exercise any right or remedy available to it, this shall not prejudice Nind's rights in exercising that or any other right or remedy. Waiver of any term of these terms of trade must be specified in writing and signed by an authorised officer of Nind.

16.2 Except as expressly provided in these Terms, all warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the Goods, Services or to these Terms are, to the maximum extent permitted by law, expressly excluded.

17. CANCELLATION

17.1 Nind may cancel any contract to which these Terms of Trade apply or cancel delivery of the Goods and/or Services at any time before the work has commenced by giving written notice to the Customer. On giving such notice, Nind shall repay to the Customer any sums paid in respect of the price, less any amounts owing by the Customer to Nind for work already performed. Nind shall not be liable for any loss or damage whatsoever arising from such cancellation.

17.2 In the event that the Customer cancels delivery of the Goods and/or Services, the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Nind as a direct result of the cancellation (including, but not limited to, any loss of profits).

18. DISPUTE

18.1 If the Customer disputes any or all of an amount contained in an invoice and/or statement, the Customer will:

- (a) Immediately notify Nind of the dispute and provide reasons for the dispute;
- (b) Pay the full amount of the Invoice and/or statement including the disputed amount by the due date specified on the Invoice; and
- (c) Negotiate in good faith with Nind to resolve the dispute.