

TERMS AND CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1. **"LASER"** means Laser Electrical Blenheim, or any agents or employees thereof. Laser Electrical Blenheim is a trading company of Adams Holdings 2005 Limited and trades independent to Laser Electrical Group Limited. Laser Electrical Blenheim uses the LASER™ name pursuant to a franchise agreement with Laser Electrical Group Limited.
- "Customer"** means the person, firm, or company being provided Goods by LASER.
- "Goods"** means all products and / or services provided by LASER to the Customer, including without limitation all contracting and maintenance services and the supply of components.
- "Price"** means the price of Goods as agreed between LASER and the Customer including all disbursements, labour charges, hire charges, insurance charges, or any other fee or charge associated with the supply of Goods by LASER to the Customer.
- "Terms and Conditions"** means the terms contained in this document and any subsequent variation made by LASER and notified to the Customer.
- 1.2. Unless the context otherwise requires, a word which denotes:
- 1.2.1. the singular includes the plural and vice versa;
- 1.2.2. any gender includes the other genders and the neuter; and
- 1.2.3. a person includes an individual, a partnership, corporation, limited liability, company, and any other entity, including a governmental entity.
- 1.3. Unless the context otherwise requires, a reference to any legislation includes all laws, statutes, ordinances, and governmental regulations and where any of the foregoing have been amended, re-enacted, or replaced means law statutes, ordinances, and governmental regulations as amended, re-enacted, or replaced.
- 1.4. An agreement, warranty, representation, or obligation which binds or benefits two (2) or more persons under these Terms and Conditions binds or benefits those persons jointly and severally.
- 1.5. Any person or entity that is a party to these Terms and Conditions shall include the trustee, executor, administrator, personal representative, successor in interest, and permitted assignee of that person. This clause must not be construed as permitting the Customer to assign any rights or obligations under these Terms and Conditions except as otherwise permitted specifically in writing by LASER.
- 1.6. Headings shall not be used in the interpretation of these Terms and Conditions t.

2. ACCEPTANCE

- 2.1. These Terms and Conditions apply to all Goods provided by LASER to the Customer, except to the extent LASER agrees specifically with the Customer otherwise in writing. Any order made by the Customer to LASER is deemed to be acceptance of these Terms and Conditions. It is the Customer's responsibility to ensure that these Terms and Conditions are promptly brought to the attention of the appropriate staff of the Customer.
- 2.2. Once an order from the Customer has been confirmed by LASER then the Customer cannot suspend or cancel the order without the written consent of LASER and there is a binding contract between LASER and the Customer on the terms and conditions contained herein.

3. PERFORMANCE

- 3.1. Provision of Goods by LASER is subject to LASER being able to obtain all supplies, licenses, permits and the like necessary to enable LASER to both obtain any goods or materials required and complete all works required.

4. WARRANTY

- 4.1. Manufacturer's warranty applies where applicable.

5. PRICE

- 5.1. The Customer may request a quotation from LASER setting out the price and quantity of the goods to be supplied. If the quotation is acceptable to the Customer, the Customer must place an order within thirty (30) days from the date of issue of the quotation.
- 5.2. Where there is no quote, the price shall be as indicated on invoices provided by LASER to the Customer in respect of the Goods supplied.
- 5.3. The Customer agrees that the cost price shall be determined by LASER and shall take into consideration one off costs such as design and production.
- 5.4. LASER reserves the right to implement a surcharge for alterations or variations to specifications of Goods after the order has been placed.
- 5.5. In the event of cancellation prior to delivery for any reason LASER reserves the right to invoice the Customer for costs incurred by LASER up to the date of cancellation.

