

EAS TERMS OF TRADE

1. DEFINITIONS & INTERPRETATION

- (a) **EAS** means Electrical & Automation Solutions Limited (5366481) referred to under this Agreement as "we" or "us".
- (b) **Customer** is the person referred to in our Quote(s) referred to under this Agreement as "you".
- (c) **Goods** means all materials and hardware, tools and accessories supplied by us to you (together with any Services forming part of the supply of Goods).
- (d) **Services** means any service performed by us (including our employees, agents or subcontractors) as part of supplying the Goods, including any installation of Goods, or any other products at a premises nominated by you (or any person acting on behalf of and with your authority) from time to time under this Agreement.
- (e) In interpreting this Agreement, unless a contrary intention is expressed:
- (i) Headings and sub-headings in this Agreement are for reference only and shall not in anyway limit or govern the construction of the provisions of this Agreement;
 - (ii) References to a party are to a party to this Agreement and include that party's successors in title and permitted assigns;
 - (iii) Words importing the singular (including defined terms where appropriate) shall include the plural and vice versa and words importing gender shall import all genders;
 - (iv) Any provision of this Agreement to be performed by two or more persons shall bind those persons jointly and severally;
 - (v) Any date which is not a working day, upon or by which anything is due to be done by any party, will be deemed to be a reference to the next working day;
 - (vi) Reference to "including" and its similar expression shall be interpreted as if followed by "without limitation";
 - (vii) References to clauses or schedules are to clauses of or schedule to this Agreement, and any schedules referred to form part of this Agreement;
 - (viii) None of the terms of this Agreement are to be construed against a party, by reason of the fact that a term or part was first proposed or was drafted by that party;
 - (ix) Any obligation not to do something will be deemed to include an obligation not to suffer, permit or cause that thing to be done; and
 - (x) If any provision in the main body of this Agreement conflicts with the provisions of any Quote, then only that particular provision of the Quote shall prevail where the remainder of this Agreement stands.

2. QUOTATIONS & PRICING

- (a) **Quote:** In consideration for payment of our fees (**Fees**), we agree to supply to you the quantities of the goods set out in the quote attached and any other quotes provided from us to you from time to time under this Agreement (**Quote**).
- (b) **Pricing:** Unless otherwise agreed in writing before you place an order, prices for Goods and Services are those stated in our Quote and are subject to change at our sole discretion on expiry of the Quote.
- (c) **NZD:** Unless we state otherwise in writing, quoted prices are in New Zealand dollars exclusive of GST and are only valid for the time stated on any quotation, or if no time is stated, on the date of quotation only.
- (d) **Urgent Works:** We are entitled to charge you additional charges, including our reasonable labour and travel charges, for works requested by you which are outside any timeframes indicated by us for the Services on a time and attendance basis unless otherwise agreed mutually in writing (such additional time and attendances can include any compulsory induction course or similar attendance that you require of us before commencement of our Services).

