

**MCNAE GROUP
TERMS OF TRADE**

In these Terms of Trade we have used **we**, **us**, and **our** to refer to the McNae Group (including McNae Electrical Solutions Limited and McNae Energy and Solar Limited) and **you** to refer to our Customer. By ordering Work from us, you agree to these Terms of Trade.

1. OWNERSHIP

1.1 Ownership of Goods supplied under these Terms of Trade remains with us until payment for the Goods is made in full.

2. RISK AND DELIVERY OF GOODS

2.1 Delivery occurs at the time possession of the Goods passes to you (or a person nominated by you) from us. The risk in Goods supplied passes to you on delivery of the Goods. Where damage to the Goods occurs during the installation process and is caused by us, we will cover any costs associated with the repair or replacement of the damaged Goods.

3. TERMS OF PAYMENT

3.1 Where a quotation is given without any nominated timeframe, it shall be binding for thirty (30) days from the date of the quote.

3.2 Where additional Work is required and agreed to in consultation with you, you agree to pay the additional price for such Work.

3.3 We may require you to pay a deposit of 10%, being an advance payment for the Work, before we commence the Work.

3.4 In the event that there is a price increase by a supplier for materials that have been quoted for in a quotation provided to you that occurs subsequent to the issuing of the quotation and either prior to or subsequent to your acceptance of such quotation in accordance with clause 3.1, we reserve the right to amend such quotation to take into account the price increase for materials. You will be notified of our intention to make such an amendment as soon as practicably possible and you retain the right to either agree to the amended quotation or cancel the agreement entered into with us. In the event that you decide to cancel the agreement with us due to the amended quotation, we will refund to you your 10% deposit that may have been collected by us under clause 3.3 within 7 working days from the date that we receive notice from you of such cancellation of agreement.

3.5 We may also require a further progress payment of up to 50% upon the delivery of materials to us. Payment of the invoice for such progress is due within 7 days following that date of our invoice.

3.6 Payment for the remainder of the Work (and any associated expenses and disbursements) is due on the 7th day following the date of our invoice, except where we have agreed in writing that other terms will apply ("**Due Date**").

3.7 Payment of all money will be without set-off or deduction of any kind.

3.8 We will apportion payments to outstanding accounts as we think fit.

3.9 It is at our sole discretion whether we accept payment for the Work by instalments, payment plans or any other arrangement. Any arrangement that varies from the terms set out in this clause must be agreed to in writing.

4. DEFAULT

4.1 Without prejudice to any other rights or remedies that we may have against you, if you do not make payment by the Due Date, you are in default and you agree to pay on demand:

- (a) all costs (including, but not limited to, collection agency fees, commission, legal fees and any other costs on a solicitor and client basis) incurred by us in recovering any amounts payable to us by you;
- (b) interest on the outstanding amount at the end of each month in which your account is in arrears at the rate of 2% per month (compounding) with such a rate continuing before and after any judgement; and
- (c) a monthly administration fee of \$25.00, which you consider to be a reasonable fee, by way of damages payable on the last day of each month in which your account is in default;

4.2 You hereby irrevocably appoint us as to act as your attorney for the purpose of us exercising our rights under this clause whilst any amount remains in default; and

4.3 You agree that we shall have the right to place a caveat over any property owned by you to secure any amount outstanding for the purpose of this clause.

5. PERFORMANCE OF WORK

5.1 We will:

- (a) perform the Work with reasonable skill, care and diligence in a professional manner;
- (b) endeavour to ensure that the Work is performed in accordance with any time frames agreed in writing with you;
- (c) liaise with you during the course of performing the Work in accordance with your reasonable requirements.

5.2 You will give reasonable assistance to enable us to perform the Work by:

- (a) giving clear instructions;
- (b) promptly providing any information, access or content required from you for us to complete the Work;

5.3 We may sub-contract any part for the Work.

5.4 If the agreement is brought to an end by you, you must give us a signed notice giving the details of why the agreement is being brought to an end. You acknowledge that we are entitled to recover a reasonable price for any Work completed in materials ordered but not installed as at the date the agreement ended.

6. ACCESSING THE PREMISES

6.1 You agree to grant us permission to enter and remain at your premises to complete any site inspections, delivery of Goods or installation of Goods required to complete the Work at any reasonable time, provided we give you as much notice as is reasonably practicable in the circumstances or by mutual agreement.

