

TERMS and CONDITIONS of TRADE

1. DEFINITIONS

- 1.1 "EFS" shall mean Electrical & Fire Services Ltd, or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from EFS.
- 1.3 "Goods" shall mean:
 - 1.3.1 all Goods of the general description specified on the front of this agreement and supplied by EFS to the Customer; and
 - 1.3.2 all Goods supplied by EFS to the Customer; and
 - 1.3.3 all Inventory of the Customer that is supplied by EFS; and
 - 1.3.4 all Goods supplied by EFS and further identified in any invoice issued by EFS to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
 - 1.3.5 all Goods that are marked as having been supplied by EFS or that are stored by the Customer in a manner that enables them to be identified as having been supplied by EFS; and
 - 1.3.6 all of the Customer's present and after-acquired Goods that EFS has performed work on or to or in which goods or materials supplied or financed by EFS have been attached or incorporated.
 - 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Goods and Services" shall also mean all goods, products, services and advice provided by EFS to the Customer and shall include without limitation the provision of all electrical services and supplies, installations, repair work and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods and Services by EFS to the Customer.
- 1.5 "Price" shall mean the cost of the Goods and Services as agreed between EFS and the Customer and includes all disbursements eg charges EFS pay to others on the Customer's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by EFS from the Customer for the supply of Goods and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises EFS to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Goods and Services provided by EFS to any other party.
- 3.2 The Customer authorises EFS to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Goods and Services shall be deemed to be sold at the current amount as such Goods and Services are sold by EFS at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods and Services that is beyond the control of EFS between the date of the contract and delivery of the Goods and Services or provision of the services.

5. PAYMENT

- 5.1 Payment for Goods and Services shall be made in full on or before the 20th day of the month following the date of the invoice ("the due date").
- 5.2 Where EFS has specified that the price shall be paid in full within seven (7) days following the date of the invoice then that shall be the due date ("the due date").
- 5.3 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.4 Any expenses, disbursements and legal costs incurred by EFS in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.5 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.6 A deposit may be required.
- 5.7 Please note that works undertaken are classified as being "Construction Work" for the purpose of the Construction Contracts Act 2002, all invoices shall constitute a payment under the act.

6. QUOTATION

- 6.1 Where a quotation is given by EFS for Goods and Services:
 - 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
 - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
 - 6.1.3 EFS reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Goods and Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Goods and Services.

7. RISK

- 7.1 The Goods and Services remain at EFS's risk until delivery to the Customer, but when title passes to the Customer pursuant to clause 9.1 of this contract, the Goods and Services are at the Customer's risk whether delivery has been made or not.
- 7.2 Delivery of Goods and Services shall be deemed complete when EFS gives possession of the Goods and Services directly to the Customer or possession of the Goods and Services is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.
- 7.3 The time agreed for delivery shall not be an essential term of this contract unless the Customer gives written notice to EFS making time of the essence.
- 7.4 Where EFS provides Goods and Services to the Customer by instalments and EFS fails to deliver or supply one or more instalments, the Customer shall not have the right to repudiate the contract but shall have the right to claim compensation as a severable breach.

8. AGENCY

- 8.1 The Customer authorises EFS to contract either as principal or agent for the provision of Goods and Services that are the matter of this contract.
- 8.2 Where EFS enters into a contract of the type referred to in clause 8.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.

9. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 9.1 Title in any Goods and Services supplied by EFS passes to the Customer only when the Customer has made payment in full for all Goods and Services provided by EFS and of all other sums due to EFS by the Customer on any account whatsoever. Until all sums due to EFS by the Customer have been paid in full, EFS has a security interest in all Goods and Services.
- 9.2 If the Goods and Services are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Goods and Services shall remain with EFS until the Customer has made payment for all Goods and Services, and where those Goods and Services are mixed with other property so as to be part of or a constituent of any new Goods and Services, title to these new Goods and Services shall be deemed to be assigned to EFS as security for the full satisfaction by the Customer of the full amount owing between EFS and Customer.

