

## TERMS AND CONDITIONS OF CONTRACT

**1 DEFINITIONS**

Unless the context otherwise requires, the following definitions shall apply to these terms and conditions:

- 1.1 "default rate" means our banks unsecured interest rate plus a margin of 3% per annum.
- 1.2 "goods and services" means those goods (other than the WEL equipment) and services provided by us and as more particularly described in the Quote.
- 1.3 "property" means the property described in the Quote as the place for the provision of the goods, services and/or WEL equipment.
- 1.4 "Quote" means the quotation letter to which these terms and conditions are attached.
- 1.5 "we" "our" or "us" means WEL Networks Limited and its assigns and includes our subsidiaries, employees, directors, contractors, agents and suppliers.
- 1.6 "WEL equipment" means all lines and other equipment (including any transformers and metering and control equipment) supplied by us, including that described as WEL equipment in the Quote and any attachments, upgrades or modifications to that equipment.
- 1.7 "validity end date" means the date until which the Quote remains valid, being 90 days from the date of the Quote.
- 1.8 "you" means the purchaser of the goods and services from us as set out on the Quote quotation.
- 1.9 "your point of supply" means point of supply as defined in section 2 of the Electricity Act 1992.

**2 GENERAL**

- 2.1 All goods and services and WEL equipment supplied by us are supplied on the basis of the Quote together with these terms and conditions. In the event of any conflict between these terms and conditions and the provisions of any other arrangement between you and us these terms and conditions shall prevail unless otherwise agreed in writing signed by both you and us.

**3 PRICE & PAYMENT**

- 3.1 To accept the Quote you must sign and return it together with confirmation of direct credit payment for the price set out in the Quote by the validity end date. We may (in our sole discretion) allow you to provide us with a works order instead of payment upfront.
- 3.2 If progress payments are required, they will be invoiced based on work completed at the progress date(s) as set out in the Quote and be paid on the due date set out in the Quote. If no due date for payment is set out in the Quote, you will pay the price on the due date for payment specified in the invoice. You will pay goods and services tax and any other taxes or levies payable in respect of any supply under this contract.
- 3.3 Where any payment is not made by the due date, then without prejudice to any other right or remedies available to us under these terms and conditions, at law, in equity or otherwise we may:
  - 3.3.1 Charge interest, by way of liquidated damages, on all overdue accounts at the default rate calculated on a daily basis from the date on which payment was due until payment is made;
  - 3.3.2 Withhold undelivered goods and services; or
  - 3.3.3 Refer the matter to a debt collection agency for collection.
- 3.4 You must, on demand, reimburse us for all costs (including legal costs on a solicitor/client basis) expenses and other sums reasonably incurred by us in exercising any right or remedy available to us consequent upon a default by you which sum shall also carry interest at the default rate if unpaid within one calendar month of demand having been made.
- 3.5 We may, at any time after any WEL equipment, goods or services have been delivered, demand immediate payment if we consider you to be a credit risk.
- 3.6 The price quoted in the Quote is correct at the time of printing but may be subject to change by us at any time before you accept the Quote. If that occurs, the Quote is immediately withdrawn by us, and you will be advised of a new price and time frame for acceptance as soon as possible. We may also amend or cancel the Quote as provided under clauses 5.1 and 14.1, and revise the connection charge under clauses 14.2 and 14.3.
- 3.7 We may, at any time after you have accepted our Quote but before the works are completed, increase the price payable by you if our own costs to complete the works have increased since providing the Quote due to circumstances outside of our control (including but not limited to any increase in the cost of materials and/or equipment). The increase in price payable will be invoiced to you as a variation.
- 3.8 Unless previously withdrawn, any Quote shall remain open for acceptance until the validity end date.

**4 DELAY & CIRCUMSTANCES BEYOND OUR CONTROL**

- 4.1 We will do everything reasonable to deliver the goods, services and WEL equipment in a timely manner. However any indication or estimate of time provided to you is to be regarded as approximate only. If the property is not ready to receive the goods and services and/or for installation of the WEL equipment, this will cause delay and we may charge you extra to recover costs we incur from any delay or take any of the steps outlined in clause 5.1.
- 4.2 We will not be responsible for loss or damage (in either case, of any kind and whether direct, indirect or consequential) arising from any delay or failure in delivering any goods, services or WEL equipment including any delay or failure caused by Government order, civil commotion, accidents, fires, epidemics, pandemics or other infectious diseases, strikes, lock-outs, labour shortages or delay in obtaining materials whether as a result of shortage or otherwise.
- 4.3 We may vary the planned works or substitute the Quoted materials and/or equipment due to unavailability and shortage of supply of materials, equipment, installation machinery and/or labour provided that the delivered works are not inferior to those Quoted (as determined by WEL).

