
A1 Electrical Contractors – Terms & Conditions of Trade

1. Definitions

- 1.1 “**A1 Electrical**” means A1 Electrical Contractors Limited T/A A1 Electrical Contractors, its successors and assigns.
- 1.2 “**Client**” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting A1 Electrical 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 partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.3 “**Contract**” means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.4 “**Cookies**” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using A1 Electricals’ website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.5 “**Intended Use**” means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Works.
- 1.6 “**Non-Conforming Building Product**” means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
- (a) the product is not, or will not be, safe; or
 - (b) does not, or will not, comply with the relevant regulatory provisions; or
 - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.7 “**Price**” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Works as agreed between A1 Electrical and the Client in accordance with clause 6 below.
- 1.8 “**Works**” means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by A1 Electrical 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).
- 1.9 “**Worksite**” means the address nominated by the Client to which the Materials are to be supplied by A1 Electrical.

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 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Works on credit shall not take effect until the Client has completed a credit application with A1 Electrical and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Works requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, A1 Electrical reserves the right to refuse delivery.
- 2.6 Where the Client is a tenant (and therefore not the owner of the land and premises where Works are to be carried out) then the Client warrants that they have obtained the full consent of the owner for A1 Electrical to carry out the Works on the owner’s land and premises. The Client acknowledges and agrees that they shall be personally liable for full payment of the Price for the Works provided under this Contract and to indemnify A1 Electrical against any claim made by the owner of the premises (howsoever arising) in relation to the provision of the Works by A1 Electrical, except where such claim has arisen because of the negligence of A1 Electrical when undertaking the Works. Furthermore, the Client agrees that they shall, upon request from A1 Electrical, provide evidence that:
- (a) they are the owner of the land and premises upon which the Works are to be undertaken; or
 - (b) where they are a tenant, that they have the consent of the owner for the Works to be carried out on the land and premises.
- 2.7 In the event that the Client requests A1 Electrical to:
- (a) make an emergency Call-Out for critical equipment after hours or causes A1 Electrical to cancel or reschedule other work then A1 Electrical reserves the right to charge a minimum Call-Out fee of one (1) hour labour cost plus a per kilometre travelled rate plus any Materials used to undertake the Works unless otherwise agreed between A1 Electrical and the Client; and
 - (b) provide the Works urgently, that may require A1 Electricals’ staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then A1 Electrical reserves the right to charge the Client additional labour costs (penalty rates will apply at time and a half normal rates), unless otherwise agreed between A1 Electrical and the Client.
- 2.8 If A1 Electrical has been requested by the Client to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.
- 2.9 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.

3. Authorised Representatives

- 3.1 The Client acknowledges that A1 Electrical shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to A1 Electrical, 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 A1 Electrical for all additional costs incurred by A1 Electrical (including A1 Electricals’ profit margin) in providing any Works or variation/s requested thereto by the Client’s duly authorised representative.

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4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that A1 Electrical 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 A1 Electrical 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 A1 Electrical 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 A1 Electrical; 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 A1 Electrical 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 A1 Electrical as a result of the Client's failure to comply with this clause.