6. PAYMENT

- 6.1. Payment for Goods must be made in full in cleared funds on or before the 20th day of the month following the date of the invoice ("the due date").
- 6.2. For the supply of Goods extending over more than one month, progress payments will be invoiced at the end of the month and will be payable by the due date shown on the invoice unless agreed otherwise in writing.
- 6.3. If LASER's invoice is a payment claim under the Construction Contracts Act 2002 then the dates which the Customer must serve a payment schedule on LASER is 10 working days after the payment claim is served.
- 6.4. Interest may be charged on all amounts owing after the due date at a rate of 2.5% per month or part month. This will be payable until the date payment is received in full by LASER, but without prejudice to LASER's other rights or remedies in respect to the Customer's default in failing to make payment on or before the due date. The charging of interest does not imply the granting of any extension of credit.
- 6.5. The Customer shall also be liable to pay all expenses and costs (including debt collection and legal costs as between solicitor and client) in relation to the LASER obtaining or attempting to obtain a remedy for the failure to pay.
- 6.6. Payment may be made by cash, cheque, bank cheque, direct credit, or by any other method agreed to between the Customer and LASER.
- 6.7. During any period of time while the Customer is in default on any account with LASER, LASER may suspend, withhold or cancel the provision of Goods. LASER will not be liable to the Customer for any loss or damage the Customer suffers because LASER exercised its rights under this Clause.
- 6.8. LASER reserves the right to request payment for any Goods prior to their supply.
- 6.9. LASER reserves the right to refuse credit.
- 6.10. The Customer may not deduct, set-off or withhold any amount from any money owing to LASER other than prior approved retentions.

7. RETENTIONS AND VARIATIONS

- 7.1. The Customer must make known to LASER at time of seeking a quote, the percentage of any retention the Customer intends to hold back during the course of the supply of Goods.

- 7.2. Retentions must be agreed with LASER in writing prior to the Customer confirming acceptance of the supply of Goods by LASER.
- 7.3. Any variation to the supply of Goods must be agreed in writing with LASER prior to delivery, with the costs of the variation payable by the Customer. Variations will be invoiced at the end of the month in which they were carried out and due for payment as per the payment terms.

8. RISK

- 8.1. Risk in any Goods supplied by LASER shall pass when the Goods are delivered to the Customer and it shall be the Customer's obligation to insure the Goods from that time.

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

- 9.1. Title in any Goods supplied by LASER passes to the Customer only when the Customer has made payment in full for all Goods provided by LASER and of all other sums due to LASER by the Customer on any account whatsoever. Until all sums due to LASER by the Customer have been paid in full, LASER has a specific security interest in all Goods pursuant to the Personal Property Securities Act 1999 (PPSA).
- 9.2. The Customer further gives LASER a general security interest in all of the Customer's present and after-acquired property to secure payment for all Goods supplied by LASER now or in the future.
- 9.3. If Goods 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 shall remain with LASER until the Customer has made payment for all Goods, and where those Goods are mixed with other property so as to be part or a constituent of any new Goods, title of these new Goods shall be deemed to be assigned to LASER as security for the full satisfaction by the Customer of the full amount owing between LASER and Customer.
- 9.4. The Customer further agrees to treat the security interest in the Goods as a continuing and subsisting security with priority over a registered general security interest, mortgage, and any unsecured creditors, regardless of whether the products have become fixtures at any time before payment has been made for them.
- 9.5. To the extent that Part 9 of the PPSA applies, the Customer agrees that the provisions of sections 114(1)(a), 120, 122, 133 and 134 of the PPSA which are for the Customer's benefit, or place any obligations on LASER in the Customer's favour, will not apply; and where LASER has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- 9.6. To the extent that Part 9 of the PPSA applies, without limiting anything in the previous paragraph, the Customer hereby waives its rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA, and its rights to receive a copy of a verification statement under section 148 of the PPSA in respect of any financing statement or financing change statement registered by LASER.
- 9.7. If the Customer defaults then, in addition to, and without prejudice to, any other rights or remedies LASER might have, the following shall occur:
- 9.7.1. All unpaid accounts in respect of Goods supplied by LASER to the Customer shall become immediately due and payable, and
- 9.7.2. The provisions relating to LASER's right of entry, repossession and recovery of Goods shall apply.
- 9.8. The following shall constitute defaults by LASER:
- 9.8.1. Non-payment of any sum by the due date.
- 9.8.2. The Customer intimates that it will not pay any sum by the due date,
- 9.8.3. Any Goods are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods.
- 9.8.4. Any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to LASER remains unpaid.
- 9.8.5. The Customer becomes bankrupt, is placed in administration or liquidation, ceases trading, or if the Customer's goods are taken in execution, or a Receiver is appointed to any of the Customer's goods, or if the Customer compounds or makes an arrangement with the Customer's creditors.
- 9.8.6. A Court Judgment is entered against the Customer and remains unsatisfied for seven (7) days.
- 9.8.7. Any material adverse change in the financial position of the Customer.
- 9.9. In the event of default, or if LASER reasonably believes an event of default is likely to occur, the Customer hereby irrevocably authorises any officer of LASER or its agent to enter and search any premises controlled by the Customer to take possession of and remove any goods LASER has security over irrespective of whether or not any dispute has arisen with the Customer. LASER will not be liable whatsoever for any damage whatsoever its officers or agents may cause in exercising LASER's rights under this clause and the Customer irrevocably indemnifies LASER in respect of any loss suffered by a third party as a result of LASER exercising its rights under this clause.
- 9.10. LASER may either resell any repossessed Goods 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 credit the Customer's account with the invoice value thereof less such sum as LASER reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 9.11. The Customer agrees to promptly execute and deliver to LASER documents and do anything else which LASER may deem appropriate to perfect LASER's security interest over the Goods, or obtain the priority required by LASER or register (and renew registration) a financing statement for a security interest in favour of LASER.