3. SERVICES

- (a) **Customer Obligations:** Where we have agreed, at your request, to provide Services to you, you must at your own cost:
- (i) Provide us, our agents, employees and subcontractors with suitable access to the premises and an electrical supply and other amenities reasonable required to perform such Services;
 - (ii) Advise us (should we require) the precise location of all underground services on site and clearly mark the same without limitations to electrical, gas, sewage, water, telephone & fibre optic cables on site.
 - (iii) Ensure the premises comply with all applicable laws, particularly those laws relevant to the health and safety under the Health and Safety at Work Act 2015 for persons performing the Services;
 - (iv) Ensure that any structures or equipment that our Goods are to be affixed shall withstand installation of the same Goods.
 - (v) Obtain any necessary permits, licences, consents and approvals required for the performance of the Services in accordance with applicable laws;
 - (vi) To effect and maintain all normal and prudent insurance policies in respect of all usual risks including fire, burglary, theft and consequential loss or damage;
 - (vii) Ensure that all other trade persons at the premises (other than our employees of subcontractors) cooperate reasonably with our employees and subcontractors; and
 - (viii) On our notice that the premises of where you require our Services is defective or unsafe (at no fault of ours), you accept and agree to bear responsibility for any costs associated with the rectification of such an area.
- (b) **Customer Acknowledgements:** You acknowledge and accept that during the course of us providing you the Services:
- (i) Failure to comply with any item of the above clause 3(a) determined at our reasonable discretion, entitles us to refuse to carry out any Services until our said requirements are met. You acknowledge that a further call out fees may apply to such scenarios;
 - (ii) Our employees shall not be required to carry out any duties or an illegal nature;
 - (iii) Where we elect at our discretion to sub-contract our duties under this Agreement, you will not have authority to instruct our said sub-contractors without our authority;
 - (iv) We are not an insurer of your premises;
 - (v) Where we provide you specifications for any Goods, these are for guidance and informational purposes only and do not indicate a promise of the final Goods to be delivered to you under this Agreement unless otherwise stated by us; and
 - (vi) Goods or Services relating to electrical repairs are for temporary repair and we do not represent that such faults will occur again, or any further damage arising from such work.
- (c) **Compliance Warranty:** You warrant and undertake that you have and will continue to comply with all the laws applicable to you in New Zealand (and any other country you decide to use or apply the product in) and hereby indemnify us against any loss, payment or liability incurred on account of such lack of compliance.

4. PROVISION OF SERVICE & RISK

- (a) **Timing:** Any times quoted for providing the Services are estimates only and we will not be liable for any reasonable delay in the commencement of our Services, whether or not such timing is within our control. Any reasonable delays in providing our Services does not entitle you to cancel this Agreement (in whole or in part). If we deem a delay to be unreasonable and due to your action or inaction, we shall be entitled to charge our reasonable costs for resupply of Services at a later date (including without limitation to any storage of Goods).
- (b) **Ownership & Bailee:** Property and ownership in Goods, whether in their original form or incorporated in, commingled with or attached to another product, will not pass to you but will remain with us until we receive payment in full of our Fees and all other amounts that you owe us under this Agreement. Unless such products are a fixture, you shall hold such Goods and proceeds of all kind (including insurance proceeds) in trust in a fiduciary capacity for us as bailee, and store and sell them in a manner to enable them to be identified and cross referenced to particular invoices.
- (c) **Supplied Goods:** Where you supply us goods to carry out the Services, you acknowledge and agree that you hold sole responsibility for such goods and we shall under no circumstances be liable for any defect in your goods, loss or damage arising from goods supplied by you.

