

# McFall Management Limited T/A Deco Light – Terms & Conditions of Trade

- 1. Definitions**
- 1.1 "Agent" means McFall Management Limited T/A Deco Light, its successors and assigns or any person acting on behalf of and with the authority of McFall Management Limited T/A Deco Light.
- 1.2 "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client it is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by the Agent to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Goods as agreed between the Agent and the Client in accordance with clause 4 below.
- 2. Acceptance**
- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the Agent's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Agent.
- 2.3 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on the Agent's website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.
- 3. Change in Control**
- 3.1 The Client shall give the Agent not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Agent as a result of the Client's failure to comply with this clause.
- 4. Price and Payment**
- 4.1 At the Agent's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by the Agent to the Client; or
- (b) the Price as at the date of delivery of the Goods according to the Agent's current price list; or
- (c) the Agent's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 The Agent reserves the right to change the Price in the event of a variation to the Agent's quotation. Any variation from the plan of scheduled Services or specifications (including, but not limited to, in the event that overseas transactions increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges or as a result of increases to the Agent in the cost of the materials and/or labour) will be detailed in writing and charged for on the basis of the Agent's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At the Agent's sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Agent, which may be:
- (a) on delivery of the Goods;
- (b) before delivery of the Goods;
- (c) by way of instalments/progress payments in accordance with the Agent's payment schedule;
- (d) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted or emailed to the Client's address or address for notices;
- (e) the date specified on any invoice or other form as being the date for payment; or
- (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Agent.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to one and a half percent (1.5%) of the Price), or by any other method as agreed to between the Client and the Agent.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Agent an amount equal to any GST the Agent must pay for any supply by the Agent 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.
- 5. Delivery of Goods**
- 5.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at the Agent's address; or
- (b) the Agent (or the Agent's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 5.2 At the Agent's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 5.3 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Agent shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.4 Any time or date given by the Agent to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and the Agent will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.
- 6. Risk**
- 6.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Agent is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Agent is sufficient evidence of the Agent's rights to receive the insurance proceeds without the need for any person dealing with the Agent to make further enquiries.
- 6.3 If the Client requests the Agent to leave Goods outside the Agent's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 6.4 The Client acknowledges that the Agent is only responsible for parts that are replaced by the Agent and that in the event that other parts/Goods, subsequently fail, the Client agrees to indemnify the Agent against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 7. Specifications of the Goods**
- 7.1 Where the Agent gives advice or recommendations to the Client, or the Client's agent, with specific instructions regarding the use of the Goods and such advice or recommendations are not acted upon then the Agent shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent purchase of the Goods.
- 7.2 The Client warrants that any structure or equipment in or upon which the Goods are to be installed is sound and will sustain the installation and work incidental thereto and the Agent shall not be liable for any claims, damages, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 7.3 The Client acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in the Agent's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Agent.
- (b) while the Agent may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that the Agent has given these in good faith, and are estimates which are variable due to factors out of the Agent's control (including, but not limited to, power supply availability and location, operational time, and location – geographical or otherwise);
- (c) some structures may not have the optimum orientation for the installation of the Goods or components, and the Client therefore understands and accepts that the Goods performance may be compromised in such situations.
- 7.4 The Client shall be responsible for ensuring that the Goods ordered are suitable for their intended use.
- 7.5 The Agent reserves the right to substitute comparable Goods (or components of the Goods), and in all such cases the Agent will notify the Client in advance of any such substitution.
- 8. Title**
- 8.1 The Agent and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid the Agent all amounts owing to the Agent; and
- (b) the Client has met all of its other obligations to the Agent.
- 8.2 Receipt by the Agent 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.
- 8.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 8.1 that the Client is only a bailee of the Goods and must return the Goods to the Agent on request.
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Agent and must pay to the Agent the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Agent and must pay or deliver the proceeds to the Agent on demand.
- (d) the Client should not convert or process the Goods 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 the Agent and must sell, dispose of or return the resulting product to the Agent as it so directs.
- (e) the Client irrevocably authorises the Agent to enter any premises where the Agent believes the Goods are kept and recover possession of the Goods.
- (f) the Agent may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Agent.
- (h) the Agent may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 9. Personal Property Securities Act 1999 ("PPSA")**
- 9.1 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 Goods previously supplied by the Agent to the Client (if any) and all Goods that will be supplied in the future by the Agent to the Client.
- 9.2 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 the Agent may reasonably require to register a financing statement or financing charge statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, the Agent for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- (c) not register a financing charge statement or a charge demand without the prior written consent of the Agent; and
- (d) immediately advise the Agent of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 9.3 The Agent and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 9.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 9.5 Unless otherwise agreed to in writing by the Agent, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 9.6 The Client shall unconditionally ratify any actions taken by the Agent under clauses 9.1 to 9.5.
