

**DNA ELECTRICAL LIMITED**  
**("DNA")**

**TERMS AND CONDITIONS OF SALE**

**1. Agreement**

- 1.1 DNA agrees to sell and you ("the Customer") agree to buy the Goods and Services referred to in the Estimate or Quotation and DNA's invoice.
- 1.2 The terms of the sale are comprised in the Quotation and/or Estimate and Invoice and in these Terms and Conditions.

**2. Goods and Services**

As per DNA's Estimate and/or Quotation and Invoice.

**3. Price (including GST if any)**

- 3.1 Any price provided by DNA by quotation shall only be valid for 30 days from the date of the quotation unless otherwise specified.
- 3.2 All prices quoted are based on current exchange rates, and the costs, at the quotation date, of all raw materials, labour, overhead charges, and other cost items over which DNA has no direct control, and on latest quotations from sub-contractors, manufacturers and suppliers. Any variation in the exchange rate or increase in such costs may be added to the price and will then become payable by the Customer.

**4. Method of Payment**

- 4.1 As per the Quotation, Estimate or Invoice.
- 4.2 Where a deposit is required to be paid on acceptance of a Quotation or Estimate and the Customer subsequently cancels the order that deposit may not be refundable.
- 4.3 Payment is to be made as specified in the Quotation or Invoice. If no payment due date is specified, then payment is to be made within 7 days from the date of the Invoice.
- 4.4 DNA may issue progress claim invoice on a monthly basis or at the end of a stage of the electrical works (such as disconnections, pre-wire, cut-out, fit-off etc.) in accordance with the Constructions Contracts Act 2002.

**5. Expected start and completion date and delays**

- 5.1 The expected date and completion date are specified in DNA's Estimate and/or Quotation subject to the Customer having paid all amounts due in accordance with this agreement and any delays as set out in clause 5.2.

- 5.2 DNA will not be liable for any delays in performing the Goods & Services or for not performing the Goods & Services in any way to circumstances beyond the control of DNA which shall include the following:

- strikes;
- accidents
- civil commotion;
- epidemics
- floods
- bad weather
- delays in transportation
- shortage of labour and/or materials;
- delays caused by other tradesperson;
- acts of god; or
- acts, demands or requirements of any governmental authority, the Council or a similar body insofar as the same are not reasonably attributable to DNA.

However DNA must give the Customer written notice within 5 working days of any event that will delay the completion of the Goods & Services within the time period required. In this case DNA must seek from the Customer an extension of time for carrying out and completion of the Goods & Services. The Customer must not unreasonably withhold consent if DNA and the Customer disagree whether DNA needs an extension of time to carry out all or any part of the Goods & Services and the parties cannot resolve the matter by conciliation, then the parties will refer the dispute to clause 18.

**6. Consents**

- 6.1 There is no requirement to obtain consent for the Goods & Services. If any consent is required for any other work, the Customer shall be responsible for obtaining such consent.

**7. Compliance and Certificates**

- 7.1 If required by the Electrical (Safety) Regulations DNA will issue an electrical Certificate of Compliance/Electrical Safety Certificate on completion of the applicable electrical works. In

the event that an electrical inspection is required (which is not always necessary) then a copy of the Record of Inspection will be provided to the Customer upon receipt of it from the inspector and lodgement of such record will be made by the inspector with the Energy Safety High Risk Database. The Customer acknowledges that the inspection may not take place at the completion of the electrical works and may take place before the Goods & Services are completed depending on purpose of such inspection.

**8 Variations**

- 8.1 DNA reserves the right to vary the items of equipment listed in the Estimate or Quotation if further investigation of existing equipment reveals the need to do so.
- 8.2 Where the Customer does not permit DNA to carry out all of the pre-wire or fit-off on a single occasion DNA shall be entitled to vary the Estimate or Quotation accordingly.
- 8.3 Any other variations must be ordered by the Customer in writing and the change to the Estimate or Quotation must be agreed in writing and signed by or on behalf of both DNA and Customer prior to DNA undertaking the agreed variation. Any agreed variations shall be paid for as part of the final adjusted purchase price.

