

## **TERMS AND CONDITIONS (COMMERCIAL CUSTOMERS)**

### **APPLICATION OF THESE TERMS**

- 1 These terms and conditions of trade ("Terms") will, unless otherwise agreed in writing, apply to all Works provided by Auric to the Customer.
- 2 The Customer is taken to have accepted and be bound by these Terms if the Customer accepts a quote, places an order for and/or accepts delivery of any Works.

### **DEFINITIONS**

- 3 In these Terms, unless the context otherwise requires:
  - "Auric" means Auric Electrical Limited and includes its employees, agents, or any person or entity that acquires the assets and business of Auric or any person acting on behalf of and with the authority of Auric.
  - "Completion Date" means the date the Works are to be completed.
  - "Customer" means the person/s, or authorised agent on behalf of a firm, organisation, partnership, company and other entity (including trust) requesting Auric 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 Auric;
    - 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 Auric is untrue, misleading or deceptive; or
    - an event, or a series of events (whether related or not), occurs which, in Auric's opinion, may cause a material adverse change in the ability of the Customer to meet its obligations under these Terms with Auric.
  - "Materials" means any goods provided by Auric 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 Auric, 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 Auric and the Customer.
  - "Variation" means a variation to the Works under clauses 18 to 21 and any other matter which is stated to be a variation or to be treated as a variation by these Terms.
  - "Works" means all goods and services provided by Auric in accordance with any quotation or any request from the Customer from time to time.

### **PROVISION OF WORKS**

- 4 Subject to clause 5, Auric will start the Works on the Start Date.
- 5 Where the Start Date or the Completion Date are delayed by events beyond Auric's control, Auric shall serve written notice of the delay and the new Start Date/Completion Date on the Customer as soon as practicable following Auric becoming aware of the delay.

- 6 Auric may deliver the Works by separate instalments. Each separate instalment will be invoiced and paid in accordance with these Terms.
- 7 Any time or date given by Auric to the Customer is an estimate only. Auric will not be liable for any loss or damage whatsoever due to failure by Auric 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 Auric.
- 8 Any advice, assistance, information, or recommendation provided by Auric is provided in good faith, based on Auric'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.

#### **PRICE & PAYMENT**

- 9 Subject to any variations in accordance with clauses 20-24 the Price will be
- 10 in accordance with any quote provided by Auric. Subject to clauses 11 and 20, the Price specified in any quote from Auric to the Customer will be valid for the period/s stated in that quote.
- 11 Unless otherwise stated in writing, the Customer will be charged for Auric's travel costs in the manner that Auric chooses.
- 11.1
- 12 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by Auric, which may be:
- 12.1 on completion of the Works; or
- 12.2 by way of progress payments in accordance with Auric'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;
- 12.3 the date specified on any invoice or other form as being the date for payment; or
- 12.4 failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Auric.
- 13 Payment will be made by electronic/online banking, or any other method agreed between the Customer and Auric.
- 14 The Contractor may require the payment of a deposit upon request.
- 15 In addition to the Price, the Customer must pay to Auric an amount equal to any GST Auric 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 in the Price.
- 16 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 Auric or to withhold payment of any invoice because the invoice is in dispute unless the request for payment by Auric 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.

#### **RETENTIONS**

- 17 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.
- 18 The Customer will hold the Retention Money on trust in an account for the agreed period following completion of the Works during which time all Works are to be completed and/or all defects are to be remedied.
- 19 Retention Money under these Terms is to be dealt with in accordance with section 18 of the Construction Contracts Act 2002.

#### **VARIATIONS**

- 20 Auric reserves the right to change the Price:
- 20.1 if a variation to the Materials which are to be supplied is requested; or
- 20.2 if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
- 20.3 where additional Works are required due to the discovery of hidden or unidentifiable difficulties which are only discovered on commencement of the Works; or
- 20.4 in the event of increases to Auric in the cost of labour or materials which are beyond Auric's control.
- 21 The Customer (and where applicable in these Terms, Auric) may, by written notice, order any variations to the Works that:

