

## Chris Odlum Electrical Ltd TERMS OF TRADE

### INTERPRETATION

*“Terms” means the terms and conditions of sale set out in this document and unless this context otherwise requires, includes any special terms and conditions agreed in writing between you and CHRIS ODLUM ELECTRICAL LTD.*

*“Contract” means this contract for the sale and purchase of goods and services under this agreement.*

*“Works” means the goods and services CHRIS ODLUM ELECTRICAL LIMITED supplies in accordance with these terms.*

*“We and us” means CHRIS ODLUM ELECTRICAL LIMITED.*

*“Writing” includes email, post and or Txt message communication.*

*“You” means the person or organisation whose order for the goods or services is accepted by us.*

### 1) Payments

*All payments shall be made 7 days following the issue of the invoice unless otherwise arranged in advance and confirmed in writing by Chris Odlum Electrical Ltd (Monthly accounts are set up for some of our larger clients who must pay by the 20<sup>th</sup> of the Month following the Invoice)*

*Chris Odlum Electrical Limited reserves the right to withdraw or refuse credit facilities or to require payment of a deposit before delivery or services are provided.*

*If you do not pay in full after three consecutive months we may refer your account to a collection agency.*

*We are entitled (without limiting any other rights we may have) to charge penalty interest on any unpaid amounts at 2.5% over and above the prevailing ANZ Bank overdraft rate per month or part month each month after the payment date until the outstanding amount is paid in full.*

*Any expenses, disbursements and costs (including solicitors fees or debt collection agency fees) incurred by Chris Odlum Electrical Ltd in the event of customer default are payable by you the client.*

*Payment by bill of exchange or cheque shall not be deemed payment until the bill of exchange or cheque has been paid by the customer’s banker and credited to Chris Odlum Electrical Limited bank account.*

*Chris Odlum Electrical Limited reserves the right to change the price*

*a. if the Goods requested are changed; or*

*b. if the Services originally contracted for are changed ; or*

*c. where additional services are required due to the discovery of hidden or unidentified difficulties (including, but not limited to, poor weather conditions, poor access to the site, unavailability of machinery, unsafe conditions, work by any third party not being completed, hidden building defects, change of design and/or specifications, hard rock barriers below the surface or iron reinforcing rods in concrete, hidden pipes and wiring in walls etc) which are only discovered on commencement of the services; or*

*d. in the event of increases to Chris Odlum Electrical Limited in the cost of labour or goods beyond Chris Odlum Electrical Limited control.*

### 2) Services

*Services” shall include all labour, parts, expenses and sub-contractors’ services supplied by Chris Odlum Electrical Limited to you.*

*All invoices rendered shall include services provided.*

### 3) Freight

*All product prices exclude freight charges unless otherwise specified and advised in writing to the customer.*

*Chris Odlum Electrical Limited reserves the right to levy a freight surcharge where urgent delivery is requested by the customer.*

*Under the Carriage of Goods Act all claims for loss of or damage to goods must be made on the carrier within 30 days from the date of invoice.*

#### **4) PRICE AND QUOTATIONS**

*Prices exclude GST unless otherwise stated.*

*Quotations are not binding on us unless in writing and signed by our authorised representative. Prices quoted are valid only for the period stated in the quotation provided. Where no period is stated the period shall be 30 days from and including the date of quotation.*

*We may withdraw the quotation at any time prior to giving our written acceptance of the order.*

*You are responsible for all additional costs incurred by us as a result of any change requested by you to the works.*

#### **5) Goods for Return**

*Goods shall only be returned to Chris Odlum Electrical Limited with its prior written consent and within 14 days after delivery.*

*Should Chris Odlum Electrical Limited discover that there is not a material defect in the goods, Chris Odlum Electrical Limited may charge the customer a handling fee.*

*Goods not returned in accordance with the above may be rejected by Chris Odlum Electrical Limited.*

*All costs for the return or delivery of the goods shall be payable by the customer.*

#### **6) Supply and Delivery**

*All services supplied shall be deemed to have been supplied when notified by Chris Odlum Electrical Limited. If you claim that some services have not been supplied or rendered, you must notify Chris Odlum Electrical Limited within 14 days of notification of supply.*

*Any claim by you must be made in writing.*

*Delivery of goods shall be deemed to be effected by Chris Odlum Electrical Limited delivering the goods to the delivery address nominated by the customer, whether or not the customer is present at the time of the delivery to acknowledge receipt.*

*Any claim that goods are not as specified or are not delivered as stated in Chris Odlum Electrical Limited invoice must be made to Chris Odlum Electrical Limited in writing within seven days of delivery.*

*Goods will not be accepted for return for credit without Chris Odlum Electrical Limited prior approval.*