**5 CONSTRUCTION COMMENCEMENT REQUIREMENT**

- 5.1 You will ensure that the property is ready to receive the goods and services and for the installation of the WEL equipment as and when we require. If we determine (acting reasonably) that the property is not ready for installation of the electrical infrastructure within 90 days of your acceptance of the Quote, this will cause delay and we have the right to amend or cancel the Quote or, at our discretion, we may rectify the issue(s) and oncharge the costs to you and you will be responsible for such costs.

**6 RISK AND OWNERSHIP**

- 6.1 Title (both legal and equitable) in any goods will not pass to you until the goods and services have been paid for in full. The goods will be at your risk immediately on delivery to you.

- 6.2 Until payment is made and title to the goods passes to you, you acknowledge that you hold the goods or any materials which incorporate the goods as bailee and in a fiduciary capacity.
- 6.3 Title in the WEL equipment remains vested in us at all times. You will ensure that the WEL equipment remains free of all encumbrances, security interests and claims of third parties.
- 7 PERSONAL PROPERTY SECURITIES ACT 1999**
- 7.1 You acknowledge that these terms and conditions create a security interest in the goods and the WEL equipment as security for all your obligations under these terms and conditions pursuant to the Personal Property Securities Act 1999 ("the PPSA") and that we may register a financing statement to perfect our security interest in the goods and the WEL equipment delivered or to be delivered to you in accordance with the provisions of the PPSA.
- 7.2 You must, upon request, provide all information, execute or arrange for execution of all documents and do all other things that we may require to ensure that we have a perfected first ranking security interest in the goods and the WEL equipment under the PPSA.
- 7.3 You waive your rights to receive a verification statement in respect of any financing statement or financing change statement registered by or on behalf of us under the PPSA and agree that as between us and you, you will have no rights under (or by reference to) sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA and where we have rights in addition to those in part 9 of the PPSA, those rights shall continue to apply.
- 7.4 You shall immediately upon request by us, procure, from any person considered by us to be relevant to our security position, such agreements and waivers as we may at any time require.
- 7.5 You shall immediately notify us of any change in your name, address details and any other information provided to us to enable us to register a financing change statement if required.
- 8 INSTALLATION**
- 8.1 If required by us, you must provide us with access to the property (and procure access to any other property as may be reasonably required by us) to enable us to provide the goods, services and the WEL equipment or to enable us to remove the same or to enforce these terms and conditions or comply with relevant laws. We may charge you extra to recover costs we incur from any delay in obtaining access to any property described in this clause 8.1.
- 8.2 Access will generally only be required during business hours. You agree to permit us to, and will procure, access to any property described in clause 8.1 immediately and without notice in the event of an emergency.
- 8.3 You will ensure that all necessary statutory or regulatory consents are obtained and remain in force for the provision of the goods, services and the WEL equipment.
- 8.4 If any or all of the goods and/or WEL equipment are installed at incorrect location(s) by reason of incorrectly positioned survey markers or trenches, we will not be responsible for any costs or obtaining any authorisations required to relocate the goods and/or WEL equipment. You will be responsible for any costs and/or authorisations required to relocate the goods and/or WEL equipment.
- 9 OUR RESPONSIBILITIES**
- 9.1 We are responsible for providing the goods, services and the WEL equipment as set out in the Quote and subject to these terms and conditions.
- 10 YOUR RESPONSIBILITIES**
- 10.1 You must provide, promptly, all relevant information, directions, assistance and co-operation as and when required by us as may be reasonably necessary for us to provide the goods, services and WEL equipment to you and undertake all activities that are identified as being your responsibility in the Quote.
- 10.2 You must not do or allow to be done, anything which may harm WEL equipment on the property and must follow our reasonable directions in relation to such WEL equipment. You must notify us of any work, at any time, on the property which may affect WEL equipment.
- 10.3 You have responsibilities under the Electricity (Hazards from Trees) Regulations 2003. Under these regulations you are responsible at all times, for maintaining a clearance between trees and shrubs and any lines.
- 10.4 We may identify overhanging trees on the property and request you to trim such trees. If you fail to trim any trees as requested by us we may enter the property on reasonable notice to you and trim the trees and we may charge you for this. You agree and will procure that we may enter the property at any time, immediately and without notice where necessary in an accident or emergency or to protect the public including to trim trees.
- 10.5 If you ask us to perform any of your responsibilities or if we have to do so for safety reasons or for the reliable operation of our network (including trimming trees) we may charge you and you must pay us.
- 10.6 You must advise us of any hazards or possible hazards as specified in the Health and Safety at Work Act 2015.
- 10.7 You must notify us of any work, goods, equipment or services, whether owned by you or any other persons, located in the area which we are to carry out the services or provide the goods or the WEL equipment which may affect our ability to provide the goods, services or WEL equipment.
- 10.8 If we require an easement to cover the WEL equipment that is installed within private property, we will, at your cost unless specified otherwise in the Quote, prepare this and provide this to you. You must arrange for its execution and registration again at your cost.
- 11 WARRANTY**
- 11.1 If within 12 months of delivery or completion of any services you advise us in writing of any defective materials or workmanship, we will investigate and where we find defective materials or workmanship, we will replace the defective materials and make good any work that in our opinion (acting reasonably and applying the standard of current industry practice) is defective at our cost.
- 11.2 Any work performed by you or your agent in respect of such goods or services without our consent shall invalidate the warranty set out in clause 11.1 above.
- 11.3 Other than the warranty above, we make no representations and give no assurance, condition or warranty of any kind (including any assurance, condition or warranty implied by law to the extent that the assurance, condition or warranty can be excluded) and accept no liability for any assurance, condition, warranty, representation, statement or term not expressly set out in these terms and conditions or other written document given by us to you.
- 12 LIMITATION OF LIABILITY**
- 12.1 In no case shall we be liable to you or any other person for indirect or consequential loss or damage of any kind including arising out of or attributable to any event or events beyond our control (including those matters referred to in clause 4.2 above), any breach by us of the warranties or conditions or obligations under the Quote or these terms and conditions whether for

