

# Arcadia Electric Ltd.

## TERMS & CONDITIONS OF TRADE

### 1. Definitions

- The “**Contractor**” is Arcadia Electric Limited, and is also referred to in these Terms & Conditions as “we” and “us”.
- The “**Client**” is you and:
  - If you are contracting with us on behalf of a company, the contract is with you and the company, and each of you and the company are jointly and severably liable under these terms and conditions.
  - If you are contracting with us on behalf of a partnership or trust, the client includes the other partners and trustees.
- The “**Work**” means the electrical work you have asked us to do, and includes where appropriate the provision and installation of materials, and the supply of services either as quoted or at our standard rates, during normal working hours.
- The “**Price**” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Work
- “**Invoice**” includes a Payment Claim under the Construction Contracts Act 2002. .

### 2. Price and Payment

- Unless we have provided you with a quote for the Work, our standard rates and costs for the Work shall apply. These are:
  - Technician: \$90 plus GST per hour (there is a minimum charge of one hour) in 15 minute increments rounded up.
  - Materials: supplied at cost plus a margin
  - We charge an administration fee of \$55 + GST for each job/invoice. This includes the issue and storage of compliance documents.
  - We charge \$2.35 per Kilometre for travel outside of Palmerston North City, the boundary defined as the 100km/h zone. The charge is door to door from our office.
- We will invoice you for the Work, and this may include invoicing you at intervals during the progress of the Work.
- You must pay the invoiced amount in full, and without set off or deduction, within 7 days of the date on the invoice, (unless another date for payment is specified on the invoice).
- Where we have provided a quote for the Work, on the basis of an agreed scope of Work, we will be entitled to a variation where:

- additional Services are required due to the discovery of hidden, unidentifiable, or unforeseeable difficulties. By way of example these might include (but are not limited to):
  - poor weather conditions,
  - limitations to site access,
  - unsafe work site,
  - prerequisite work by a third party not being completed,
  - inaccurate measurements supplied by you,
  - hidden pipes and wiring,
  - electrical wiring is required to be re-positioned at the request of any third party contracted by the Client.
  - Time and/or day of work is outside of normal hours i.e. before 0700 and after 1700 weekdays. Public holidays and weekend/s. Or any time that is deemed to be outside of normal working hours.
- You request and we agree to do Work outside of the agreed scope of Work.

2.5 Where we are entitled to a variation, we will either agree a price with you for the variation or the variation will be charged at our standard rates and costs, set out in clause 2.1 above, including a further administration fee.

### **3. Responsibility for the Site**

- The Client shall ensure that the Contractor has clear and free access to the work site at all times to enable them to do the Work.
- Prior to the Contractor commencing any work the Client must advise the Contractor of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site. Whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified.
- The Client warrants that any structures to which we install or affix equipment and materials are sufficiently durable to withstand the

installation or affixation of the materials and equipment and any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity.

#### **4. Accuracy of Customer's Plans & Measurements for Orders**

- The Contractor shall be 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, the Contractor accepts no responsibility for any loss, damages, or costs however resulting from the inaccuracy of information.

#### **5. Personal Property Securities Act 1999 ("PPSA")**

- These terms and conditions constitute a security agreement for the purposes of the Personal Property Securities Act 1999 ("PPSA") in all materials equipment and any other personal property supplied by the Contractor to the Client, whether in the past or future ("the Goods").
- The Client undertakes to:
  - sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing the Goods charged thereby;
  - not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Contractor; and
  - immediately advise the Contractor of any material change in its business practises of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- The Contractor and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

- Unless otherwise agreed to in writing by the Contractor, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- The Contractor may in its discretion allocate any payment received from the Client towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Contractor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Contractor, payment will be deemed to be allocated in such manner as preserves the maximum value of the Contractor's Purchase Money Security Interest (as defined in the PPSA) in the Goods.

#### **6. Other securities**

- The Contractor shall be entitled to a charge over the Client's real property (whether or not the property was the site of the Works) to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The charge shall constitute a caveatable interest in favour of the Contractor.

#### **7. Limitation on warranties and liabilities**

- To the extent permitted by statute, no warranty is given by the Contractor as to the quality or suitability of materials or equipment supplied by it for any purpose and any implied warranty, is expressly excluded.
- The Contractor's liability shall not, in any circumstances, exceed the Price.

#### **8. Consumer Guarantees Act 1993**

- If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Contractor to the Client.

#### **9. Default and Consequences of Default**

- The Client is in default if the Client:
  - Is placed into bankruptcy, liquidation, receivership or administration, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - Does not pay any invoice when due; or
  - Otherwise does not comply with the Client's obligations under the contract, including these terms and conditions.
- If the Client is in default the Contractor is entitled, without prejudice to its other rights or remedies to:
  - Cancel the contract, by giving 5 days' notice of its intention to cancel; or
  - Suspend the Contract (clause 10).
- In addition, and regardless of whether the Contractor cancels or suspends the contract due to the Client's default:

- Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of five percent (5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgement.
- The Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor as a result of the default including but not limited to:
  - internal administration fees.
  - all legal costs on a solicitor and own client basis incurred or incidental to recovering any debt owed by the Client, enforcing its securities, or otherwise pursuing any right or remedy as a result of the default.
  - the Contractor's collection agency costs.
  - bank dishonour fees.

#### 10. Suspension of Works

- The Contractor has the right to suspend work within five (5) working days of written notice of its intent to do so if the Client is in default.
- if the Contractor suspends work:
  - The Contractor is not in breach of Contract; and
  - The Contractor is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
  - The Contractor is entitled to an extension of time to complete the Contract; and
  - The Contractor retains all rights under the Contract including the right to terminate the Contract.
- if the Contractor exercises the right to suspend work, the exercise of that right does not:
  - affect any rights that would otherwise have been available to the Contractor under the Contract and Commercial Law Act 2017; or
  - enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Contractor suspending work under this provision;
- All costs and expenses incurred by the Contractor as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.

#### 11. Service of Notices

- Any written notice given under this Contract shall be deemed to have been given and received:

- by handing the notice to the other party, in person;
  - by leaving it at the address of the other party as stated in this Contract;
  - by sending it by registered post to the address of the other party as stated in this Contract;
  - if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - if sent by email to the other party's last known email address.
- Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

## 12. General

- The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- The Contractor may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- The Client cannot licence or assign without the written approval of the Contractor.
- Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.