#### **7) Insurance**

*Chris Odlum Electrical Limited shall maintain a public liability insurance policy indemnifying Chris Odlum Electrical Limited against claims in respect of loss or damage against any property or injury or death or illness to any of its subcontractors in connections with the execution of services.*

#### **8) Accuracy of Client's Plans and Measurements**

*Chris Odlum Electrical Limited is entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The client acknowledges and agrees that in the event that any of this information provided by the client is inaccurate Chris Odlum Electrical Limited accepts no responsibility for any loss, damages or costs what so ever resulting from these inaccurate plans, specifications or other information. In the event the client gives information relating to measurements and quantities of goods required in completing the services, it is the clients responsibility to verify the accuracy of the measurements and quantities before Chris Odlum Electrical Limited places an order based on these measurements and quantities*

#### **9) Access**

*The client shall ensure that Chris Odlum Electrical Limited has unimpeded access to the work site at all times to enable Chris Odlum Electrical Limited to deliver goods or services. Chris Odlum Electrical Limited shall not be liable for any loss or damage to the site (including without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Chris Odlum Electrical Limited .*

#### **10) Underground Locations**

*Prior to Chris Odlum Electrical Limited commencing any work the Client must advise Chris Odlum Electrical Limited of the precise location of all underground services on the site and clearly mark the location. The underground mains and services the client must identify include, but are not limited to, telephone cables, fibre optic cables, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigations pipes, oil pumping mains and any other services that may be on site.*

Whilst Chris Odlum Electrical Limited will take all care to avoid damage to any underground services the client agrees to indemnify Chris Odlum Electrical Limited in respect of all any liability claims, loss, damage, cost and fines as a result of damage to services not precisely located and notified pursuant to this clause.

## **11) Title and Security (Personal Property Security Act 1999)**

Title in any goods supplied by Chris Odlum Electrical Limited passes to the customer only when the customer has made payment in full for all goods provided by Chris Odlum Electrical Limited and of all other sums due to Chris Odlum Electrical Limited by the customer on any account whatsoever. Until all sums due to Chris Odlum Electrical Limited by the customer have been paid in full, Chris Odlum Electrical Limited has a security interest in all goods.

The customer grants to Chris Odlum Electrical Limited a personal property security in the goods (by virtue of the Retention of Title clause in these terms) and all goods previously supplied by Chris Odlum Electrical Limited to the customer (if any) and all after acquired goods supplied by Chris Odlum Electrical Limited to the customer.

The customer agrees to:-

a. Sign any further document and provide any further information which the customer warrants to be complete, accurate and up-to-date in all respects, which Chris Odlum Electrical Limited may reasonably require to register a financing statement or financing change statement on the personal property securities register.

b. Not register a financing change statement or a change demand without the prior written consent of Chris Odlum Electrical Limited.

c. Give Chris Odlum Electrical Limited no less than 14 days written notice of any change of the customer's name or other change in the customer's details (including but not limited to changes in address, facsimile number, trading name or business practice).

d. Indemnify Chris Odlum Electrical Limited for any costs incurred by it in relation to the above.

e. Waive any rights to receive a copy of the verification statement under the Personal Property Securities Act and agrees to the extent permitted by law that under this contract:-

i) The customer will have no rights under (or by reference to) Section 114(1) or 133 of the Personal Property Securities Act.

(ii) The provisions of Part 9 of the Personal Property Securities Act which after the benefit of the customer or place obligations on Chris Odlum Electrical Limited will apply only to the extent that they are mandatory.

(iii) Where Chris Odlum Electrical Limited has rights under this contract additional to those in Part 9 of the Personal Property Securities Act, those rights will continue to apply.

In the event the customer refuses to comply with its obligations under the above clause, then by accepting this document the customer grants to Chris Odlum Electrical Limited power of attorney to sign all documents giving Chris Odlum Electrical Limited a personal property security in the goods.

If the goods are attached, fixed or incorporated into any property of the customer, by way of any manufacturing or assembling process by the customer or any third party, title in the goods shall remain with Chris Odlum Electrical Limited until the customer has made payment for all goods and where those goods are mixed with other property so as to be part of or a constituent of any new products, title to these new products shall be deemed to be assigned to Chris Odlum Electrical Limited as security for the full satisfaction by the customer of the full amount owing between Chris Odlum Electrical Limited and the customer.