5. PAYMENTS & PROPERTY

- (a) **Fees:** You must pay our Fees per the attached Quote under the terms of this Agreement.
- (b) **Fee Revisions:** All Quotes are subject to change unless we expressly agree in writing that a Quote will not change.
- (c) **Variations:** We reserve the right to vary the Quote should you request different Goods or Services or if there is a change of circumstances (i.e., relating to the premises) discoverable only upon commencement of the Services or changes in the cost of labour or materials beyond our reasonable control.
- (d) **Deposit:** We may require you to pay a deposit before we commence the Services.
- (e) **Line of Credit:** Where we have agreed in writing to extend credit to you, and unless otherwise advised to you in writing and signed by us, you must pay in full, without deduction or set-off, within ten (10) working days of the date of our invoice unless otherwise agreed in writing. Your payment is made only when funds have fully cleared through the banking system into our bank account.
- (f) **Late Payment:** If full payment for our Fees is not made by the due date for payment, you will pay, at our discretion (and without prejudice to any other rights of remedies we may have), on demand, default interest on the amount outstanding at the rate of 2.5% per calendar month (calculated on a daily basis until the account is paid in full where we have sole discretion if such interest shall compound monthly at such a rate) and all expenses and costs (including legal costs on a solicitor and client basis) incurred by or on behalf of us recovering or attempting to recover the overdue amount and we may suspend delivery of further Goods or performance of further Services until your account is paid in full.
- (g) **Insurance:** You must insure the finished Goods against all usual risks for full replacement value where any insurance claims in respect of damage to, or destruction of, the Goods are hereby assigned by you to us.
- (h) **Failure to Accept Work without Reasonable Cause:** All payments payable by you to us under the terms of this Agreement shall immediately become due if:
- (i) You refuse to accept our Goods and Services without reasonable cause;
 - (ii) We reasonably believe that the information which you have given us in your application for credit is not correct or no longer correct and you have failed to give us correct information within five (5) working days of our request;
 - (iii) Without our consent, you sell or otherwise dispose of any Goods which has not been paid for;
 - (iv) You become insolvent, commit any act of bankruptcy, or if a receiver, administrator, liquidator or statutory manager is appointment over any of your assets or undertaking;
 - (v) You fail to comply with any of the provisions of this Agreement; or
 - (vi) You make or attempt to make an arrangement with creditors without our written consent.
- (i) **Ability to Enter Premises:** Where you have not paid our Fees in full by the due date for payment, and we reasonably believe that any Goods have been or will be destroyed, damaged, disposed-of, sold, endangered, disassembled, removed, or concealed or that you are or will be in breach of any part of this Agreement, you hereby irrevocably agree that we or our agent may enter your premises without further notice to you or any other person, to remove any Goods which are our property using such force as is necessary and without prejudice to any of our other rights, without incurring any liability to any person.
- Indemnity:** You indemnify us against any losses, costs (including solicitor costs), expenses, demand or liability, whether direct, indirect, consequential, or otherwise, and whether arising in contract, tort (including in each case negligence), or equity or otherwise, in respect of our exercise of rights under this clause 5.
- Construction Contracts Act 2002:** Where our Quote specifies that there is more than one payment to be made under this Agreement and notwithstanding any of our other remedies at law or this Agreement, we shall be entitled to make a claim by applying for progress payments for Work completed under the **Construction Contracts Act 2002 (CCA)**. Where such CCA claim is made, we shall be entitled to suspend work within five (5) working days of our notice of a payment claim and payment is not paid in full by the due date on the payment claim notice.

PERSONAL PROPERTY SECURITIES ACT 1999

PPSR: You grant to us a personal property security in the goods and all goods previously supplied by us to you (if any) and all after acquired goods supplied by us. You acknowledge that this security interest a monetary obligation of yours to us for the Services we provide you under this Agreement from time to time.

Financing Statement:

- (i) **Registration:** Sign any further document and provide any further information which you warrant to be complete, accurate and up-to-date in all respects, which we may reasonably require to register a financing statement or financing change statement on the personal property securities register. Furthermore, you will not register a financing change statement or a change demand without our prior written consent.
- (ii) **Notify Us of Change:** Give us no less than five (5) working days written notice of any change in your name or other change in your details (including but not limited to changes in address, email, trading name or business practice).
- (iii) **Indemnity:** Indemnify us for any costs incurred by us in relation to this clause 6.

- (c) **Waiver of Statement:** Waive any rights to receive a copy of the verification statement under the Personal Property Securities Act 1999 (PPSA) and agrees to the extent permitted by law that under

this Agreement you will have no rights under (or by reference to) Section 114(1) or 133 of the PPSA; the provisions of Part 9 of the PPSA that places obligations on us will apply only to the extent that they are mandatory; or where we have the right under this Agreement additional to those in Part 9 of the PPSA, those rights will continue to apply.

- (d) **Power of Attorney:** In the event you refuse to comply with your obligations under this clause 6, then by entering into this Agreement you grant to us power of attorney to sign all documents giving us a personal property security in the goods.
- (e) **No Liability:** We shall not be liable to any costs, damages, expenses or losses incurred by you or any third party as a result of our action under the above clause 6(d), nor liable in contract or in tort or in otherwise in any way whatsoever unless by statute such liability cannot be excluded.