- 21.1 Increase or decrease the quantity of any Work;
  - 21.2 Omit any Work;
  - 21.3 Change the character or quality of any Material or Work;
  - 21.4 Require additional Work to be done; or
  - 21.5 Change the level, line, position, or dimensions of any part of the Works, and such order will be a variation.
- 22 Auric will carry out and comply with any Variation ordered under clauses 20-20.
- 23 The value of any Variation, as calculated under clause 24, will be added to or deducted from the Price.
- 24 Any Variation to the Works will be valued as follows:
- 24.1 Where the Terms include specific rates and/or percentages applicable to any Variation, the Variation will be valued in accordance with such rates and/or percentages.
  - 24.2 Where the Terms do not include any specific rates and/or percentages applicable to any Variation, Auric will notify the Customer of the proposed value of any Variation and as soon as practicable following receipt of Auric'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 accept such proposed value, the parties will endeavour to resolve the dispute by agreement, failing which the Dispute Resolution provisions of these Terms will apply.

#### **CUSTOMER RESPONSIBILITIES**

- 25 The Customer will:
- 25.1 provide Auric with clear and unobstructed access to the Site. If Auric moves anything on or about the Site to safely perform the Works (as determined by Auric 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 the responsibility of Auric unless it is due to the negligence of Auric.
  - 25.2 arrange for scaffolding to be installed at the Site by a professional scaffold installer and to the satisfaction of Auric in all things, should Auric determine it is necessary to complete the Works.
  - 25.3 on request, advise and mark the precise the location of all underground services on the Site. While Auric will take all due care, any damage caused by the Customer not correctly and precisely locating underground services will be the responsibility of the Customer and the Customer indemnifies Auric from all liability, claims, loss, damage, or fines.
  - 25.4 be responsible for any materials the Customer supplies. Any additional costs and/or delays incurred because the materials provided are not fit for purpose will be the Customer's sole responsibility in all things.
  - 25.5 be responsible for the acts of any persons at or about the Site not under Auric's control, including but not limited to other contractors engaged by the Customer. Any delay in Auric'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 20 to 24 of these Terms will apply.
  - 25.6 Be responsible for the clean-up of the Site, including removal of all rubbish.

#### **PLANS AND SPECIFICATIONS**

- 26 All customary building industry tolerances will apply to the dimensions and measurements of the Materials unless otherwise agreed by Auric and the Customer in writing.
- 27 Auric will be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer.
- 28 If any reference to the position of any electrical installations is removed or covered up by the Customer, then Auric 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 Auric.
- 29 Any additional costs caused by the Customer not providing an acceptable plan or scope of work, will be the responsibility of the Customer.
- 30 If the Customer requests Auric to decide on the positioning of any electrical installations, the Customer will be deemed to have accepted the positioning of the same.

**TITLE**

- 31 Ownership of the Materials will not pass to the Customer until the Customer has paid all amounts owing to Auric and met all the Customer's other obligations to Auric.
- 32 Receipt by Auric of any form of payment other than cash will be deemed to be received by Auric once they have cleared funds in their Bank account that cannot be reversed.
- 33 Risk for the materials will move to the Customer as soon as they accept delivery.
- 34 It is further agreed that:
- 34.1 until ownership of the Materials passes to the Customer in accordance with clause 31, the Customer is only in possession and not ownership of the Materials and unless the Materials have become fixtures must return the Materials to Auric on request.
- 34.2 the Customer holds the benefit of the Customer's insurance of the Materials on trust for Auric and must pay to Auric the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
- 34.3 the production of these Terms by Auric will be sufficient evidence of Auric's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Auric to make further enquiries.
- 34.4 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 on trust for Auric and must pay or deliver the proceeds to Auric on demand.
- 34.5 the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Auric and must sell, dispose of or return the resulting product to Auric as it so directs.
- 34.6 unless the Materials have become fixtures the Customer irrevocably authorises Auric to enter any premises where the Customer believes the Materials are kept and recover possession of the Materials.
- 34.7 Auric may recover possession of any Materials in transit whether or not delivery has occurred.
- 34.8 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 Auric.
- 34.9 Auric may commence proceedings to recover the price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

**PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")**

- 35 The Customer agrees that these Terms constitute a security agreement for the purposes of the Personal Property Securities Act 1999 ("PPSA"). Auric may register such interest with the Personal Property Securities Register. A security interest is taken in all Materials and/or collateral.
- 36 The Customer undertakes to provide any information or sign any additional document to allow Auric to register its interest on the Personal Property Security Register.
- 37 The Customer will reimburse Auric for any costs associated in the registration of the financing statement.
- 38 To the extent permitted by law:
- 38.1 Nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to these terms and conditions;
- 38.2 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
- 38.3 The Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 39 The Customer will unconditionally ratify any actions taken by Auric under clauses 35 to 38.2.