The customer gives irrevocable authority to Chris Odlum Electrical Limited to enter any premises occupied by the customer or on which products are situated at any reasonable time after default by the customer or before default if Chris Odlum Electrical Limited believes a default is likely and to remove and repossess any goods and any other property to which goods are attached or in which goods are incorporated. Chris Odlum Electrical Limited shall not be liable for any costs, damages, expenses or losses incurred by the customer or third party as a result of this action, nor liable in contract or in tort or in otherwise in any way whatsoever unless by statute such liability cannot be excluded. Chris Odlum Electrical Limited may either resell any repossessed goods and credit the customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed goods and credit the customer's account with the invoice value less such sum as Chris Odlum Electrical Limited reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

## **12) Construction Contracts Act 2002**

The client hereby expressly acknowledges that:

a. Chris Odlum Electrical Limited 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 client and:

(i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the client; or

(ii) a schedules amount stated in a payment schedule issued by the client in relation to the payment claim is not paid in full by the due date for its payment; or

(iii) the client has not complied with an adjudicator's notice that the client must pay an amount to Chris Odlum Electrical Limited by a particular date; and

(iv) Chris Odlum Electrical Limited has given written notice to the client of its intention to suspend the carrying out of construction work

under the construction contract.

**b.** If Chris Odlum Electrical Limited suspends work, it

(i) is not in breach of contract; and

(ii) is not liable for any loss or damage whatsoever suffered, or alleged to have suffered by the client or by any person claiming through the client; and

(iii) is entitled to an extension of time to complete the contract; and

(iv) keeps its right 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 Chris Odlum Electrical Limited exercises the right to suspend work, the exercise of that right does not

(i) affect any rights that would otherwise have been available to Chris Odlum Electrical Limited under the Contractual Remedies Act 1979 or

(ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of Chris Odlum Electrical Limited suspending work under this provision.

### **13) General**

These terms of trade shall apply to all goods sold to the customer.

If any provisions of these terms are unenforceable, that term will be deemed modified to the extent necessary to make it enforceable or if modification is impractical, the provision will be deemed deleted but without affecting the remainder of these terms.

These terms may only be varied by the written agreement of Chris Odlum Electrical Limited.

Any notice required to be served by either party shall be deemed to have been properly served if left at or posted in a pre-paid letter addressed to the other party at the place of business or residence of such party and any service by post shall be deemed to have been effected when the letter containing such notice would have been delivered in the ordinary course of post.

These terms shall be governed by and construed in accordance with the laws of New Zealand.

### **14) Returns, Claims, Refunds**

The customer shall immediately upon receipt of goods supplied fully inspect such goods and satisfy itself that the goods are correct. If the customer is unsatisfied, the customer must immediately contact Chris Odlum Electrical Limited and communicate all details of such dissatisfaction. Unless the above procedure is followed Chris Odlum Electrical Limited is entitled to assume that the goods supplied are correct and no returns claims for refunds will be permitted or made.

### **15) Warranties and Liabilities**

While we endeavour to provide higher quality goods and use the highest quality of care and skill to provide the works, all warranties, conditions or other terms implied by law, including the Sale of Goods ACT 1908 and the Consumer Guarantees Act 1993 and the Fair-Trade Act are expressly excluded to the fullest extent permitted by Law.

**a.** Where any legislation makes void or prohibits a provision excluding or modifying a supplier's liability under such a condition or warranty, such condition or warranty will be deemed to be included in these terms provided that our liability will be limited at our option to any of the following, pursuant to our Warranty document which can be found on our website:

**b.** the replacement of the goods: or

**c.** the supplying of equivalent goods or services; or

**d.** the repair of the goods or services.

We do not give any warranty, guarantee or other term as to the quality, fitness for purpose or otherwise, of any third party goods but agree to assign the benefit of any warranty, guarantee or indemnity given to us by the relevant manufacturer to you.

### **16) Consumer Guarantees Act**

Where Chris Odlum Electrical Limited supplies the goods to the customer for the customer's use in a business for the purpose of the business, the customer agrees that the Consumer Guarantees Act does not apply. Where Chris Odlum Electrical Limited supplies the product to a customer as a "consumer" as defined in the Consumer Guarantees Act for a non-business purpose, the Consumer Guarantees Act will apply and prevail over any contrary provision in these terms and conditions.

### **17) Customer Information**

In accordance with the Privacy Act 1993 the customer authorises Chris Odlum Electrical Limited to obtain such information as it may require in response to their enquiries from any source in order to determine the customer's credit worthiness and to be used as a guide concerning credit limits.

Chris Odlum Electrical Limited will set a credit limit and reserves the right to alter the credit limit from time to time.

