

Bayside Electrical Services Limited – Terms & Conditions of Trade

- unsafe by Bayside, then Bayside shall notify the Client immediately. The power if isolated will not be re-engaged until such time as the existing condition has been rectified and made safe in accordance with the Electrical Safety Regulations. The Client accepts and agrees that any costs associated with the rectification Works including any Materials and labour shall be to the Client's account.
- 12.7 Any live Works or Works undertaken near live conductors where it is safe to do so shall be dealt with in accordance with New Zealand and Australian Wiring standards being "Safe working on Low Voltage Electrical Installations, relevant Statutory Acts and Work Place Regulations". Bayside's live Works procedures are designed to eliminate risk of injury to Bayside's employees, damage to the Client's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Works for which additional charges may be applicable. This shall be invoiced in accordance with clause 6.2.
- 12.8 Notwithstanding clause 12.1, and pursuant to the Health & Safety at Work Act 2015 (the "HSWA Act"), Bayside agrees at all times to comply with sections 28 and 34 of the "HSWA Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the Worksite or where they may be acting as a sub-contractor for the Client who has engaged a third party head contractor.
13. **Title**
13.1 Bayside and the Client agree that ownership of the Materials shall not pass until:
(a) the Client has paid Bayside all amounts owing to Bayside; and
(b) the Client has met all of its other obligations to Bayside.
- 13.2 Receipt by Bayside of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 13.3 It is further agreed that:
(a) the ownership of the Materials passes to the Client in accordance with clause 13.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Bayside on request;
(b) the Client holds the benefit of the Client's insurance of the Materials on trust for Bayside and must pay to Bayside the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
(c) the production of these terms and conditions by Bayside shall be sufficient evidence of Bayside's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Bayside to make further enquiries;
(d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value, if the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for Bayside and must pay to Bayside the proceeds of any such act on demand;
(e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Bayside and must sell, dispose of or return the resulting product to Bayside as it so directs;
(f) unless the Materials have become fixtures the Client irrevocably authorises Bayside to enter any premises where Bayside believes the Materials are kept and recover possession of the Materials;
(g) Bayside may recover possession of any Materials in transit whether or not delivery has occurred;
(h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of Bayside; and
(i) Bayside may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
14. **Personal Property Securities Act 1999 ("PPSA")**
14.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
(a) these terms and conditions constitute a security agreement for the purposes of the PPSA, and
(b) a security interest is taken in all Materials that have previously been supplied to the Client and will be supplied in the future by Bayside to the Client and the proceeds from such Materials as listed by Bayside to the Client in invoices rendered from time to time.
- 14.2 The Client undertakes to:
(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Bayside may reasonably require to register a financing statement or financing change statement or deliver the Personal Property Securities Register, indemnify, and upon demand reimburse, Bayside for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;
(c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials or the proceeds of such Materials in favour of a third party without the prior written consent of Bayside; and
(d) immediately advise Bayside of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
- 14.3 Bayside and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 14.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 14.5 Unless otherwise agreed to in writing by Bayside, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.6 The Client shall unconditionally ratify any actions taken by Bayside under clauses 14.1 to 14.5.
- 14.7 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
15. **Security and Charge**
15.1 In consideration of Bayside agreeing to supply the Works, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of the price of the Works and the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 15.2 The Client indemnifies Bayside from and against all Bayside's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Bayside's rights under this clause.
- 15.3 The Client irrevocably appoints Bayside and each director of Bayside as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.
16. **Defects and Returns of Materials**
16.1 The Client shall inspect the Materials on delivery and shall within thirty (30) days of delivery (time being of the essence) notify Bayside of any alleged defect, shortage in quantity, damage or failure to comply with the description or quality of the Materials. The Client has the right to inspect the Materials within a reasonable time following delivery if the Client believes the Materials are defective in any way. If the Client shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which Bayside has agreed in writing that the Client is entitled to reject, Bayside's liability is limited to either (at Bayside's discretion) replacing the Materials or repairing the Materials.
- 16.2 Materials will not be accepted for return other than in accordance with 16.1 above.
17. **Warranties**
17.1 Subject to the conditions of warranty set out in clause 17.2 Bayside warrants that if any defect in any workmanship provided by Bayside becomes apparent and is reported to Bayside within twelve (12) months of the date of delivery (time being of the essence) then Bayside will either (at Bayside's sole discretion) replace or rectify the defect.
- 17.2 The conditions applicable to the warranty given by clause 17.1 are:
(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
(i) failure on the part of the Client to properly maintain any Materials or serviced item; or
(ii) failure on the part of the Client to follow any instructions or guidelines provided by Bayside;
(iii) any use of any Materials or serviced item otherwise than for any application specified on a quote or order form; or
(v) the continued use of any Materials or serviced item after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
(v) fair wear and tear, any accident or act of God.
- (b) the warranty shall cease and Bayside shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Bayside's consent.
(c) in respect of all claims Bayside shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
18. **Consumer Guarantees Act 1993**
18.1 If the Client is acquiring Materials for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Materials by Bayside to the Client.
19. **Intellectual Property**
19.1 Where Bayside has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in Bayside, and shall only be used by the Client at Bayside's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of Bayside.
- 19.2 The Client warrants that all designs, specifications or instructions given to Bayside will not cause Bayside to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Bayside against any action taken by a third party against Bayside in respect of any such infringement.
