

SOUTHWICK TRADING LIMITED T/A Electric Cover

TERMS OF TRADE

The terms of trade set out below govern all of the supplies of goods and services from Southwick Trading Limited trading as Electric Cover ("Electric Cover", "we", "us") to the Customer ("you"). They are effective from [date] and will replace all earlier Electric Cover terms of trade and any terms and conditions contained in any document used by you and purporting to have contractual effect, and your acceptance of any goods or services from Electric Cover indicates your continuing acceptance of these terms of trade.

1. Delivery and risk

- 1.1 You are responsible for insurance and risk in the goods from the time they leave our premises.
- 1.2 You must ensure that Electric Cover has access to your premises at all times that you have arranged for Electric Cover to supply goods or services. If we cannot gain access at the agreed time, we may charge our waiting time at our normal rate.
- 1.3 You agree to pay all delivery costs. If we deliver any order in parts, then each delivery is a separate contract.
- 1.4 You do not have the right to possess goods until they are delivered to you or collected by you. Where you ask us to deliver goods directly to another person, that person takes possession of the goods for you as your agent and you are still directly responsible to us under these terms of trade.
- 1.5 All claims for shortage or delivery damage must be made to the carrier and to Electric Cover within 7 business days of the date of delivery.
- 1.6 We will make every effort to ensure delivery of goods, or performance of services, is on time but will not be liable to you for any loss or damage arising in any way from any delay in delivery or performance.

2. Quotations, Orders and Prices

- 2.1 All prices are subject to alteration without notice.
- 2.2 Quoted prices are the New Zealand dollar price and are valid for the time stated on any quotation, or if no time is stated, on the date of quotation only. Where quotes include quotes for the supply of goods, Electric Cover reserves the right to pass on the actual amount of unexpected increases in the cost of obtaining those goods.

- 2.3 You agree to pay goods and services tax and any other government duties, levies or taxes in respect of the goods or services.
- 2.4 Unless Electric Cover agrees to other terms in writing, all installation and service work is charged out at Electric Cover's rates ruling at the date the service is supplied.
- 2.5 Orders for goods may be cancelled only if Electric Cover agrees in writing to the cancellation and the order has not been processed by Electric Cover. Electric Cover may charge you a cancellation fee.

3. Payments and Progress Payments

- 3.1 Electric Cover has the right to progress payments under the Construction Contracts Act 2002 ("the CC Act"). For the avoidance of doubt, the provisions of this clause 3 will replace the provisions implied by sections 15 to 18 of the CC Act. Except to the extent that Electric Control has agreed in writing to different arrangements for the number, amount, frequency or due date for progress payments, progress payments will be claimed according to this clause 3.
- 3.2 If all goods and services to be supplied under a contract are supplied within a single calendar month, then payment is due in full within 7 working days of receipt of a payment claim for the full amount.
- 3.3 For contracts under which goods and services are to be supplied during more than one calendar month, at the end of each calendar month, or when each stage of the work is completed, Electric Cover will serve a payment claim requiring payment for all goods and services actually supplied during that calendar month or for that stage, whether those goods or services were supplied under the contract or under an agreed variation to the contract. Within two months after the last month in which Electric Cover supplies goods or services Electric Cover will serve a payment claim ("final account") for all remaining sums due under the contract and under any agreed variations.
- 3.4 You must respond to each payment claim by either paying the amount claimed or serving a payment schedule (in accordance with the Act) within 7 working days of the payment claim being served.
- 3.5 Except to the extent that Electric Cover has agreed in writing to other payment arrangements, or unless the CC Act provides otherwise, you must pay all claimed amounts in full, without deduction or setoff, in accordance with this clause 3. Your payment is made only when funds have fully cleared through the banking system into our bank account.
- 3.6 If you have not paid in full or served a payment schedule in accordance with the CC Act by the due date, we may charge you interest compounding monthly on the unpaid overdue balance at the rate of 5% per annum above the current overdraft rate charged by our bankers, and we may charge costs (including collection costs and legal costs on a solicitor-client basis) and

suspend delivery of further goods or performance of further services until the account is paid.

- 3.7 Payments which you make to us will be applied first to any amount owing in respect of service work, then to payment for any goods which have been purchased as inventory and which have been sold by you, then to payment for goods supplied by us which have not been sold by you.

