
Moses Electrical Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "Moses" means Moses Electrical Limited by its duly appointed licensee Joseph Moses (licence number E241260) and its successors and assigns or any person acting on behalf of and with the authority of Moses Electrical Limited.
- 1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Moses to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by Moses to the Client at the Client's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).
- 1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Works via the website.**
- 1.7 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Works as agreed between Moses and the Client in accordance with clause 6 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges and accepts that:
- (a) the supply of Works on credit shall not take effect until the Client has completed a credit application with Moses and it has been approved with a credit limit established for the account; and
 - (b) in the event that the supply of Works request exceeds the Client's credit limit and/or the account exceeds the payment terms, Moses reserves the right to refuse delivery; and
 - (c) the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, Moses reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 6.2. In all such cases Moses will notify the Client in advance of any such substitution, and also reserves the right to place the Client's order and/or Works on hold, as per clause 7.2 until such time as Moses and the Client agree to such change.
- 2.5 In the event that Moses is required to provide the Works urgently, that may require Moses' staff to work outside normal business hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then Moses reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between Moses and the Client.
- 2.6 If Moses has been requested by the Client to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2, the Client agrees that should the Client introduce any third party to Moses as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Works, and/or to request any variation thereto, on the Client's behalf, and such authority to continue until all requested Works have been completed or the Client otherwise notifies Moses in writing that said person is no longer the Client's duly authorised representative.
- 3.2 In the event that the Client's duly authorised representative, as per clause 3.1, is to have only limited authority to act on the Client's behalf, then the Client must specifically and clearly advise Moses in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to Moses for all additional costs incurred by Moses (including Moses' profit margin) in providing any Works, or variation/s thereto, requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that Moses shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Moses in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Moses in respect of the Works.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of Moses; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

5. Change in Control

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- 5.1 The Client shall give Moses not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by Moses as a result of the Client's failure to comply with this clause.
- 6. Price and Payment**
- 6.1 At Moses' sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Moses to the Client in respect of Works performed or Materials supplied; or
 - (b)
 - (c) Moses' quoted Price (subject to clause 6.2) which shall be binding upon Moses provided that the Client shall accept Moses' quotation in writing within thirty (30) days.
- 6.2 Moses reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather condition, poor existing wiring, obscured building defects (including wood rot and damage from rodents, insects and exposure to harsh chemicals etc.), health hazards and safety considerations (such as the discovery of asbestos), availability of machinery, replacement of wall brackets, prerequisite work by any third party not being completed, hard rock barriers below the surface or iron reinforcing rods in concrete, hidden pipes and wiring/cablings etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to Moses in the cost of labour or materials (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to Moses in the cost of taxes, levies, freight and insurance charges and any applicable administration costs, etc.) which are beyond Moses' control.
- 6.3 Variations will be charged for on the basis of Moses' quotation, and will be detailed in writing, and shown as variations on Moses' invoice. The Client shall be required to respond to any variation submitted by Moses within ten (10) working days. Failure to do so will entitle Moses to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At Moses' sole discretion a non-refundable deposit may be required.
- 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by Moses, which may be:
- (a) on completion of the Works; or
 - (b) by way of progress payments in accordance with Moses' specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the worksite but not yet installed;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Moses.
- 6.6 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, Moses reserves the right to treat all retentions as placing the Client's account into default.
- 6.7 Payment may be made by cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Moses.
- 6.8 Moses may in its discretion allocate any payment received from the Client towards any invoice that Moses determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Moses may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Moses, payment will be deemed to be allocated in such manner as preserves the maximum value of Moses' Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 6.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Moses nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by Moses is a claim made under the Construction Contracts Act 2002.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Moses an amount equal to any GST Moses must pay for any supply by Moses under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 7. Provision of the Works**
- 7.1 Subject to clause 7.2 it is Moses' responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that Moses claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Moses' control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify Moses that the site is ready.
- 7.3 Moses may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.4 Any time specified by Moses for delivery of the Works is an estimate only and Moses will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that Moses is unable to supply the Works as agreed solely due to any action or inaction of the Client, then Moses shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
- 8. Risk**
- 8.1 If Moses retains ownership of the Materials under clause 13 then:

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- (a) where Moses is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by Moses or Moses' nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
- (b) where Moses is to both supply and install Materials then Moses shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests Moses to leave Materials outside Moses' premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 8.3 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. If, for any reason (including but not limited to, the structure not being watertight, the discovery of asbestos, defective or unsafe wiring, or dangerous access etc.) Moses reasonably forms the opinion that the Client's property is not safe for the installation of Materials to proceed then Moses shall be entitled to delay installation of the Materials (in accordance with clause 7.2) until Moses is satisfied that it is safe for the installation to proceed. Moses may in agreement with the Client bring the property up to a standard suitable for installation to proceed but all such Works undertaken and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.
- 8.4 Moses shall upon installation ensure that all Materials are to be installed in a manner that is fully compliant with industry standards. If, for any reason, the Client specifically requires the Materials to be installed in any way which goes against Moses' recommendations and/or falls below industry standards; a request detailing that requirement must be made in writing to Moses. Accordingly, Moses offers no warranty in regards to the aforementioned.
- 8.5 Moses 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, Moses accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.6 Where the Client has supplied materials for Moses to complete the Works, or existing materials are in place, the Client acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. Moses shall not be responsible for any defects in the Works, any loss or damage to the Materials (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 8.7 The Client acknowledges that Moses is only responsible for parts that are replaced by Moses, and in the event that other parts/Materials, subsequently fail, the Client agrees to indemnify Moses against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.
- 8.8 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify Moses immediately upon any proposed changes. The Client agrees to indemnify Moses against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 6.2.
- 8.9 The Client acknowledges and accepts that:
- (a) the Materials may fade or change colour over time, expand, contract or distort as a result of exposure, heat, and cold temperatures, mark or stain if exposed to certain substances and be damaged or disfigured by impact or scratching; and
- (b) where Moses has performed temporary repairs that:
- (i) Moses offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
- (ii) Moses will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair.
- 8.10 Moses accepts no responsibility for any damage or performance related problems with any Materials where they have not been used and/or maintained in accordance with Moses' and/or the manufacturers' recommendations.
- Air Conditioning Risk**
- 8.11 Whilst the final location of the condensing unit is at the discretion of the Client, a charge will apply as a variation as per clause 6.2 if the Client requests the unit to not be located adjacent to the external wall, due to the underground piping required.
- 8.12 The final location of the wall, window or floor unit must be determined on site by the Client.
- 8.13 Moses shall upon installation ensure that all installed Materials meet current industry standards applicable to noise levels, however Moses cannot guarantee that noise levels will remain constant post installation as the Materials may be impacted by many factors such as the weather, lack of maintenance, tampering etc.
- 8.14 In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Client shall be responsible for any and all costs involved.
- 8.15 The Client acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.
- 8.16 The Client acknowledges that Moses shall not be responsible or liable for any defect in other appliances or power points as a coincidence of Moses installing the Materials.
- Solar Risk Clauses**
- 8.17 The Client acknowledges and accepts that:
- (a) while Moses may have provided information to it about the performance of solar electricity systems, the Client acknowledges that Moses shall not be deemed to have made any warranty or representation, express or implied, in relation to the Materials or Works, including whether or not they are suitable for a particular purpose (whether such purpose was made known to Moses or not) unless the same is confirmed in writing; and
- (b) the performance of the Materials may be affected by the actions of third parties and environmental conditions including, without limitation, the number of hours of sunlight, cloud cover, weather patterns, the location of the Materials and the location of surrounding structures and flora; and
- (c) some buildings may not have the optimum orientation for the installation of the Materials or components and therefore understands and accepts that the Materials performance may be compromised in such situations. Notwithstanding the former Moses will use its best endeavours to install and position the Materials to maximise orientation and exposure to direct sunlight.