- negligence or otherwise. For the purposes of these terms and conditions, consequential loss includes (without limitation) loss or use of goods and services, loss of income or profit and consequential loss or damage to persons and property.
- 12.2 Regardless of the legal basis of any claim of any kind made against us, our maximum liability to you under any circumstances shall not exceed the sum paid by you for the goods and services supplied by us and which gave rise to that claim.
- 12.3 No employee, agent of, or independent contractor engaged by us shall in any circumstances be under any liability of any kind to you whether arising directly or indirectly from any act, neglect or default on the part of such person while acting in the course of or in connection with his or her employment, agency or engagement and, without prejudice to the generality of the foregoing provision, every exemption, limitation, condition and right expressed or implied in these terms and conditions on the part of or in our favour shall extend to protect every such employee, agent or independent contractor.
- 12.4 We shall not be liable for any loss or damage of any kind arising out of or attributable to your interference with, or work undertaken by you or on your behalf, or your failure to perform agreed work, in relation to any goods or services supplied by us without our consent.
- 12.5 You indemnify us against any loss (including economic, indirect and consequential loss), liabilities, costs and expenses (including legal costs on a solicitor/client basis) arising out of or attributable to any breach by you of your warranties, conditions or obligations under these terms and conditions, including for your negligence or otherwise.
- 12.6 Nothing in these terms and conditions limits or excludes any rights you may have, or obligations we may have, under the Energy Complaints Scheme provided by Utilities Disputes Ltd.

### **13 CONSUMER GUARANTEES ACT**

- 13.1 You acknowledge that where you are acquiring goods and services for business purposes the provisions of the Consumer Guarantees Act 1993 do not apply to this contract, otherwise nothing in these terms and conditions limits any rights you may have under the Consumer Guarantees Act 1993.

### **14 MISCELLANEOUS**

- 14.1 If, during the works, we encounter on the property physical conditions which we consider (acting reasonably) could not have been reasonably foreseen when providing the Quote and which will materially increase our costs, we have the right to amend or cancel the Quote.
- 14.2 The connection charge contained in the Quote has been determined in accordance with WEL's Capital Contribution Policy and based upon the information you or your agent provided to WEL. If such information is later found to be inaccurate, WEL may review and revise the connection charge in accordance with clause 14.3. Where a connection has been deemed standard, WEL has assumed that an Installation Control Point (ICP) will be allocated for the connection within a year of the quoted works being completed. If an ICP has not been allocated within such timeframe, WEL Networks may review and revise the connection charge in accordance with clause 14.3.
- 14.3 Where any circumstances outlined in clause 14.2 apply, and at any time within five years of completion of the quoted works, WEL may invoice a revised connection charge, which you will be required to pay (less any amount already paid as the connection charge). However, if you have a separate Connection Agreement with WEL, the terms of the Connection Agreement shall prevail regarding any revised connection charge.
- 14.4 We will collect and hold personal information about you in the course of providing goods and services to you. This information may be used for credit, marketing and administration purposes and we may disclose personal information about you to our agents and to any debt collection agency which we may use. We will comply with our legal requirements relating to the privacy of information which we hold about you, including giving you the rights to access and correct personal information conferred by the Privacy Act 2020.
- 14.5 We shall not be deemed to have waived or varied any provision of these terms and conditions or any right or remedy which we may have under these terms and conditions or at law or in equity or otherwise unless the waiver or variation is in writing signed by us. No waiver of a breach shall be deemed to be a waiver of any other breach or any further breach.
- 14.6 These terms and conditions and the relationship between the parties shall be governed by the laws of New Zealand.
- 14.7 Each provision of these terms and conditions is individually severable. If any provision is or becomes illegal, unenforceable or invalid it is to be treated as severed from these terms and conditions and the rest of these terms and conditions will not be affected.
- 14.8 We may assign, subcontract or transfer any of our rights or obligations under these terms and conditions at any time without your consent.