

1. DEFINITIONS

- 1.1 Top Energy, we, us, or our means Top Energy Limited and all its subsidiaries, affiliates and each of their respective directors, officers, partners, employees, and agents.
- 1.2 Construction Terms means details included in the Quotation. .
- 1.3 Customer, you or yours means Top Energy’s customer as defined in the Quotation.
- 1.4 Days, excludes any shut down period Top Energy has over the Christmas and New Year holiday period.
- 1.5 Materials means, any goods or equipment owned by us and/or supplied by us under this agreement including, but not limited to, electrical equipment or any other goods or equipment related to electrical equipment or installation or maintenance of such equipment and as otherwise set out in the Key Terms.
- 1.6 Minor Variation means a small modification, addition, or reduction to the approved plans, specifications, or scope of work that does not significantly deviate from the original contract, impact compliance, or substantively alter the contract price or completion date.
- 1.7 Quotation means, any document given to you by us to provide pricing and scope of work, whether in writing or by email.
- 1.8 Works, means the works to be undertaken by us in accordance with the scope of the Quotation.

2. FORMATION OF AGREEMENT


- 2.1 These Terms of Trade and your acceptance of a Quotation from Top Energy including any specific Construction Terms, including and incorporating these Terms of Trade form a binding legal agreement (the Agreement) between you and Top Energy and constitute an order for Top Energy to supply Materials and/or services.
- 2.2 Should there be any conflict between these Terms of Trade, the Quotation and the Construction Terms then the Quotation takes precedence over the Terms of Trade followed by the Construction Terms.
- 2.3 You will be deemed to have accepted our Quotation and these Terms of Trade upon the earlier of:
 - a) countersigning the Quotation or these Terms of Trade where indicated and returning the signed documents to us; or
 - b) communication of your acceptance, (whether orally, in writing, by purchase order, by email or other action consistent with acceptance, subject always to clause 2.4 below) and provision of credit arrangements satisfactory to us.
- 2.4 Should there be no reply to our offer within 90 days of the offer being issued the job file will be closed and a new application will be required.
- 2.5 Unless otherwise stated by us, the Quotation remains open for acceptance for 30 days after the date of issue (or, if undated, the date of receipt by you), after which time Top Energy will not be bound by any quoted price(s). If, within 60 days of your acceptance of our Quotation pursuant to clause 2.2 (and the formation of an Agreement between you and Top Energy):
 - a) we remain unable to commence the provision of the agreed Materials and/or services despite due diligence by Top Energy;
 - b) you are unable to provide us with necessary access to any relevant sites and/or materials; or
 - c) the relevant licences, permits or consents have not been granted;
 then we may, at our sole discretion, elect either to terminate this Agreement or to treat the situation as a Variation, which shall be agreed by the parties in accordance with clause 3.3.
- 2.6 This Agreement supersedes all previous communications in relation to the relevant Materials and/or services (whether written or oral), including without limitation any inconsistent terms (a) purported to be included in your acceptance pursuant to clause 2.3 above; (b) in any order from you (including without limitation in any purchase order); and (c) that might be implied by law, trade custom, practice or course of dealing.

3. SCOPE OF WORK

- 3.1 We will provide the Materials and/or services described in the Quotation in accordance with industry standards and all relevant legal requirements.
- 3.2 We will be entitled to vary the scope of work under this Agreement, which shall include, without limitation, any changes to the price, quality, scale, supply or timing of the work arising from:
 - a) any verbal or written instruction from you or your representative;
 - b) any deficiency or inaccuracy in the information supplied by you on which we have relied in preparing the Quotation;
 - c) any changes in law (including without limitation any statute, regulation, by-law or requirement of any relevant authority) or circumstance not reasonably foreseeable at the time of entering into this Agreement;
 - d) any circumstances that prevent us from providing any Materials or services pursuant to clause 2.3; or
 - e) any other reason agreed to in writing by the parties (Variation).
- 3.3 Where practicable, and in good faith and acting reasonably, the parties shall agree in writing without undue delay, but within 14 days, the value of any Variation, which shall be based on our standard rates at the time, and its impact on any previously agreed dates relating to the provision of the Materials and/or services. You agree that where the Variation is a Minor Variation, we do not need to obtain your agreement to the Variation. Where agreement is required but the parties are unable to reach agreement, then either party may terminate the Agreement with immediate effect and you shall be required to immediately pay all sums due in relation to the provision of Materials and services up until the date of termination.
- 3.4 If you cancel or terminate this Agreement at any time you agree to pay us any costs that we have incurred in the provision of Materials and services under this Agreement, provided that we will mitigate these costs where we can.

