

Terms and Conditions of Trade

1.1 All Goods and/or Services Okitu Electrical provides to its Client are subject to the following terms and conditions ("**Terms**"). These Terms, together with any **Supplemental Terms**, constitute the entire agreement between the Client and Okitu Electrical for the Goods and/or Services provided. Each accepted order will constitute a separate agreement for the supply of the relevant Goods and/or Services.

1.2 If the Client orders or accepts any Goods or Services, the Client will be deemed to have accepted these Terms.

1.3 Okitu Electrical reserves the right to charge for a minimum of two hours' labour for any Services provided to the Client.

1.4 In the event that Okitu Electrical is required to provide the Services outside of normal business hours Okitu Electrical reserves the right to charge the Client at a rate which is time and a half normal rates, unless otherwise agreed between Okitu Electrical and the Client.

1.5 Okitu Electrical reserves the right to charge a levy for travel (ie mileage) based on the distance to the jobsite.

1.6 Nothing in these Terms affects any rights that the Client may have as a "consumer" under the Fair Trading Act 1986 ("**FTA**") and the Consumer Guarantees Act 1993 ("**CGA**").

1.7 If these Terms or any Supplemental Terms are a "construction contract" or relate to "construction work" (in each case as defined in the Construction Contracts Act 2002), the provisions of that Act will take priority over these Terms or Supplemental Terms (as applicable) if there is any conflict or inconsistency between these Terms or any Supplemental Terms and that Act.

1.8 If there is any conflict or inconsistency between these Terms and any Supplemental Terms then, unless otherwise expressly provided in these Terms to the contrary, the Supplemental Terms will prevail over these Terms.

2 Definitions

2.1 In these Terms (and in any Supplemental Terms unless specified otherwise):

"**Okitu Electrical**" means Okitu Electrical Limited, its successors and assigns or any person acting on behalf of and with the authority of Okitu Electrical Limited.

"**Client**" means the Client named on any Supplemental Terms entered into with Okitu Electrical or otherwise any person, firm, company or other entity buying the Goods and/or Services from Okitu Electrical.

"**Goods**" means all goods, machinery, product, plant, equipment or chattels provided by Okitu Electrical to the Client, including as expressly identified in any Supplemental Terms.

"**Price**" means the Price payable for the Goods as agreed between Okitu Electrical and the Client in accordance with clause 3.

"Services" means all labour, construction, design, installation and engineering work and all other services provided by Okitu Electrical to the Client, including as expressly identified in any Supplemental Terms.

"Supplemental Terms" includes any letter of works, requisition order, quotation, purchase order, Okitu Electrical invoice or similar supplied by Okitu Electrical in connection with the Services. Any document supplied by a person other than Okitu Electrical will not constitute Supplemental Terms.

"Trade" means any trade, business, industry, profession, occupation, activity of commerce, or undertaking relating to the supply or acquisition of goods or services.

2.2 Headings are used as a matter of convenience only and shall not affect the interpretation of these Terms.

2.3 A reference to a person includes a corporation, association, firm, company, trust, partnership or individual.

3 Price and Payment

3.1 At Okitu Electrical's sole discretion the Price shall be either:

- (a) as indicated on any invoice provided by Okitu Electrical to the Client; or
- (b) Okitu Electrical's quoted price (subject to clause 3.2) which will be valid for the period stated in the quotation or otherwise for a period of 30 days.

3.2 Okitu Electrical reserves the right to change the Price:

- (a) if a variation to the Goods which are to be supplied is requested; or
- (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
- (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Services; or
- (d) in the event of increases to Okitu Electrical in the cost of labour or Goods which are beyond Okitu Electrical control.