**9. Construction Contracts Act 2002 ("CCA")**

The Estimate or Quotation together with the Customer's acceptance of same constitutes a construction contract for the purposes of the CCA.

**10. Maintenance and Defects**

- 10.1 **DNA to remedy defects notified within 1 year of completion of the Services:** If:
- (a) the Electrical Work is carried out in relation to a household unit; and
  - (b) the Electrical Work is defective; and
  - (c) the defect is able to be remedied; and
  - (d) the Electrical Work is carried out by or on behalf of DNA

The Customer may give notice, within 12 months from completion of the Electrical Work, to DNA requiring DNA to remedy the defect. Provided that notice has been given in accordance with this clause DNA shall remedy the defect (including repairing or replacing defective materials used in the Electrical Work) within a reasonable time of notification in writing of the defect. Nothing in this clause affects the Implied warranties in section 362I or limits the time for enforcing any of those warranties.

- 10.2 **Exclusion of liability for event not attributable to fault of DNA:** DNA is not liable under clause 10.1 for any defect in a building or breach of warranty to the extent that if DNA is able to prove that the defect or breach is caused by any of the following that occurs during or after completion of the Electrical Work:

- (a) a cause independent of human control;
- (b) any act or omission, including accidental damage, by a person who is none of the following:
  - (i) DNA;
  - (ii) a subcontractor to DNA;
  - (iii) a person for whom DNA is responsible in law;

For example, faults or defects in any Goods.

- (c) failure to carry out normal maintenance;
- (d) failure to carry out, or cause to be carried out, repairs as soon as practicable after the defect becomes apparent.

**11. Quality, fitness, description or sample**

DNA does not undertake as to the quality, fitness, description or sample, except to the extent that the Customer has set forth the requirements of the Customer on the Quotation or Estimate. The contents of such Quotation or Estimate shall exclude any usage of trade or custom or practice existing between DNA and Customer except to the extent that it has been expressly stated.

**12. Warranties & Guarantees**

**12.1 Workmanship Guarantee:**

- (a) Subject to the conditions set out in 12.1(b) DNA warrants that if any defect in any workmanship of DNA becomes apparent and is reported to DNA within 12 months of the date of

delivery of Goods & Services then DNA will remedy the workmanship. Any workmanship costs incurred outside of the 12 months workmanship warranty will be paid by the Customer at the labour rate current at that time for DNA.

(b) The condition applicable to the warranty given by clause 12.1(a) are:

- a) The warranty shall not cover any defects or damage which may be caused or partly caused by or arise through:
  - i. Defects in any Goods which not caused or partly caused by DNA's workmanship; or
  - ii. Failure on the part of the Customer to properly maintain any Goods; or
  - iii. Failure on the part of the Customer to follow any instructions provided by DNA; or
  - iv. Any use of any Goods otherwise than for any application specified on a quotation; or
  - v. The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
  - vi. Fair wear and tear, any accident or act of God.

(c) In respect of all claims DNA shall not be liable to compensate the Customer for any delays in remedying the workmanship or in properly assessing the Customer's claim.

12.2 **Implied warranties:** In addition to any defects or maintenance warranty in this agreement, the Customer shall be entitled to any statutory warranties that may be applicable to this agreement and the building work, including the warranties implied by law in sections 362I to 362K of the Building Act 2004. The Customer's attention is drawn to the warranties implied by law and to s362Q of the Building Act. DNA will remedy any defective building work which it is liable to remedy either under an express warranty in this agreement or under a warranty implied by law which applies to this agreement and the Electrical work within a reasonable time of either receiving a notice from the Customer or receiving a decision or adjudication in relation to the defect, whichever is later.

12.3 **Product warranties:**

- (a) Product warranties will be provided at handover. Where DNA provides a warranty in respect of the Goods the terms of such warranty are limited to terms of the original manufacturer's warranty as detailed in the Quotation. We will pass on the benefits of those warranties to you to the extent it is permitted to do so without being directly liable to you under any warranty.
- (b) Any warranty may be voided by damage or misuse of the Product (excluding services), problems caused by unauthorised repairs, modifications or the addition of incompatible hardware.