4. Property

- 4.1 Property and ownership in goods, whether in their original form or incorporated in or attached to land, to buildings or to another product, will not pass to you but will remain with Electric Cover until Electric Cover receives payment in full of the purchase price of the goods and all other amounts that you owe to Electric Cover for any reason.

- 4.2 Until property passes to you, you shall hold any goods in trust as fiduciary bailee for Electric Cover.

- 4.3 You must not resell or part with possession of any equipment that we supply for your use before you have paid for it in full, unless we have given you written consent.

- 4.4 Notwithstanding clauses 3 above, all payments shall immediately become due to Electric Cover, if without our consent you sell or otherwise dispose of any equipment, machinery which have not been paid for, if you become insolvent, commit any act of bankruptcy, or if a receiver, liquidator or statutory manager is appointed over any of your assets or undertaking, if you fail to comply with any of the provisions of clause 4, or if you make or attempt to make an arrangement or composition with creditors.

- 4.5 Where Electric Cover reasonably believes that any collateral is at risk or that you are or will be in breach of any part of clauses 3 to 5 and clause 7 of this agreement, Electric Cover or its agent may enter your premises without further notice to you or any other person, to remove any goods which are the property of Electric Cover, including goods or software which are installed in or affixed to other goods, using such force as is necessary and without prejudice to any other rights of Electric Cover.

- 4.6 You indemnify Electric Cover against all costs and claims in respect of its exercise of rights under this clause 4.

5. Security interests

- 5.1 If we already have a perfected security interest in the products we supply to you together with their proceeds, that security interest is continued under these terms of trade. Otherwise, you grant us a security interest in the Products that we supply to you to the value of all amounts owing to us. Our security interest covers the Products together with all proceeds, whether or not those Products have become accessions to other goods or processed or commingled into or mixed with other goods. The goods and services subject

to the security interest will be described on our quotations or our invoices. Where Products that we supply to you have become mixed with other similar goods supplied by other persons, you grant us a security interest in the mixed goods to the value of the Products in the mixture that we have supplied to you but which have not yet been paid for.

- 5.2 You agree that you will do all acts necessary and provide us on request all information we require to register a financing statement over the goods and their proceeds of all kinds, and that you will advise us immediately in writing of any changes to that information. You waive all rights to receive a copy of any verification statement of a financing statement.
- 5.3 You agree that you will supply Electric Cover, within 2 business days of its written request, with copies of all security interests registered over your personal property, and you authorise Electric Cover as your agent to request information from any secured party relating to any security interest which is held in any personal property which is or has been in your possession or control.
- 5.4 You agree that Electric Cover may require you to pay all reasonable costs, including legal costs on a solicitor client basis, associated with the discharge or amendment of any financing statement registered by Electric Cover, whether or not the change was initiated by you.
- 5.5 If we repossess goods under this agreement, we may retain those goods or dispose of them without notice to you or any other person, and, after deducting reasonable costs of sale, we may credit any surplus by way of setoff against any sums owing to us. We shall not be obliged to furnish you with a statement of account or to pay any person other than you or your receiver or liquidator any sum in excess of the total amount you owe us at the time we credit your account. We will not be obliged to reinstate this agreement or resupply any repossessed inventory or equipment to you.

6. Electric Cover Warranties

- 6.1 Where the New Zealand Consumer Guarantees Act applies to the supply of goods or services under these terms of trade, you may have additional rights under that Act.
- 6.2 Goods are subject to the manufacturers' warranties only. Electric Cover will pass on the benefit of those warranties to you, without itself being directly liable to you under any warranty for goods. Where you require Electric Cover to carry out warranty services, Electric Cover may require you to pay its service and call-out charges.
- 6.3 Electric Cover's workmanship is covered by the warranty which is set out on its quotations.
- 6.4 Where you require Electric Cover to carry out any services for goods not supplied by Electric Cover, you agree to pay Electric Cover's service and call-out charges.