3.3 At Okitu Electrical sole discretion a non-refundable deposit may be required.

3.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by Okitu Electrical, which may be:

- (a) on completion of the Services; or
- (b) by way of progress payments in accordance with Okitu Electrical specified progress payment schedule. Such progress payment claims may include the reasonable value of

authorised variations and the value of any Goods delivered to the worksite but not yet installed;

(c) for certain approved Client's, due 20 days following the end of the month in which a statement is posted to the Client's address or address for notices;

(d) the date specified on any invoice or other form as being the date for payment; or

(e) failing any notice to the contrary, the date which is 7 days following the date of any invoice given to the Client by Okitu Electrical.

3.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and Okitu Electrical.

3.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Okitu Electrical an amount equal to any GST Okitu Electrical must pay for any supply by Okitu Electrical under this or any other agreement for the sale of the Goods. 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.

3.7 If the Client disputes any or all of an amount contained in an invoice, the Client will:

(a) immediately notify Okitu Electrical of the dispute and provide reasons for the dispute;

(b) pay the undisputed amount of the invoice by the due date specified in the invoice; and

(c) negotiate in good faith with Okitu Electrical to resolve the dispute in accordance with the disputes procedure set out in clause 13.

3.8 If payment is not made by the due date Okitu Electrical may, without prejudice to its other rights and remedies (for example, to suspend or cancel further deliveries of Goods or Services to the Client), charge the Client default interest (compounding monthly) on the unpaid amount at a rate equal to one and a half times the monthly small to medium-sized enterprise (SME) overdraft rate published by the Reserve Bank of New Zealand over the relevant period (available at <https://www.rbnz.govt.nz/statistics/b3>).

3.9 Okitu Electrical may deduct or withhold any amount (whether by way of counterclaim, set-off or otherwise) from any money owing by Okitu Electrical to the Client on any account whatsoever. However, the Client shall not be entitled to withhold payment or to make any deductions from the agreed price without the prior written consent of Okitu Electrical.

3.10 If Okitu Electrical at any time considers the credit of the Client to be unsatisfactory, it may require security for payment and may suspend performance of its obligations until the provision of sufficient security. All reasonable costs and expenses of or incurred by Okitu Electrical as a result of such suspension and any recommencement shall be payable by the Client upon demand.

4 Accuracy of Clients Plans & Measurements for Orders

4.1 Okitu Electrical 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, Okitu Electrical accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

4.2 In the event the Client gives information relating to measurements and quantities of Goods required in completing the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or Okitu Electrical places an order based on these measurements and quantities. Okitu Electrical accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

5 Delivery

5.1 Okitu Electrical reserves the right to charge for the delivery of any Goods.

5.2 Okitu Electrical will use reasonable endeavours to ensure that the Goods are delivered on the agreed delivery dates (if any). Any time for delivery or installation of the Goods shall be approximate only, time shall not be deemed to be of the essence of these Terms and the Client will accept the Goods if they are delivered within a reasonable time after any specified time for delivery.

5.3 Notwithstanding any obligation on the part of Okitu Electrical to carry out any installation work, delivery will be deemed to have been made, and risk with respect to the Goods shall pass to the Client, when:

- (a) the Goods arrive at the delivery point agreed with the Client; or
- (b) if no place of delivery is agreed on, when the Goods are delivered to Okitu Electrical's premises, at which point the Client is required to collect the Goods from Okitu Electrical's premises.

5.4 The Client or its authorised representative must sign Okitu Electrical's copy of the delivery docket or packing slip before the Goods are unloaded or collected to evidence delivery (provided that delivery shall still be deemed to have been made on the occurrence of the relevant actions described in this clause 5.4, notwithstanding that a delivery docket or packing slip has not been signed by the Client).

5.5 All claims for errors in delivery, or for Goods damaged in transit only when a delivery point has been agreed, must be made in writing (including by email) to Okitu Electrical within five working days of delivery or Goods being collected by the Client.