10. LIEN

- 10.1. The Customer hereby acknowledges that LASER has a Lien over all goods in its possession belonging to the Customer to secure payment of any or all amounts outstanding from time to time.

11. AGREEMENT TO MORTGAGE

- 11.1. Were the Customer has failed to make payment of any monies due and payable to LASER whether for any Goods supplied or otherwise on the due date for payment, then the Customer will forthwith upon demand give and execute in favour of LASER a registrable memorandum of mortgage over the premises of the Customer to secure the amount owing from time to time from the Customer to LASER, such mortgage to be in the form of the All Obligations form in general use by LASER's solicitors or approved by them. The Customer acknowledges that LASER is entitled to demand a registrable memorandum of mortgage.
- 11.2. In consideration of LASER supplying Goods to the Customer, the Customer appoints LASER (and if LASER is a company, then every director of the LASER) to be the attorney of the Customer for the purposes of giving and executing in favour of LASER a registrable memorandum of mortgage over the Customer's premises to secure all amounts owing from time to time from the Customer to LASER. The Customer acknowledges and agrees that the appointment of LASER to be the Customer's attorney is made for valuable consideration and is irrevocable.
- 11.3. The Customer will ensure that any existing mortgagee is aware of LASER's rights under Clauses 11.1 to 11.3 of this Contract.

12. DISPUTES

- 12.1. The Customer must advise LASER of any dispute relating to an invoice or any concern relating to any Goods within 7 days of receiving the invoice or Goods as the case may be. If LASER is not advised of a dispute within 7 days of the Customer receiving the invoice or Goods, then the Customer is deemed to have accepted the invoice or Goods as the case may be.

12.2. In the event of any dispute the Customer must still pay any invoice in full and in accordance with the payment terms contained herein. Thereafter, the parties agree to use all reasonable endeavours to promptly resolve any dispute or difference between them but this provision shall not prevent either party from commencing any proceedings or exercising any security as they see fit.

13. LIABILITY

- 13.1. Where the Goods acquired by the Customer are for business purposes, the warranties continued in the Consumer Guarantees Act 1992 are specifically excluded.
- 13.2. All other implied warranties and obligations contained in the Fair Trading Act 1986, the Building Act 2004 and the Contract and Commercial Law Act 2017 are hereby excluded to the greatest extent permitted by law.
- 13.3. LASER's liability for any loss, damage or expense arising out of the supply of Goods is limited for all intent and purposes and in all circumstances at LASER's option, to either:
- 13.3.1. replacing or repairing any part of the Goods which the Customer is entitled to reject; or
 - 13.3.2. refunding the price paid by the Customer for the Goods that the Customer is entitled to reject.
- 13.4. LASER will not be liable in respect of any claim unless the claim is notified to LASER within the sooner of:
- 13.4.1. 12 months of the Goods being delivered to the Customer; or
 - 13.4.2. 7 days of the alleged defect becoming apparent;
- AND LASER is first given a reasonable opportunity to investigate the claim.
- 13.5. LASER will not be liable in any event:
- 13.5.1. If the Goods have been altered or repaired by any person other than LASER or its agent approved in writing by LASER; or
 - 13.5.2. If the Goods have been subject to excessive wear or tear, or improper or abnormal use or storage; or
 - 13.5.3. for any direct, consequential or indirect loss or damages of any nature whatsoever past the liability stated in this provision.