- 19.3 The Client agrees that Bayside may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which Bayside has created for the Client.
20. **Default and Consequences of Default**
20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Bayside's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Client owes Bayside any money the Client shall indemnify Bayside from and against all costs and disbursements incurred by Bayside in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Bayside's collection agency costs, and bank dishonour fees).
- 20.3 Further to any other rights or remedies Bayside may have under this Contract, if a Client has made payment to Bayside, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Bayside under this clause 20, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 20.4 Without prejudice to Bayside's other remedies at law Bayside shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Bayside shall, whether or not due for payment, become immediately payable if:
(a) any money payable to Bayside becomes overdue, or in Bayside's opinion the Client will be unable to make a payment when it falls due;
(b) the Client has exceeded any applicable credit limit provided by Bayside;
(c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
21. **Cancellation**
21.1 Without prejudice to any other rights or remedies Bayside may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice(s)) then Bayside may suspend or terminate the supply of the Works. Bayside will not be liable to the Client for any loss or damage the Client suffers because Bayside has exercised its rights under this clause.
- 21.2 Bayside may cancel any Contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice Bayside shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Bayside for Works already performed. Bayside shall not be liable to the Client for any loss or damage whatsoever arising from such cancellation.
- 21.3 In the event that any Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by Bayside as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
22. **Privacy Policy**
22.1 All emails, documents, images or other recorded information held or used by Bayside is "Personal Information" as defined and referred to in clause 22.3 and therefore considered confidential. Bayside acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and set out in the Act. Bayside acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information held by Bayside that may result in serious harm to the Client, Bayside will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- 22.2 Notwithstanding clause 22.1, privacy limitations will extend to Bayside in respect of Cookies where the Client uses Bayside's website to make enquiries. Bayside agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
(a) IP address, browser, email client type and other similar details;
(b) tracking website usage and traffic; and
(c) reports are available to Bayside when Bayside sends an email to the Client, so Bayside may collect and review that information ("collectively the Client's Personal Information").
- If the Client consents to Bayside's use of Cookies on Bayside's website and later wishes to withdraw that consent, the Client may manage and control Bayside's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 22.3 The Client authorises Bayside or Bayside's agent to:
(a) access, collect, retain and use any information about the Client;
(i) (including name, address, D.O.B., occupation, driver's license details, electronic contact (email, Facebook or Twitter) details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
(ii) for the purpose of marketing products and services to the Client.
(b) disclose information about the Client, whether collected by Bayside from the Client or obtained by Bayside from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 22.4 Where the Client is an individual the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 22.5 The Client shall have the right to request (by e-mail) from Bayside, a copy of the Personal Information about the Client retained by Bayside and the right to request that Bayside correct any incorrect Personal Information. Bayside will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the Law.
- 22.7 The Client can make a privacy complaint by contacting Bayside via e-mail. Bayside will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.
23. **Suspension of Works**
23.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
(a) Bayside has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client; and
(i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
(ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
(iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to Bayside by a particular date; and
(iv) Bayside has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
(b) if Bayside suspends work, it:
(i) is not in breach of Contract; and
(ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
(iii) is entitled to an extension of time to complete the Contract; and
(iv) keeps its rights under the Contract including the right to terminate the Contract; and 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 Bayside exercises the right to suspend work, the exercise of that right does not:
(i) affect any rights that would otherwise have been available to Bayside under the Contract and Commercial Law Act 2017; or
(ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of Bayside suspending work under this provision;
(d) due to any act or omission by the Client, the Client effectively precludes Bayside from continuing the Works or performing or complying with Bayside's obligations under this Contract, then without prejudice to Bayside's other rights and remedies, Bayside may suspend the Works immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Works is based. All costs and expenses incurred by Bayside as a result of such suspension and commencement shall be payable by the Client as if they were a variation.
- 23.2 If pursuant to any right conferred by this Contract, Bayside suspends the Works and the default that led to that suspension continues unremedied subject to clause 21.1 for at least ten (10) working days, Bayside shall be entitled to terminate the Contract, in accordance with clause 21.
24. **Service of Notices**
24.1 Any written notice given under this Contract shall be deemed to have been given and received:
(a) by handing the notice to the other party, in person;
(b) by leaving it at the address of the other party as stated in this Contract;
(c) by sending it by registered post to the address of the other party as stated in this Contract;
(d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
(e) if sent by email to the other party's last known email address.
- Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
25. **Trusts**
25.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Bayside may have notice of the Trust, the Client covenants with Bayside as follows:
(a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
(b) the Client has full and complete power and authority under the Trust to enter into this Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
(c) the Client will not without consent in writing of Bayside (Bayside will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
(i) the removal, replacement or retirement of the Client as trustee of the Trust;
(ii) any alteration to or variation of the terms of the Trust;
(iii) any advancement or distribution of capital of the Trust; or
(iv) any resettlement of the trust property.
26. **General**
26.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 26.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect either party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 26.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 26.4 Subject to the CGA, Bayside shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Bayside of these terms and conditions (alternatively Bayside's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 26.5 Bayside may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 26.6 The Client cannot licence or assign without the written approval of Bayside.
- 26.7 Bayside may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Bayside's sub-contractors without the authority of Bayside.
- 26.8 The Client agrees that Bayside may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Bayside to provide Works to the Client.
- Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including worldwide destination ports) etc. ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to Bayside.
- 26.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.