

**IDEAL ELECTRICAL SUPPLIERS  
TERMS AND CONDITIONS OF TRADE  
(effective January 2012)**



**1. APPLICATION**

- (a) Rexel New Zealand Limited trading as Ideal Electrical Suppliers (**Ideal**) and the purchaser (**Purchaser**) agree that these terms and conditions of trade (**Terms**) will apply to any goods (including electrical goods and any related goods and services) supplied by Ideal to the Purchaser (**Goods**).
- (b) If there is a conflict between these Terms and any other terms and conditions of the Purchaser (or included as part of any Purchaser documentation) these Terms will prevail unless Ideal has specifically agreed in writing that these Terms no longer apply.
- (c) If there is a conflict between these Terms and a written supply agreement signed between the Purchaser and Ideal then those provisions of the supply agreement will apply only to the extent that they conflict with these Terms.
- (d) Ideal may amend these Terms at any time. The amended Terms will apply in respect of all Orders placed with Ideal following the date the amended Terms are provided to the Purchaser.

**2. ORDERS**

- (a) The Purchaser will place written orders for Goods which comply with the ordering process specified by Ideal from time to time (**Order**).
- (b) Each Order will be considered an offer to purchase the Goods and will only be accepted once Ideal either supplies the Goods or sends a written confirmation of the Order to the Purchaser.
- (c) Ideal may accept the Order or decline to accept the Order in whole or in part, in its sole discretion.
- (d) Orders accepted by Ideal are subject to Ideal's ability to supply the Goods. Following acceptance of an Order, Ideal may cancel or refuse to supply any Order at any time in its sole discretion.
- (e) Any Order accepted by Ideal may not be revised, altered or cancelled by the Purchaser unless agreed in writing by Ideal.

**3. PRICE AND PAYMENT**

- (a) The price for any Goods supplied to the Purchaser (**Price**) will be:
- (i) the price agreed between the parties; or
- (ii) in the absence of any agreement between the parties, Ideal's prices applicable for the Goods at the time of the acceptance of the Order by Ideal.
- (b) Ideal may change any Prices by giving 30 days notice to the Purchaser. The new Prices will apply to any Orders accepted by Ideal after the 30 day notice period has elapsed.
- (c) Ideal will invoice the Purchaser the Price for all Goods ordered on a monthly basis (**Invoiced Amount**).
- (d) The Purchaser will pay the Invoiced Amount in full and without deduction or set off by the last working day of the month following the date of the invoice or where Ideal has agreed to any extended credit terms, the Invoiced Amount will be payable by the Purchaser on the date specified by Ideal in any invoice (**Due Date**).
- (e) Unless expressly stated in writing, the Price excludes GST (and any other relevant taxes and duties (if any)) which will be payable by the Purchaser in addition to the Price.
- (f) If the Purchaser fails to pay any amount owing to Ideal in full on or before the Due Date, Ideal may, without prejudice to any other right or remedy Ideal may have:
- (i) charge the Purchaser (who will pay Ideal on demand) default interest at 2% per month on the overdue amount, calculated daily from the Due Date until the date on which payment of the overdue amount is made in full;
- (ii) charge the Purchaser (who will pay Ideal on demand) all costs (including all legal costs on a solicitor-client basis and all collection costs) incurred by Ideal in the collection of such overdue amounts; and
- (iii) refuse to deliver any Order, cancel or suspend any Order, place any overdue account on hold or stop providing credit facilities to the Purchaser and any related entity of the Purchaser.

**4. DELIVERY**

- Delivery will be considered to have taken place when the Goods are made available for collection by the Purchaser from Ideal's premises (**Delivery**). If Ideal agrees to arrange for the transportation of any Goods from Ideal's premises on behalf of the Purchaser:
- (a) the transportation of such Goods is at the Purchaser's expense;
- (b) the Goods will be properly and suitably packed by Ideal and in such manner as to reach the intended destination in good condition under normal conditions of transport;
- (c) Ideal will act as the agent for and on behalf of the Purchaser and will not be liable for, or responsible for, any damage that occurs after Delivery, provided that it has complied with clause 4(b); and
- (d) Ideal will not be liable to the Purchaser for any loss of revenue, loss of profits or any other indirect or consequential losses or liabilities incurred by the Purchaser if any Goods are delivered on any specified date.

**5. RISK AND TITLE**

- (a) Unless agreed in writing by Ideal, all risk of loss, damage, deterioration or destruction to the Goods will pass to the Purchaser on Delivery. Title to any Goods will not pass to the Purchaser until Ideal has received payment in full for all Goods supplied to the Purchaser.
- (b) Until title to the Goods passes, the Purchaser will:
- (i) hold the Goods as a bailee only;
- (ii) clearly designate the Goods as Ideal's property and store the Goods in such a way that they are identified as Ideal's property; and
- (iii) maintain the Goods in good order and condition and preserve the Goods in their present form.
- (c) Without limiting Ideal's other rights and remedies, Ideal will be entitled to retake possession of any Goods at any time prior to payment in full being received for those Goods. The Purchaser grants Ideal an irrevocable right and authority to enter onto any place where such Goods are, or thought to be, at any time, and to take and resell the Goods and to retain the proceeds from such sale. Any shortfall arising from such sale will be a debt due and owing to Ideal by the Purchaser.

