

Southland Electrical and Refrigeration Limited

Customer Form

The Customer:					Trade <input type="checkbox"/>	Private <input type="checkbox"/>
Limited Liability Company <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Trader <input type="checkbox"/> Other:						
Legal name:						
Company number/Date of birth:						
Postal address:						
Email:						
Telephone:						
Contact person:						
Name and address of Directors / Partners / Proprietors / Shareholders:						
Name:	Designation:	Residential address:	Telephone:	Date of birth:		
Declaration and Agreement:						
In consideration of Southland Electrical and Refrigeration Limited (referred to in this form as us / we) agreeing to perform the Work for the Customer at the Customer's request, I, the Customer or on behalf of the Customer:						
1. agree to the Terms of Trade set out on the reverse side of this form; and						
2. declare that the information supplied in this form is correct.						
Full name:			Signed:			
Designation:			Date:			
Guarantee and Indemnity:						
In consideration of Southland Electrical and Refrigeration Limited agreeing to perform the Services or deliver the Goods for the Customer at the Customer's request, I/we:						
1. unconditionally guarantee to Southland Electrical and Refrigeration Limited the due and punctual payment by the Customer of all moneys payable under the Contract and the performance of all obligations of the Customer in respect of that Work in accordance with the Terms of Trade set out on the reverse side of this form as and when the same become due and payable by the Customer.						
2. agree to be deemed as principal debtor for all accounts held by the Customer with Southland Electrical and Refrigeration Limited .						
3. agree that this guarantee and indemnity will be a continuing guarantee and indemnity and will not be discharged by any settlement or payment of account and that this guarantee and indemnity is both joint and several.						
4. agree that our liability under this guarantee and indemnity will not be discharged, abrogated, prejudiced, or affected by:						
(a) the granting of time, credit or the indulgence or other concession to the Customer;						
(b) any alteration, modification, variation, or addition to any agreement in respect of the supply of goods and services; or						
(c) any other act, omission, or event which but for this provision might operate to discharge, impair, or otherwise affect, my/our obligations under this guarantee and indemnity or any powers or remedies conferred on Southland Electrical and Refrigeration Limited by this guarantee and indemnity or by law.						
5. indemnify Southland Electrical and Refrigeration Limited against all losses Southland Electrical and Refrigeration Limited may incur or suffer should the Customer default in the performance of any obligations to be performed by the Customer under the attached Terms of Trade.						
6. I/We confirm that I/we have been advised by Southland Electrical and Refrigeration Limited that I/we should seek legal advice before signing this guarantee and indemnity.						
Name:			Signed:			
Witness name:			Witness signed:		Date:	
Name:			Signed:			
Witness name:			Witness signed:		Date:	

Contract with Southland Electrical and Refrigeration Limited

Terms of Trade

In these Terms of Trade, **we**, **us**, and **our** refer to Southland Electrical & Refrigeration Limited and include our employees. **You** refers to the Customer specified in the Customer Form. **Parties** refers to you and us.

The agreement between you and us (**Contract**) is contained exclusively in these Terms of Trade.

By Placing an Order, you accept the terms of this Contract to the exclusion of your terms (if any) and all previous representations made to you.

1. Definitions

1.1 In these Terms of Trade:

Consents means all resource consents, building consents, engineering approvals and all other consents, permits, waivers and authorities required from any local or territorial authority in respect of the Installation

Completion means Delivery or when performance of our Services is completed.

Contract Price is as specified by us, subject to clauses 3 and 5.

Delivery is the delivery of the Goods to the address provided in the Order Details.

Deposit is an advance payment of the Contract Price and is payable in accordance with clause 4.

Goods means goods ordered all other materials and structures supplied by us to you.

Order Details means the Goods and/or Services we have agreed to supply you with.

Place an Order means the request for us to supply of Goods and/or Services to you.

Services are all services provided by us to you including, where elected, the installation of Goods.