7. WARRANTIES

- (a) **Our Warranty:** We represent and warrant on a continuing basis that we have the requisite skill, judgement, ability, capacity and experience necessary to perform the Services under this Agreement, including carrying out works (where applicable) in accordance with the **Electrical (Safety) Regulations 2010** and the **Australian/New Zealand Wiring Rules**.
- (b) **12 Month Warranty:** Subject to the conditions of warranty under this clause 7, we warrant that if any defect in any workmanship of ours becomes apparent and is reported to us within twelve (12) months from the date of finished Goods or Services (time being of the essence) then we will either at our sole discretion replace or remedy our workmanship.
- (c) **Manufacturer Warranties:** Subject to manufacturers warranties, we will pass on the benefit of those warranties to you, without being directly liable to you under any warranty. You are responsible for the cost of us returning Goods to the manufacturer or to us directly under any warranty, and you may be responsible for additional costs (including but not limited to delivery). Where you require us to do anything related to a warranty claim, you must pay a service and callout charges. We may refuse to assist with warranties should you have any amounts owing to us under this Agreement.
- (d) **Voided Warranties:** Any warranty may be avoided by unreasonable use, damage or mis-use of equipment, problems caused by mis-use of software or faulty software, damage after the Goods leave our possession, negligent installation or operation, inadequate packaging, cleaning or maintenance, unauthorised repairs, modifications of the use of parts, hardware, software or consumables not supplied by us.
- (e) **No Representations:** You shall not provide any warranty or make any representation to any person concerning the quality, performance or other characteristics of the product or the basis of its supply, unless such warranty or representation has been expressly authorised by us in writing. You indemnify us against any losses, costs (including solicitor costs), expenses, demand or liability, whether direct, indirect, consequential, or otherwise, and whether arising in contract, tort (including in each case negligence), or equity or otherwise, incurred as a result of any warranty or representation made to a third party by the you in contravention of this clause.
- (f) **Business Use:** If the Goods and Services that you acquire from us are not of a kind ordinarily acquired for personal household or domestic use or consumption, or where you acquire, or hold yourself out as acquiring, the goods or services for the purpose of a business, the provisions of the **Consumer Guarantees Act 1993** and the conditions, warranties and guarantees set out in the **Contract and Commercial Law Act 2017**, or implied by common-law will not apply and are excluded from this Agreement.

8. INTELLECTUAL PROPERTY

- (a) **Definition of IP:** For the purposes of this Agreement, intellectual property means all rights, including copyright, patents, designs, trademarks, trade names, goodwill rights, trade secrets, confidential information and any other intellectual property or proprietary right in or relating to the Goods and Services (**Intellectual Property or IP**).
- (b) **Customer Warranty:** You warrant that any Intellectual Property given to us will not cause us to infringe any third party Intellectual Property right in the execution of our contemplated Services and you agree to indemnify us against any action taken by a third party against us in respect of any such infringement.
- (c) **Our Ownership of IP:** The parties agree that we own the Intellectual Property in the electronic and electrical systems (without limitation to circuit design, application of electronics to complex systems) supporting our Services (unless we state the IP belongs elsewhere).
- (d) **Licence:** We grant to you a perpetual, non-transferrable licence to use the Goods per the terms of this Agreement.
- (e) **No product modifications / reverse engineering:** You agree to not make any modifications to the Goods. Any existing IP of ours, or new IP created or developed by the parties, including employees, agents, officers or subcontracting organisation, as a result of, for the purpose of, or in connection with this Agreement, including its Good and Services, will vest in, and is assigned to us on creation. You must execute all documents and do all things required to give effect to this clause.
- (f) **Passing Off:** You agree to not acquire the Goods, or any product similar to the Goods, from any third party and pass that product off as being the product or being derived from us, nor sell or market any product that competes with the Goods, unless our written consent has first been obtained.

