

## TERMS AND CONDITIONS OF TRADE

1. The following terms and conditions of trade (“**Terms**”) will, unless otherwise agreed in writing, apply to all Works provided by Astral Electrical Limited (“**Astral**”) to the Customer. No variation of these Terms will be binding upon Astral unless made in writing.

### 2. DEFINITIONS

“**Completion Date**” means the date the Works are to be completed. “**Astral**” means Astral Electrical Limited and its successors or any person acting on behalf of and with the authority of Astral Electrical Limited.

“**Customer**” means the person or persons or their authorised agent on behalf of a firm, organisation, partnership, company, or other entity (including trust) requesting Astral to provide the Works, and where the context requires, includes the Customer’s contractors.

“**Event of Default**” means an event of default by the Customer, which occurs if:

- the Customer defaults in payment of an amount payable under these Terms;
- the Customer fails to meet any of its other obligations under these Terms with Astral;
- where the Customer is a natural person, the Customer dies, ceases to be of full legal capacity or commits an act of bankruptcy, or if the Customer is a company or body corporate, the Customer becomes insolvent or is subject to liquidation, receivership, administration or a similar insolvency process;
- any representation or undertaking made by the Customer to Astral is untrue, misleading or deceptive;
- where the Customer has made payment to Astral and the transaction is subsequently reversed, where such a reversal is contravention to the Customer’s obligations under these Terms; or
- an event, or a series of events (whether related or not), occurs which, in Astral’s opinion, may cause a material adverse change in the ability of the Customer to meet its obligations under these Terms with Astral.

“**Materials**” means any goods provided by Astral to the Customer.

“**Price**” means the price payable (plus any Goods and Services Tax (“**GST**”) where applicable) for the Works.

“**Site**” means the location where the Works are to be carried out by Astral, as advised by the Customer.

“**Start Date**” means the start date of the performance of the Works.

“**Terms**” means these terms and conditions, together with any invoice, order, quote, or other document or amendments expressed to form part of the terms between Astral and the Customer.

“**Variation**” means a variation to the Works under clauses 8.1 to 8.4 and any other matter stated to be a variation or to be treated as a variation by these Terms.

“**Works**” or “**Work**” means all goods and services provided by Astral in accordance with any quotation or any request from the Customer from time to time.

### 3. ACCEPTANCE

3.1. The Customer is taken to have accepted and be bound by these Terms if the Customer accepts a quote or estimate, places an order for and/or accepts delivery of any Works.

3.2. Electronic signatures shall be deemed accepted by either party, providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017.

3.3. In the event of inconsistency between these Terms or any quotation or other agreement entered into between Astral and the Customer, these Terms shall always take precedence.

### 4. URGENT WORK

4.1. If Astral is required to provide the Works urgently, which may require Astral’s staff to work outside regular business hours (including but not limited to lunch breaks, weekends, and/or Public Holidays), then Astral reserves the right to charge the Customer

additional labour costs (penalty rates will apply) unless otherwise agreed between Astral and the Customer.

4.2. If the Customer requests that Astral diagnose a fault that requires investigation, disassembly, and/or testing, the Customer will be charged for all costs involved, regardless of whether the repair goes ahead.

### 5. PROVISION OF WORKS

5.1. Subject to clause 5.2, Astral will start the Works on the Start Date.

5.2. The Start Date will be delayed and the Completion Date extended by whatever time is reasonable if Astral claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond Astral’s control, including but not limited to any failure by the Customer to:

- (a) make a selection, or
- (b) have the site ready for the Work, or
- (c) notify Astral that the site is ready.

5.3. Astral may deliver the Works in separate instalments. Each instalment will be invoiced and paid per these Terms.

5.4. Any time or date Astral gives to the Customer is an estimate only. Astral will not be liable for any loss or damage whatsoever due to failure by Astral to deliver the Works (or any part of them) promptly or at all, where the failure is due to circumstances beyond the reasonable control of Astral.

5.5. Any advice, assistance, information, or recommendation provided by Astral is provided in good faith, based on Astral’s knowledge and experience, and the Customer will be responsible for confirming the accuracy and reliability of the same in the use to which the Customer makes or intends to make of the Works.

### 6. PRICE & PAYMENT

6.1. At Astral’s sole discretion, the Price will be either:

- (a) per any quote provided by Astral (subject to clause 6.2)

or

- (b) as indicated on any invoice provided by Astral to the Customer.

6.2. Subject to clauses 6.3 and 6.4, the Price specified in any quote from Astral to the Customer will be valid for the period/s stated in that quote.

6.3. Unless otherwise stated in writing, the Customer will be charged for Astral’s travel costs in the manner that Astral chooses.