14. CANCELLATION

- 14.1. LASER may cancel any order immediately by notice in writing:
- 14.1.1. upon the Customer failing to make any payment owed by the Customer to LASER by the due date for payment;
 - 14.1.2. upon the Customer committing any breach of these terms and conditions that is incapable of remedy;
 - 14.1.3. upon the Customer failing to remedy any breach of these terms that is capable of remedy within 7 days of notice of that breach; or
 - 14.1.4. upon the commencement of liquidation or the insolvency of the Customer (except for the purposes of solvent amalgamation or reconstruction) or upon the appointment of a receiver, statutory manager or trustee of the Customer's property, or upon an assignment for the benefit of the Customer's creditors, or upon execution being levied against the Customer, or upon the Customer compounding with its creditors or being unable to pay its debts in the ordinary course of business.
- 14.2. The Customer shall indemnify LASER against all claims and loss of any kind whatsoever however caused or arising brought by any person in connection with any cancellation by LASER, its agents or employee in connection with the cancelled Goods.
- 14.3. If the Customer having accepted a quote or made an order subsequently cancels the order then the Customer must pay:
- 14.3.1. for the cost of any Goods and/or the amount of any restocking fee for any Goods ordered or purchased by LASER for the order which are not returnable to the supplier for credit, or which incur a restocking fee; and
 - 14.3.2. for all other costs incurred by LASER up to and including the date of cancellation, including all labour costs.
- 14.4. If the Customer requests suspension of an order that has already been started and LASER agrees to suspend the order, LASER may increase the agreed Price to cover any resulting extra expense, and charge for the Order as a result of the suspension.

15. INTELLECTUAL PROPERTY

- 15.1. All copyright, patents, designs, trademarks, trade names, goodwill rights, trade secrets, confidential information and any other intellectual property right whether registered or unregistered in:
- 15.1.1. the Goods; and
 - 15.1.2. all quotes, plans, designs, processes, methodology and know-how used by LASER in its supply of the Goods,
- is either the property of LASER or licenced for use by LASER and nothing in these terms and conditions operates to change that ownership or use.
- 15.2. The Customer must not, nor may it permit any other person to copy, use, reproduce or do any act in relation to the Goods that would be inconsistent with the LASER's intellectual property rights without the written consent of LASER. The Customer indemnifies LASER against all losses whatsoever incurred by LASER as a result of the Customer's breach of this clause.
- 15.3. The Customer agrees that LASER may (at no cost) use any documents, designs, drawings, images, reproductions or goods that LASER has created for the Customer for the purposes of marketing and / or entry into any competition.

16. COLLECTION AND USE OF INFORMATION

- 16.1. The Customer authorises LASER or LASER's agent to:
- 16.1.1. access, collect, retain and use any information about the Customer; (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or for the purpose of marketing products and services to the Customer and
 - 16.1.2. disclose information about the Customer, whether collected by LASER from the Customer directly or obtained by LASER 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 Customer.
- 16.2. Where the Customer is an individual the authorities under this clause are authorities or consents for the purposes of the Privacy Act 1993.
- 16.3. The Customer shall have the right to request LASER for a copy of the information about the Customer retained by LASER and the right to request LASER to correct any incorrect information about the Customer held by LASER.

17. NOTICES

- 17.1. A notice under these Terms and Conditions must be in writing and may be given to the addressee by facsimile at a number and/or by electronic mail at an address provided by the addressee for that purpose. By providing such an address, the indicating party consents that notices, approvals, and consents can be transmitted to them electronically as long as the method of electronic communication creates a record that can be retained, retrieved, and reviewed by the recipient and can be directly reproduced on paper form through an automated process.
- 17.2. Notices, approvals, and consent shall be deemed to have been received by the addressee at the earlier of when delivered to the addressee, when an acknowledgement of receipt is signed by the addressee or a duly authorised agent of addressee, when sent to the addressee by facsimile transmission at a telephone number or by electronic mail when sent to an address, provided by the addressee to the other party or parties, five (5) days after deposited with a recognised delivery service or post, when properly addressed to the addressee.