9. DISPUTE RESOLUTION

- (a) **Good Faith Negotiation:** The parties agree to use their best efforts to resolve any dispute that may arise under or in respect of this Agreement through good faith negotiations.
- (b) **Mediation:** If the parties fail to resolve the dispute within ten (10) working days of an issue having triggered clause 9(a), the dispute will be submitted to a mediator and conducted as follows:
 - (i) **Mediator:** The mediator and the mediator's fee will be that agreed by the parties. If they cannot so agree within ten (10) working days of the referral to mediation, then the President for the time being of the Arbitrators and Mediators Institute of New Zealand (**AMINZ**) or his or her nominee will appoint a mediator and determine the mediator's fee.
 - (ii) **Manner of Mediation:** Unless the parties agree otherwise, the mediation will be conducted in terms of the Standard Mediation Agreement produced by LEADR New Zealand Incorporated at the time the dispute is referred to mediation. If no Standard Mediation Agreement is produced by that organisation at the time of the dispute, the mediation will be conducted in a manner determined by the mediator except that the mediation will be conducted on a without prejudice basis; either party may terminate their involvement in the mediation at any time but only after consultation with the mediator; any information disclosed during the mediation process will not be disclosed to any person not present at the mediation unless required by law; and the costs of the mediation will be shared equally by the parties.

- (c) **Expert Determination:** Subject to performing clause 9(b), a party may refer the dispute to an expert for determination. This will be an expert agreed by the parties, but if they cannot agree then an expert nominated by the New Zealand Dispute Resolution Centre (NZDRC). Subject to the expert's procedural rules (i.e. Expert Determination in accordance with the Expert Determination Rules of the New Zealand Dispute Resolution Centre), the expert may determine the manner in which the dispute will be heard, a timetable to resolve it, and the expert may award costs to a party. The decision of an expert will be final and binding. The expert is not an arbitrator and the Arbitration Act 1996 will not apply.

- (d) **Court Proceedings:** Any party may commence court proceedings only when expert determination ceases under the above clause 9(c).
- (e) **No Unreasonable Delays:** Neither party will unreasonably delay the dispute resolution procedure in this clause 9.
- (f) **Urgent Relief:** This clause 9 does not apply to an application by either party for urgent interlocutory relief.

10. LIMITATION OF LIABILITY

- (a) **Limited Liability:** We shall not have any liability or responsibility to you for any loss which does not flow directly or naturally (i.e. in the ordinary course of things) from a breach of this Agreement including, in each case consequential loss of business or profits or other loss. We shall only be liable for losses (excluding loss of business or profits) which flow directly or naturally from a breach of this Agreement up to a maximum of the amount paid by you to us. Any claim under this clause 10(a) must be made within 1 year of the date that you receive possession of the finished Goods.

11. SUSPENSION

- (a) **Suspension:** We may suspend our obligation to supply you the Goods if a dispute is raised in accordance with clause 9, until that dispute has been resolved.

12. CANCELLATION

- (a) **Cancellation:** Your order for our Services may be cancelled only if we agree in writing to the cancellation and the order has not been processed by us. We may charge you a cancellation fee.
- (b) **Term:** This Agreement shall commence from the date of this Agreement and shall remain effective until the final Works are completed and delivered, or otherwise terminated per this clause 9.
- (c) **Termination:** This Agreement may be terminated for convenience at any time by either party effective immediately upon notice, or the mutual agreement of the parties.
- (d) **Compensation:** In the event of termination, we shall be compensated for our Services performed, including any Goods or other materials ordered and paid for by us to support the Services contemplated by this Agreement, through to the date of termination (where you agree that compensation may be determined by us through deduction of any deposit payment paid by you).