6.4. Astral 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 which are only discovered on commencement of the Works; or
- (d) in the event of increases to Astral in the cost of labour or materials beyond Astral’s control.

6.5. Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by Astral, which may be:

- (a) on completion of the Works; or
- (b) by way of progress payments following Astral’s 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 Site but not yet installed;
- (c) the date specified on any invoice or other form as being the date for payment or
- (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Astral.

6.6. Payment will be made through electronic/online banking or any other method agreed upon between the Customer and Astral.

6.7. Astral may require the payment of a deposit upon request.

6.8. In addition to the Price, the Customer must pay Astral an amount equal to any GST Astral must pay for any provision of the Works. The Customer must pay any other taxes and duties that

may be applicable in addition to the Price, except where they are expressly included.

**6.9.** The Customer will not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Astral or to withhold payment of any invoice because the invoice is in dispute unless the request for payment by Astral is a payment claim under the Construction Contracts Act 2002, in which case the Customer must comply with the provisions under that Act relating to payment schedules.

## **7. RETENTIONS**

**7.1.** Where there is a commercial construction contract as defined in the Construction Contracts Act 2002, payment of the Price may be subject to retention by the Customer of an amount ("**Retention Money**"), being a set amount or equal to a percentage of the Price. All Retention Money must be held on a plus GST basis.

**7.2.** The Customer will hold the Retention Money in trust in an account for the agreed period following the completion of the Works, during which time all Works are to be completed and/or all defects are to be remedied.

**7.3.** Retention Money under these Terms must be dealt with under section 18 of the Construction Contracts Act 2002.

## **8. VARIATIONS**

**8.1.** The Customer (and where applicable in these Terms, Astral) may, by written notice, order any variations to the Works that:

- (a) Increase or decrease the quantity of any Work;
- (b) Omit any Work;
- (c) Change the character or quality of any Material or Work;
- (d) Require additional Work to be done; or
- (e) Change the level, line, position, or dimensions of any part of the Works, and such order will be a variation.

**8.2.** Astral will comply with any Variation ordered under clause 8.1.

**8.3.** The value of any Variation, as calculated under clause 8.4, will be added to or deducted from the Price.

**8.4.** Any Variation to the Works will be valued as follows:

- (a) Where the Terms include specific rates and/or percentages applicable to any Variation, the Variation will be valued by such rates and/or percentages.
- (b) Where the Terms do not include any specific rates and/or percentages applicable to any Variation, Astral will notify the Customer of the proposed value of any Variation as soon as practicable following receipt of Astral's notice (but in any case, no more than 7 days, time being of the essence), the Customer will confirm in writing whether or not the proposed value of the Variation is accepted. Where the Customer gives notice that it does not receive such proposed value, the parties will endeavour to resolve the dispute by agreement, failing which the Dispute Resolution provisions of these Terms will apply.

## **9. CUSTOMER RESPONSIBILITIES**

**9.1.** The Customer will provide Astral with clear and unobstructed access to the Site. If Astral moves anything on or about the Site to safely perform the Works (as determined by Astral from time to time), this will be done at the sole risk of the Customer. Any damage to the Customer's property and/or the Site will not be Astral's responsibility unless it is due to negligence.

**9.2.** The Customer will arrange for scaffolding to be installed at the Site by a professional scaffold installer and to the satisfaction of Astral in all things, should Astral determine it is necessary to complete the Works.

**9.3.** The Customer will, on request, advise and mark the precise location of all underground services on the Site. While Astral will take all due care, any damage caused by the Customer not correctly and precisely locating underground services will be the Customer's responsibility, indemnifying Astral from all liability, claims, loss, damage, or fines.

**9.4.** The Customer is responsible for any materials it supplies. The Customer is solely responsible for any additional costs and/or

delays incurred because the materials provided are not fit for purpose.

**9.5.** The Customer will be responsible for the acts of any persons at or about the Site not under Astral's control, including but not limited to other contractors engaged by the Customer. Any delay in Astral's performance of the Works arising from the act of a person for whom the Customer is responsible will be treated as a Variation, and clauses 8.1 to 8.4 of these Terms will apply.

**9.6.** Unless otherwise agreed, the Customer is responsible for cleaning up the Site, including removing all rubbish.

## **10. PLANS AND SPECIFICATIONS**

**10.1.** All customary building industry tolerances will apply to the dimensions and measurements of the Materials unless otherwise agreed by Astral and the Customer in writing.

**10.2.** Astral will be entitled to rely on the accuracy of any plans, specifications and other information the Customer provides.

