



**WILPOWER ELECTRICAL**  
PO Box 20525 Bishopdale, Christchurch 8543  
Email [admin@wilpowerelectrical.com](mailto:admin@wilpowerelectrical.com)  
[www.wilpowerelectrical.com](http://www.wilpowerelectrical.com)  
Phone 03 428-6656

## WILPOWER ELECTRICAL (1998) LIMITED – TERMS & CONDITIONS OF TRADE

These terms and conditions of trade shall apply to all goods and services provided by Wilpower Electrical (1998) Ltd. We may amend these terms at any time and amended terms shall apply to all orders placed by the Customer from the date of amendment.

### **1. DEFINITIONS**

- 1.1. "Company" means Wilpower Electrical (1998) Limited.
- 1.2. "Customer" means the person, authorised agent or legal entity stated on the invoice or order form, buying goods and/or services from the Company.
- 1.3. "Goods" has the same meaning as section 2 of the Sale of Goods Act 1908 and includes all goods provided by the Company to the Customer.
- 1.4. "Services" shall mean all services supplied by the Company to the Customer and includes any recommendations or advice.
- 1.5. "Guarantor" means any person, persons, or entity who has agreed to be liable for the debts of the Customer.
- 1.6. "Terms" means these Terms and Conditions of Trade as amended, updated, or replaced from time to time.

### **2. ACCEPTANCE**

- 2.1. Any instructions received by the Company from the Customer for the supply of Goods and/or Services shall constitute acceptance of the terms and conditions contained herein.
- 2.2. Once accepted these Terms are irrevocable and can only be rescinded with the written consent of the Company.
- 2.3. The Customer acknowledges that it has received a copy of these terms and conditions.

### **3. PAYMENT TERMS**

- 3.1. Payment for Goods or Services shall be made in full on or before the 20th day of the month following date of invoice, or other date agreed by the parties ("the due date").
- 3.2. At the Company's sole discretion before Goods or Services are supplied, the Company may require the Customer to pay a deposit or progress deposits in accordance with a payment schedule.
- 3.3. If an invoice is unpaid after the due date the Company reserves the right to suspend Services until the invoice is paid in full.
- 3.4. Unless otherwise agreed, accounts that remain unpaid after the due date shall incur interest at a rate of 10% per calendar month commencing from the due date and charged to the Customer on a monthly basis until payment is made in full.
- 3.5. Payment of invoices may be made by instalments provided the Company agrees in writing prior to an instalment being paid.
- 3.6. If payment of the Goods and/or Services are not received by the Company by the due date for payment, the Customer will be in breach of its obligations under these Terms and clause 4 (below) will apply.
- 3.7. The Customer shall pay all costs incurred by the Company, including costs on a solicitor-client basis and debt collectors' costs incurred in the recovery or attempted recover of outstanding moneys and the enforcement of these terms and conditions.
- 3.8. The Customer may not claim any counter claim or set-off against any payments due by it to the Company.

#### 4. DEFAULT

- 4.1. Default means:
- 4.1.1. Any money payable to the Company is not paid when due or, in the Company's opinion, the Customer will be unable to meet its payments as they fall due;
  - 4.1.2. The Customer does not comply with these Terms or any other contract or agreement with the Company;
  - 4.1.3. The Customer is in breach of any of its obligations under these Terms;
  - 4.1.4. If the ownership or effective control of the Customer is transferred, or the nature of the Customer's business is materially altered;
  - 4.1.5. The Guarantor (if any) is in breach of any agreement between the Company and the Guarantor; and/or
  - 4.1.6. The Customer or the Guarantor is subject to any event which is in the nature of dissolution, winding up, bankruptcy, liquidation, insolvency, receivership or which generally precedes such an event, or enters into an arrangement with creditors or makes an assignment for the benefit of its creditors.
- 4.2. Where the Customer is in Default under these Terms, or any other contract between the Customer and the Company, and without prejudice to any other remedies of the Company at law, all amounts owing by the Customer, whether or not due for payment, shall become immediately due and payable and the Company may:
- 4.2.1. Demand payment of all or part of any sums owing; and/or
  - 4.2.2. Enforce security interests granted to the Company by the Customer; and/or
  - 4.2.3. Withhold or terminate, the delivery of Goods or Services ordered by the Customer; and/or
  - 4.2.4. Cancel all or any part of any order which remains unfulfilled; and/or
  - 4.2.5. Accrue and charge interest pursuant to these Terms; and/or
  - 4.2.6. Cancel this or any other contract between the parties.

