



BOS ELECTRICAL LIMITED - TRADE TERMS

The following are the terms on which Bos Electrical Limited (**Bos Electrical**) will supply goods and services to the Customer from time to time (**Terms**).

1. **Status of Terms:** These Terms may only be waived or varied by a written variation signed by Bos Electrical and will prevail over all terms and conditions of the Customer. Any special conditions specified by Bos Electrical in any order, contract or any other written document will prevail over these Terms to the extent of any inconsistency. By ordering goods or services from Bos Electrical, the Customer accepts these Terms.
2. **Orders:** Orders for goods or services are subject to Bos Electrical's acceptance, and cannot be cancelled or varied without Bos Electrical's written consent. Bos Electrical may require the Customer to reimburse Bos Electrical for any reasonable cost Bos Electrical incurs in connection with a cancelled or varied order.
3. **Quotes, Estimates, Prices and GST:**
 - (a) Quotes or estimates are valid for 30 days and may be withdrawn at any time.
 - (b) Prices are exclusive of goods and services tax (**GST**). They are the recommended prices at the date of quotation or estimate. Prices are subject to change without notice, and may also vary due to fluctuations in cost price, rates of freight, insurance and the quantity of a good ordered by the Customer.
4. **Payment:**
 - (a) If Bos Electrical has agreed to provide credit under these Terms, the Customer must pay each invoice within 7 days after the invoice date (unless the invoice states otherwise).
 - (b) Notwithstanding clause 4(a), Bos Electrical may require a deposit of Bos Electrical's quoted or estimated price for the goods or services. The balance must be paid in full before the goods are delivered or the services are completed, unless Bos Electrical has agreed to provide credit, in which case clause 4(a) will apply to the balance.
 - (c) If the Customer has not paid in full by the due date, and in the case of any other Default Event, then (in addition to any other remedies available to Bos Electrical):
 - (i) All amounts owing by the Customer to Bos Electrical (whether or not previously due for payment) become immediately due and payable;
 - (ii) Bos Electrical may cancel any orders for Goods made by the Customer, without liability to the Customer;
 - (iii) Bos Electrical may require payment for any ordered but undelivered Goods;
 - (iv) Bos Electrical may charge the Customer interest on the amount outstanding at the rate of five percent (5%) above the current base lending rate for the time being of Bos Electrical's bankers, from the due date until payment is received by Bos Electrical.
 - (d) Bos Electrical may choose how to allocate payments which the Customer makes to Bos Electrical in satisfaction of any invoice or amount owing by the Customer.
 - (e) Where Bos Electrical has agreed to extend credit to the Customer, if Bos Electrical doubts the Customer's ability to pay for Goods, Bos Electrical may restrict or withhold the sale of further Goods on credit to the Customer. In addition, Bos Electrical may, at any time, change the Customer's credit limit or otherwise refuse to provide the Customer with further credit.
 - (f) The Customer may not deduct or withhold any amount (by way of set off, counterclaim or otherwise) from any money owing to Bos Electrical without Bos Electrical's written agreement.
5. **Delivery/Risk:**
 - (a) Goods will be delivered to the delivery address specified in these Terms at the Customer's cost, which includes packaging and/or transport costs. Risk in the goods passes to the Customer immediately upon the goods arriving at the Customer's premises (unloaded).
 - (b) If the Customer intends to collect the goods from Bos Electrical, delivery occurs, and risk in the goods passes to the Customer, when Bos Electrical advises the Customer that the Goods are ready for collection.
 - (c) Bos Electrical will make all reasonable efforts to deliver the goods on the date agreed as the delivery date. However, Bos Electrical is not liable for late or non-delivery, or any loss, damage or delay suffered by the Customer or its customers as a consequence.
6. **Title:**
 - (a) Bos Electrical is the legal and beneficial owner of all goods supplied to the Customer until the Customer has paid for them in full.
 - (b) If the Customer commits a Default Event or Bos Electrical considers the goods are at risk, Bos Electrical or its agents may at any time enter the Customer's premises (or the premises of any associated company or agent) where the goods are located (whether occupied or unoccupied) without liability for trespass or any resulting damage, and repossess the goods. The Customer irrevocably indemnifies Bos Electrical and its agents and representatives against all loss, costs (including costs incurred on a solicitor/own client basis), expenses, claims, proceedings or any other liability, action or claim arising from any entry, any act of trespass committed, or damage caused, by such entry.
7. **Security interest:**
 - (a) The Customer grants Bos Electrical a security interest in all goods from time to time supplied by Bos Electrical to the Customer and all proceeds of such goods, as security for the payment of all amounts the Customer may from time to time owe Bos Electrical and the performance of the Customer's obligations to Bos Electrical (**Security Interest**).
 - (b) The Customer will sign all documents and provide all information Bos Electrical requires to register a financing statement or financing change statement on the Personal Property Securities Register (**PPSR**). The Customer will give Bos Electrical at least 20 days prior written notice if it wishes to change its name.