6. Price and Payment

- 6.1 At A1 Electricals' sole discretion the Price shall be either:
- (a) as indicated on invoices provided by A1 Electrical to the Client in respect of Works performed or Materials supplied; or
 - (b) A1 Electricals' quoted Price (subject to clause 6.2) which shall be binding upon A1 Electrical provided that the Client shall accept A1 Electricals' quotation in writing within thirty (30) days.
- 6.2 A1 Electrical 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 due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the Worksite, obscured building/Worksite defects, incorrect measurements, plans and/or specifications provided by the Client, safety considerations (discovery of asbestos, etc.), prerequisite work by any third party not being completed, lack of required utilities, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, iron reinforcing rods in concrete or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to A1 Electrical as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges in the cost of labour or materials which are beyond A1 Electricals' control.
- 6.3 Variations will be charged for on the basis of A1 Electricals' quotation, and will be detailed in writing, and shown as variations on A1 Electricals' invoice. The Client shall be required to respond to any variation submitted by A1 Electrical within ten (10) working days. Failure to do so will entitle A1 Electrical 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 At A1 Electricals' sole discretion a deposit may be required.
- 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by A1 Electrical, which may be:
- (a) on completion of the Works;
 - (b) by way of instalments/progress payments in accordance with A1 Electricals' 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;
 - (c) for certain approved Clients, 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;
 - (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 Client by A1 Electrical.
- 6.6 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 Money applicable to this Contract is to be dealt with in accordance with Subpart 2A - sections 18(a) to 18(i) of the Construction Contracts Amendment Act 2015 and as such no Retention Money shall be use other than to remedy defects in the performance of A1 Electricals' obligations under the Contract.
- 6.7 Payment may be made by cash, electronic/on-line banking, or by any other method as agreed to between the Client and A1 Electrical.
- 6.8 A1 Electrical may in its discretion allocate any payment received from the Client towards any invoice that A1 Electrical determines and may do so at the time of receipt or at any time afterwards. On any default by the Client A1 Electrical may re-allocate any payments previously received and allocated. In the absence of any payment allocation by A1 Electrical, payment will be deemed to be allocated in such manner as preserves the maximum value of A1 Electricals' Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 6.9 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 A1 Electrical nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by A1 Electrical is a claim made under the Construction Contracts Act 2002. Nothing in this clause 6.9 prevents the Client from the ability to dispute any invoice.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to A1 Electrical an amount equal to any GST A1 Electrical must pay for any supply by A1 Electrical under this or any other agreement 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 A1 Electricals' responsibility to ensure that the Works start as soon as it is reasonably possible.

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- 7.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that A1 Electrical claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond A1 Electricals' control, including but not limited to any failure by the Client to:
- make a selection; or
 - have the Worksite ready for the Works; or
 - notify A1 Electrical that the Worksite is ready.
- 7.3 At A1 Electricals' sole discretion, the cost of delivery is included in the Price.
- 7.4 Any time specified by A1 Electrical for delivery of the Works is an estimate only and A1 Electrical 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 A1 Electrical is unable to supply the Works as agreed solely due to any action or inaction of the Client, then A1 Electrical shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
- 8. Risk**
- 8.1 If A1 Electrical retains ownership of the Materials under clause 12 then:
- where A1 Electrical 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 the Materials are delivered by A1 Electrical or A1 Electricals' nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address); or
 - where A1 Electrical is to both supply and install Materials then A1 Electrical 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 A1 Electrical to leave Materials outside A1 Electricals' 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 A1 Electrical 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, A1 Electrical accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.4 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.) A1 Electrical reasonably forms the opinion that the Client's property is not safe for the installation of Materials to proceed then A1 Electrical shall be entitled to delay installation of the Materials (in accordance with clause 7.2) until A1 Electrical is satisfied that it is safe for the installation to proceed. A1 Electrical 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.
- 8.5 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify A1 Electrical immediately upon any proposed changes. The Client agrees to indemnify A1 Electrical against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 6.2.
- 8.6 Any advice, recommendation, information, assistance or service provided by A1 Electrical in relation to Materials or Works supplied is given in good faith to the Client, or the Client's agent and is based on A1 Electricals' own knowledge and experience and shall be accepted without liability on the part of A1 Electrical. Where such advice or recommendations are not acted upon then A1 Electrical shall require the Client or their agent to authorise commencement of the Works in writing. A1 Electrical shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.
- 8.7 The Client acknowledges and accepts that:
- where A1 Electrical has performed temporary repairs that:
 - A1 Electrical offers no guarantee against the reoccurrence of the initial fault, or any further damage caused;
 - A1 Electrical will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair required;
 - A1 Electrical is only responsible for components that are replaced by A1 Electrical and does not at any stage accept any liability in respect of previous goods and/or services supplied by any other third party that subsequently fail and found to be the source of the failure;
 - any defects in the Materials or appearing in the Works after completion due to the Client or any third party using any items that overloads the structure or system to which A1 Electricals' Materials are installed or connected to, or by workmanship not performed by A1 Electrical, shall not be covered by any applicable warranty pertaining to the Materials;
 - A1 Electrical shall not be responsible or liable for any defect in other appliances or power points as a coincidence of A1 Electrical installing the Materials,
 - any defects in the Materials or appearing in the Works after completion due to the Client or any third party using any items that overloads the structure or system to which A1 Electricals' Materials are installed or connected to, or by workmanship not performed by A1 Electrical, shall not be covered by any applicable warranty pertaining to the Materials;
 - it is the Client's responsibility to insure any equipment partly or completely installed on the Worksite, against theft or damage;
 - A1 Electrical shall not be liable for any loss or damage caused in accessing the work area beyond reasonable control of A1 Electrical (including, without limitation, to ceiling tiles and panels, face brickwork and rendered masonry services) which A1 Electrical may have to break into or disturb in performance of the Works), unless due to the negligence of A1 Electrical;
 - under no circumstances, will A1 Electrical handle removal of asbestos product. In the event asbestos (or other hazardous material) is discovered on the Worksite:
 - A1 Electrical shall suspend the Works;
 - the Client shall be fully responsible for the resolution of any resulting problems;