#### 5. TITLE

- 5.1. Until payment in full of all indebtedness to the Company in relation to the Goods and/or Services, the Company and the Customer agree that:
- 5.1.1. Title in the Goods remains with the Company;
  - 5.1.2. The Customer irrevocably gives the Company, its agent/s and servants, any necessary licence or authority to enter any premises occupied or owned by the Customer, at any reasonable time, to remove any Goods not paid for in full by the Customer;
  - 5.1.3. If the Company exercises its right to reclaim the Goods it shall be entitled to dispose of them for its own benefit and the Customer shall indemnify the Company for:
    - 5.1.3.1. Any shortfall incurred by it on realisation against the price at which such Goods were contracted to be bought by the Customer; and
    - 5.1.3.2. Any costs incurred by the Company in the exercise of its right to reclaim the Goods, whether relating to the repossession, storage or resale of the Goods (including legal costs as between solicitors and own client);
  - 5.1.4. Nothing in this clause shall be construed as permitting the Customer to return the Goods or any part of them for any reason; and
  - 5.1.5. If the Goods or any part of them are sold or disposed of by the Customer, the Customer will be deemed to have done so as agent for the Company and the proceeds of such sale will be the property of the Company. The Customer will hold all proceeds of sale or disposition on trust for the Company.

#### 6. RISK

- 6.1. The Goods will be at the Customer's risk immediately on the Goods being delivered. The Customer will insure the Goods at full replacement value until legal and beneficial title to the Goods has passed to the Customer. If the Goods are damaged or destroyed before legal and beneficial title has passed to the Customer, the Customer will hold the proceeds of such insurance in a separate fund and on trust for the Company. The production of these Terms by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
- 6.2. Until legal and beneficial title to the Goods has passed to the Customer, the Customer will store the Goods separately from other goods.



**WILPOWER ELECTRICAL**  
PO Box 20525 Bishopdale, Christchurch 8543  
Email [admin@wilpowerelectrical.com](mailto:admin@wilpowerelectrical.com)  
[www.wilpowerelectrical.com](http://www.wilpowerelectrical.com)  
Phone 03 428-6656

## **7. NON WAIVER**

- 7.1. Failure by the Company to enforce any of these Terms, or any other terms between the Company and the Customer shall not be deemed to be a waiver of any of the rights of the Company and is not liable for any indirect loss or expense to the Customer.

## **8. FORCE MAJEURE**

- 8.1. The Company shall not be liable for failure or delay to perform its obligations if the delay or failure is beyond its control (Force Majeure). If the Company invokes Force Majeure, it shall do all reasonable things within its power to end the circumstances causing the Force Majeure and to mitigate any losses that the Customer may suffer as a consequence thereof. However, the Company shall not be liable for any such losses.

## **9. DELIVERY OF GOODS/SERVICES**

- 9.1. Delivery shall be deemed to have occurred at the Company's premises upon transfer of possession of the Goods to the Customer or to any agent or carrier and the Customer shall insure the Goods for their full insurable value from the time it takes delivery.
- 9.2. If requested by the Customer and at the Company's sole discretion, the Company may deliver the Goods to the Customer at the Customer's nominated address (in the event that the Goods are delivered by the Company or the Company's nominated carrier).
- 9.3. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, and delivery of the Goods to a carrier, either named by the Customer or failing such naming to a carrier at the discretion of the Company for the purpose of transmission to the Customer, is deemed to be a delivery of the Goods to the Customer. In the event that the Customer is unable to take delivery of the Goods as arranged, then the Company shall be entitled to charge a reasonable fee for redelivery.
- 9.4. The costs of carriage and any insurance which the Customer reasonably directs the Company to incur shall be reimbursed by the Customer to the Company (without any set-off to other withholding whatever) and shall be due as indicated in the Company's invoice. The carrier shall be deemed to be the Customer's agent.
- 9.5. If the Customer indicates to the Company that it will refuse to accept delivery, then the Goods shall be deemed to have been delivered when the Company was willing to deliver them. The Company may charge storage, transportation costs and all related expenses if the Customer refuses to accept delivery.
- 9.6. The Company reserves the right to deliver the Goods in instalments.
- 9.7. The Company shall not be liable for any loss or damage whatsoever due to failure by the Company to deliver the Goods (or any of them) promptly or at all.
- 9.8. Any dates quoted by the Company for delivery are approximate only. The Company shall use its best endeavours to deliver the Goods by the quoted date, however it shall not, under any circumstances, be liable for any costs, expenses, damages or loss of profits incurred by the Customer as a result of a delay in delivery.