 - (c) The Customer will protect Bos Electrical's interests in the goods. In particular, the Customer will put in place appropriate security precautions to protect the goods from loss, damage and destruction and not permit any other security interest to attach to the Goods.
 - (d) The Customer agrees:
 - (i) that nothing in sections 114(1)(a), 133 and 134 of the Personal Property Securities Act 1999 (**PPSA**) shall apply to these terms;
 - (ii) to waive all the Customer's rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA;
 - (iii) to waive its right to receive a copy of the verification statement confirming registration.
 - (e) If the Customer is placed in voluntary administration, receivership or liquidation or otherwise insolvent, the authority to sell goods supplied by Bos Electrical where title has not passed under clause 6 above, is deemed to have been revoked without the need for any notice.
8. **Return of Goods:** Bos Electrical has no obligation to accept returns of Goods for credit or refund. Goods delivered in accordance with the Customer's order may only be returned for credit or refund if Bos Electrical agrees to the return and only if the Goods are, within 30 days of the date of delivery, returned to Bos Electrical in original condition and packaging together with a copy of the original packing slip or invoice. Delivery charges will not be credited or refunded and Bos Electrical may charge the Customer a reasonable restocking fee.
9. **Default/termination:** Without prejudice to any of Bos Electrical's rights or remedies, Bos Electrical may terminate these Terms:
 - (a) by giving the Customer one month's prior written notice; or
 - (b) immediately if the Customer:
 - (i) fails to pay any amount owing to Bos Electrical under these Terms; or
 - (ii) breaches these Terms, and such breach is not capable of remedy, or if capable of remedy, is not remedied to Bos Electrical's satisfaction within 10 days after Bos Electrical notifies the Customer of such breach; or
 - (iii) an event occurs which in Bos Electrical's sole opinion effects or may effect the Customer's ability to meet its obligations under these Terms, including the voluntary administration, bankruptcy receivership or liquidation of the Customer (each a **Default Event**).
 - (c) Upon termination of these Terms, the Customer must immediately pay all amounts owing to Bos Electrical and shall, at its cost, immediately return any goods that have not been paid for to Bos Electrical. If the Customer fails to do so within 5 business days, Bos Electrical may repossess any goods that have not been paid for without notice. Bos Electrical may retain all or part of any deposit paid by the Customer to cover its reasonable costs and/or as compensation for the early termination of these Terms.
10. **Customer warranties:** The Customer warrants:
 - (a) It has inspected the goods and has satisfied itself that the goods are fit for the Customer's intended use, and it does not rely on any statement, warranty, undertaking or representation made by or on behalf of Bos Electrical about the goods; and
 - (b) It has had the opportunity to obtain independent legal advice about its obligations under these Terms, and confirms the Terms are fair and reasonable.
11. **General warranties/guarantees:**
 - (a) If the Customer has entered into these Terms in trade, the Customer acknowledges and agrees that the provisions of the Consumer Guarantees Act 1993 are expressly excluded. All warranties and guarantees express or implied that may be excluded by law are also excluded to the maximum extent permitted by law.
 - (b) To the maximum extent permitted by law, for Goods that are not manufactured by Bos Electrical, the Customer is entitled only to such benefits as Bos Electrical may receive under any warranty given to Bos Electrical by the manufacturer or other person who supplied the Goods to Bos Electrical. Bos Electrical will use their reasonable endeavours to pass on this benefit to the Customer, without Bos Electrical being directly liable to the Customer.
12. **Limitation of liability:**
 - (a) Bos Electrical is not liable for any loss of profits, loss of goodwill, indirect losses or consequential losses of any kind arising out of any defect in the goods, or the supply, installation or use of the goods, or arising out of Bos Electrical's negligence, or in any way whatsoever, to the maximum extent permitted by law.
 - (b) If Bos Electrical cannot exclude liability for a breach of any implied warranty, guarantee or condition, or any provision of these Terms, Bos Electrical's liability in respect of a breach of such warranty, condition, guarantee or terms is limited, at its option, and to the maximum extent permitted by law:
 - (i) in the case of goods, replacing the goods or supplying equivalent Goods, or the cost of replacing the Goods or supplying equivalent goods, or repairing the goods or the cost of repairing the goods;
 - (ii) in the case of services, supplying the services again or paying the cost of having the services supplied again; or
 - (iii) paying the Customer the actual direct loss suffered by the Customer.
13. **Indemnity:** The Customer at all times indemnifies Bos Electrical and its employees, agents and contractors, and holds all of them harmless from and against:
 - (a) all loss, costs, claims, damages, expenses (including all legal costs and expenses incurred on a solicitor/own client basis) incurred by Bos Electrical, or any of its employees, agents or contractors; and