5.6 Without prejudice to any of Okitu Electrical's rights and remedies, if the Client fails or refuses to take delivery of any Goods at an agreed delivery point or time, or indicates that they will fail or refuse to take or accept delivery and/or permit installation at the time specified in these Terms or any Supplemental Terms or at any other times that Okitu Electrical is able to deliver and/or install the Goods or Services, the Goods shall be deemed to have been delivered when Okitu Electrical notified the Client that it was willing and able

to deliver them, and Okitu Electrical may (without limiting any other rights or remedies Okitu Electrical may have) charge the Client for any expenses or additional costs reasonably incurred by Okitu Electrical as a result of the delay including, but not limited to, storage and transportation expenses.

5.7 If the manufacture, supply or delivery of any Goods and/or Services, or where these Terms provide for the installation of the Goods, the installation or any commissioning or testing of the Goods, is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the Client, Okitu Electrical may, without prejudice to its other rights and remedies, require payment by the Client of such portion of the price payable to the extent to which Okitu Electrical has performed its obligations up to the date such payment is required together with any expenses or additional costs incurred by Okitu Electrical as a result of such delay. In the event of such delay continuing beyond a reasonable time, Okitu Electrical may without prejudice to its other remedies, terminate the supply or delivery of the Goods and/or Services.

6 Installation

6.1 Where these Terms and/or the Supplemental Terms provide for installation of the Goods to be carried out by Okitu Electrical, it is the Client's responsibility to:

- (a) provide suitable access to the Client's premises in all weather conditions for the vehicles and equipment that Okitu Electrical will need to use in carrying out such installation;
- (b) provide all necessary services and amenities to enable Okitu Electrical to carry out such installation; and
- (c) ensure that the Client's premises and foundations are structurally sound and in a proper condition for the installation to proceed.

6.2 If the Client is acquiring Goods and/or Services in trade, it is the Client's responsibility to:

- (a) observe and comply with all statutes, regulations and other subordinate legislation in force, or that come into force, in New Zealand in respect of health and safety in employment (including the Health and Safety at Work Act 2015 and all regulations made under that Act) and any reasonable health, safety, security and other requests which Okitu Electrical has previously advised the Client of in writing, provided that Okitu Electrical shall also follow all reasonable directions relating to health and safety from the Client with respect to Okitu Electrical access to the Client premises;
- (b) provide all plant materials and services required to be provided by the Client at such times and in such manner as to cause Okitu Electrical no delay in carrying out such installation;
- (c) provide safe and secure onsite storage for materials and accessories supplied and used by Okitu Electrical, its employees and contractors; and
- (d) maintain adequate insurance against all loss, damage, costs and expenses (including loss of profits and where installation or other work is to be performed by Okitu Electrical, its agents or contractors, damage to or destruction of the Client's

premises) which may be suffered or incurred by the Client and to ensure that Okitu Electrical, its agents and contractors are named as additional insured parties under all such insurance policies.

6.3 The Client shall advise Okitu Electrical promptly of any decision or instruction which needs to be made or given prior to Okitu Electrical being able to proceed with installation of the Goods.

6.4 Okitu Electrical will ensure that proof of identification is carried and will provide the Client with prior notice of access where it can reasonably do so.

7 Risk and Title

7.1 Okitu Electrical retains legal and equitable title to any Goods supplied to the Client until full payment is made for the Goods and all other Goods and/or Services supplied by Okitu Electrical (even if the Client incorporates the Goods with other items or the Goods become part of or an accession or accessory to any other objects, products or mass).

7.2 Notwithstanding that ownership of any Goods may remain with Okitu Electrical, all risk of any loss, damage or deterioration in relation to any Goods supplied shall pass to the Client on delivery.

7.3 Until legal and equitable title to any Goods supplied by Okitu Electrical passes to the Client, the Client will hold the Goods as Okitu Electrical's bailee and, if so required by Okitu Electrical, store separately those Goods in respect of which property is retained by Okitu Electrical and clearly identify such goods as the property of Okitu Electrical. The Goods must be kept in good condition.