**10.3.** If any reference to the position of any electrical installations is removed or covered up by the Customer, then Astral will not be responsible for any damage caused in relation to the locating of the installations, and the installations will be at the sole discretion of Astral.

**10.4.** The Customer is responsible for any additional costs caused by not providing an acceptable plan or scope of work.

**10.5.** If the Customer requests that Astral decides on the positioning of any electrical installations, the Customer will be deemed to have accepted the positioning.

## **11. TITLE**

**11.1.** Ownership of the Materials will not pass to the Customer until the Customer has paid all amounts owing to Astral and met all the Customer's other obligations to Astral.

**11.2.** Receipt by Astral of any form of payment other than cash will be deemed to be received by Astral once the payment has cleared and cannot be reversed.

**11.3.** Risk for the materials will move to the Customer as soon as they accept delivery.

**11.4.** It is further agreed that:

- (a) until ownership of the Materials passes to the Customer per clause 11.1, the Customer is only in possession and not ownership of the Materials and, unless the Materials have become fixtures, must return the Materials to Astral on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for Astral and must pay Astral the proceeds of any insurance if the Materials are lost, damaged or destroyed.
- (c) the production of these Terms by Astral will be sufficient evidence of Astral's rights to receive the insurance proceeds directly from the insurer without requiring any person dealing with Astral to make further enquiries.
- (d) the Customer 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 Customer sells, disposes or parts with possession of the Materials, then the Customer must hold the proceeds of any such act of trust for Astral and must pay or deliver the proceeds to Astral on demand.
- (e) the Customer should not convert or process the Materials or intermix them with other goods. Still, if the Customer does so, then the Customer holds the resulting product on trust for the benefit of Astral and must sell, dispose of or return the resulting product to Astral as it directs.
- (f) unless the Materials have become fixtures, the Customer irrevocably authorises Astral to enter any premises where the Customer believes the Materials are kept and recover possession of them.
- (g) Astral may recover possession of any Materials in transit whether or not delivery has occurred.
- (h) the Customer will not charge or grant an encumbrance over the Materials nor grant or otherwise dispose of any

interest in the Materials while they remain the property of Astral.

(i) Astral may commence proceedings to recover the price of the Materials sold, notwithstanding that ownership of the Materials has not passed to the Customer.

## 12. PERSONAL PROPERTY SECURITIES ACT 1999

12.1. The Customer agrees that these Terms constitute a security agreement for the Personal Property Securities Act 1999 (“PPSA”). Astral may register such interest with the Personal Property Securities Register. A security interest is taken in all Materials and/or collateral.

12.2. The Customer undertakes to provide any information or sign any additional document to allow Astral to register its interest on the Personal Property Security Register.

12.3. The Customer will reimburse Astral for any costs associated with the registration of the financing statement.

12.4. To the extent permitted by law:

(a) Nothing in sections 114(1)(a), 133, and 134 of the PPSA will apply to these terms and conditions;

(b) The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA; and

(c) Unless Astral agrees otherwise in writing, the Customer waives its right to receive a verification statement under section 148 of the PPSA.

12.5. The Customer will unconditionally ratify any actions taken by Astral under clauses 12.1 to 12.4.

## 13. HAZARDOUS SUBSTANCES

13.1. The Customer acknowledges that should any hazardous, toxic, or otherwise dangerous substance be discovered at the Site, the Customer will be responsible for having the substance tested and, if necessary, removed. Until the Customer has provided evidence to Astral that the substance is not dangerous or has been removed by a suitably qualified person, Astral may take any steps that they see necessary, including refusing to complete any further Work.

## 14. SECURITY AND CHARGE

14.1. In consideration for Astral agreeing to provide the Works, the Customer charges all its rights, title, and interest (whether joint or several) in any land, real estate, or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these Terms (including, but not limited to, the payment of any money).

14.2. The Customer indemnifies Astral from and against all Astral's costs and disbursements, including legal fees on a solicitor-client basis incurred in exercising Astral's rights under clause 14.1.

14.3. The Customer irrevocably appoints Astral and each director of Astral as the Customer's attorney to perform all necessary acts to effect the provisions of clause 14.1, including, but not limited to, signing any document on the Customer's behalf.

## 15. INADVERTENT MISREPRESENTATION

15.1. Notwithstanding any rights the Customer may have under the Contract and Commercial Law Act 2017, the Customer agrees that if Astral has made an inadvertent misrepresentation to the Customer, the parties will first seek to resolve any adverse consequence that misrepresentation may have caused by good faith negotiations and otherwise by the dispute resolution process in clause 18.1.