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(iii) any additional cost incurred by A1 Electrical shall be added to the Price under clause 6.2;

(i) Materials supplied may:

(i) exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. A1 Electrical will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur;

(ii) expand, contract or distort as a result of exposure to heat, cold, weather;

(iii) mark or stain if exposed to certain substances; and

(iv) be damaged or disfigured by impact or scratching.

9. Worksite Access and Condition

9.1 A1 Electrical is not responsible for the removal of rubbish from or clean-up of the building/construction Worksite/s. All rubbish generated by A1 Electrical will be placed in a designated area appointed by the Client but the responsibility of removal of same is the Client or the Client's agent, unless otherwise agreed.

9.2 It is the intention of A1 Electrical and agreed by the Client that:

(a) where A1 Electrical requires that Materials, tools etc. required for the Works be stored at the Worksite, the Client shall supply A1 Electrical 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;

(b) the Client shall ensure that A1 Electrical has clear and free access to the Worksite at all times to enable them to undertake the Works (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Materials). A1 Electrical shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of A1 Electrical; and

(c) it is the Client's responsibility to provide A1 Electrical, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities.

9.3 The Client agrees to be present at the Worksite when and as reasonably requested by A1 Electrical and its employees, contractors and/or agents.

9.4 Worksite Inductions

(a) in the event the Client requires an employee or sub-contractor of A1 Electrical to undertake a Worksite induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Client shall be liable to pay A1 Electricals' standard (and/or overtime, if applicable) hourly labour rate; or

(b) where A1 Electrical is in control of the Worksite, the Client and/or the Client's third-party contractors must initially carry out A1 Electricals' Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works will be by **appointment only** and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by A1 Electrical.

10. Underground Locations

10.1 Prior to A1 Electrical commencing any work the Client must advise A1 Electrical of the precise location of all underground services on the Worksite and clearly mark the same. The underground mains and 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 the Worksite.

10.2 Whilst A1 Electrical will take all care to avoid damage to any underground services the Client agrees to indemnify A1 Electrical 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 and A1 Electrical 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 health and safety laws relating or any other relevant safety standards or legislation pertaining to the Works.

11.2 Both parties acknowledge and agree:

(a) to comply with the Building Act 2004 (including any subsequent Amendments) in respect of all workmanship and building products to be supplied during the course of the Works; and

(b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.

11.3 Where the Client has supplied products for A1 Electrical to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in A1 Electricals' opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with New Zealand regulations, then A1 Electrical shall be entitled, without prejudice, to halt the Works until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 6.2.

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

11.5 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.

11.6 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 A1 Electrical, then A1 Electrical 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 with the Electrical Safety Regulations. The Client acknowledges and agrees that any costs associated with the rectification Works including any Materials and labour shall be to the Client's account.