7.4 Following delivery and until legal and equitable title in the Goods passes to the Client, the Client shall keep the goods insured in the name of Okitu Electrical and the Client for their respective rights and interests (in particular, the insurance shall cover the full replacement value of the Goods) and will produce to Okitu Electrical on demand such evidence as the Okitu Electrical may require to confirm the existence of such insurance. If the Client defaults in the performance of its obligations under this clause, Okitu Electrical shall be entitled to, but shall not be obligated to, insure the Goods and the cost of effecting such insurance shall be payable by the Client to Okitu Electrical on demand.

7.5 If any Goods are damaged or destroyed following delivery but prior to the legal and equitable title passing to the Client, Okitu Electrical shall be entitled, without prejudice to any of its other rights or remedies, to receive all insurance proceeds which are payable in respect thereof (whether or not the purchase price of such goods has become payable) and the production of these Terms by Okitu Electrical shall be sufficient evidence of Okitu Electrical's right to receive payment of such insurance proceeds without the need for further enquiry by any person dealing with Okitu Electrical. Any such insurance proceeds shall be applied by Okitu Electrical as follows:

- (a) first, in payment of the purchase price of the Goods which are damaged or destroyed, if unpaid;

(b) secondly, in payment of the outstanding purchase price of any other Goods and/or Services supplied to the Client by Okitu Electrical, whether under these Terms (or Supplemental Terms) or otherwise;

(c) thirdly, in payment of any other sums payable to Okitu Electrical by the Client whether under these Terms (or Supplemental Terms) or otherwise; and

(d) thereafter any balance shall be paid to the Client.

7.6 The risk of any damage to the Goods arising out of any installation work carried out at the Client's premises shall be borne by the Client, except where such damage is caused by the negligence of Okitu Electrical, its agents or contractors in carrying out any such installation work in which event such damage shall be the responsibility of Okitu Electrical.

7.7 The Client authorises Okitu Electrical to enter any premises occupied by the Client, or any other party on which Goods and Services are situated, at any reasonable time after default by the Client, in order to remove and repossess any Goods, and to sell those Goods if necessary to recover unpaid monies, including in accordance with clause 11.1.3.

8 Security

8.1 Unless expressly defined in this section, terms used in these Terms which have a particular meaning in the Personal Property Securities Act 1999 ("**PPSA**"), shall have the same meaning as in the PPSA.

8.2 The Client grants Okitu Electrical a security interest in the Goods supplied by Okitu Electrical to the Client (either before or after the date of these Terms) and all proceeds of the Goods. The security interest is granted by the Client to Okitu Electrical as security for all amounts owing by the Client to Okitu Electrical and for the performance of the Client's obligations under these Terms.

8.3 Okitu Electrical has the right to take possession of any Goods in the event of any unpaid amounts outstanding under this contract being overdue, in accordance with clause 11.1.3.

8.4 It is expressly agreed that:

(a) to the fullest extent possible Okitu Electrical and the Client contract out of the application of sections 114(1)(a), 133 and 134 of the PPSA;

(b) the Client's rights as debtor in sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA shall not apply to these Terms;

(c) each security interest created by these Terms is continuing notwithstanding any immediate payments, settlement of accounts or anything else;

(d) the requirement for Okitu Electrical to provide to the Client a verification statement following the registration by Okitu Electrical of a financing statement or a financing change statement under section 148 of the PPSA is waived;

(e) Okitu Electrical has the right to allocate payments;