Site is the address for Delivery or performance of the Services, and includes all areas on or over or under which the Services are to be performed, together with any other areas made available to us to carry out the Services.

1.2 Reference to a party includes that party's successors, executors, administrators and permitted assigns.

1.3 Reference to clauses is to clauses in this Contract.

1.4 Reference to a statute includes references to all regulations, orders, rules, or notices made pursuant to that statute, and all amendments to that statute and those regulations, orders, or notices or any statute passed in substitution of that statute.

2. Commencement, Access, Delivery and Completion

2.1 These terms are binding on the parties from the date we accept the Order Details.

(a) Where we require, you will give us full access to the Site on the date(s) we agree

with you. We reserve the right to refuse performance at a site where there is a reasonable risk to the health and safety of any party.

2.2 If we have given you a date for Completion, that date is approximate only and we give no warranty that Completion will occur on or before that date.

2.3 We may unilaterally extend the date for Completion because of any reason or other circumstance outside our control.

2.4 We reserve the right to arrange delivery of Goods by instalments or stagger performance of our Services.

2.5 If you breach any of the terms in this Contract, we reserve the right to cancel Delivery (or such instalments thereof) or provision of Services without prejudice to our rights to recover all sums owing to us in respect of Deliveries already made or Services performed.

3. Price

3.1 In consideration of us supplying Goods and/or performing the Services, you will pay to us the Contract Price plus:

(a) Any disbursements (including any additional installation or Delivery costs) incurred by us on your behalf.

(b) The cost of any additional products supplied by us.

(c) The cost of any subcontractors engaged by us (if any).

(d) Charges for travel costs that we may incur and mileage from the time we depart from, and until we return to, our normal place of work where appropriate.

3.2 Any variation to our Services additional to those set out in the Order Details, will be carried out on a labour and materials supplied basis at our applicable rates, unless agreed otherwise by us.

3.3 A specified Contract Price replaces any prior quotation or estimate.

3.4 If a Contract Price is not specified or agreed, then you will pay us the price we set for the Goods and where appropriate our applicable labour rates for any Services supplied.

3.5 Unless specified otherwise, the Contract Price and all other amounts payable under this Contract are **plus GST** and are payable in New Zealand dollars.

3.6 Disbursements incurred by us on your behalf may include a reasonable mark-up by us.

3.7 If the price of any Goods or Services in our opinion materially changes from the time that we accepted the Order Details to the point of Completion, we reserve the right to

vary the Contract Price to reasonably recover additional costs we may have incurred

4. Deposit (where required)

- 4.1 We may require you to pay a Deposit.
- 4.2 If we require a Deposit, you will pay the Deposit immediately after you Place an Order. Unless we waive in writing the requirement for a Deposit, we have no obligation to order the Goods and perform the Services until you have paid the Deposit.
- 4.3 If this Contract is terminated before performance, the total cost of all Goods ordered and time we have expended in anticipation will be deducted from the Deposit. We will refund the balance, if any, to you. If you terminate this Contract after we have commenced works on the Site, you will pay us the Contract Price.
- 4.4 Nothing in this clause prevents us for seeking damages and/or costs in excess of the Deposit for any breach or repudiation of this Contract.

5. Terms of Payment

- 5.1 Subject to clause 5.2, you will pay the balance of the Contract Price, and any associated expenses and disbursements, on the date payable set out in our invoice (Due Date) unless otherwise agreed between the parties.
- 5.2 We reserve the right to require the Contract Price to be paid by instalments prior to or during Delivery or performance of our Services.
- 5.3 If you do not make payment on the Due Date, you will be in default and must pay us default interest at the rate of 10% per calendar month, compounded monthly.
- 5.4 Payment of all sums under this Contract will be without set-off or deduction of any kind.
- 5.5 We may apportion payments to outstanding accounts as we determine in our sole discretion.