9. Client's Responsibilities

- 9.1 It is the intention of Moses, and agreed by the Client, that it is the responsibility of the Client to:
- (a) provide and have erected scaffolding to enable the Works to be undertaken (where in Moses' opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed; and
 - (b) provide adequate dust sheets and/or remove any furniture or personal items from the vicinity of the Works. The Client agrees that Moses shall not be liable for any damage caused to those items through the Client's failure to comply with this clause; and
 - (c) be wholly responsible for the removal of rubbish from or clean-up of the site, unless otherwise agreed between Moses and the Client at the time of quotation; and
 - (d) provide Moses with facilities, as specified by Moses, (including, but not limited to, a suitable free power source) for the duration of the Works.
- 9.2 If Moses notifies the Client that it intends to store onsite Materials, plant, equipment or tools to be used in performance of the Works, then the Client shall designate an area for storage and shall take all reasonable precautions to protect such items against destruction, damage, or theft. In the event that such items are destroyed, damaged or stolen then the cost of replacement shall be added to the contract Price and will be shown as a variation as per clause 6.2.

10. Access

- 10.1 The Client shall ensure that Moses has clear and free access to the site at all times to enable them to undertake the Works. Moses 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 Moses.

11. Underground Locations

- 11.1 Prior to Moses commencing any work the Client must advise Moses 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.
- 11.2 Whilst Moses will take all care to avoid damage to any underground services the Client agrees to indemnify Moses 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 as per clause 11.1.

12. Compliance with Laws

- 12.1 The Client and Moses shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any WorkSafe guidelines regarding health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 12.2 Notwithstanding clause 12.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") Moses agrees at all times comply with sections 29 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the worksite or if in the event that they may be acting as a subcontractor for the Client's where the Client has engaged a thirty party head contractor.
- 12.3 The Client shall obtain (at the expense of the Client) all licenses, approvals, applications and permits that may be required for the Works.

13. Title

- 13.1 Moses and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid Moses all amounts owing to Moses; and
 - (b) the Client has met all of its other obligations to Moses.
- 13.2 Receipt by Moses of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 13.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Client in accordance with clause 13.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Moses on request;
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for Moses and must pay to Moses the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
 - (c) the production of these terms and conditions by Moses shall be sufficient evidence of Moses' rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Moses to make further enquiries;
 - (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for Moses and must pay or deliver the proceeds to Moses on demand;
 - (e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Moses and must sell, dispose of or return the resulting product to Moses as it so directs;
 - (f) unless the Materials have become fixtures the Client irrevocably authorises Moses to enter any premises where Moses believes the Materials are kept and recover possession of the Materials;
 - (g) Moses may recover possession of any Materials in transit whether or not delivery has occurred;
 - (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of Moses;
 - (i) Moses may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

14. Personal Property Securities Act 1999 ("PPSA")

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- 14.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Materials and/or collateral (account) – being a monetary obligation of the Client to Moses for Works – that have previously been supplied and that will be supplied in the future by Moses to the Client.
- 14.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Moses may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Moses for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of Moses; and
 - (d) immediately advise Moses of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
- 14.3 Moses and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 14.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 14.5 Unless otherwise agreed to in writing by Moses, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.6 The Client shall unconditionally ratify any actions taken by Moses under clauses 14.1 to 14.5.
- 14.7 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

- 15.1 In consideration of Moses agreeing to supply the Works, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, 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).
- 15.2 The Client indemnifies Moses from and against all Moses' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Moses' rights under this clause.
- 15.3 The Client irrevocably appoints Moses and each director of Moses as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.

16. Defects In Materials

- 16.1 The Client shall inspect the Materials on delivery and shall within ten (10) days of delivery (time being of the essence) notify Moses of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Moses an opportunity to inspect the Materials within a reasonable time following delivery if the Client believes the Materials are defective in any way. If the Client shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which Moses has agreed in writing that the Client is entitled to reject, Moses' liability is limited to either (at Moses' discretion) replacing the Materials or repairing the Materials.
- 16.2 Materials will not be accepted for return other than in accordance with 16.1 above.

17. Returns

- 17.1 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 16.1; and
 - (b) Moses has agreed in writing to accept the return of the Materials; and
 - (c) the Materials are returned at the Client's cost within seven (7) days of the delivery date; and
 - (d) Moses will not be liable for Materials which have not been stored or used in a proper manner; and
 - (e) the Materials are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 17.2 Moses will not accept the return of Materials for credit.

18. Warranties

- 18.1 For Materials not manufactured by Moses, the warranty shall be the current warranty provided by the manufacturer of the Materials. Moses shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.