- (f) any notice or other document to be served by the Client on Okitu Electrical shall not be served by facsimile;
- (g) the Client has received value from Okitu Electrical as at the date of first delivery of the Goods and the Client has not agreed to postpone the time for the attachment of the security interest granted to Okitu Electrical under these Terms nor to subordinate such security interest in favour of any person;
- (h) no security interest created under these Terms is discharged, nor are the Client's obligations affected by any amendment to, or the validity or enforceability of, or failure to enforce, these Terms, or anything else whatever that, but for this clause, may have discharged these Terms or affected the Client's obligations under these Terms, and Okitu Electrical is not liable to the Client in relation to any of these matters, even though the Client's rights in subrogation or otherwise may be prejudiced as a result;
- (i) the Client must not change the Client's details (including name, address, facsimile, email trading name or business practice) without first notifying Okitu Electrical in writing 14 days prior to the date on which the name change becomes effective;
- (j) the Client must not give Okitu Electrical a written demand, or allow any other person to give Okitu Electrical a written demand requiring Okitu Electrical to register a financing change statement or lodge a change demand or allow any other person to lodge a change demand, in each case in relation to a financing statement registered by Okitu Electrical under the PPSA;
- (k) the Client must not enter into or accept, or allow any other person to enter into or accept, a financing change statement in relation to a financing statement registered by reference to it under the PPSA; and
- (l) the Client must not consent to or enter into any agreement which permits any Okitu Electrical or other person to register a security interest in respect of the Goods which ranks in priority to Okitu Electrical's rights as first ranking security holder.

8.5 All costs of enforcement under these Terms are chargeable to the Client's account, including the actual legal fees and disbursements on a "solicitor and own client basis" of obtaining any orders required under the PPSA.

8.6 The Client is to promptly execute documents and do such further acts as may be required by Okitu Electrical to ensure Okitu Electrical is paid all sums due to Okitu Electrical and to otherwise protect the interests of Okitu Electrical under these Terms, including to register the security interest granted to Okitu Electrical under these Terms under the PPSA and to ensure the security interest is a first ranking perfected security interest over the Goods and any proceeds.

8.7 If the Goods subsequently become part of some other product or mass, then nothing in these Terms or the Supplemental Terms can be construed as limiting the application of sections 82 to 86 of the PPSA.

9 Use of Information

9.1 For the purposes of facilitating the administration of Okitu Electrical's business, the Client authorises Okitu Electrical:

- (a) to request all information it may require about the Client ("Client Information") from the Client and the Client agrees to release such Client Information to Okitu Electrical;
- (b) to collect Client Information from any third parties and the Client authorises those third parties to release such Client Information to Okitu Electrical;
- (c) to hold all Client Information given to Okitu Electrical by the Client or any third party to Okitu Electrical; and
- (d) to use all Client Information for any purpose related to facilitating the administration of Okitu Electrical business, including by giving any Client Information to any other person to facilitate the collection of debts from the Client.

9.2 The Client Information will be collected, held and used on the condition that:

- (a) it will be held securely at Okitu Electrical's offices;
- (b) it will only be accessible by Okitu Electrical employees and agents who need access to it for the administration of Okitu Electrical business; and
- (c) the Client may request access to and correction of any Client Information at any time.

9.3 Okitu Electrical shall comply with its obligations under the Privacy Act 1993 with respect to all Client Information collected pursuant to these Terms.

10 Confidentiality and intellectual property

10.1 Both parties agree to treat as confidential any information relating to the other party which by its nature, or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential ("Confidential Information"). Neither party will use or disclose any Confidential Information, except so far as may be reasonably necessary to enable that party to fulfil its obligations or exercise its rights under these Terms (and as permitted under clause 9.1) or as required by law.

10.2 All intellectual property in any Goods and/or Services that Okitu Electrical provides to the Client remain the sole and exclusive property of Okitu Electrical and copyright in all drawings, specifications and other technical information provided by Okitu Electrical in connection with the provision of Goods and/or Services by Okitu Electrical is vested in Okitu Electrical.

10.3 The Client warrants that the use by Okitu Electrical of any instructions or specifications supplied to Okitu Electrical by the Client will not infringe the intellectual property rights of any other person and the Client indemnifies Okitu Electrical against any losses, damages,

liabilities or costs (on a solicitor client basis) that Okitu Electrical may suffer or incur in the event of any such infringement.