- 10. Security and Charge**
- 10.1 In consideration of the Agent agreeing to supply the Goods, 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, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Client indemnifies the Agent from and against all the Agent's costs and disbursements including legal costs as a solicitor and own client basis incurred in exercising the Agent's rights under this clause.
- 10.3 The Client irrevocably appoints the Agent and each director of the Agent as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.
- 11. Client's Disclaimer**
- 11.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Agent or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Agent and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.
- 12. Defects**
- 12.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Agent of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Agent an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Agent has agreed in writing that the Client is entitled to reject, the Agent's liability is limited to either (at the Agent's discretion) replacing the Goods or repairing the Goods.
- 13. Returns**
- 13.1 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 12.1; and
- (b) the Agent has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Client's cost within seven (7) days of the delivery date; and
- (d) the Agent will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 13.2 Returned Goods may (at the Agent's sole discretion), incur restocking and handling fees.
- 13.3 Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.
- 14. Warranty**
- 14.1 Subject to the conditions of warranty set out in clause 14.2 the Agent warrants that if any defect in any workmanship of the Agent becomes apparent and is reported to the Agent within thirty (30) days of the date of delivery (time being of the essence) then the Agent will either (at the Agent's sole discretion) replace or remedy the workmanship.
- 14.2 The conditions applicable to the warranty given by clause 14.1 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 Goods; or
- (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Agent; or
- (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
- (iv) the continued use of any Goods 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 the Agent shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Agent's consent.
- (c) in respect of all claims the Agent 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.
- 14.3 For Goods not manufactured by the Agent, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Agent shall not be bound by nor responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 14.4 The conditions applicable to the warranty given on Goods supplied by the Agent are contained on the "Warranty Card" that will be supplied with the Goods.
- 14.5 In the case of second hand Goods, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by the Agent as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Agent shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 15. Consumer Guarantees Act 1993**
- 15.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Agent to the Client.
- 16. Intellectual Property**
- 16.1 Where the Agent has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Agent.
- 16.2 The Client warrants that all designs, specifications or instructions given to the Agent will not cause the Agent to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Agent against any action taken by a third party against the Agent in respect of any such infringement.
- 16.3 The Client agrees that the Agent may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Agent has created for the Client.
- 17. Default and Consequences of Default**
- 17.1 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 the Agent's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Client owes the Agent any money the Client shall indemnify the Agent from and against all costs and disbursements incurred by the Agent in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Agent's collection agency costs, and bank dishonour fees).
- 17.3 Without prejudice to any other remedies the Agent may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Agent may suspend or terminate the supply of Goods to the Client. The Agent will not be liable to the Client for any loss or damage the Client suffers because the Agent has exercised its rights under this clause.
- 17.4 Without prejudice to the Agent's other remedies at law the Agent shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Agent becomes overdue, or in the Agent's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client becomes insolvent, 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 18. Cancellation**
- 18.1 The Agent may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Agent shall repay to the Client any money paid by the Client for the Goods. The Agent shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Agent as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.3 Cancellation of orders for Goods 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.
- 19. Privacy Act 1993**
- 19.1 The Client authorises the Agent or the Agent's agent to:
- (a) access, collect, retain and use any information about the Client:
- (i) (including 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 the Agent from the Client directly or obtained by the Agent 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.
- 19.2 Where the Client is an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 19.3 The Client shall have the right to request the Agent for a copy of the information about the Client retained by the Agent and the right to request the Agent to correct any incorrect information about the Client held by the Agent.
- 20. Unpaid Seller's Rights**
- 20.1 Where the Client has left any item with the Agent for repair, modification, exchange or for the Agent to perform any other service in relation to the item and the Agent has not received or been tendered the whole of any moneys owing to it by the Client, the Agent shall have, until all moneys owing to the Agent are paid:
- (a) a lien on the item; and
- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 20.2 The lien of the Agent shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Agent having been obtained against the Client.
- 21. Construction Contract Act 2002**
- 21.1 The Client hereby expressly acknowledges that:
- (a) the Agent 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 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 the Agent by a particular date; and
- (iv) the Agent has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if the Agent 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 the Agent exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to the Agent under the Contractual Remedies Act 1979; 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 the Agent suspending work under this provision.
- 22. General**
- 22.1 The failure by the Agent to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Agent's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.2 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.
- 22.3 The Agent 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 the Agent of these terms and conditions (alternatively the Agent's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 22.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Agent nor to withhold payment of any invoice because part of that invoice is in dispute.
- 22.5 The Agent may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 22.6 The Client agrees that the Agent may amend these terms and conditions at any time. If the Agent makes a change to these terms and conditions, then that change will take effect from the date on which the Agent notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Agent to provide Goods to the Client.
- 22.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 22.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.