19. Consumer Guarantees Act 1993

- 19.1 If the Client is acquiring Materials 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 Materials by Moses to the Client.

20. Intellectual Property

- 20.1 Where Moses has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in Moses, and shall only be used by the Client at Moses' discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of Moses.
- 20.2 The Client warrants that all designs, specifications or instructions given to Moses will not cause Moses to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Moses against any action taken by a third party against Moses in respect of any such infringement.

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20.3 The Client agrees that Moses may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which Moses has created for the Client.

21. Default and Consequences of Default

21.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Moses' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

21.2 If the Client owes Moses any money the Client shall indemnify Moses from and against all costs and disbursements incurred by Moses in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Moses' collection agency costs, and bank dishonour fees).

21.3 Further to any other rights or remedies Moses may have under this Contract, if a Client has made payment to Moses, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Moses under this clause 21, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.

21.4 Without prejudice to Moses' other remedies at law Moses shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Moses shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to Moses becomes overdue, or in Moses' opinion the Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by Moses;
- (c) the Client becomes insolvent or bankrupt, 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
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

22. Cancellation

22.1 Without prejudice to any other rights or remedies Moses may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice/s) then Moses may suspend the Works immediately. Moses will not be liable to the Client for any loss or damage the Client suffers because Moses has exercised its rights under this clause.

22.2 Moses may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice Moses shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Moses for Works already performed. Moses shall not be liable for any loss or damage whatsoever arising from such cancellation.

22.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by Moses as a direct result of the cancellation (including, but not limited to, any loss of profits).

22.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

23. Privacy Policy

23.1 All emails, documents, images or other recorded information held or used by Moses is Personal Information as defined and referred to in clause 23.3 and therefore considered confidential. Moses acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Moses acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by Moses that may result in serious harm to the Client, Moses will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

23.2 Notwithstanding clause 23.1, privacy limitations will extend to Moses in respect of Cookies where transactions for purchases/orders transpire directly from Moses' website. Moses agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:

- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to Moses when Moses sends an email to the Client, so Moses may collect and review that information ("collectively Personal Information")

In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Moses' website.

23.3 The Client authorises Moses or Moses' agent to:

- (a) access, collect, retain and use any information about the Client;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
- (b) disclose information about the Client, whether collected by Moses from the Client directly or obtained by Moses from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.

23.4 Where the Client is an individual the authorities under clause 23.3 are authorities or consents for the purposes of the Privacy Act 1993.

23.5 The Client shall have the right to request Moses for a copy of the Personal Information about the Client retained by Moses and the right to request Moses to correct any incorrect Personal Information about the Client held by Moses.

24. Suspension of Works

- 24.1 Where the Contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) Moses 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 in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - (ii) a scheduled 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 Moses by a particular date; and
 - (iv) Moses has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
 - (b) if Moses 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 be 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 rights 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 Moses exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to Moses under the Contract and Commercial Law Act 2017; 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 Moses suspending work under this provision;
 - (d) due to any act or omission by the Client, the Client effectively precludes Moses from continuing the Works or performing or complying with Moses' obligations under this Contract, then without prejudice to Moses' other rights and remedies, Moses may suspend the Works immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Works is based. All costs and expenses incurred by Moses as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 24.2 If pursuant to any right conferred by this Contract, Moses suspends the Works and the default that led to that suspension continues unremedied subject to clause 22.1 for at least ten (10) working days, Moses shall be entitled to terminate the Contract, in accordance with clause 22.

25. Service of Notices

- 25.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) 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;
 - (e) if sent by email to the other party's last known email address.
- 25.2 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.

26. Trusts

- 26.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Moses may have notice of the Trust, the Client covenants with Moses as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of Moses (Moses will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

27. General

- 27.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 27.2 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.
- 27.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Wellington Courts of New Zealand.

Moses Electrical Limited – Terms & Conditions of Trade

- 27.4 Moses shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Moses of these terms and conditions (alternatively Moses' liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 27.5 Moses may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 27.6 The Client cannot licence or assign without the written approval of Moses.
- 27.7 Moses may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Moses' sub-contractors without the authority of Moses.
- 27.8 The Client agrees that Moses may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Moses to provide Works to the Client.
- 27.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 27.10 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.