## **10. RETURN OF GOODS**

- 10.1. The Customer shall notify the Company in writing within seven (7) days of delivery of any alleged defect, shortage in quantity, damage, failure for the Goods to comply with the description on the quote, or where performance of the services is not what was promised by the Company.
- 10.2. The Customer shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way or short in quantity. If the Customer fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage.
- 10.3. For defective Goods, which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods, repairing the Goods, or providing the Customer with credit provided that:
- 10.3.1. The Customer has complied with the provisions of clause 10.1; and
- 10.3.2. The Company will not be liable for defective Goods which have not been stored or used in a proper manner or which have not been paid for by the Customer.



**WILPOWER ELECTRICAL**  
PO Box 20525 Bishopdale, Christchurch 8543  
Email admin@wilpowerelectrical.com  
www.wilpowerelectrical.com  
Phone 03 428-6656

- 10.4. The Company will not accept product returned for credit that is in anyway damaged, or not of merchantable quality, or product that has been specially manufactured or procured for the Customer.
- 10.5. The Company shall, should agreement to accept returns be granted, be entitled to charge the Customer a re-stocking fee of 15% of the sell price for product returned in good merchantable quality.

## 11. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

- 11.1. The Customer acknowledges and agrees that:
- 11.2. These Terms constitute a security agreement for the purposes of the PPSA as security for payment by the Customer of all amounts due to the Company including any future amounts.
- 11.3. The Customer undertakes to:
  - 11.3.1. Sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - 11.3.2. Indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
    - 11.3.2.1. Not register a financing change statement or a change demand without the Company's prior written consent of the Company; and
    - 11.3.2.2. Give the Company not less than fourteen (14) days prior written notice of any proposed change in the Customer's name and/or any other change in its details (including, but not limited to, changes in address, facsimile number, trading name or business practice);
  - 11.3.3. Not register or agree to register any financing statement granting security over the Goods without the prior express written authority of the Company.
- 11.4. The Customer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms.
- 11.5. To the maximum extent permitted by law the Customer waives its rights and, contracts out of its rights under the sections referred to in sections 116, 120(2), 121, 125, 126, 127, 129, 131, 132 and 148 of the PPSA.
- 11.6. This section 11 survives termination of the arrangements and agreement between the Company and the Customer.

## 12. SECURITY AND CHARGE

- 12.1. Despite anything to the contrary contained herein or any other rights which the Company may have whatsoever, where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under these Terms, the said mortgage to be in such form and to contain such covenants, conditions, provisions and powers as are usually inserted in mortgages of land securing funds by solicitors practising in the Canterbury region. The Customer and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge a caveat, which caveat shall be withdrawn once all amounts owed by the Customer have been paid in full.
- 12.2. Should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own Customer basis.
- 12.3. The Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Company or the Company's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.

## 13. ASSIGNMENT

- 13.1. The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.



**WILPOWER ELECTRICAL**

PO Box 20525 Bishopdale, Christchurch 8543  
Email admin@wilpowerelectrical.com  
www.wilpowerelectrical.com  
Phone 03 428-6656

13.2. The Customer shall not assign all or any of its rights or obligations under this contract without the written consent of the Company.

**14. CANCELLATION**

- 14.1. The Company may cancel any contract to which these Terms apply or cancel the provision of Goods and Services at any time before the Goods or Services are delivered by giving written notice to the Customer. The Company shall not be liable for any loss or damage howsoever arising from such cancellation.
- 14.2. In the event that the Customer cancels delivery of the Goods or Services, the Customer shall be liable for any loss incurred by the Company (including but not limited to, any loss of profits) up to the time of cancellation.
- 14.3. Cancellation of orders for Goods made to the Customer's specifications or non-stock list items will not be accepted, once production or installation has commenced.