- 17.3. Any party to these Terms and Conditions can change his, her, or its address by giving written notice of the change to the other party as provided above.
- 18. FORCE MAJEURE**
- 18.1. Either party may suspend its obligations to perform under these Terms and Conditions if it is unable to perform as a direct result of any war, riot, strike, natural or man-made disaster, or other circumstance outside their reasonable control (“Force Majeure Event”);
- 18.2. Any such suspension of performance must be limited to the period during which the Force Majeure Event continues.
- 18.3. Where a party’s obligations have been suspended pursuant to clause 18.1 for a period of 30 days or more, the other party may immediately cancel any order by giving notice in writing to the other party.
- 19. WAIVER**
- 19.1. Failure by LASER to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations LASER has under this contract.
- 20. INVALID**
- 20.1. If any part of these Terms and Conditions are declared by any judicial or other competent authority to be unenforceable, invalid, or illegal, the remaining provisions of these Terms and Conditions shall remain in full force and effect unless LASER in its sole discretion decides that the effect of such declaration will adversely affect LASER’s rights or materially adversely affect LASER’s confidential information, intellectual property, business name, proprietary property, trade marks, or other material elements of LASER’s operation in which event LASER shall be entitled to cancel the supply of Goods on written notice to the Customer.
- 21. ASSIGNMENT AND SUBCONTRACTING**
- 21.1. LASER has the right to assign its interests, benefits and obligations under these Terms and Conditions to a third party and the Customer shall thereby be obliged to that third party in terms of same and LASER released from all further obligation to the Customer.
- 21.2. LASER may engage subcontractors or third parties to enable LASER to supply Goods to the Customer.
- 22. ENTIRE AGREEMENT**
- 22.1. These conditions of trade and any associated quotation or order constitute the entire agreement between LASER and the Customer for the supply of Goods and the Customer acknowledges that they shall apply to the exclusion of any standard terms or conditions of trade of the Customer.
- 23. LAW**
- 23.1. This contract shall be governed by and must be construed in accordance with the laws of New Zealand. The venue of any proceedings shall be in Nelson, New Zealand. However, LASER may seek a restraining order or injunction in any court having immediate jurisdiction over the supply of Goods provided by LASER.
- 24. FURTHER ASSURANCES**
- 24.1. The Customer warrants that it has authority to enter into and perform and the ability to perform its obligations under these Terms and Conditions .

Personal guarantee

In consideration of LASER ELECTRICAL BLENHEIM agreeing at my / our request to supply the Company with goods, I / we:

..... (“the Guarantor(s)) hereby undertake and agree with the Company as follows:

I / We shall be answerable to and responsible to LASER for due payment by the Customer for all such Goods as may be supplied from time to time by LASER to the Customer, together with all interest charges and recovery costs charged by LASER to the Customer.

This agreement shall be a continuing guarantee to LASER for all debts whatsoever and whensoever contracted by the Customer in respect of all Goods supplied to the Customer by LASER and the obligations under this guarantee shall not be affected by any of the following:

- Any indulgence or extension of time given to the Customer or any variation of the terms of contract as between LASER and the Customer.
- The death or bankruptcy or winding up of the Customer or any of the Guarantors hereunder.
- The Customer’s liability under the contract for supply being or becoming invalid, illegal or unenforceable through any act of omission or in terms of any legislation.
- The release or discharge of or any indulgence extended to any of the Guarantors by LASER.

The Guarantor(s) agree(s) that LASER shall have the right and liberty to complete and have registered a Mortgage over any property owned by the Guarantor to secure monies owed by the Customer or the Guarantor and LASER shall also have the right to place a caveat on any such property for the purpose of this provision and the Guarantor hereby irrevocably appoints LASER as the Guarantor’s attorney for the purpose of executing such mortgage.

In the event of there being more than one Guarantor, then the obligations of the Guarantors shall be joint and several and the liability of the parties executing the guarantees shall not be affected by the refusal or failure of any of the intended Guarantors to sign the guarantee.

Although as between the Customer and the Guarantor, the Guarantor may be surety only, yet as between the Guarantor and LASER, the Guarantor shall be deemed to be a principal debtor and shall not be released by any matter or thing the happening of which would otherwise release one liable as a surety only.

DATED the day of

Signed by :

ALSO PRINT NAME :

Signed by :

ALSO PRINT NAME :