## 16. WARRANTIES

16.1. For Materials not manufactured by Astral, the warranty shall be the current warranty provided by the manufacturer. Astral shall not be bound by nor be responsible for any term, condition, representation or warranty other than that given by the Materials manufacturer.

## 17. CONSUMER GUARANTEES ACT

17.1. If the Customer is acquiring the Works for trade or business, to the maximum extent permitted by law, the Customer agrees that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of the Works to the Customer.

## 18. DISPUTE RESOLUTION

18.1. If a dispute arises in connection with these Terms (“Dispute”), the parties must enter negotiations in good faith to resolve the Dispute. A party may initiate the negotiations by giving written notice to the other party in Dispute and naming its representative in that notice. The other party in the Dispute must promptly name its representative in the negotiations. Each representative must have the authority to settle the Dispute. Within 10 days of the parties in the Dispute advising each other of their representatives, the representatives must enter negotiations to resolve the Dispute.

18.2. If the parties cannot resolve the Dispute within 10 days after it has been notified under clause 18.1, then at the request of either party, the parties will, in good faith, seek mediation under clause 18.3.

18.3. If a Dispute is referred to mediation, then the parties will:

(a) seek to agree on a mediator, and if they cannot agree, the mediator will be appointed by the Chair of the New Zealand Committee of the Resolution Institute;

(b) seek to agree on the process for mediation, and if they cannot agree, then the mediator will decide the method and

(c) each pay an equal share of the mediator's fees.

18.4. A party may not commence any court or arbitration proceedings relating to a Dispute unless it has complied with clauses 18.1 to 18.3, except where the party seeks urgent interlocutory relief.

18.5. Where the Construction Contracts Act 2002 applies to the Works, the parties can pursue resolution of the Dispute under that legislation in addition to or in substitution for that party's rights under clauses 18.1 to 18.4.

18.6. Pending resolution of any Dispute, the parties will continue to perform their respective obligations under these Terms that are not in dispute without prejudice to their respective rights and remedies under these Terms or at law.

## 19. DEFAULT AND CONSEQUENCES OF DEFAULT

19.1. Notwithstanding any other rights and remedies available to Astral, if the Customer is in breach of its obligations under the Terms, Astral will:

(a) Notify the Customer of the breach in writing; and

(b) Given the Customer the opportunity to remedy the breach within a reasonable period.

19.2. If the Customer does not remedy the breach notified under clause 19.1 within the period specified in the notice, Astral may terminate or suspend the Works by giving reasonable notice to the Customer.

19.3. Astral may charge interest on overdue invoices daily from the date payment becomes due until the date of payment at a rate of 2.5% per calendar month, compounding monthly.

19.4. Astral may charge the Customer for, and the Customer indemnifies Astral from, all costs and expenses incurred by the Customer in recovering unpaid amounts due under these Terms or otherwise taking action to enforce these Terms. This includes but is not limited to legal costs, on a full solicitor-client basis, and collection agency costs.

19.5. Without prejudice to any other remedies, if an Event of Default occurs or, in Astral's opinion, is likely to happen, Astral may take any one or more of the following actions (after giving any notice required by law):

(a) suspend or terminate the supply of Works to the Customer;

(b) cancel any order of the Customer that remains unfulfilled;

(c) require that any unpaid amounts owing to Astral by the Customer, whether or not due for payment, become immediately payable; and

(d) exercise any rights Astral has under these Terms, including under any securities created by or under them or available to it at law.

**19.6.** Astral will not be liable to the Customer for any loss or damage the Customer may suffer due to Astral exercising any of its rights under clause 19.5.

## **20. COMPLIANCE WITH LAWS**

**20.1.** The Customer and Astral will comply with the provisions of all statutes, regulations, and bylaws that may apply to the Works, including but not limited to the Health and Safety at Work Act 2015 relating to building/construction sites and related Electrical (Safety) Regulations 2010.

**20.2.** Unless otherwise agreed, the Customer will obtain any consents that may be required for the Works.

**20.3.** The Customer is responsible for ensuring that the Site complies with occupational health and safety laws to the satisfaction of Astral. The works will not commence until Astral is satisfied that the Site meets all health and safety requirements.

**20.4.** Astral will not assume any obligations of the Customer that may apply to the Customer under the Health and Safety at Work Act 2015 or any related Regulations arising from the Works. Unless otherwise agreed, the parties agree that Astral will not be the person who controls the Site under the Health and Safety at Work Act 2015.

## **21. INSURANCE**

**21.1.** Astral will hold public liability insurance of at least \$5 million. It is the Customer's responsibility to ensure that they hold appropriate contract works and existing structure(s) and contents insurance for the Site and Works.