10.4 If any Goods are to be supplied to the Client's design, the Client warrants that the manufacture and supply of such goods by Okitu Electrical will not infringe any patent, copyright, registered design or other rights of any other person and the Client agrees to indemnify Okitu Electrical against any liability incurred by Okitu Electrical including any costs and expenses in the event of any claim being made that the manufacture or supply of such goods by Okitu Electrical infringes any patent, copyright, registered design or other rights of any other person.

11 Default

11.1 If the Client fails to make payment on any invoice when due (whether under contract or otherwise), is in default in the performance of its obligations under these Terms or any Supplemental Terms, becomes insolvent, commits an act of bankruptcy, is adjudicated bankrupt or makes any composition or arrangement with creditors, does any act which would render it liable to be wound up, goes into liquidation (whether compulsory or voluntary other than for the purpose of and followed by amalgamation or reconstruction) or has a receiver appointed of any part of its business or assets then, without prejudice to any other rights Okitu Electrical has at law or in equity, Okitu Electrical reserves the right, and the Client agrees that Okitu Electrical is entitled (to the extent permitted by law):

- (a) to treat all sums due or to become due from the Client as immediately due and payable;
- (b) to immediately cancel or suspend the delivery of Goods and the provision of Services which remain unperformed;
- (c) by its agents, without prior written notice, to enter onto the Client's premises where the Goods may be installed or stored and to search for and remove and take possession of any Goods and Okitu Electrical shall not be liable in contract, tort (including negligence) or otherwise, for any costs, losses, damages or expenses incurred by the Client or any third party, and the Client indemnifies Okitu Electrical against any liability Okitu Electrical may have to any third party (including, without limitation, legal costs on a solicitor-client basis), as a result of exercising Okitu Electrical's rights under this clause 11.1.3; and

11.1.4 to resell or dispose of any or all of the Goods noted in clause 11.1.3 and apply the proceeds in or towards payment of all sums due and all other moneys owing to Okitu Electrical by the Client in such a manner and generally on such terms and conditions as it thinks fit (subject to any requirements under law).

11.2 Any expenses, disbursements and legal costs incurred by Okitu Electrical in the enforcement of any rights contained in these Terms for example, recovering any outstanding moneys owed by the Client, shall be paid by the Client upon demand, including, but not limited to, any reasonable solicitor's fees or debt collection agency fees and commissions.

11.3 For the avoidance of doubt, nothing in these Terms and Supplemental Terms will have the effect of contracting out of any provision of the Credit (Repossession) Act 1997 if it applies.

12 Exclusion and Limitation of Liability

12.1 Except as expressly provided in these Terms, all warranties or representations are, to the maximum extent permitted by law, expressly excluded.

12.2 If the Client is acquiring Goods and/or Services in trade, for the purposes of section 5D of the FTA and section 43 of the CGA, Okitu Electrical and the Client acknowledge and agree that, to the extent permitted by law:

- (a) the products, Goods and/or Services provided to the Client under or in connection with these Terms are being provided and acquired in trade;
- (b) to the extent that the FTA and/or the CGA applies to the sale of Goods and/or Services to the Client under these Terms, in respect of all matters under or in connection with these Terms, the parties are contracting out of the CGA and sections 9, 12A and 13 of the FTA;
- (c) the parties have each had an opportunity to receive advice from a lawyer prior to contracting under these Terms; and
- (d) it is fair and reasonable for the parties to be bound by this clause.

12.3 Okitu Electrical is not liable to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client or any third party arising out of a breach by Okitu Electrical of these terms and conditions

12.4 Where the Terms and/or any Supplemental Terms provide for any testing or commissioning procedure or any other acceptance procedure in respect of the Goods, no claim shall be made by the Client if the Goods fail to comply with the requirements of these Terms at any time after the successful completion of such testing, commissioning or acceptance procedures, subject however to the warranty in respect of defective materials or workmanship.