**HAZARDOUS SUBSTANCES**

- 40 The Customer acknowledges that should any hazardous, toxic, or otherwise dangerous substance be discovered at the Site, it will be the Customer's responsibility to have the substance tested and if necessary, removed. Until the Customer has provided evidence to Auric that the substance is not dangerous or has been removed by a

suitably qualified person, Auric may take any steps that they see necessary, including refusing to complete any further Works.

#### **SECURITY AND CHARGE**

41 In consideration for Auric 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).

42 The Customer indemnifies Auric from and against all Auric's costs and disbursements including legal costs on a solicitor client basis incurred in exercising Auric's rights under clause 41.

43 The Customer irrevocably appoints Auric and each director of Auric as the Customer's attorney to perform all necessary acts to give effect to the provisions of clause 41 including, but not limited to, signing any document on the Customer's behalf.

#### **INADVERTENT MISREPRESENTATION**

44 Notwithstanding any rights the Customer may have under the Contract and Commercial Law Act 2017, the Customer agrees that if Auric 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 in accordance with the dispute resolution process in clause 47.

#### **WARRANTIES**

45 To the extent permitted by law:

45.1 Auric provides no warranty as to the quality or suitability of the Work for any purpose.

45.2 Any implied warranty is expressly excluded.

45.3 Auric will not be liable or responsible for any loss suffered or caused by the Works in any way whatsoever.

#### **CONSUMER GUARANTEES ACT**

46 If the Customer is acquiring the Works for the purposes of 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.

#### **DISPUTE RESOLUTION**

47 If a dispute arises in connection with these Terms ("Dispute"), the parties must enter negotiations in good faith to try 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 Dispute must promptly name its representative in the negotiations. Each representative must have authority to settle the Dispute. Within 10 days of the parties in Dispute having advised each other of their representatives, the representatives must enter negotiations to try to resolve the Dispute.

48 If the Dispute cannot be resolved by the parties within 10 days after it has been notified pursuant to clause 47, then at the request of either party, the parties will in good faith seek mediation under clause 49.

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

49.1 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;

49.2 seek to agree on the process for mediation, and if they cannot agree, then the mediator will decide the process; and

49.3 each pay an equal share of the mediator's fees.

50 A party may not commence any court or arbitration proceedings relating to a Dispute unless it has complied with clauses 47 to 49 except where the party seeks urgent interlocutory relief.

51 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 47 to 50.

52 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.

#### **DEFAULT AND CONSEQUENCES OF DEFAULT**

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

- 53.1 Notify the Customer of the breach in writing; and
- 53.2 Given the Customer the opportunity to remedy the breach within a reasonable period.
- 54 If the Customer does not remedy the breach notified under clause 53 within the period specified in the notice, Auric may terminate or suspend the Works to the Customer by giving reasonable notice.
- 55 Auric may charge interest on overdue invoices daily from the date when payment becomes due, until the date of payment, at a rate of 2.5% per calendar month compounding monthly.
- 56 Auric may charge the Customer for, and the Customer indemnifies Auric 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.
- 57 Without prejudice to any other remedies, if an Event of Default occurs Auric may take any one or more of the following actions (after giving any notice required by law):
- 57.1 suspend or terminate the supply of Works to the Customer;
- 57.2 cancel any order of the Customer which remains unfulfilled;
- 57.3 require that any unpaid amounts owing to Auric by the Customer, whether or not due for payment, become immediately payable; and
- 57.4 exercise any rights Auric has under these Terms, including under any securities created by or pursuant to these Terms, or available to it at law.
- 58 Auric will not be liable to the Customer for any loss or damage the Customer may suffer as a result of Auric exercising any of its rights under clause 57.

#### **COMPLIANCE WITH LAWS**

- 59 The Customer and Auric 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.
- 60 Unless otherwise agreed the Customer will obtain any consents that may be required for the Works.
- 61 The Customer is responsible to ensure that the Site will comply with any occupational health and safety laws to the satisfaction of Auric. Until Auric is satisfied that the Site meets all health and safety requirements, the Works will not commence.
- 62 Auric will not assume any obligations of the Customer which 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 Auric will not be the person who controls the Site under the Health and Safety at Work Act 2015.