6. Performance

- 6.1 You will promptly provide us with all information reasonably required by us for Delivery and performance of our Services, including building structure plans.
- 6.2 You warrant that:
 - (a) you are the owner of the Site or are authorised by the owner to contract us to perform the Services at the Site;
 - (b) we will have free and unimpeded access to the Site for the purpose of performing our Services;
 - (c) unless otherwise agreed by us, you hold or will hold all Consents required prior to commencement of the Services;
 - (d) the Site will be cleared of all debris prior to commencement of the Services and all preparatory works completed prior to us performing the Services; and

- (e) all information you have or will provide to us under and pursuant to this Contract is true and accurate.

6.3 We will:

- (a) undertake the provision of our Services with reasonable skill, care, and diligence in a professional manner; and
- (b) liaise with you during the course of the performance of our Services in accordance with your reasonable requirements.

6.4 You will:

- (a) identify to us any hazards or health and safety risk before we access the Site;
- (b) obtain our prior agreement to any other contractors accessing the Site during the term of this Contract and ensure such access is coordinated to allow continuity of our Services and minimum inconvenience or delay. If there is a delay in performing our Services through no fault of our own, then we reserve the right to reasonably vary the Contract Price.

7. Variations

- 7.1 If you require additional work and/or variations to the scope of Services, or we identify through no fault of our own necessary variations (Variation), then:
 - (a) We shall notify you of the requirement for a Variation;
 - (b) Where possible we will provide a price for the Variation but in the absence of such the price shall be at our applicable labour rates and costs for Goods;
 - (c) we will advise of any time extension required for the completion of that work;
 - (d) payment for the Variation will be in accordance with clause 5; and
 - (e) where a Variation occurs, the Contract will be deemed to be varied accordingly. These Terms of Trade will continue to apply to such Variation.
- 7.2 If you do not authorise a Variation, the Contract remains unchanged, and all parties remain bound by its terms.
- 7.3 We may at any time by notice in writing to you vary these Terms of Trade, acting reasonably, and you will be bound by such variation from the date of that notice.

8. Ownership

- 8.1 We retain ownership of the Goods until the Contract Price is paid in full.
- 8.2 Until the Contract Price is paid in full, you will:
 - (a) hold the Goods as our bailee;
 - (b) store the Goods safely at your cost so that they can be readily identified as belonging to us;
 - (c) not remove the Goods from the Site;

- (d) do or allow to be done anything that may contribute to a deterioration in the value of the Goods; or
 - (e) otherwise adversely affect our rights in the Goods.
- 8.3 You must immediately inform us of any attempt by any third party to exercise any remedies against the Goods or of any circumstances that may affect our rights to the Goods.
- 8.4 You will immediately return the Goods if requested to do so by us following non-payment of any amount owing to us or the non-fulfilment of any of your obligations to us under this Contract, without limiting any other rights we may have.
- 8.5 This clause 8 creates a security interest, as defined in the Personal Property Securities Act 1999 (PPSA), in all Goods supplied to you under the Contract.
- 8.6 You will not grant any other security interest or any lien over Goods that we have a security interest in.
- 8.7 At our request you will promptly sign any documents and do anything else required by us to ensure our security interest constitutes a first ranking perfected security interest in the Goods.
- 8.8 We may at any time enter your premises and properties to uplift Goods that we have a security interest in.
- 8.9 If Goods that we have a security interest in are processed, included or dealt with in any way causing them to become accessions, processed or commingled Goods, our security interest will continue in the whole in which they are included. You will not grant any other security interest or any lien in either the Goods or in the whole.

9. Consents

- 9.1 You are responsible for all consent and application fees and other costs, charges, and deposits charged by local or territorial bodies. You will comply with all requirements of such bodies.

10. Goods

- 10.1 You acknowledge the Goods supplied may vary in colour and quality from any sample, description, photo, or specification. Any variation, irregularity or imperfection in the Goods will not constitute a failure of the Goods to correspond with the sample, description, photo, or specification. You may not reject the Goods or withhold payment of the Contract Price because of any such variation, irregularity, or imperfection.