**6. PERSONAL PROPERTY SECURITIES ACT 1999**

- (a) The Purchaser acknowledges that the retention of title in clause 5 gives rise to a security interest in all present and after acquired Goods supplied by Ideal to the Purchaser to secure the Purchaser's performance of its obligations to Ideal.
- (b) The Purchaser undertakes to:
- (i) promptly do all things, execute all documents and/or provide any information which Ideal may reasonably require to enable Ideal to perfect and maintain the perfection of its security interest (including by registration of a financing statement);
- (ii) give Ideal not less than 14 days' prior written notice of any proposed change in its name and/or any other change to its details; and

- (iii) immediately on request by Ideal (and at the Purchaser's expense) obtain from any third party such agreements and waivers of any security interest that third party has in the Goods, to ensure that at all times Ideal has a first priority security interest in the Goods.

- (c) The Purchaser waives its rights to receive a copy of any verification statements under the PPSA and agrees that as between Ideal and the Purchaser:
- (i) the Purchaser will have no rights under (or by reference to) sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA; and
- (ii) where Ideal has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.

**7. RETURN OF GOODS**

- (a) Any claims by the Purchaser that any Goods supplied do not correspond to the relevant Order, or that any Goods received are defective, must be made in writing to Ideal within 10 working days after Delivery.
- (b) If no claim is received by Ideal within the 10 working day period the Purchaser will be considered to have irrevocably accepted the Goods.
- (c) If a claim is made by the Purchaser under clause 7(a):
- (i) the Purchaser will advise Ideal of the defect in the Goods and seek Ideal's permission to return those Goods to Ideal for testing or verification (at the Purchaser's cost); and
- (ii) subject to verification, and on receipt of the Goods returned:
- (A) if Ideal supplied incorrect or defective Goods, Ideal will (at the Purchaser's election) either issue a credit note for the Goods or, if possible, transport the applicable replacement Goods to the Purchaser at no additional cost to the Purchaser; or
- (B) if Ideal has not supplied incorrect or defective Goods, or the claim is made outside the applicable period, then Ideal will return the Goods to the Purchaser at the cost of the Purchaser and the Purchaser will have no further claim against Ideal in relation to those Goods.

**8. TESTING AND ACCESS**

If Ideal wishes to commission or test the Goods it will give the Purchaser reasonable notice of its intention to do so. The Purchaser will allow or arrange reasonable access for Ideal to any site in order to carry out these tasks.

**9. LIMITATION OF LIABILITY**

- Without prejudice to clause 7, the Purchaser acknowledges and agrees that: Ideal is not liable to the Purchaser in any manner in connection with any breach of these Terms, other than to compensate the Purchaser for the cost of replacement of any Goods pursuant to clause 7; and
- (b) nothing expressed or implied in these Terms will confer any liability on Ideal for any consequential, indirect or special loss, damage, cost or expense suffered or incurred by the Purchaser as a direct or indirect result of:
- (i) a breach by Ideal of any of its obligations under these Terms; or
- (ii) any use of the Goods otherwise than in accordance with any relevant specifications notified by Ideal to the Purchaser.

**10. NO WARRANTIES**

- (a) Unless warranted in writing by Ideal (in relation to any specific Goods), Ideal makes no representation, warranty or undertaking (whether express or implied) in relation to any Goods (including as to the merchantability, quality, or condition of the Goods, compliance with the description of the Goods, the suitability or fitness of the Goods for the Purchaser's purposes, or the use of the Goods) and to the maximum extent permitted by law, all such representations, warranties and undertakings are negated and excluded.
- (b) Where the Purchaser is acquiring (or represents itself as acquiring) any Goods for the purposes of a business, in terms of section 43(2) of the Consumer Guarantees Act 1993 (Act), the Purchaser will not assert or attempt to assert any rights or claims against Ideal under the provisions of the Act.
- (c) The Purchaser acknowledges that it is not relying on Ideal's skill or judgment as to the suitability or otherwise of the Goods for any purpose.
- (d) Where the Purchaser on-sells any Goods to consumers who purchase those Goods for business purposes, the Purchaser will contract out of the Act in the same manner as provided in clause 10(b). If the Purchaser fails to do so, the Purchaser will indemnify Ideal against any claim, expense or loss suffered or incurred by Ideal as a direct or indirect consequence of such failure.

**11. PRIVACY**

Any information about the Purchaser provided at any time to Ideal may be used by Ideal for any purpose connected with Ideal's business including (but not limited to) direct marketing, debt collection and credit reporting or assessment. Ideal is authorised to provide such information to any external agency or party for credit information and assessment purposes and that agency or party is authorised by the Purchaser to use and continue to use such information as part of its business services. Ideal and any external agency or party may retain and/or use such information for as long as they see fit.

**12. GENERAL**

- (a) The Purchaser will not assign or otherwise transfer its rights or obligations under these Terms to any person without the prior written consent of Ideal.
- (b) Ideal will not be liable for any act, omission or failure by it under these Terms if that act, omission or failure results directly or indirectly from an event or circumstances beyond the reasonable control of Ideal, to the extent permitted by law.
- (c) Any waiver by a party of any of its rights or remedies under these Terms will be effective only if it is recorded in writing and signed by a duly authorised senior representative of that party. If the waiver relates to a breach of any provision of these Terms, this will not (unless stated otherwise) operate as a waiver of any other breach of that provision. No waiver of any breach, or failure to enforce any provision, of these Terms at any time by either party will in any way affect, limit or waive that party's right to subsequently require strict compliance with these Terms.
- (d) If any provision of these Terms is or becomes invalid or unenforceable, that provision will be deemed deleted from these Terms. The invalidity or unenforceability of that provision will not affect the other provisions of these Terms, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.
- (e) These Terms are governed by the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to these Terms.