12.5 Insofar as Okitu Electrical may be liable, the maximum liability of Okitu Electrical, whether in contract, tort (including negligence), equity, under statute or otherwise for any loss, damage or injury arising directly or indirectly from any breach of Okitu Electrical's obligations under these Terms relating specifically to the supply of the Goods and/or Services is, limited, at the option of Okitu Electrical, to Okitu Electrical undertaking the actions set out in clause 12.6 or 12.7 (as applicable).

12.6 If the breach giving rise to Okitu Electrical's liability relates to Goods then Okitu Electrical's liability is limited to:

- (a) the replacement of the Goods or the supply of equivalent Goods;

- (b) the repair of such Goods (at such place as Okitu Electrical may specify and the Client shall be responsible for shipment of the defective Goods to and from the place or places so specified);
- (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
- (d) the payment of the cost of having the Goods repaired.

Notwithstanding any other provision to the contrary contained in clause 12.6, and only if the Client is in trade, the obligations of Okitu Electrical pursuant to clause 12.6 shall be limited to the replacement or repair of defective parts only and shall not extend to the costs of labour, services, removal, installation or analyse, which costs shall be to the account of the Client.

12.7 If the breach giving rise to Okitu Electrical's liability relates to Services then Okitu Electrical's liability is limited to:

- (a) the supplying of the Services again; or
- (b) the payment of the cost of having the Services supplied again.

12.8 Notwithstanding the above, Okitu Electrical shall not be required to take any action under clauses 12.6 and/or 12.7 (as applicable):

- (a) if any attempt to repair the defective Goods and/or rectify the provisions of the Services is made by any person or persons not authorised by Okitu Electrical to effect such repairs or rectification;
- (b) if the defective Goods have been modified without the approval of Okitu Electrical;
- (c) if the defective Goods have not been stored, maintained, installed, commissioned or operated in a proper manner; or
- (d) if the Client is in default in relation to any payment or in the performance of any obligation under these Terms.

12.9 Despite any other statement in these Terms the total liability of Okitu Electrical, whether in contract or pursuant to any cancellation of these Terms or in tort or otherwise howsoever, in respect of all claims for loss, damage or injury arising from breach of any of Okitu Electrical's obligations arising under or in connection with these Terms, from any cancellation of these Terms or from any negligence, misrepresentation or other act or omission on the part of these Terms, its servants, agents or contractors (including, without in any way limiting the foregoing, any loss, damage or injury arising as aforesaid from the carrying out of any Services) shall not in aggregate exceed the lesser of the amount paid by the Client under these Terms or \$100,000.

12.10 Okitu Electrical is not liable for any failure or delay in performing an obligation in these Terms if it is due to a cause reasonably beyond its control. For completeness, this includes but is not limited to, failure to deliver or to carry out any installation or any

commissioning or testing of the Goods or for any delay in delivery or in carrying out any installation or any commissioning or testing of the Goods or any failure in the provision of the Services where such failure or delay is occasioned by strike, combination of workmen, lockout, difficulty in procuring components or materials, shortage of labour, lack of skilled labour, delays in transit failure or delay by the Client in performing any of his obligations hereunder, failure or delays by Okitu Electricals or subcontractors, legislative governmental or other prohibitions or restrictions, fire, flood, hostilities, commotions or other causes whatsoever (whether similar in nature or not to the foregoing) beyond Okitu Electrical's reasonable control.

13 Dispute

13.1 In the event of any dispute, difference or question arising out of, or in connection with, these Terms (a dispute) each party must:

- (a) use its best efforts to resolve the dispute through good faith negotiations and informal dispute resolution techniques;
- (b) not commence any proceedings relating to the dispute unless it has complied with clauses 13.2 to 13.4 (inclusive), as applicable; and
- (c) continue to perform its obligations under these Terms as far as possible as if the dispute had not arisen, pending final settlement of the dispute.

13.2 Each party will advise the other party of a dispute on the day that the dispute arises. The parties will use their best efforts to resolve the dispute in accordance with clause 13.1(a). If the dispute is not resolved within 10 days the dispute will be escalated within the respective organisations to be resolved within a further 10 days.

