

# McNae Electrical Solutions Ltd - Terms of Trade

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## 1. Definitions

- 1.1 "Seller" shall mean McNae Electrical Solutions Ltd, or any agents, employees, successors or assigns thereof.
- 1.2 "Owner" shall mean the entity or person named on any form provided by the Owner to the Seller (or any person acting on behalf of and with the authority of such entity or person) who buys or agrees to buy works (which includes materials to complete the works - but excluding materials supplied by the Owner). If the Owner includes two or more persons, those persons' liability is joint and several.

## 2. General

- 2.1 This contract shall be subject to the laws and statutes of New Zealand and subject to the jurisdiction of the court geographically closest to the physical address of the Seller.
- 2.2 The Seller may sub-contract any part of this contract. No-subcontractor has any authority to agree to any variation of this contract on behalf of the Seller.
- 2.3 Any instructions received by the Seller from the Owner for the supply of works shall constitute acceptance of this contract.
- 2.4 The Seller may submit a detailed payment claim at intervals not less than one (1) week for work performed up to the end of each week.
- 2.5 To end the contract, the Owner must give the Seller a signed notice giving the details of why the contract is being ended. The Seller is entitled to a reasonable price for any works completed, and materials ordered but not installed, as at the date the contract is ended.
- 2.6 Where a quotation is given then it shall only be binding for thirty (30) days from the date of issue, and where additional works are required the Buyer agrees to pay the additional price of such works.

## 3. Payment

- 3.1 The Seller may require a deposit to be made before commencing the works.
- 3.2 Payment shall be due the 20<sup>th</sup> day of the month following the invoice date for commercial owners, and 7 days following the invoice date for residential owners.
- 3.3 At the Seller's sole discretion payment of the price may be made by installment.

## 4. Liability and Warranty

- 4.1 The Owner shall ensure that the works are fit and suitable for the purpose of which they are required and Seller is under no liability if they are not.
- 4.2 The Owner shall be solely responsible for compliance with all legislation, regulations, by-laws or rules having the force of law in connection with the installation and operation of the works.
- 4.3 In the case of works not manufactured by Seller the Owner is entitled to only such benefits as Seller may receive under any warranty given to Seller by the manufacturer of the works.
- 4.4 In lieu of any warranty, condition, or liability by law, the liability of Seller in respect of any defect in or failure of the works supplied, or for any loss, injury, or damage attributable thereto, is limited to making good or repairing of any defects in materials or workmanship in the works concerned arising under normal proper use within the warranty period, if stated, or otherwise within 12 months of the date of supply. At the termination of the appropriate period all liability on the part of Seller ceases. In all cases the Seller's liability is limited to the price.
- 4.5 Seller is not liable under clause 4.4 for damage arising from misuse, accident, neglect or improper operation, maintenance, installation, modification or adjustment.
- 4.6 Seller shall not be liable for any consequential, indirect or special loss or damage arising directly or indirectly from the works.
- 4.7 The liability of Seller under this contract and the warranty is confined to the Owner named in this contract, it being agreed that Seller has no liability to any purchaser of the works from the Owner in that the Owner's rights under the contract are not assignable without the prior written consent of Seller.

## 5. Default

- 5.1 Without prejudice to any other rights or remedies that the Seller may have against the Owner, the Owner agrees that in the event of default in payment by the Owner then the Owner agrees to pay on demand;
  - a) all costs (including, but not limited to, collection agency fees, commission, legal fees and any other costs on a solicitor and own client basis) incurred by the Seller in recovering any amounts payable by the Owner to the Seller; and
  - b) interest on the amount outstanding at the end of each month in which the Owners account is in arrears at the rate of two percent (2%) per month (compounding) with such a rate after as well as before any judgement; and
  - c) a monthly administration fee of twenty five dollars (\$25) by way of damages payable on the last day of each month in which the Owners account is in default; and
  - d) the Owner hereby irrevocably appoints the Seller as the attorney of the Owner for the purpose of the Seller exercising its rights under this clause whilst any amount remains in default; and
  - e) the Owner agrees that the Seller shall have the right to complete and register a mortgage over any property owned by the Owner to secure any amount outstanding and that the Seller shall have the right at its discretion to place a caveat on any such property for the purpose of this clause.

## 6. Privacy Act

- 6.1 The Owner acknowledges that personal information collected or held by the Seller is provided and may be held, used and disclosed for the purpose enabling the Seller to notify any credit agency of default on any obligation of the Owner to the Seller and enabling the Seller to provide such personal information to any credit agency so such credit agency can maintain correct accounting records.

## 7. Completion

- 7.1 The works shall be deemed to be completed when (subject to clause 6.3) either (in the Seller's sole opinion) the works have been completed in accordance with the plans and specifications, or the Owner is given notice of practical completion, or a certificate of completion has been produced.
- 7.2 The time agreed for delivery (if any) shall not be an essential term of this agreement unless the parties agree otherwise in writing to make time of the essence.
- 7.3 Any claim by the Owner as to incorrect performance or breach of this contract must be made to the Seller in writing within seven (7) days of completion (time being of the essence) of the works otherwise the Seller shall be entitled to presume that the works have been delivered in good order and without defect or shortage in quantity.

## 8. Consumer Guarantees Act 1993

- 8.1 In the event a transaction that is the subject of these Terms and Conditions is subject to the Consumer Guarantees Act 1993 (CGA) then:
  - a) Where the Owner is acquiring the works for the purpose of business then the CGA shall not apply;
  - b) In the event the Owner is acquiring the works for purposes other than that of a business, then these Terms and Conditions shall be interpreted subject to the Owner's rights under the CGA, to the intent that no provisions shall in any way limit or purport to limit the Owner's rights under the CGA

## 9. Construction Contracts Act 2002

- 9.1 In the event that the Owner is a residential occupier as defined by the Construction Contracts Act 2002 the Owner 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 Owner, and the payment is not paid in full by the due date for payment and no payment schedule has been given by the Owner, or a scheduled amount stated in a payment schedule issued by the Owner in relation to the payment claim is not paid in full by the due date for its payment, or the Owner has not complied with an adjudicator's notice that the Owner must pay an amount to the Seller by a particular date, and the Seller has given written notice to the Owner of its intention to suspend the carrying out of construction work under the construction contract.
- b) If the Seller suspends work, it is not in breach of contract; and is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Owner or by any person claiming through the Owner; and is entitled to an extension of time to complete the contract; and keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- c) If the Seller exercises the right to suspend work, the exercise of that right does not affect any rights that would otherwise have been available to the Seller under the Contractual Remedies Act 1979; or enable the Owner to exercise any rights that may otherwise have been available to the Owner under that Act as a direct consequence of the Seller suspending work under this provision.