6.2 Due to the nature of our work and varying installation timeframes, unless expressly agreed otherwise, if you wish that you or a representative is present at your premises for any of the site inspections, delivery of Goods or installation of Goods required to complete the Work it is your responsibility to make such arrangements.

6.3 You must:

- (a) ensure we have a convenient and safe access to all parts of your premises necessary to conduct any site inspections, delivery of Goods or installation of Goods required to complete the Work;
- (b) not hinder or obstruct our access;
- (c) ensure your premises, including its roof, supporting structures and electrical systems are sound and able to accommodate any Work: and
- (d) not do anything to obstruct or cause us to be in breach of our health and safety obligations. You acknowledge and agree that if you require us to leave your premises for any reason while we are undertaking any Work that we will require a reasonable amount of time to ensure that the site is electrically safe prior to us leaving your premises.

7. COMPLETION

7.1 The Work shall be deemed to be completed when (in our sole opinion):

- (a) the Work has been completed in accordance with the plans and specifications; or
- (b) you are given notice of practical completion; or

- (c) a practical certificate of completion has been produced and provided to you.
- 7.2 If we have given you a time frame for completion of the Work, unless agreed in writing to the contrary such time frame is approximate only and is not deemed to be of the essence of the agreement.
- 7.3 Any claim by you as to incorrect performance or breach of this agreement must be made to us in writing within seven (7) days of completion (time being of the essence) of the Work in accordance with clause 7.1 otherwise we shall be entitled to presume that the Work has been completed in good order and without defect or shortage in quantity.

8. WARRANTIES

- 8.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations on us which cannot by law (or which can only to a limited extent by law) be excluded. We exclude all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.
- 8.2 Where you acquire Goods and/or services from us for the purposes of a business:
- (a) the parties acknowledge and agree that:
- (i) you are acquiring the Goods and/or services covered by these Terms for the purposes of a business in terms of sections 2 and 43(2) of the Consumer Guarantees Act 1993;
- (ii) the Goods and/or services are both supplied and acquired in trade from the purposes of the Fair Trading Act 1986 and the parties agree to contract out of sections 9 (Misleading and deceptive conduct generally), 12A (Unsubstantiated representations), and 13 (False or misleading representations); and
- (b) you agree that all warranties, conditions, and other terms implied by the Consumer Guarantees Act 1993 or sections 9, 12A, and 13 of the Fair Trading Act 1986 are excluded from these Terms to the fullest extent permitted by law and the parties further acknowledge and agree that it is fair and reasonable that the parties are bound by this clause.

9. LIMITATION OF LIABILITY

- 9.1 You shall ensure that the Work is fit and suitable for the purpose of which the Work is required and we are under no liability if the Work is not.
- 9.2 In the case of Work not manufactured by us, you are only entitled to such benefits as we may receive under any warranty given to us by the manufacturer of the Work.
- 9.3 In lieu of any warranty, condition, or liability by law, our liability in respect of any defect and/or failure of the Work supplied or for any loss, injury, or damage attributed thereto, is limited to making good or repairing any defects in materials or workmanship in the Work concerned arising under normal proper use within the warranty period, if stated, or otherwise within 12 months of the day of supply. At termination of the appropriate period all liability on our part ceases. In all cases our liability is limited to the price of the Work.
- 9.4 We are not liable under clause 9.3 for damage arising from misuse, accident, neglect or improper operation, maintenance, installation, modification or adjustments.
- 9.5 We shall not be liable for any consequential, indirect or special loss or damage arising directly or indirectly from the Work.
- 9.6 Our liability under this agreement and any warranty is confined to you, being the person/entity named under this agreement and is not assignable without our prior written consent.

10. SPECIFIC DISCLAIMER RELATING TO THE INSTALLATION OF SOLAR SYSTEMS

- 10.1 We must install the solar system at your premises in accordance with applicable regulations and standards.
- 10.2 We will take every reasonable precaution in installing the solar system at your premises.
- 10.3 You expressly acknowledge that we shall not be liable in respect of any of the following:
- (a) the structural integrity of the roof at your premises; or
- (b) the roof's ability to carry the weight of the solar system; or
- (c) any effect that the installation of the solar system has on any manufacturer's warranty relating to the roof at your premises; or
- (d) any damage to the roof at your premises and any consequential, indirect or special loss or damage which is not due to our negligence or breach of this agreement; or
- (e) any water tightness issues, or any consequential, indirect or special loss or damage relating to such water tightness issues, that arise from the installation, use or maintenance of the solar system.

