

# **ALEX STEWART ELECTRICAL LTD TERMS AND CONDITIONS**

## **1. DEFINITIONS**

1.1 "ASEL" shall mean Alex Stewart Electrical Ltd, Alex Stewart, or any agents, members 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 ASEL.

1.3 "Goods" shall mean:

1.3.1 all Goods of the general description specified on the attached quote and supplied by ASEL to the Customer; and

1.3.2 all Goods supplied by ASEL to the Customer; and

1.3.3 all inventory of the Customer that is supplied by ASEL; and

1.3.4 all Goods supplied by ASEL and further identified in any invoice issued by ASEL 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 ASEL or that are stored by the Customer in a manner that enables them to be identified as having been supplied by ASEL; and

1.3.6 All of the Customer's present and after-acquired Goods that ASEL have performed work on or to or in which goods or materials supplied by ASEL 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 mean all goods, products, services and advice provided by ASEL to the Customer and shall include without limitation all contracting and maintenance services and the supply of components and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods and Services by ASEL to the Customer.

1.5 "Price" shall mean the cost of the Goods and Services as agreed between ASEL and the Customer and includes all disbursements eg charges ASEL pay to others on the Customer's behalf subject to clause 4 of this contract.

## **2. ACCEPTANCE**

2.1 Any instructions received by ASEL 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 ASEL 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 ASEL to any other party.

3.2 The Customer authorises ASEL to disclose any information obtained to any person for the purposes set out in clause 3.1.

## **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 ASEL 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 ASEL between the date of the contract and delivery of the Goods and Services.

## **5. PAYMENT**

5.1 Payment is due without any retention 7 working days following the date of service of our invoices/payment claims ("the Due Date").

5.2 The Customer must provide any payment schedule to ASEL no later than 5 working days following the date of service of ASEL's payment claim.

5.3 If the Customer does not make payment on the Due Date, the Customer shall be liable to pay:

5.3.1 default interest at the rate of 10% per month, which shall accrue on a daily basis on the total amount outstanding from the Due Date to the date of payment in full; and

5.3.2 any expenses, disbursements and/or legal costs on a solicitor/client basis that ASEL incur incidental to the enforcement or attempted enforcement of its rights, remedies and powers under these Terms and Conditions. Includes ASEL admin time and debt collection agency fees.

5.4 ASEL shall be entitled to, immediately and without notice, suspend any further work on credit if any payment is not made by the Due Date. Such suspension shall have the same effect and be on the same terms as that set out in s24A(2) to (5) of the Construction Contracts Act 2002.

5.6 If this quotation is not signed the Customer will be deemed by their conduct to have accepted these Terms and Conditions if the Customer asks us verbally or in writing to commence works and/or pay any required deposit.

## **6. QUOTATION**

6.1 Where a quotation is given by ASEL 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 ASEL reserve the right to alter the quotation because of circumstances beyond its control.

6.1.4 ASEL reserve the right to charge the customer for design fees and time taken to quote/work done to date if the quotation is not accepted by the customer

## **7. RISK**

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

## **8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)**

8.1 Title in any Goods supplied by ASEL passes to the Customer only when the Customer has made payment in full for all Goods provided by ASEL and of all other sums due to ASEL by the Customer on any account whatsoever. Until all sums due to ASEL by the Customer have been paid in full, ASEL has a security interest in all Goods.

8.2 If the 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 ASEL until the Customer has made payment for all Goods, and where those Goods are mixed with other property so as to be part of or a constituent of any new Goods, title to these new Goods shall be deemed to be assigned to ASEL as security for the full satisfaction by the Customer of the full amount owing between ASEL and Customer.

8.3 The Customer gives irrevocable authority to ASEL to enter any premises occupied by the Customer or on which Goods are situated at any reasonable time after default by the Customer or before default if ASEL believes a default is likely and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. ASEL 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. ASEL 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 ASEL reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

8.4 Where Goods are retained by ASEL pursuant to clause 8.3 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.

8.5 The following shall constitute defaults by the Customer:

8.5.1 Non payment of any sum by the due date.

8.5.2 The Customer indicates that it will not pay any sum by the due date.

8.5.3 Any Goods are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods.

8.5.4 Any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to ASEL remains unpaid.

8.5.5 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.

8.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.

8.5.7 Any material adverse change in the financial position of the Customer.

## **9. SECURITY INTEREST FOR SERVICE PROVIDERS**

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

## **11. LIABILITY**

11.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon ASEL 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 ASEL, ASEL'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.

11.2 Except as otherwise provided by clause 11.1 ASEL shall not be liable for:

11.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Goods and Services by ASEL to the Customer, 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 ASEL to the Customer; and

11.2.2 The Customer shall indemnify ASEL 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 ASEL or otherwise, brought by any person in connection with any matter, act, omission, or error by ASEL its agents or employees in connection with the Goods and Services.

## **12. WARRANTY**

12.1 Manufacturer's warranty applies where applicable.

## **13. CONSUMER GUARANTEES ACT**

13.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods and Services from ASEL for the purposes of a business in terms of section 2 and 43 of that Act.

## **14. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**

14.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for ASEL 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 ASEL the payment of any and all monies now or hereafter owed by the Customer to ASEL and indemnify ASEL 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.

## **15. MISCELLANEOUS**

15.2 Failure by ASEL 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 ASEL has under this contract.

15.3 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.

15.4 Governing Law, these terms and conditions of trade shall be governed by the laws of New Zealand.

## **17. CANCELLATION**

17.1 Orders placed with ASEL cannot be cancelled without the written approval of ASEL. In the event that ASEL accepts the cancellation of any order placed, it shall be entitled to charge a reasonable fee for any work done on behalf of ASEL to the date of the cancellation including a fee for the processing and acceptance of the Customer's order and request for cancellation.

17.2 ASEL reserves the right to cancel the order at any time by ASEL giving the Customer written notice. The Customer shall indemnify ASEL against all claims and loss of any kind whatsoever however caused or arising as a result of this clause brought by any person in connection with any cancellation by ASEL its agents or employees in connection with the cancelled Goods and Services.

## **18. INTELLECTUAL PROPERTY**

18.1 All quotes, plans and other material supplied by ASEL contain intellectual property that cannot be copied or given to other parties without the written consent of ASEL. ASEL reserves the right to charge a consultancy fee and the customer agrees to pay the consultancy fee for misuse of this material.