11. Limitation of Liability

- 11.1 Where you engage us to provide the Goods and/or Services for your personal use, as a retail customer, we guarantee that the Goods and/or Services will be free from defects in material and workmanship for a period of 12 months from the date of the Completion. However, we will not be liable in any way for any loss or damage arising from:

- (a) fair wear and tear;
- (b) wilful damage;
- (c) any failure to follow our instructions as to the care and use;
- (d) any alteration or repair, other than by us.

- 11.2 Where you engage us to supply Goods and perform Services for the purposes of a business, as a commercial customer, you agree that:

- (a) The supply of the Goods and/or the Services are both supplied and acquired in trade for the purposes of 43(2) of the Consumer Guarantees Act 1993 and the parties contract out of the Consumer Guarantees Act 1993 to the fullest extent permitted by law; and
- (b) it is fair and reasonable that you are bound by the exclusion in this clause.

- 11.3 Except to the extent that the law prevents us from excluding liability, we will not be liable for any loss or damage or liability of any kind whether suffered or incurred by you or another person and whether in contract, or tort (including in negligence), or otherwise and whether such loss or damage arises directly or indirectly from the Goods or the Services provided by us to you.

- 11.4 Our liability in respect of Goods which are defective or are not in compliance with the specification is excluded to the fullest extent permitted by law to the extent that liability cannot be excluded, our liability for Goods is limited to the amount(s) we receive under any warranty from the manufacturer/supplier of such Goods.

- 11.5 Without limiting clause 11.4, to the extent we are liable for any loss suffered by you arising from breach of these Terms of Trade or for any other reason, such liability is limited to the Contract Price.

- 11.6 We are not liable for any repair or reinstatement costs for wear and tear that is a reasonable consequence of performing our Services

12. Default

- 12.1 If any of the following events occurs:

- (a) you fail to pay any money owing on the Due Date;
- (b) we believe you have committed or will commit an act of bankruptcy, have had or are about to have a receiver or liquidator appointed, or are declared insolvent;
- (c) you are otherwise in breach of your obligations under this Contract;

then, in addition to any remedies we have at law, we may do one or more of the following:

- (d) require immediate payment of the Contract Price;
- (e) charge default interest in accordance with clause 5.3
- (f) immediately terminate this Contract by written notice to you.

13. Privacy of Information

13.1 You authorise us:

- (a) to collect, retain and use information about you from any person for the purpose of assessing your creditworthiness;
- (b) to disclose information about you:
 - (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us;
 - (ii) to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies, and powers.

14. Risk

14.1 The risk in the Goods supplied passes to you on the date the Goods are brought on to the Site or Delivery occurs.

15. Survival

15.1 This clause 15 and clauses 5, 10, 11, 12, 13 and 18 and any other provision which by its nature is intended to survive the termination or expiration of these Terms of Trade will survive the termination or expiration of these Terms of Trade or Completion.

16. Force Majeure

16.1 We will not be liable for any delay or failure to deliver the Goods or provide the Services if the cause of such delay or failure is beyond our control.

17. Notices

17.1 Any notice may be delivered in person, posted, or sent by email to you or to any director, where you are a company.

18. Costs

18.1 You must pay our costs of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms of Trade including all debt recovery costs and legal costs.

19. Assignment

19.1 You must not assign any of your rights, powers, or obligations under this Contract without our prior written consent.

20. Disputes

20.1 If a dispute arises under or in relation to this Contract, the parties will act in good faith to resolve the dispute.

20.2 Any claim or dispute arising will be determined by mediation if the parties are unable to resolve the dispute themselves within one calendar month of the dispute arising. Nothing in this clause prevents either party from taking immediate steps to seek any equitable relief before the New Zealand court.

Southland Electrical and Refrigeration Limited

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