

## **Electric Exploits Limited: Terms of trade**

### **1. DEFINITIONS**

- 1.1 "Electric Exploits Ltd" shall mean this company, or any agents or employees thereof.
- 1.2 "Customer" shall mean the client, any person acting on behalf of and with the authority of the customer, or any person purchasing Services from Electric Exploits Ltd.
- 1.3 "Services" shall mean all electrical work, advice and materials provided by Electric Exploits Ltd or its subcontractors to the customer including without limitation the provision of electrical services, repairs, maintenance and all charges for labour and work, hire charges, insurance charges, or any fee or charge associated with the supply of Services by Electric Exploits Ltd to the customer.
- 1.4 "price" shall mean the cost of Services as agreed between Electric Exploits Ltd and the customer subject to clause 4 of these terms.

### **2. ACCEPTANCE**

- 2.1 Any instructions received by Electric Exploits Ltd from the customer is on the basis that the customer has read and understood these terms and the subsequent supply of Services shall constitute a binding contract and acceptance of the terms set out herein. Should the customer have any queries regarding these terms it should seek independent legal advice before instructing Electric Exploits Ltd.

### **3. COLLECTION AND USE OF INFORMATION**

- 3.1 The customer authorises Electric Exploits Ltd to collect, retain and use any information about the customer, or for the purpose of assessing the customer's credit worthiness, enforcing any rights under these terms, or marketing Services provided by Electric Exploits Ltd to any other party.
- 3.2 The customer authorises Electric Exploits Ltd to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

### **4. PRICE**

- 4.1 Where no price is stated in writing or agreed to orally Services shall be deemed to be sold at the current amount for which Services are sold by Electric Exploits Ltd at the time of the contract between the parties.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of Services that is beyond the control of Electric Exploits Ltd between the date of the contract and the delivery of Services.

### **5. PAYMENT**

- 5.1 Unless otherwise agreed, payment for Services, including progress payments, shall be made in full on or before the 20<sup>th</sup> day of the month following the date of the invoice ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 All expenses, disbursements and legal costs incurred by Electric Exploits Ltd in the enforcement of any rights contained in this contract shall be paid by the customer, including any reasonable solicitor's fees (on a solicitor client basis) or any debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is honoured in full.
- 5.5 A deposit of 10% to 50% may be required at the complete discretion of Electric Exploits Ltd.

### **6. QUOTATION**

- 6.1 Where a quotation is given by Electric Exploits Ltd for Services:
  - 6.1.1 The quotation shall be valid for thirty (30) days from the date of issue; and
  - 6.1.2 The quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary;
- 6.2 If for any reason the particular specification upon which the quotation is based is altered then Electric Exploits Ltd reserves the right to vary the quotation or agreed price accordingly.
- 6.3 Where Services are required in addition to the quotation the customer agrees to pay for the additional cost of such Services as per clause 4.1 above.
- 6.4 A deposit of 10% to 50% may be required at the complete discretion of Electric Exploits Ltd.

### **7. AGENCY**

- 7.1 The customer authorises Electric Exploits Ltd to contract either as principal or agent for the provision of Services.
- 7.2 Where Electric Exploits Ltd enters into a contract of the type referred to in clause 7.1 it shall be read with and form part of these terms and the customer agrees to pay any amounts due under that contract.

### **8. TITLE & SECURITY**

- 8.1 Title to any Services supplied by Electric Exploits Ltd passes to the customer only when the customer has made payment in full for all Services provided by Electric Exploits Ltd, and of all other sums due to Electric Exploits Ltd on any account whatsoever. Until all accounts are paid in full, the customer grants Electric Exploits Ltd a security interest in all Services provided to the customer.

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8.2 The customer gives irrevocable authority to Electric Exploits Ltd to enter any premises occupied by the customer or its agent/s or assignee/s on or in which Services are situated at any reasonable time after default and to remove and repossess those Services. Electric Exploits Ltd shall not be liable for any costs, damages or expenses incurred by the customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way unless by statute such liability cannot be excluded.

