

TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "POTTER" shall mean **Craig Potter Electrical , trading as Potter Electrical Ltd**, or any agents or employees thereof.
- 1.2 "Client" shall mean the Client, any person acting on behalf of and with the authority of the Client, or any person purchasing products and services from POTTER.
- 1.3 "Products" shall mean:
- 1.3.1 all Products of the general description specified on the front of this agreement and supplied by POTTER to the Client; and
- 1.3.2 all Products supplied by POTTER to the Client; and
- 1.3.3 all inventory of the Client that is supplied by POTTER ; and
- 1.3.4 all Products supplied by POTTER and further identified in any invoice issued by POTTER to the client, which invoices are deemed to be incorporated into and form part of this agreement; and
- 1.3.5 all products that are marked as having been supplied by POTTER or that are stored by the Client in a manner that enables them to be identified as having been supplied by POTTER; and
- 1.3.6 all of the Client's present and after acquired Products that POTTER has performed work on or to or in which goods or materials supplied or financed by POTTER have been attached or incorporated.
- 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Products" shall also mean all products, goods, services and advice provided by POTTER to the Client and shall include without limitation the supply of products and technical support and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Products by POTTER to the Client.
- 1.5 "Price" shall mean the cost of the Products as agreed between POTTER and the Client and includes all disbursements eg: charges POTTER pay to others on the Client's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by POTTER from the Client for the supply of Products shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Client authorises POTTER to collect, retain and use any information about the Client, for the purpose of assessing the Client's credit worthiness, enforcing any rights under this contract, or marketing any Products provided by POTTER to any other party.
- 3.2 The Client authorises POTTER to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Client 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 the Products shall be deemed to be sold at the current amount as such products are sold by POTTER at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Products that is beyond the control of POTTER between the date of the contract and delivery of the Products.

5. PAYMENT

- 5.1 Payment for Products shall be made in full on or before the due date as stated on the invoice. If no due date is specified on the invoice then the due date shall be the 20th of the month following the date of the invoice.
- 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 Any expenses, disbursements and legal costs incurred by POTTER in the enforcement of any rights contained in this contract shall be paid by the Client, including any reasonable solicitor's fees or 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 paid in full. (please note due date will be 14 days from completing of works on the initial contract and revert to the 20th of the month following from that transaction)

6. QUOTATION

- 6.1 Where a quotation is given by POTTER for Products:
- 6.1.1 Unless otherwise agreed 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;
- 6.1.3 POTTER reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where products are required in addition to the quotation the Client agrees to pay for the additional costs of such Products.

7. RISK

- 7.1 The Products remain at POTTER risk until delivery to the Client.
- 7.2 Delivery of Products shall be deemed complete when POTTER gives possession of the Products directly to the client or possession of the Products is given to a carrier, courier, or other bailee for purposes of transmission to the client.

8. AGENCY

- 8.1 The client authorises POTTER to contract either as principal or agent for the provision of Products that are the matter of this contract.
- 8.2 Where POTTER enters into a contract of the type referred to in clause 8.1 it shall be read with and form part of this agreement and the client agrees to pay any amounts due under that contract.

9. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 9.1 Title in any Products supplied by POTTER passes to the client only when the client has made payment in full for all Products provided by POTTER and of all other sums due to POTTER by the Client on any account whatsoever. Until all sums due to POTTER by the Client have been paid in full, POTTER has a security interest in all Products.
- 9.2 If the Products are attached, fixed, or incorporated into any property of the Client, by way of any manufacturing or assembly process by the Client or any third party, title in the Products shall remain with POTTER until the client has made payment for all Products, and where those Products 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 POTTER as security for the full satisfaction by the Client of the full amount owing between POTTER and Client.
- 9.3 The Client gives irrevocable authority to POTTER to enter any premises occupied by the Client or on which Products are situated at any reasonable time after default by the Client or before default if POTTER believes a default is likely and to remove and repossess any Products and any other property to which Products are attached or in which Products are incorporated. POTTER shall not be liable for any costs, damages, expenses or losses incurred by the Client or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. POTTER may either resell any repossessed Products and credit the Client's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Products and credit the Client's account with the invoice value thereof less such sum as POTTER reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 9.4 Where Products are retained by POTTER pursuant to clause 9.3 the Client waives the right to receive notice under s.120 of the Personal Properties Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.
- 9.5 The following shall constitute defaults by the Client:
- 9.5.1 Non payment of any sum by the due date.
- 9.5.2 The Client intimates that it will not pay any sum by the due date.
- 9.5.3 Any Products are seized by any other creditor of the Client or any other creditor intimates that it intends to seize Products.
- 9.5.4 Any Products in the possession of the Client are materially damaged while any sum due from the client to POTTER remains unpaid.
- 9.5.5 The Client is bankrupted or put into liquidation or a receiver is appointed to any of the Client's assets or a landlord distrains against any of the Client's assets.
- 9.5.6 A Court judgment is entered against the Client and remains unsatisfied for seven (7) days.
- 9.5.7 Any material adverse change in the financial position of the Client.

10. SECURITY INTEREST FOR SERVICE PROVIDERS

- 10.1 The Client gives POTTER a security interest in all of the Client's present and after-acquired property that POTTER has performed services on or to or in which goods or materials supplied or financed by POTTER have been attached or incorporated.

11. PAYMENT ALLOCATION

- 11.1 POTTER may in its discretion allocate any payment received from the Client towards any invoice that POTTER determines and may do so at the time of receipt or at any time afterwards and on default by the client may reallocate any payments previously received and allocated. In the absence of any payment allocation by POTTER, payment shall be deemed to be allocated in such manner as preserves the maximum value of POTTER 's purchase money security interest in the Products.

12. DISPUTES AND RETURN OF PRODUCTS

- 12.1 No claim relating to the Products supplied will be considered unless made within seven (7) days of delivery.

13. LIABILITY

13.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon POTTER 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 POTTER, POTTER'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.

13.2 Except as otherwise provided by clause 13.1 POTTER shall not liable for:

13.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Products by POTTER to the Client, including consequential loss whether suffered or incurred by the Client or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or Indirectly from Products provided by POTTER to the Client; and

13.2.2 The Client shall indemnify POTTER 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 POTTER or otherwise, brought by any person in connection with any matter, act, omission, or error by POTTER its agents or employees in connection with the Products.

14. WARRANTY

14.1 Any written warranty that POTTER provide to the Client will also form part of these terms and conditions of trade.

15. CONSUMER GUARANTEES ACT

15.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Client acquires Products from POTTER for the purposes of a business in terms of section 2 and 43 of that act.

16. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

16.1 If the Client is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for POTTER agreeing to supply Products and grant credit to the Client at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to POTTER the payment of any and all monies now or hereafter owed by the Client to POTTER and indemnify POTTER against non-payment by the Client. Any personal liability of a signatory hereto shall not exclude the Client in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Client shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

17. MISCELLANEOUS

17.1 POTTER shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

17.2 Failure by POTTER to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations POTTER has under this contract.

17.3 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.