13. **Meaning of Quotation; Estimate**

13.1 Where DNA has provided you with an Estimate, the price stated in it is an approximate calculation only and is subject to final confirmation.

13.2 Where DNA has provided you with a Quotation the price stated in it is the final price required to be paid for the Goods and Services, subject to clauses 3 and 5.

14. **Application for Credit**

The Customer warrants the correctness of the particulars provided to DNA in the Application for Credit completed by the Customer and provided to DNA.

15. **Default**

15.1 If the Customer fails to pay all moneys payable to DNA by the due date DNA may, without prejudice to its other rights and remedies, do all or any of the following without prior notice to the Customer:

- (a) withhold from the Customer further supplies of the Goods;
- (b) supply the Customer with the Goods on a "cash on delivery" basis or such other terms as DNA considers appropriate;
- (c) charge the Customer a penalty on the due and unpaid money calculated daily at a rate of 2% per month.

16. **Reservation Of Title And PPSR Provisions**

16.1 The Customer agrees and acknowledges that DNA's rights under this clause constitute a security interest in all goods supplied by DNA to the Customer (including after-acquired goods), pursuant to the Personal Property Securities Act 1999 ("the PPSA"), and the Customer agrees to DNA registering DNA's security interest in respect of all goods supplied by us to the Customer, and the Customer shall supply DNA with all necessary identifiers and other information to enable registration of DNA's security interest under the PPSA.

16.2 The Customer agrees that it will forthwith notify DNA of any change in the Customer's name or other material identifying characteristics.

16.3 Nothing in sections 114(1)(a), 133, and 134 of the PPSA shall apply to this contract.

16.4 The Customer hereby waives its rights pursuant to sections 121, 125, 129, 131 and 132 of the PPSA and its rights to receive any verification statement relating to the security interest in the goods.

16.5 All DNA's costs and expenses (including legal costs and expenses on a full indemnity basis) in respect to the registration of DNA's security interest, any variation and any release thereof and any matter incidental thereto shall be paid by the Customer upon demand by DNA.

17 **Constructions Contracts Act 2002 ("CCA") Suspension of work**

In the event that the Customer is a residential occupier as defined by the CCA the Customer hereby acknowledges that:

- (a) DNA has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to DNA by a particular date; and DNA has given written notice to DNA of its intention to suspend the carrying out of construction work under the construction contract.
- (b) If DNA suspends work, it is not in breach of contract and 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; and is entitled to an extension of time to complete the agreement; and keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) If DNA exercises the right to suspend work, the exercise of that right does not affect any rights that would otherwise have been available to DNA under the Contractual Remedies Act 1979; or enable the Customer to exercise any rights that may otherwise been available to the Customer under that Act a direct consequence of DNA suspending work under this provision.

18 **Dispute Resolutions**

18.1 **Good faith:** If a dispute arises between DNA and the Customer relating to this agreement or the Goods & Services both DNA and the Customer must act in good faith and endeavour to resolve the dispute between them amicably and as soon as possible.

18.2 **Mediation:** If a dispute is not resolved in terms of 18.1 within 7 working days either party may give a written notice to the other party specifying the nature of the dispute and requiring that Dispute be referred to a mediation. DNA and the Customer must endeavour to agree on a mediator and shall submit the dispute to him or her. If DNA and the Customer cannot agree on a person to act as mediator, the mediator must be appointed at the request of either DNA and the Customer by an office holder of LEADR New Zealand Inc. or the Arbitrators' and Mediators' Institute of New Zealand Inc. (AMINZ), or the nominee of that office holder. The guidelines governing the mediation are to be set by DNA and the Customer. Failing agreement on the guidelines within 5 working days after the appointment of a mediator, the mediator must set the guidelines which will govern the mediation. DNA and the Customer may at any stage agree to invite the mediator to give a decision to determine the matter