- 6.5 Any warranty may be voided by unreasonable use, damage to or misuse of equipment, problems caused by the misuse of software or unauthorised changes to programming, damage after the goods left Electric Cover's control, negligent operation, inadequate packaging, cleaning or maintenance, power surges, unauthorised repairs, alterations, modifications or the use of hardware, software or consumables not supplied by Electric Cover.
- 6.6 We may refuse warranty assistance if any sum that you owe us for any reason is overdue.
- 6.7 Where the goods or services that you acquire from Electric Cover are not of a kind ordinarily acquired for personal household or domestic use or consumption, or where you acquire, or hold yourself out as acquiring, the goods or services for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 and the conditions, warranties and guarantees set out in the Sale of Goods Act 1908, or implied by common law will not apply and are excluded from these terms of trade.

7. Customer Warranties

- 7.1 You warrant that you are the owner of any property (real or personal) or premises that you ask Electric Cover to do work on, or if the property or premises are owned by a third party, that you have authority to instruct Electric Cover to do work on the property or premises. You agree to indemnify Electric Cover, its agents and its employees against loss or damage of any kind whatsoever resulting wholly or in part from your failure to comply with this clause 7.

8. Limitation of liability

- 8.1 You are responsible for ensuring that any computer system is secure against attacks by viruses and similar disruptive codes, that you use effective power surge protection for computers and other electrical appliances, and that your data is backed up at all times. Electric Cover will not be responsible for any loss or costs incurred through your failure to back up data or to secure your computer system.
- 8.2 Electric Cover will not be liable for any losses of any kind or any delay in supplying goods or services which are caused in whole or in part by force majeure including (but not limited to) any act of God, natural disaster, flood or earthquake, strike, lockout, fire, war, civil commotion, network service failure, inability to obtain products or supplies including the imposition of any export or import bans, or any cause beyond its reasonable control. Electric Cover shall not be required to settle a strike or lockout or other industrial disturbance against its wishes in order to benefit from this clause.
- 8.3 Subject to clause 6.1, Electric Cover's liability shall be limited to the value of any defective goods or services supplied, and none of Electric Cover, its employees, contractors and agents, any manufacturer(s) or developer of the goods, software or any of their materials or components or any suppliers of services, will be liable to you for loss or damage of any kind however that loss

or damage is caused or arises. Electric Cover reserves the right to remedy any defects in goods or services supplied. This limitation of liability includes, but is not limited to, costs (including costs of returning goods to Electric Cover or to any manufacturer), loss of data, consequential loss, loss of contracts, loss of profits and damage caused by or arising from delays in manufacturing or delivery, faulty or delayed installation, unreasonable use, negligence (including a failure to do something which should have been done or to prevent something from happening), faulty specifications and design, and faulty materials or components of the goods.

9. Intellectual property rights

9.1 Where you provide us with any plans, work diagrams, schematics or any other intellectual property of third parties, you warrant that you have the right to use, and to instruct Electric Cover to use the intellectual property. You agree to indemnify Electric Cover, its agents and its employees against loss or damage of any kind whatsoever resulting wholly or in part from your failure to comply with this clause 9.1.

9.2 Where we carry out design work for you at your request, you agree that we have copyright in that work, and that we may charge you a reasonable fee if you do not contract with us to carry out that work.

9.3 Neither Electric Cover nor its suppliers or manufacturers of any goods transfers any right, title or interest in any copyright, trade marks, or other intellectual property rights relating to any of the goods or software to you.

10. Personal Information

10.1 Electric Cover will use any personal information that you supply for credit, administration, service and marketing purposes. You have the right of access to, and to ask for correction of, your personal information.

10.2 You authorise Electric Cover to search the Personal Property Securities Register for any information about you (and, in the case of a company) your parent or associated companies.

11. General Conditions

11.1 Electric Cover reserves the right to change these terms of trade from time to time by notice to you in writing, which may be by email.

11.2 If Electric Cover fails to enforce any terms or to exercise its rights under these terms of trade at any time, Electric Cover has not waived those rights.

11.3 If any provision of these terms of trade is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect and the parties shall adjust their respective rights and obligations in accordance with the spirit and intent of the parties as shown by these terms of trade.

11.4 Any agreement between you and Electric Cover is governed by the laws of New Zealand. You agree that any dispute is subject to the exclusive jurisdiction of the New Zealand courts although Electric Cover reserves the right to commence any proceedings against you in any other court.