**15. WARRANTY**

- 15.1. The Company makes no warranty or representations as to the state, quality or fitness of the Goods for any purpose and no such warranty shall be implied. For the avoidance of doubt, and to the extent permissible by law, no warranty, whether implied or statutory shall be implied by the description of any Goods on the face of this form or by the provision of any information relating to the proper operation or maintenance of the goods. For the avoidance of doubt the Customer expressly acknowledges that the Sales of Goods Act 1908 does not apply.

**16. CONSUMER GUARANTEES ACT 1993**

- 16.1. The guarantees contained in the Consumer Guarantees Act 1993 are expressly excluded and shall not apply where the Customer acquires goods or services from the Company for the purposes of a business.
- 16.2. If the Customer on sells the goods to a third party, the Customer agrees to indemnify the Company for any losses incurred due to third party claims against the Company.

**17. LIMITATION OF LIABILITY**

- 17.1. The Company shall not be liable for any loss of profits, or any consequential indirect loss, or damage of any kind arising directly or indirectly from any breach of the Company's obligation under this contract or in tort.
- 17.2. Where the Company is liable to the Customer, the maximum cost of any liability shall not in any circumstances exceed the value of the goods or services provided by the Company to the Customer.

**18. GUARANTEE**

- 18.1. In consideration of the Company agreeing to supply goods and services to the Customer, the Guarantor jointly and severally agree, guarantee and undertake to the Company due payment of all amounts due or at any time owing to the Company by the Customer.
- 18.2. The Guarantor agrees that the Guarantor is liable as a principal debtor as well as a guarantor for all accounts held by the Customer with the Company. Where there is more than one Guarantor, each Guarantor is jointly and severally liable.
- 18.3. As a separate, independent obligation the Guarantor indemnifies and shall keep indemnified the Company, on demand, against all costs (including legal costs on a solicitor-Customer basis), claims, losses, demands, expenses and liabilities of any nature whatsoever which may be made against the Company by third parties or which the Company may sustain, pay or incur as a result of or in connection with the supply of goods and/or services and the granting of credit to the Customer.
- 18.4. This guarantee shall be a continuing guarantee which will not be discharged by any settlement or payment of any account and the Guarantor agrees that the Guarantors liability shall not be discharged, waived or affected by any compromise, granting of credit, extension of former credit, granting of time or waiver, neglect to sue or any other concession given to the Customer.

**19. PRIVACY ACT**

- 19.1. For the purposes of the Privacy Act 1993, the Customer and/or Guarantor authorise the Company to:



**WILPOWER ELECTRICAL**  
PO Box 20525 Bishopdale, Christchurch 8543  
Email [admin@wilpowerelectrical.com](mailto:admin@wilpowerelectrical.com)  
[www.wilpowerelectrical.com](http://www.wilpowerelectrical.com)  
Phone 03 428-6656

- 19.1.1. Collect, hold and use any information about the Customer and/or Guarantor, for the purpose of assessing the Customer's and/or the Guarantor's creditworthiness or marketing products and services to the Customer and/or Guarantor; and
- 19.1.2. Disclose information about the Customer and/or Guarantor, whether collected by the Company from the Customer and/or Guarantor directly or obtained by the Company 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 Customer and/or Guarantor.
- 19.2. The Customer and/or Guarantor have the right to access correct their respective personal information held by the Company.

## 20. JURISDICTION

- 20.1. The contract shall in all respects be deemed to be a contract made in New Zealand and the validity, construction and performance of the contract shall be governed by New Zealand law.

## 21. MISCELLANEOUS

- 21.1. If anything in this agreement is unenforceable, illegal or void it is severed and the rest of this agreement remains in force.
- 21.2. Headings are inserted for convenience and shall not affect the construction of the contract. The singular includes the plural and vice versa. Persons include incorporated and unincorporated entities. Words implying one gender include the other. A reference to the Company includes its servants, agents, successors and assigns. The word "including" does not imply limitation.