- in dispute. In that case, and if the mediator agrees to give a decision, the mediator's decision is binding on DNA and the Customer.
- 18.3 **Adjudication:** At any time, DNA or the Customer may give a written notice to the other requiring the dispute to be referred to adjudication under the Constructions Contracts Act. Unless DNA and the Customer agree otherwise, adjudication must not suspend or delay any mediation or arbitration in relation to that dispute. The cost of adjudication shall be determined in accordance with sections 56 and 57 of the CCA.
- 18.4 **Arbitration:** If settlement has not been achieved within 50 working days of a notice requiring mediation and/or adjudication, DNA and Customer may refer the dispute to arbitration under the Arbitration Act or any Act passed in its place. Either party may give a written notice to the other party referring the dispute to arbitration. If DNA and the Customer cannot agree on an arbitrator within 5 working days from the date on which the notice requiring arbitration was first given by one party to the other, either party may request the President of the New Zealand Law Society, the President or AMINZ or his or her nominee to appoint the arbitrator. The costs of an arbitrator (subject to any award by the arbitrator) are to be borne equally by DNA and the Customer. The Arbitrator may award interest upon any amount due and payable under any award made by the arbitrator at a rate and for a period determined by the arbitrator. The award of the arbitrator is final and binding on DNA and the Customer.
- 18.5 **No suspension during dispute:** No dispute proceedings entitle DNA to stop the electrical work, except in accordance with clause 17, the instructions of the Customer or with an award made during the dispute resolution proceedings. No Payment Claim, Payment Schedule (as those terms are defined in the Constructions Contracts Act) or payment due or payable is to be withheld on account of dispute proceedings.
19. **Personal Guarantees**  
Where the Customer is a Limited Liability Company or a Trust, in consideration of DNA providing credit to the Customer, the Director(s) or Trustee(s) (where appropriate) personally guarantee all payments due and owing by the Customer.
20. **Governing Law and Jurisdiction**  
This agreement shall be governed by New Zealand Law and the Customer consents to the exclusive jurisdiction of the New Zealand Courts in respect of actions or proceedings concerning this agreement.
21. **Notices**
- 21.1 All notices under this agreement must be in writing and either delivered by hand or sent by fax, email, or post to a contact address that has been provided by the relevant party.
- 21.2 A notice is deemed to be received: -  
(a) If it is personally delivered, when delivered; or  
(b) If it is posted, 3 working days after posting; or  
(c) If it is sent by fax, on production of a transmission report (by the machine from which the fax was sent) that indicates that the fax was sent in its entirety; or  
(d) If it is sent by email, when the email leaves the communication system of the sender, provided that the sender –  
a) Does not receive any error message relating to the sending of the email; and  
b) Receives confirmation that the email was delivered (which confirmation may include an automated delivery receipt from the communication system of the recipient).  
(e) Despite clause 21.2, any notice received after 5pm, or received on a day that is not a working day, is deemed not to have been received until 9am on the next working day.
22. **Health and Safety**  
22.1 The Customer shall comply with its obligations with the Health and Safety at Work Act 2015 (and any applicable regulations or codes of practice made pursuant to that Act) to ensure that, in performing its obligations under this agreement, a safe working environment exists for:  
(a) employees and contractors of DNA;  
(b) third parties entering or on the site.
23. **Interpretations**  
23.1 For the purposes of these terms and conditions, (unless the context otherwise requires):  
23.2 Where the singular is used that includes the plural and vice versa, a reference to any person includes an individual, a company and a body of persons (whether incorporated or not);  
23.3 References to any statutory provision include any statutory provision which amends or replaces it, and any by law, regulation, order, statutory instrument, determination or subordinate legislation made under it.  
23.4 **"Agreement"** means these Terms and Conditions together with any Quotation and/or Estimate and/or Invoice.  
**"Electrical Work"** means all services provided by DNA to the Customer pursuant to these Terms and Conditions. **"Services"** shall have the same meaning.  
**"Site"** means the place or location where the Goods and Services are to be used for the purposes of this agreement.