4. PRICE AND PAYMENT

- 4.1 You agree to the price, plus GST (unless otherwise specified), detailed in the Quotation.
- 4.2 Subject to any agreed credit arrangements, all Materials and services provided by Top Energy must be paid for before they are provided to you. Works will be scheduled to start within 60 days following the issue of the work pack to the construction team
- 4.3 If we have agreed to credit arrangements, you will pay the invoiced amounts no later than the 20th of the month following the date of the invoice (or any other date for payment agreed in writing by the parties) (the Due Date).
- 4.4 If you do not pay any sums due by the Due Date then you will be required to pay:
 - a) interest on all overdue amounts, which will be charged at the rate of 2.0% per month compounding, from the Due Date to the date of payment; and
 - b) all costs and expenses (including, without limitation, legal fees on a solicitor client basis, court costs, reasonable costs of administrative time spent attending to any debt collection and debt collection agency costs) reasonably incurred by Top Energy in the collection of overdue accounts and interest.
- 4.5 If you dispute any obligation to pay under any invoice in good faith, you must notify us of the nature of the dispute and the date and number of the invoice within 14 days of receipt of the invoice. If you fail to notify us in that manner, you will be required to pay for the Materials or services on the relevant Due Date. Payment of any undisputed amounts will be required by the Due Date.
- 4.6 Receipt of any electronic payment, or other negotiable instrument shall not be deemed to be payment if dishonoured, cancelled or invalidated.
- 4.7 Part payment of any sums owed to us will not constitute full and final settlement of your total debts unless we have previously agreed in writing to accept the amount paid as full and final settlement of such debts.
- 4.8 If you fail to pay us any amount due by the Due Date, or in the event of any adverse change in your financial circumstances, we may, on notice to you, terminate or suspend the grant of credit to you, or vary the terms upon

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which we grant credit. If so, you must pay any outstanding debt immediately and pay in advance for any existing order.

5. DEFAULT

5.1 You shall be in default under this Agreement (Default) if: a) subject to clause 4.5, you do not pay any invoice by the Due Date and fail to remedy this breach within 10 business days of receiving notice from us advising that the payment is overdue;

- a) you knowingly cause or allow any Materials to be, or become liable to be, removed, destroyed, damaged, endangered, disassembled, concealed from us or made subject to any lien;
- b) you sell or otherwise dispose of any Materials, or if any Materials become liable to seizure by another creditor; or
- c) you breach any of your other obligations under this Agreement and fail to remedy such breach within 10 business days of us requesting you to do so.

5.2 In the event of any Default, and without prejudice to any other available rights and remedies, Top Energy may:

- a) suspend or cease all work agreed to under this Agreement;
- b) terminate the Agreement;
- c) seize any Materials that are subject to any Top Energy security interest(s);
- d) enter without notice any premises in order to seize any Materials. You irrevocably authorise Top Energy's agents to enter the premises on which the Materials may be located in order to seize the Materials;
- e) if necessary, use your equipment to lift and transport the Materials. You indemnify Top Energy against any claim from any third party for damage caused during such entry or seizure and you agree that you have no claim whatsoever against Top Energy for any such damage;
- f) require payment by you for all completed work and non-returnable Materials received by you; and
- g) require payment by you of any reasonable costs incurred by Top Energy in association with any of (a) – (f) above.

6. SET OFF

6.1 You will pay all amounts due under this Agreement in full without any set- off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).

6.2 Top Energy may at any time, at our absolute discretion and without prior notice, set off any amount owing by you to us (whether or not due for payment) against any amount payable by us to you (including without limitation all or any part of any credit balance held by us), regardless of whether or not either liability arises under this Agreement. Any exercise by us of such rights of set off shall not limit or affect any other rights or remedies available to us under this Agreement or otherwise.

7. OWNERSHIP & SECURITY

7.1 Top Energy retains ownership of all Materials supplied to you until we receive your payment in full for those Materials.


7.2 The terms “perfected”, “proceeds”, “purchase money security interest” and “security interest” have the respective meanings given to them in the Personal Property Securities Act 1999 (PPSA).