13.3 If the dispute is not resolved under clause 13.2 then, unless otherwise agreed between the parties, either party may refer the dispute to expert determination by written notice to the other party.

13.4 A dispute referred to expert determination will be conducted in accordance with the following process:

- (a) the expert (Expert) will be appointed by agreement between the parties or, failing agreement within 10 days following the date of referral to expert, by the President (or his or her nominee) of the Arbitrators and Mediators Institute of New Zealand who will be requested to appoint an expert who is suitably qualified and experienced in relation to the subject matter of the dispute;
- (b) the Expert will act as an expert and agree to act on a confidential basis, and not as an arbitrator, and referral of the dispute to the expert will not be a submission to arbitration for the purposes of the Arbitration Act 1996 (Arbitration Act) and the provisions of the Arbitration Act will not govern that referral;
- (c) within 10 days of the Expert accepting the appointment, the parties will send written submissions on the dispute to the Expert and to each other and, within five days of receiving the other party's submission, will submit any written replies they wish to make to the Expert and to each other;

- (d) the parties will give the Expert all necessary assistance that the Expert reasonably requires to determine the dispute;
- (e) the Expert will, unless the parties otherwise agree, be directed to deliver a written determination to the parties within 10 days of having received the parties' written submissions under clause 13.4.3;
- (f) the Expert will have the power to compel either party to produce any information material to the dispute which that party has in its possession and which that party could be required to produce on discovery in a court proceeding to the Expert and to the other party;
- (g) the Expert's decision will be final and binding and, to the extent it is lawful to do so, the parties waive any right of appeal or review; and
- (h) the Expert's fees will be at the parties' cost, and the Expert will determine the proportion of those fees that each party will be required to pay, having regard to (amongst other things) the conduct of the parties.

13.5 Nothing in this clause 13 will preclude either party from taking immediate steps to seek urgent relief before a New Zealand Court.

13.6 If the Client wishes to make a complaint, they must contact Okitu Electrical by phone, email or by completing the online Contact form on the website at <http://www.okituelectrical.co.nz>

14 General

14.1 These Terms are intended to be binding and endure to the benefit of Okitu Electrical and Okitu Electrical's successors and assigns. The Client must not assign or transfer any of their rights or obligations under these Terms to any other person without the prior written consent of Okitu Electrical (which consent shall not be unreasonably withheld). Any assignment, transfer or novation, or purported assignment, transfer or novation, which does not comply with this clause 14.1 is (and shall be treated as) void.

14.2 Okitu Electrical may license or sub-contract all or any part of its rights and obligations without the Client's consent.

14.3 These Terms are subject to the laws of New Zealand and the jurisdiction of New Zealand courts.

14.4 If any provision of these Terms shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

14.5 In these Terms:

- (a) a reference to a "day" in these Terms means a day other than a Saturday or Sunday on which trading banks are normally open for business in the city or region in which the Goods and/or Services are being, or are to be, delivered;

- (b) references to “including” shall be construed as “including, without limitation”;
- (c) these Terms must not be construed adversely to a party just because that party prepared them or caused them to be prepared;
- (d) a word importing the singular includes the plural and vice versa; and
- (e) a reference to a statute is a reference to a New Zealand statute and includes all regulations under and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.

14.6 The failure by Okitu Electrical to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Okitu Electrical right to subsequently enforce that provision.

14.7 Each party shall, at its own expense and when requested by another party, promptly sign and deliver, execute, procure, pass and do all such further document, acts, matters, resolutions and things as may be necessary or desirable for effecting the transactions contemplated by this Terms.

14.8 Okitu Electrical may amend these Terms from time to time by notice to Client in writing (including by email) and by publication on Okitu Electrical’s website at okituelectrical.co.nz. Any change will take effect from the time specified by the notice. By continuing to receive any Goods and/or Services or by placing any order the Client shall be deemed to have accepted the updated Terms.