- 9.3 The Customer gives irrevocable authority to EFS to enter any premises occupied by the Customer or on which Goods and Services are situated at any reasonable time after default by the Customer or before default if EFS believes a default is likely and to remove and repossess any Goods and Services and any other property to which Goods and Services are attached or in which Goods and Services are incorporated. EFS shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. EFS may either resell any repossessed Goods and Services and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and Services and credit the Customer's account with the invoice value thereof less such sum as EFS reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 9.4 Where Goods and Services are retained by EFS pursuant to clause 9.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.
- 9.5 The following shall constitute defaults by the Customer:
- 9.5.1 Non-payment of any sum by the due date.
- 9.5.2 The Customer intimates that it will not pay any sum by the due date.
- 9.5.3 Any Goods and Services are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods and Services.
- 9.5.4 Any Goods and Services in the possession of the Customer are materially damaged while any sum due from the Customer to EFS remains unpaid.
- 9.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets.
- 9.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
- 9.5.7 Any material adverse change in the financial position of the Customer.
- 9.6 If the Credit Repossession Act applies to any transaction between the Customer and EFS, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

10. SECURITY INTEREST FOR SERVICE PROVIDERS

- 10.1 The Customer gives EFS a security interest in all of the Customer's present and after-acquired Goods and Services that EFS has performed services on or to or in which goods or materials supplied or financed by EFS have been attached on incorporated.

11. PAYMENT ALLOCATION

- 11.1 EFS may in its discretion allocate any payment received from the Customer towards any invoice that EFS determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by EFS, payment shall be deemed to be allocated in such manner as preserves the maximum value of EFS's purchase money security interest in products.

12. GENERAL LIEN

- 12.1 The Customer agrees that EFS may exercise a general lien against any Goods and Services or property belonging to the Customer that is in the possession of EFS for all sums outstanding under this contract and any other contract to which the Customer and EFS are parties.
- 12.2 If the lien is not satisfied within 7 days of the due date EFS may, having given notice of the lien at its option either:
- 12.2.1 Remove such Goods and Services and store them in such a place and in such a manner as EFS shall think fit and proper and at the risk and expense of the Customer; or
- 12.2.2 Sell such Goods and Services or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.

13. DISPUTES

- 13.1 No claim relating to products and services will be considered unless made within seven (7) days of delivery.

14. LIABILITY

- 14.1 The Consumer Guarantees Act 1993, the Fair-Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon EFS which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on EFS, EFS's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 14.2 Except as otherwise provided by clause 14.1 EFS shall not be liable for:
- 14.2.1 Any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods and Services provided by EFS to the Customer; and
- 14.2.2 The Customer shall indemnify EFS against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of EFS or otherwise, brought by any person in connection with any matter, act, omission, or error by EFS its agents or employees in connection with the Goods and Services.

15. WARRANTY

- 15.1 Workmanship carried out by EFS is warranted free from defect for a period of twelve (12) months, from the date of supply and is subject to the Warranty Disclaimer. This warranty does not apply to any Goods and Services supplied by the Customer and EFS does not provide any warranty that Goods and Services supplied by the Customer are fit and suitable for the purpose for which they are required by the Customer and shall not be liable if they are not.
- 15.2 EFS will pass on any third-party warranty such as those of manufacturers to the Customer.
- 15.3 Any written warranty that EFS provide to the Customer will also form part of these terms and conditions of trade.

16. CONSUMER GUARANTEES ACT

- 16.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires products and services from EFS for the purposes of a business in terms of section 2 and 43 of that Act.

17. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 17.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for EFS agreeing to supply Goods and Services and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to EFS the payment of any and all monies now or hereafter owed by the Customer to EFS and indemnify EFS against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

18. CANCELLATION

- 18.1 EFS shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of Goods and Services to the Customer if the Customer fails to pay any money owing after the due date or the Customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.
- 18.2 Any cancellation or suspension of this agreement shall not affect EFS's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the Customer's obligations to EFS under this contract.

19. MISCELLANEOUS

- 19.1 EFS shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 19.2 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.3 Where the terms of this contract are at variance with the order or instruction from the Customer this contract shall prevail.