7.3 You grant a security interest to us in each and every part of any Materials supplied to you as security for payment by you for the Materials and for any other amounts owed by you to us from time to time. The security created under and by this Agreement will become enforceable in the event of any Default occurring pursuant to clause 5.1.

7.4 You acknowledge that a financing statement may be registered in respect of the security interest granted in the Materials and that you will do all things that we require to enable us to:

- a) have a perfected security interest in the Materials and a purchase money security interest in each part of the Materials; and

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b) exercise any of our rights or powers under this Agreement, whether on enforcement of the security interest or otherwise.

7.5 You agree to waive the right to receive a copy of a verification statement under the PPSA.

7.6 You agree that:

a) your rights as a debtor under sections 116, 120(2), 121, 125, 127, 129 and 131 of the PPSA will not apply to this Agreement; and

b) nothing in sections 114(1)(a), 120(1), 133 and 134 of the PPSA will apply to this Agreement or the security interest granted under this Agreement.

7.7 If you do not pay any sums due by the Due Date then, in addition to the payment of interest and any debt collection costs detailed in clause 4.4, you will be required to pay the costs of:

a) our compliance with section 162 of the PPSA; and

b) obtaining any order maintaining registration under section 165 of the PPSA.

7.8 Top Energy is the sole owner of any intellectual property rights that arise or are created by our employees or contractors in relation to this Agreement.

8. RISK

8.1 Notwithstanding our ownership of any Materials, the risk of damage to or loss of those Materials will fall on you from the time of delivery to your site. You will insure any such Materials for full replacement value from the time of delivery.

9. DEFECTS

9.1 If you become aware of any defect in any Materials or services supplied by Top Energy, you must advise us in writing as soon as you become aware of such defect.

9.2 We will remedy, at our cost, any defects in our workmanship that arise within 12 months of the date the relevant services were performed. This obligation does not extend to any defects or damage caused by misuse or mismanagement of the works, damage caused by third parties or yourself, or any deficiency in design not undertaken by us. For the avoidance of doubt, we will have no liability after the expiry of that 12 month period.

9.3 We will pass on the benefit of any manufacturers' warranties relating to any Materials that we supply to you for a maximum period of 12 months from the date of delivery of those Materials.

10. OBLIGATIONS

10.1 YOUR OBLIGATIONS In addition to your other obligations detailed in this Agreement, you will:

a) provide, free of cost and as soon as practicable, all information in your possession or control that we may require in order to carry out the works, ensuring that any such information does not infringe the copyright or other intellectual property rights of any other person or entity;

b) co-operate with Top Energy at all times and not obstruct the proper performance of any services; and

c) as soon as practicable after the commencement of this Agreement, allow us to access the locations associated with the provision of the Materials and/or services.

d) provide all the required licenses, permissions, and consents to undertake the services; and

e) ensure we have unrestricted access to site

10.2 OUR OBLIGATIONS

a) We will do everything reasonable within our control to undertake and complete the Works in a timely manner.

b) We will undertake the Works in accordance with all applicable legislation and good industry practice.

c) We may need to switch off the electricity supply to the property and other customers while we undertake the Works. We will use reasonable endeavors to minimise the number and duration of outages for our

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customers. We will not be liable for any interruption this may cause to you, your business activities or any other person at the property.

11. YOUR LIABILITY

- 11.1 Subject to clauses 11.4, 11.6, you will be liable to us for the physical loss or damage which is directly caused by your negligence or breach of this Agreement.
- 11.2 Subject to clause 11.4, 11.6, but despite any other term of this Agreement and to the extent permitted by law, you will not be liable to us, under or in relation to this agreement, for:
 - a) Any loss of profit, loss of revenue, loss of contract or loss of goodwill (in each case whether direct or indirect), and
 - b) Any indirect or consequential loss.
- 11.3 Subject to clauses 11.4, 11.6, your maximum liability to us for any single event or series of related events is \$50,000, and in aggregate for all events will not exceed \$150,000.
- 11.4 Despite any other term of the agreement, you indemnify us against the full amount of all claims, losses, damages and reasonable expenses and costs that we incur in relation to any claim by any third party in relation to this agreement, to the extent that such claim arises from or could not have been made but for your negligence or any breach of this agreement by you.
- 11.5 We agree to take all reasonable steps to mitigate any losses we may suffer or incur arising out of anything done, or not done, under or in connection with this Agreement.
- 11.6 Nothing in this clause 11 limits or excludes or has the effect of limiting or excluding any liability you have to us relating to any charges that are owing to us under this Agreement.
- 11.7 This clause will survive termination or expiry of this Agreement.