11.7 Any live Works or Works undertaken near live conductors where it is safe to do so shall be dealt with in accordance with New Zealand and Australian Wiring standards being "Safe working on Low Voltage Electrical Installations, relevant Statutory Acts and Workplace

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- Regulations". A1 Electricals' live Works procedures are designed to eliminate risk of injury to A1 Electricals' 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.
- 11.8 Notwithstanding clause 11.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), A1 Electrical agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the Worksite or where they may be acting as a sub-contractor for the Client who has engaged a third party head contractor.
- 12. Title**
- 12.1 A1 Electrical and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid A1 Electrical all amounts owing to A1 Electrical; and
 - (b) the Client has met all of its other obligations to A1 Electrical.
- 12.2 Receipt by A1 Electrical 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 A1 Electrical on request;
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for A1 Electrical and must pay to A1 Electrical 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 A1 Electrical shall be sufficient evidence of A1 Electricals' rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with A1 Electrical 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 A1 Electrical and must pay or deliver the proceeds to A1 Electrical 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 A1 Electrical and must sell, dispose of or return the resulting product to A1 Electrical as it so directs;
 - (f) unless the Materials have become fixtures the Client irrevocably authorises A1 Electrical to enter any premises where A1 Electrical believes the Materials are kept and recover possession of the Materials;
 - (g) A1 Electrical 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 A1 Electrical; and
 - (i) A1 Electrical 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 that have previously been supplied and that will be supplied in the future by A1 Electrical to the Client and the proceeds from such Materials as listed by A1 Electrical to the Client in invoices rendered from time to time.
- 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 A1 Electrical may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, A1 Electrical 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 or the proceeds of such Materials in favour of a third party without the prior written consent of A1 Electrical; and
 - (d) immediately advise A1 Electrical 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 A1 Electrical 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, and 131 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by A1 Electrical, 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 A1 Electrical under clauses 13.1 to 13.5.
- 13.7 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 14. Security and Charge**
- 14.1 In consideration of A1 Electrical 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, and the Client grants a security interest in all of its present and after-acquired property, 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). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 14.2 The Client indemnifies A1 Electrical from and against all A1 Electricals' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising A1 Electricals' rights under this clause.

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14.3 The Client irrevocably appoints A1 Electrical and each director of A1 Electrical 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. Defects and Returns of Materials

15.1 The Client shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify A1 Electrical of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford A1 Electrical 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 A1 Electrical has agreed in writing that the Client is entitled to reject, A1 Electricals' liability is limited to either (at A1 Electricals' discretion) replacing the Materials or repairing the Materials.

15.2 Materials will not be accepted for return other than in accordance with 15.1 above.

15.3 A1 Electrical will not accept the return of Materials for credit.

15.4 Subject to clause 15.1, non-stocklist items or Materials made to the Client's specifications are under no circumstances acceptable for credit or return.

16. Warranties

16.1 For Materials not manufactured by A1 Electrical, the warranty shall be the current warranty provided by the manufacturer of the Materials. A1 Electrical 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.

16.2 To the extent permitted by statute, no warranty is given by A1 Electrical as to the quality or suitability of the Materials for any purpose and any implied warranty, is expressly excluded. A1 Electrical shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.

16.3 In the case of second hand Materials, the Client acknowledges that full opportunity to inspect the same has been provided and accepts the same with all faults and that no warranty is given by A1 Electrical as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. A1 Electrical shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.

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 ("CGA") do not apply to the supply of Materials by A1 Electrical to the Client.

18. Intellectual Property

18.1 Where A1 Electrical 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 A1 Electrical, and shall only be used by the Client at A1 Electricals' discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of A1 Electrical.

18.2 The Client warrants that all designs, specifications or instructions given to A1 Electrical will not cause A1 Electrical to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify A1 Electrical against any action taken by a third party against A1 Electrical in respect of any such infringement.

18.3 The Client agrees that A1 Electrical may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which A1 Electrical 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 A1 Electricals' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

19.2 If the Client owes A1 Electrical any money the Client shall indemnify A1 Electrical from and against all costs and disbursements incurred by A1 Electrical in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, A1 Electricals' collection agency costs, and bank dishonour fees).