13. GENERAL

- (a) **Notices:** Any notice, document, request, demand or other communication (**Notice**) to be given for the purposes of this Agreement must be in writing and may be served personally, sent by secure or registered mail, or sent by email to the appropriate address of that party specified in the attached Quote or such other address as that party may notify to the other party, in writing, from time to time.
- (b) **Confidentiality:** The parties will keep confidential all confidential information belonging to each other and will not use this information for any purpose other than that for which it was disclosed to them. They will return this information (without keeping copies) upon demand and will not disclose it to any third party without written authorisation from the relevant party.
- (c) **Privacy:** Under the Privacy Act 2020, we collect personal information from you, including information such as the name(s) your authorised representatives and billing information. We collect your personal information in order to carry out our Services. You have the right to ask for a copy of any personal information we hold about you, and to ask for it to be corrected if you think it is wrong. If you would like to ask for a copy of your information, or to have it corrected, please contact us at info@easwaikato.co.nz.
- (d) **Severability:** If any provision of this Agreement shall be held to be illegal, invalid or unenforceable in accordance with the laws of New Zealand from time to time such provision shall be read down to the extent necessary and reasonable in all circumstances to give it a valid operation. If any provision cannot be read down, that provision will be severed and void where such severing shall not affect the remaining terms of the Agreement.
- (e) **Entire Agreement:** The parties acknowledge that this Agreement sets forth the entire Agreement and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.
- (f) **Variation:** Any modification to or variation of this Agreement must be in writing and agreed to by all parties in writing.
- (g) **No Assignment:** You may not directly or indirectly assign to any person your obligations and benefits of this Agreement without our written consent (where such assignment shall include any change in the control of your company or entity). Any contrary attempt by you to assign your rights under this Agreement will be deemed void, and you shall be liable for any losses or costs incurred by us (including full costs between solicitor and client) caused by the attempted assignment.
- (h) **No Partnership:** Nothing in this Agreement, referred to or implied, shall constitute a partnership between the parties.
- (i) **No Waiver:** No waiver of any right or remedy under this Agreement is effective unless it is in writing by the party entitled to such benefit. Such waiver is only effective in the specific instance and for the specific purpose for which it is granted. No delay or omission to exercise any right or remedy under this Agreement shall operate as a waiver or prevent further exercise of that or any other right or remedy.
- (j) **Force Majeure:** We may, by written notice to the you, suspend our obligations to perform this Agreement if we are unable to perform as a direct result of a pandemic, war, riot, strike, natural or man-made disaster or other circumstance of a similar nature (**Force Majeure Event**). Any suspension of performance must be limited to the period during which the Force Majeure Event continues.
- (k) **Trustee Limited Liability:** Where a party is acting as an independent trustee of a Trust, the trustee's liability under this Agreement is not personal, and is limited to the assets of the Trust from time to time, unless such liability is a result of the Trustee's wilful breach of the Trust and/or its dishonesty or fraudulent behaviour.

- (l) **Independent Advice:** Each party has made adequate enquiries and investigations, including seeking independent advice from their respective lawyers, accountants and other advisors, regarding all matters relevant to its decision to entering into this Agreement.
- (m) **Costs:** The parties are responsible for their own respective legal and other costs incurred in relation to the preparation, negotiation and execution of this Agreement and any ancillary documentation or action.
- (n) **Governing Law:** This Agreement shall be governed by, construed and interpreted in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of any dispute or proceeding arising out of this Agreement.
- (o) **Authorised Signatory:** Where you are a company, the person(s) entering into this Agreement on behalf of the company personally warrants that that person or those persons have the power to enter into, and have duly entered into this Agreement in accordance with the terms of the Companies Act 1933 and/or its constitution.

CERTIFICATION BY CUSTOMER

By accepting any of our Goods and Services, you acknowledge and agree on a continuing basis to the following:

1. Your information on the Quote is true and correct;
2. You are authorised to enter this Agreement and be bound by its terms, and we can rely on this information;
3. You have read and understood the terms of the Agreement, and agree to abide by these;
4. You authorise the collection, use and disclosure of information pursuant to the Privacy Act 2020; and
5. If applicable, you understand that acceptance of any credit account application is subject to acceptance and notification by us.