12. OUR LIABILITY

- 12.1 Subject to clauses 12.4, we will be liable to you for the physical loss or damage which is directly caused by our negligence or breach of this Agreement.
- 12.2 Subject to clause 12.4, but despite any other term of this Agreement and to the extent permitted by law, we will not be liable to you, under or in relation to this agreement, for:
 - a) Any loss of profit, loss of revenue, loss of contract or loss of goodwill (in each case whether direct or indirect), and
 - b) Any indirect or consequential loss.
- 12.3 Subject to clauses 12.4, our maximum liability to you for any single event or series of related events is \$50,000, and in aggregate for all events will not exceed \$150,000.
- 12.4 Despite any other term of the agreement, we indemnify you against the full amount of all claims, losses, damages and reasonable expenses and costs that you incur in relation to any claim by any third party in relation to this agreement, to the extent that such claim arises from or could not have been made but for our negligence or any breach of this agreement by us.
- 12.5 You agree to take all reasonable steps to mitigate any losses you may suffer or incur arising out of anything done, or not done, under or in connection with this Agreement.
- 12.6 This clause will survive termination or expiry of this Agreement.

13. HEALTH, SAFETY AND ENVIRONMENT

- 13.1 We will provide our services in accordance with all relevant health, safety and environmental requirements and with any site-specific safety requirements that you notified to us at the time you ordered our Materials and/or services.
- 13.2 The site must be kept safe at all times. You must inform us of any workplace hazards to which we may be exposed while on your premises at the time of ordering and during the delivery or performance of our Materials and/or services.

- 13.3 If any situation arises which may require our input to maintain a safe work site, there must be prior agreement as to who will manage particular risks, and how.
- 13.4 We may refuse to perform work if we are not satisfied that it can be performed safely.
- 13.5 You will comply with all applicable New Zealand legislation including (without limitation) the Resource Management Act 1991 and the Health and Safety at Work Act 2015. All will comply with all our safety requirements and procedures including performing appropriate health, safety and environmental risk assessments and implement any necessary preventive controls prior to our works commencing.

- 14. **CONFIDENTIALITY**
- 14.1 You shall not, at any time during this Agreement and for a period of two years following completion of the services, disclose to any person any confidential information concerning Top Energy’s business, affairs, pricing, customers, clients or suppliers except as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 15. **FORCE MAJEURE**
- 15.1 Neither party shall in any event be liable to the other as a result of any delay or failure to perform our obligations under this Agreement as a result of any strikes, lock-outs or other industrial disputes; failure of a utility service or transport network; war, riot, civil commotion or malicious damage; compliance with any law or governmental order, rule, regulation or direction; accident, breakdown of plant or machinery, fire, flood, storm or other acts of God; default of suppliers or subcontractors or any other cause beyond our reasonable control.

- 16. **CONSUMER GUARANTEES ACT**
- 16.1 Where you acquire, or hold yourself out as acquiring, Materials or services or both for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 will not apply to the supply of Materials or services under this Agreement.
- 16.2 The limitation of liability in clause 12 of this Agreement is not intended to limit any rights a consumer may have under the Consumer Guarantees Act 1993.

- 17. **NO ASSIGNMENT**
- 17.1 You may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any manner with any or all your rights under this Agreement.

- 18. **VARIATIONS AND WAIVERS**
- 18.1 Subject to clause 3.3, no variation to or waiver of any part of this Agreement shall be valid or effective unless or until agreed to in writing by Top Energy.

- 19. **RELATIONSHIP**
- 19.1 Nothing expressed or implied in this Agreement will constitute either party as the agent, partner, employee, or officer of, or as a joint venture with, the other party. Neither party will make any contrary representation to any other person nor will they have any authority to act as agent for, or to bind, the other party in any way.
- 19.2 A person who is not a party to this Agreement shall not have any rights to enforce its terms.

- 20. **SEVERABILITY**
- 20.1 If any condition or provision of this Agreement is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceable shall not affect the validity or enforceability of any other provisions and conditions of this Agreement.