8.3 If the customer intimates that it will not pay any sum by the due date this shall constitute a default under these terms.

### **9. SECURITY INTEREST FOR SERVICE PROVIDERS**

9.1 In the event of any default of these terms by the customer, the customer grants Electric Exploits Ltd a security interest in all of the customers present and after acquired personal property except only for such property (and the proceeds of such property) in or to which the customer has rights and which has not been supplied by Electric Exploits Ltd to the customer.

9.2 On request, the customer must properly execute any documents and do anything else required by law to ensure that this security interest constitutes a perfected security interest (as defined by the Personal Property Securities Act 1999 - 'the Act') including:

(a) executing any amendments to these terms as reasonably required by Electric Exploits Ltd;

(b) executing any new, replacement or additional security document(s); and

(c) providing any information to Electric Exploits Ltd to enable it to complete a financing statement or a financing charge statement (as both defined by the Act).

9.3 The customer must not agree to any other person or entity filing a financing statement over the Services without the prior written consent of Electric Exploits Ltd and the customer shall notify Electric Exploits Ltd immediately it becomes aware of any other person or entity taking steps to file a financing statement over the Goods. The customer waives its right to receive a copy of the verification statement confirming registration of the financing statement or a financing change statement relating to the security interest created by these terms.

### **10. LIABILITY**

10.1 The Consumer Guarantees Act 1993, the Commerce Act 1986, the Fair Trading Act 1986, the Sale of Goods Act 1908 and other statutes may imply warranties or conditions or impose obligations upon Electric Exploits Ltd which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Electric Exploits Ltd, Electric Exploits Ltd's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

10.2 Except as otherwise provided by clause 10.1 Electric Exploits Ltd shall not be liable for:

10.2.1 Any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the customer or another person and whether in contract, or tort, or otherwise and whether such loss or damage arises directly or indirectly from the Services; and

10.2.2 The customer shall indemnify Electric Exploits Ltd against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Electric Exploits Ltd & its agents or otherwise, brought by any person in connection with any matter, act, omission, or error by Electric Exploits Ltd, its agents or employees in connection with the Services.

10.2.3 The customer is responsible for locating and identifying underground services prior to the start of cabling operations. Electric Exploits Ltd, its agents or employees will not be liable for any loss or damage to underground services that were not located and identified by the customer.

### **11. CONSUMER GUARANTEES ACT**

The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the customer acquires services from Electric Exploits Ltd for the purposes of a business in terms of section 43(2) of that Act.

### **12. OCCUPATIONAL HEALTH AND SAFETY STANDARDS**

12.1 The customer is obliged to ensure:

12.1.1 That all work sites comply with Occupational Health and Safety Statutory Requirements Regulations and Standards; and

12.1.2 That there is always proper means of access to the work site;

### **13. ELECTRICAL REGULATIONS**

13.1 Only projects that comply with the electrical regulations, including NZS3000 and the Electrical Codes of Practice will be undertaken.

13.2 The customer is to ensure that fittings or equipment they supply to be installed comply with the requirements of the building codes, and is to provide instructions to the installer on the required installation procedures. No liability will be accepted by Electric Exploits Ltd for fittings later deemed unsuitable. Recessed lights must be supplied with the manufacturers' installation sheet, and must comply with NZECP 54 as to their suitability for the proposed location.

### **14. MISCELLANEOUS**

14.1 The customer shall not assign all or any of its rights or obligations under the applicable contract with Electric Exploits Ltd without the written consent of Electric Exploits Ltd.

14.2 Electric Exploits Ltd shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

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- 14.3 Failure by Electric Exploits Ltd to enforce any of these terms shall not be deemed to be a waiver of any of the rights or obligations which Electric Exploits Ltd has under these terms.
- 14.4 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired. In the case of any conflict between these terms or any other document provided by Electric Exploits Ltd, these conditions shall prevail. These terms shall not be modified or varied unless expressed in writing and agreed to by Electric Exploits Ltd and the customer.

01/09/2005