- (b) all actions, suits, claims, demands and other proceedings whatsoever made or brought against Bos Electrical or any of its employees, agents or contractors, caused by any breach of these Terms, or by any representation made, or any act, omission, or negligence committed, by the Customer or by any of the Customer's employees, agents, contractors or customers.
14. **Intellectual property:** The Customer acknowledges that all concepts, technical information, know-how, designs, writings, diagrams, drawings, copyright material and any other intellectual property whatsoever owned, developed, created or used by Bos Electrical in connection with the design or supply of any goods or the provision of any services to or for the Customer (**Intellectual Property**) are, and at all times remain, the exclusive property of Bos Electrical. The Customer will not, and will not permit anyone else to, use or copy the Intellectual Property, unless Bos Electrical expressly agrees in writing.
15. **Regulatory affairs:** It is the Customer's responsibility to observe all applicable health, safety and other laws and regulations, and to take appropriate steps in relation to the safe use of the goods.
16. **Guarantee:** In consideration of Bos Electrical agreeing to provide goods and services to the Customer at each Guarantor's request, each Guarantor jointly and severally:
- (a) guarantees the due, punctual and full performance by the Customer of its obligations and warranties under these Terms and under any law of New Zealand or any other country; and
 - (b) indemnifies Bos Electrical from and against any action, suit, claim demand, cost or expense (including all legal costs and expenses incurred on a solicitor/own client basis) arising directly or indirectly as a result of any act or omission by the Customer in breach of any obligation or warranty under these Terms or under any law of New Zealand or any other country, or as a result of any act, omission, or negligence committed, by the Customer or by any of the Customer's employees, agents, contractors or customers.
- The liability of each Guarantor under these Terms is a principal obligation of each Guarantor and shall not be relieved or in any way affected in a manner prejudicial to Bos Electrical by any granting of time, waiver of forbearance to sue by Bos Electrical. The guarantee provided by each Guarantor is a continuing guarantee and shall remain in full force and effect until Bos Electrical executes a written release.
17. **Privacy:** The Customer and each Guarantor authorises Bos Electrical to:
- (a) collect and disclose information about the Customer and the Guarantors (including credit information) to or from any person (including accountants, credit reporters, debt collection agencies, solicitors or other suppliers) for the purposes of:
 - (i) considering whether to provide goods and services to the Customer;
 - (ii) business administration and marketing;
 - (iii) making credit decisions about the Customer or the Guarantor; and
 - (iv) recovering any amount owing by the Customer or any Guarantor, or taking enforcement action against any of them.
 - (b) The Customer acknowledges that information given to credit reporting agencies may be disclosed by them to other persons to help those other persons decide whether to provide credit or other goods or services to the Customer or each Guarantor.
18. **Costs:** The Customer will pay all Bos Electrical's costs and expenses (including legal costs and expenses incurred on a solicitor/own client basis) incurred by Bos Electrical in the enforcement of its rights and remedies under these Terms and under any law.
19. **Severability:** If any provision of these Terms is held to be invalid or unenforceable for any reason, the remaining provisions will remain binding on the Customer.
20. **Amendment:** Bos Electrical may change these terms from time to time by written notice to the Customer and the amended terms will apply to all orders made by the Customer after the amended terms have been sent to the Customer.
21. **Waiver:** Failure by Bos Electrical to insist upon strict performance of any of these Terms will not be deemed to be a waiver of its rights under these Terms or a waiver of any subsequent breach by the Customer of any of these Terms.

AGREEMENT

In consideration of Bos Electrical Limited agreeing to supply goods and services to the Customer, the Customer agrees to be bound by the attached Trade Terms.

Customer's Full Legal Name: _____ Incorporation No: _____
(if a company)

Trading as (if different to Customer Name): _____

Signed on behalf of the Customer by its authorised representative:

Signed

Full Name

Date