#### **INSURANCE**

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

#### **CANCELLATION AND EFFECTS OF CANCELLATION**

- 64 Unless otherwise agreed in writing and subject to clauses 65 and 66, either party may cancel these Terms and/or any contract or agreement that is subject to these Terms by giving reasonable written notice of cancellation ("Cancellation Notice"). On 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.
- 65 In the event of a cancellation under clause 64:
- 65.1 all amounts owing by the Customer to Auric 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
- 65.2 neither party will be liable for any damage or loss to the other arising from the cancellation.
- 66 Provisions in any document cancelled by a party under clause 64 will survive termination if they concern the following matters:
- 66.1 Payments;
- 66.2 Privacy and confidentiality;
- 66.3 Title to Materials; and
- 66.4 Securities.

#### **PRIVACY ACT 2020**

- 67 The Customer authorises Auric to access, collect, retain and use any information about the Customer for the purposes of:

- 67.1 assessing the Customer's creditworthiness; and
  - 67.2 marketing products and services to the Customer.
- 68 The Customer authorises Auric to disclose information about the Customer, whether collected by Auric from the Customer directly or obtained by Auric from any other source to any credit provider or credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 69 The authorities under clauses 67 and 68 are provided for the purposes of the Privacy Act 2020.
- 70 The Customer has the right to:
- 70.1 request a copy of the information about the Customer held by Auric; and
  - 70.2 request correction of any incorrect information about the Customer held by Auric.

#### **INTELLECTUAL PROPERTY**

- 71 Where Auric has designed, drawn, written plans or a schedule of Works, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products will remain vested in Auric, and will only be used by the Customer at Auric's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of Auric.
- 72 The Customer warrants that all designs, specifications, or instructions given to Auric will not cause Auric to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Auric against any claims or action taken by a third party against Auric in respect of any such infringement.
- 73 The Customer agrees that Auric may (at no cost) use for the purposes of marketing or entry into any competition, any documents, photos, designs, drawings, plans or products which Auric has created for the Customer.

#### **CONSTRUCTION CONTRACTS ACT 2002**

- 74 Where Auric and Customer have a contract subject to the Construction Contracts Act 2002, Auric 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:
- 74.1 the amount stated in the payment claim is not paid in full by the due date for payment and no payment schedule has been provided by the Customer;
  - or
  - 74.2 a scheduled amount stated in a payment schedule provided by the Customer is not paid in full by the due date for payment; or
  - 74.3 the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to Auric by a particular date; and
  - 74.4 Auric has given written notice to the Customer of its intention to suspend the Works.
- 75 If the Works are suspended under clause 74 then, in relation to the Terms to supply the Works, Auric:
- 75.1 is not in breach of these Terms between the parties;
  - 75.2 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;
  - 75.3 is entitled to an extension of time to complete the Works, in relation to which clause 24 of these Terms will apply;
  - 75.4 reserves its rights under these Terms and the Contract and Commercial Law Act 2017; and
  - 75.5 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.

#### **GENERAL TERMS**

- 76 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.
- 77 If Auric fails to enforce any term or provision contained in these Terms between Auric and the Customer, it will not be treated as a waiver of that term or provision. Such waiver will not affect Auric's right to enforce such term or provision.
- 78 These Terms are governed by and interpreted in accordance with the laws of New Zealand and are subject to the jurisdiction of the Courts of New Zealand.
- 79 To the extent permitted by law, Auric's liability to the Customer for any loss and/or expense arising by Auric's breach of these Terms will be limited to actual loss suffered

by the Customer as a direct result of Auric's wilful default. Auric's liability will be limited to a sum equivalent in aggregate to the Price.

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

81 The Customer will give Auric not less than 14 days prior written notice of any proposed change of ownership of the Customer.

82 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.

83 These Terms may be amended by Auric from time to time. If any changes are made to these Terms, Auric will notify the Customer of such changes in writing. No amendment, alteration or addition will be effective unless it is in writing and signed by both parties. However, by instructing Auric to undertake further Works after receiving notice of any variation, the Customer will be deemed to have accepted the notified variations.

84 If all or part of Auric's business operations are suspended due to an event beyond Auric'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"), Auric may suspend all or part of the Works and clauses 20 to 24 of these Terms may apply at Auric'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.

85 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.