19.3 Further to any other rights or remedies A1 Electrical may have under this Contract, if a Client has made payment to A1 Electrical, 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 A1 Electrical 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 A1 Electricals' other remedies at law A1 Electrical shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to A1 Electrical shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to A1 Electrical becomes overdue, or in A1 Electricals' 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 A1 Electrical;
- (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. Cancellation

20.1 Without prejudice to any other rights or remedies A1 Electrical may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice/s) then A1 Electrical may suspend or terminate the supply of the Works. A1 Electrical will not be liable to the Client for any loss or damage the Client suffers because A1 Electrical has exercised its rights under this clause.

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- 20.2 A1 Electrical 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 A1 Electrical shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to A1 Electrical for Works already performed. A1 Electrical shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 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 A1 Electrical as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.4 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.

21. Privacy Policy

- 21.1 All emails, documents, images or other recorded information held or used by A1 Electrical is "**Personal Information**" as defined and referred to in clause 21.3 and therefore considered confidential. A1 Electrical acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in the Act. A1 Electrical acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by A1 Electrical that may result in serious harm to the Client, A1 Electrical will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to A1 Electrical in respect of Cookies where the Client utilises A1 Electrical's website to make enquiries. A1 Electrical agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to A1 Electrical when A1 Electrical sends an email to the Client, so A1 Electrical may collect and review that information ("collectively Personal Information")
- If the Client consents to A1 Electrical's use of Cookies on A1 Electrical's website and later wishes to withdraw that consent, the Client may manage and control A1 Electrical's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 21.3 The Client authorises A1 Electrical or A1 Electrical's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or 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 A1 Electrical from the Client directly or obtained by A1 Electrical 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.
- 21.4 Where the Client is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 21.5 The Client shall have the right to request (by e-mail) from A1 Electrical, a copy of the Personal Information about the Client retained by A1 Electrical and the right to request that A1 Electrical correct any incorrect Personal Information.
- 21.6 A1 Electrical will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 21.7 The Client can make a privacy complaint by contacting A1 Electrical via e-mail. A1 Electrical will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

22. Suspension of Works

- 22.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) A1 Electrical 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 in accordance with clause 6.5 and/or any subsequent amendments or new legislation 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 A1 Electrical by a particular date; and
 - (iv) A1 Electrical has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
 - (b) if A1 Electrical 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 A1 Electrical exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to A1 Electrical under the Contract and Commercial Law Act 2017; or

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- (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 A1 Electrical suspending work under this provision;
 - (d) due to any act or omission by the Client, the Client effectively precludes A1 Electrical from continuing the Works or performing or complying with A1 Electricals' obligations under this Contract, then without prejudice to A1 Electricals' other rights and remedies, A1 Electrical may suspend the Works immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Works is based. All costs and expenses incurred by A1 Electrical as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 22.2 If pursuant to any right conferred by this Contract, A1 Electrical suspends the Works and the default that led to that suspension continues un-remedied subject to clause 20.1 for at least ten (10) working days, A1 Electrical shall be entitled to terminate the Contract, in accordance with clause 20.

23. Service of Notices

- 23.1 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.
- 23.2 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.

24. Trusts

- 24.1 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 A1 Electrical may have notice of the Trust, the Client covenants with A1 Electrical 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 A1 Electrical (A1 Electrical 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.

25. General

- 25.1 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 section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 25.2 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.
- 25.3 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 Dunedin Courts of New Zealand.
- 25.4 Subject to the CGA, A1 Electrical 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 A1 Electrical of these terms and conditions (alternatively A1 Electricals' liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 25.5 A1 Electrical may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 25.6 The Client cannot licence or assign without the written approval of A1 Electrical.
- 25.7 A1 Electrical 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 A1 Electricals' sub-contractors without the authority of A1 Electrical.
- 25.8 The Client agrees that A1 Electrical may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to 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 A1 Electrical to provide Works to the Client.
- 25.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to A1 Electrical.
- 25.10 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.