You the client consent to you Chris Odlum Electrical Limited collecting, using and disclosing your personal information for the following purposes:

- a. Verifying any information that I give to you (or information that you may collect from other sources) with third parties and third party databases, including Government agencies (for example: NZ Transport Authority, Motor Vehicle Register, PPSR).
- b. Carrying out credit checks on me with a credit reporting agency for a purpose of making a credit decision affecting me (including debt collection) or for the requirements of the Anti-Money Laundering and Countering Financing Terrorism Act 2009. This will require you to give my information to the credit reporting agency as well as the credit reporting agency providing information about me to you. (You may also disclose my positive credit information (including repayment history information) to a credit reporting agency).
- c. Debt recovery including appointing an agent to collect any outstanding debts and listing defaults with a credit reporting agency.
- d. Checking the Ministry of Justice fines database for any overdue fines I may have. This will require you to give my information to the Ministry of Justice. This check may be carried out by a credit reporting agency, which will require the search results to be disclosed to the credit reporting agency.
- e. Verifying any information that I give to you (or information that you may collect from other sources) with third parties and third party databases for the purposes of fraud prevention or the Anti-Money Laundering and Countering Financing Terrorism Act 2009.
- f. Where I have voluntarily given you my driver licence information, this information may also be disclosed to a credit reporting agency and the Ministry of Justice as part of the checks you undertake with them.
- g. I authorise any third party to provide my personal information to you for any of these purposes.
- h. I understand that if you disclose my personal information to a credit reporting agency, they may hold my information on their credit reporting database and use it for providing credit reporting services and for any other lawful purpose and they may disclose my information to their subscribers for the purpose of credit checking or debt collection or for any other lawful purpose.

## 18) Disputes Accounts

The customer must notify Chris Odlum Electrical Limited in writing within Seven days of receipt of any disputed invoice. The notification must quote the relevant invoice number and must include all the necessary details of the reason the invoice is being disputed. Should the customer fail to notify Chris Odlum Electrical Limited of any dispute, defect or damage within Seven days of receipt of the invoice, the customer shall be deemed to have accepted the invoice and shall pay that invoice according to the terms and conditions contained in this document.

## 19) Confidential Information

Each party agrees to always keep the other party's confidential material confidential and not to use the confidential material for any purpose other than for the purpose for which it was supplied or copy or reproduce any of the confidential material in any way except whether disclosure is necessary to enable goods or services to be used under lease or where the party that owns the confidential material has consented to disclosure.

On request each party will ensure that any confidential material (including any copies) that it possesses or controls and that belongs to the other party is returned to that other party.

Confidential material means:-

- a. All information and other material relating to Chris Odlum Electrical Limited business, employees, goods or services which we make available or have previously made available to you; or
- b. Any report or material which we produce as a direct or indirect result of any work that we carry out for you and anything that you derive from this information and material but excluding everything which is generally available to the public or you or a third party have independently developed or acquired this confidential material.

## 20) Resolving Disputes

Chris Odlum Electrical Limited and the customer will use all reasonable endeavours to resolve any dispute between them. If they cannot resolve their dispute between them, they will:-

- a. Refer the dispute to mediation which will be conducted in accordance with the Resolution Institute New Zealand Standard Mediation Agreement; and
- b. If mediation is unsuccessful, the matter of dispute shall be referred to a single arbitrator in accordance with the provisions contained in the Arbitration Act 1996 and any amendments.

Nothing in this clause will preclude either party from taking immediate steps to seek urgent equitable relief before an appropriate Court.

## 21) Assignment

Chris Odlum Electrical Limited is entitled at any time to assign to any other person all or any part of the debt owing by the customer to Chris Odlum Electrical Limited.

## 22) Review of Terms

Chris Odlum Electrical Limited reserves the right to review any of these terms at any time. Any change will take effect on the next transaction following the date on which Chris Odlum Electrical Limited notified the customer of such change.

## **23) Intellectual Property**

*The customer acknowledges that Chris Odum Electrical Limited is the sole owner of all intellectual property (including business know how, ideas, methodologies, routines, systems and processes relating to or arising, directly or indirectly, out of the goods and services that Chris Odum Electrical Limited supplies to the customer or developed or contributed to by Chris Odum Electrical Limited in relation to any information, fault, repair or documentation that is supplied to the customer or as a result of Chris Odum Electrical Limited performing services or any other work for the customer.*

*The customer agrees not to use any trade marks or other intellectual property rights which are legally Chris Odum Electrical Limited except as authorised by Chris Odum Electrical Limited.*

## **24) Acknowledgement and Declaration**

I/We agree to this declaration as the customer: -

- a. Accepting and agreeing to abide by the terms of trade specified above; and
- b. Giving the necessary approvals, consents, authorisations under the Privacy Act 1993; and
- c. Acknowledging that a copy of the terms of trade has been, read and understood.
- d. Agreeing that these terms of trade will apply to all contracts between Chris Odum Electrical Limited and ourselves as the customer.