11. CONSTRUCTION CONTRACTS ACT 2002

- 11.1 In the event that you are a residential owner as defined in the Constructions Contracts Act 2002 you hereby expressly acknowledge that:
- (a) we have the right to suspend Work within five (5) working days of written notice to you of our intent to suspend Work if:
- (i) a payment claim is served on you, and the payment is not paid in full by the due date for payment and no payment schedule has been given by you;
- (ii) a scheduled amount stated and payment schedule issued by you in relation to the payment claim is not paid in full by the due date for its payment; or
- (iii) you have not complied with an adjudicator's notice that you must pay an amount to us by particular date;
- (b) if we suspend Work you expressly agree that the suspension of Work is not a breach of this agreement and we:
- (i) are not liable for any loss or damage suffered whatsoever, or alleged to be suffered, by you or by any person claiming through you;
- (ii) are entitled to an extension of time to complete the agreement;
- (iii) keep all our rights under the agreement including, the right to terminate the agreement; and
- (iv) 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 we exercise a right to suspend Work:
- (i) the exercise of that right does not affect any rights that would otherwise have been available to us under the Contractual Remedies Act 1979; or
- (ii) enable you to exercise any rights that may otherwise have been available to you under the Contractual Remedies Act 1979 as a direct consequence of our suspending Work under this provision.

12. PRIVACY OF INFORMATION

- 12.1 You acknowledge that all personal information collected by us will be collected, retained and used in accordance with the Privacy Act 2020 and our Privacy Policy which can be found at:
https://mcnae.co.nz/images/pdf/TandCprivacypol/mcnae_electrical_solutions_privacy_policy.pdf
- 12.2 You expressly authorise us:
- (a) to collect, retain and use information about you from any person for the purpose of assessing your creditworthiness;
- (b) to disclose information about you:
- (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us;
- (ii) to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these Terms of Trade.

- 13. NOTICES**
13.1 Any notice may be given by phone, in person, posted, or sent by fax or email to you (or where you are a company, to any of your directors).
- 14. VARIATION**
14.1 We reserve the right to vary or amend any provision of these Terms of Trade from time to time as it is deemed appropriate at our absolute discretion. Your continued use of our website and our services will be deemed as your acceptance and you will be bound by such variations or amendments.
- 15. CONFIDENTIALITY**
15.1 You will at all times treat as confidential all non-public information and material received from us and must not publish, release, or disclose the same without our prior written consent. For clarity, confidential information includes any new Intellectual Property and prices.
- 16. COSTS**
16.1 You must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms of Trade.
- 17. JURISDICTION**
17.1 These Terms of Trade are governed by and construed according to the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of these Terms of Trade.
- 18. ASSIGNMENT**
18.1 You must not subcontract or assign any of your rights, powers or obligations under these Terms of Trade.
- 19. DISPUTES**
19.1 Any claim or dispute arising under these Terms of Trade will be determined by arbitration under the Arbitration Act 1996 if the parties are unable to resolve such dispute themselves within one (1) month of the dispute arising. However, nothing in this clause prevents either party from taking immediate steps to seek any equitable relief before the New Zealand Courts.
- 20. FORCE MAJEURE**
20.1 We will not be liable for any failure or delay to perform the Work if the failure or delay arises directly or indirectly from a cause reasonably beyond our control.
- 21. DEFINITIONS**
21.1 In these Terms of Trade unless the context otherwise requires:
(a) **"Goods"** has the meaning given to it in the Personal Property Securities Act 1999.
(b) **"Intellectual Property"** includes all intellectual property rights (including without limitation copyright, patent and design rights, drawings, documents, data, ideas, procedures and calculations).
(c) **"Work"** means our performance of services for you, and the production or supply of any Goods by us as part of or related to such services.
21.2 References to us include our employees, contractors and agents.
21.3 Words referring to the singular include the plural and vice versa.
21.4 Any reference to a party includes:
(a) that party's executors, administrators, or permitted assigns; or
(b) if a company, limited partnership, or any other body corporate, its successors or permitted assigns or both.
21.5 Clause headings are for reference only.
21.6 References to clauses are references to clauses of these Terms.
21.7 References to money will be New Zealand currency, unless specified otherwise.
21.8 Expressions referring to writing will be construed as including references to words printed, typewritten or otherwise visibly represented, copied or reproduced (including by fax or email).
21.9 References to statutory provisions will be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time.

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