## **22. CANCELLATION AND EFFECTS OF CANCELLATION**

**22.1.** Unless otherwise agreed in writing and subject to clauses 22.2 and 22.3, either party may cancel these Terms and/or any contract or agreement subject to these Terms by giving reasonable written notice of cancellation ("**Cancellation Notice**"). On the expiry of the period specified in the Cancellation Notice ("**Cancellation Date**"), the applicable document(s) will be cancelled but without prejudice to the rights of either party against the other.

**22.2.** In the event of a cancellation under clause 22.1:

- (a) all amounts owing by the Customer to Astral as at the Cancellation Date (including but not limited to any Materials purchased but not yet delivered to the Site) will become due for payment by the Cancellation Date and
- (b) neither party will be liable for any damage or loss to the other arising from the cancellation.

**22.3.** Provisions in any document cancelled by a party under clause 22.1 will survive termination if they concern matters related to Payments, Privacy and Confidentiality, Title to Materials, or Securities.

## **23. CONSTRUCTION CONTRACTS ACT 2002**

**23.1.** Where Astral and Customer have a contract subject to the Construction Contracts Act 2002, Astral may suspend the Works under these Terms (or any other contract that it has entered into, or in the future enters into, with the Customer) by five (5) working days written notice if a payment claim is served on the Customer and:

- (a) the amount stated in the payment claim is not paid in full by the due date for payment, and the Customer has provided no payment schedule or
- (b) a scheduled amount stated in a payment schedule provided by the Customer is not paid in full by the due date for payment or
- (c) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to Astral by a particular date and
- (d) Astral has notified the Customer of its intention to suspend the Works.

**23.2.** If the Works are suspended under clause 23.1, then, concerning the Terms to supply the Works, Astral:

- (a) is not in breach of these Terms between the parties;

(b) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer;

(c) is entitled to an extension of time to complete the Works, about which clause 8.4 of these Terms will apply;

(d) reserves its rights under these Terms and the Contract and Commercial Law Act 2017 and

(e) may at any time lift the suspension, even if the amount due has not been paid in full or an adjudicator's determination has not been complied with.

## **24. GENERAL TERMS**

**24.1.** If any provision or part of a provision of these Terms is unenforceable or invalid, that provision or part is treated as removed from these Terms and does not affect the remaining provisions.

**24.2.** If Astral fails to enforce any term or provision contained in these Terms between Astral and the Customer, it will not be treated as a waiver of that term or provision. Such waiver will not affect Astral's right to enforce such term or provision.

**24.3.** These Terms are governed by and interpreted according to New Zealand law and are subject to the jurisdiction of the New Zealand courts in Wellington.

**24.4.** To the extent permitted by law, Astral's liability to the Customer for any loss and/or expense arising by Astral's breach of these Terms will be limited to the actual loss suffered by the Customer as a direct result of Astral's wilful default. Astral's liability will be limited to a sum equivalent to the Price.

**24.5.** Astral may sub-contract or assign all or any part of its rights and obligations under these Terms without the Customer's consent.

**25.6.** The Customer will give Astral not less than 14 days prior written notice of any proposed change of ownership of the Customer.

**24.7.** Time being of the essence, each party will promptly provide the other with up-to-date contact information, including but not limited to changes in legal name, address, email, phone number(s), or business practice.

**24.8. Astral may amend these Terms** from time to time. Astral will notify the Customer in writing if any changes are made to these Terms. No amendment, alteration or addition will be effective unless it is in writing and accepted by both parties. However, by instructing Astral to undertake further Works after receiving notice of any variation, the Customer will be deemed to have accepted the notified variations.

**24.9.** If all or part of Astral's business operations are suspended due to an event beyond Astral's control (including but not limited to epidemic, pandemic, war, natural disaster, electricity failure, strike, terrorism, lock-out, industrial action, fire, flood, storm or governmental action) ("**Interrupting Event**"), Astral may suspend all or part of the Works and clauses 8.1 to 8.4 of these Terms may apply at Astral's sole discretion. Neither party will be liable for any default under these Terms due to any Interrupting Event or other event beyond the reasonable control of either party.

**24.10.** Both parties warrant that they have the power to enter into these Terms and have obtained all necessary authorisations to allow it to do so, are not insolvent and that these Terms create binding and valid legal obligations on them.

**24.11.** These Terms shall be read together with the privacy policy published on Astral's website, which can be found at the following link: <https://astralelectrical.co.nz/privacy-policy/> ("**Privacy Policy**"). The Privacy Policy contains relevant authorities for the Privacy Act 2020 to obtain and use personal information. It reinforces Astral's obligations to allow the Customer to request and correct any of the personal information held by Astral.