

ESAT Limited, Terms and Conditions

1. Definitions 1.1 "Seller" shall mean ESAT Limited and its successors and assigns. 1.2 "Customer" shall mean the Customer or any person acting on behalf of and with the authority of the Customer. 1.3 "Guarantor" means that person (or persons), or entity that agrees herein to be liable for the debts of the Customer on a principal debtor basis. 1.4 "Goods" shall have the same meaning as in section 2 of the Sale of Goods Act 1908 and are goods supplied by the Seller to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined). 1.5 "Services" shall mean all services supplied by the Seller to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra). 1.6 "Price" shall mean the cost of the goods as agreed between the Seller and the Customer subject to clause 4 of this contract.

2. Acceptance 2.1 Any instructions received by the Seller from the Customer for the supply of Goods shall constitute acceptance of the terms and conditions contained herein. 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price. 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller. 2.4 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.

3. Goods / Services 3.1 The Goods and/or Services are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Seller to the Customer.

4. Price and Payment 4.1 At the Sellers sole discretion the Price shall be either; (a) The Price shall be as indicated on invoices provided by the Seller to the Customer in respect of Goods supplied; or (b) The Price of the Goods shall, subject to clause 4.2, be the Sellers quoted Price, which shall be binding upon the Seller provided that the Customer shall accept in writing the Sellers quotation within thirty (30) days. 4.2 Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Seller's quotation and will be shown as extras on the invoice. Payment for all extras must be made in full at their time of completion. 4.3 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods. 4.4 At the Seller's sole discretion, a progress payment of 50% for "pre-wires" shall be made in accordance with the Sellers delivery schedule. 4.5 At the Seller's sole discretion, payment for approved Customers shall be due on 20th each month following the posting of a statement to the Customer's address or address for notices. 4.6 At the Seller's sole discretion, for certain approved Customer's payment will be due seven (7) days following the date of the invoice. 4.7 Payment will be made by cash, or by cheque, or by credit card, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and the Seller. 4.8 The Price shall be increased by the amount of any GST and other taxes and duties, which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller.

5. Delivery of Goods 5.1 Delivery of the Goods shall be made to the Customer's address. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Customer at the Seller's address. 5.2 Delivery of the Goods to a carrier, either named by the Customer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Customer, is deemed to be a delivery of the Goods to the Customer. 5.3 The costs of carriage and any insurance which the Customer reasonably directs the Seller to incur shall be reimbursed by the Customer (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Customer's agent. 5.4 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated. 5.5 The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

6. Risk 6.1 If the Seller retains property in the Goods nonetheless all risk for the Goods passes to the Customer on delivery. 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Customer, the Seller is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under these terms and conditions. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

7. Defects/Returns 7.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage. 7.2 For defective Goods which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods provided that: (a) the Customer has complied with the provisions of clause 7.1; (b) the Goods are returned at the Customers cost within seven (7) days of the delivery date; (c) the Seller will not be liable for Goods which have not been stored or used in a proper manner; (d) 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 reasonable possible in the circumstances. 7.3 The Seller may (in its discretion) accept the Goods for credit but this may incur a restocking fee of 15% of the value of the returned Goods plus any freight.

8. Warranty 8.1 Subject to the conditions of warranty set out in Clause 8.2 the Seller warrants that if any defect in any workmanship manufactured by the Seller becomes apparent and is reported to the Seller within twelve (12) months of the date of delivery (time being of the essence) then the Seller will (at the Sellers sole discretion) repair the defect or replace the workmanship. 8.2 The conditions applicable to the warranty given by Clause 8.1 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 Customer to properly maintain any Goods; or ii) Failure on the part of the Customer to follow any instructions or guidelines provided by the Seller; 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;) Fair wear and tear, any accident or act of God. (b) The warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent. (c) In respect of all claims the Seller shall not be liable to compensate the Customer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Customers claim. 8.3 For Goods not manufactured by the Seller the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.

9. Default & Consequences of Default 9.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement. 9.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Seller from and against all of the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's nominees' costs of collection. 9.3 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Customer and any

of its other obligations under the terms and conditions. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller exercised its rights under this clause. 9.4 If any account remains unpaid at the end of the second month after supply of the Goods or services the following shall apply: An immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable in addition to the interest payable under clause 9.1 hereof. 9.5 In the event that: (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to meet its payments as they fall due, or; (b) the Customer 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 Customer or any asset of the Customer, then without prejudice to the Seller's other remedies at law. (i) the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and, (ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become due and payable.

10. Title 10.1 It is the intention of the Seller and agreed by the Customer that property in the goods shall not pass until: (a) The Customer has paid all amounts owing for the particular Goods, and (b) The Customer has met all other obligations due by the Customer to the Seller in respect of all contracts between the Seller and the Customer, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Seller shall have received payment and all other obligations of the Customer are met. 10.2 It is further agreed that: (a) Until such time as ownership of the Goods shall pass from the Seller to the Customer the Seller may give notice in writing to the Customer to return the Goods or any of them to the Seller. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease. (b) If the Customer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are reasonably thought to be situated and take possession of the Goods, without being responsible for any damage thereby caused.

11. Personal Property Securities Act 1999 11.1 Upon assenting to these terms and conditions in writing the Customer 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 Seller to the Customer (if any) and all Goods that will be supplied in the future by the Seller to the Customer during the continuance of the party's relationship. 11.2 The Customer 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 Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby; (c) not register a financing change statement or a change demand without the prior written consent of the Seller; (d) give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice); and (e) immediately advise the Seller 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. 11.3 The Seller and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and Conditions. 11.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA. 11.5 Unless otherwise agreed to in writing by the Seller, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA. 11.6 The Customer unconditionally ratifies any actions taken by the Seller under and by virtue of the power of attorney given by the Customer to the Seller under clauses 11.1 to 11.5.

12. Security & Charge 12.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever: (a) Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met. (b) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis. (c) To give effect to the provisions of clause (11, 12.1(a) to (b)) inclusive hereof the Customer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Customer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as the Seller and/or the Seller's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Customer and/or the Guarantor in any land, realty or asset in favour of the Seller and in the Customer's and/or Guarantor's name as may be necessary to secure the said Customer's and/or Guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

13. Intellectual Property 13.1 The Customer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Customer's order.

14. Cancellation 14.1 The Seller may cancel these terms and conditions or cancel delivery of Goods and Services at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall promptly repay to the Customer any sums paid in respect of the Price for those Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation. 14.2 At the Seller's sole discretion the Customer may cancel delivery of Goods and/or Services. In the event that the Customer cancels delivery of Goods and/or Services the Customer shall be liable for any costs incurred by the Seller up to the time of cancellation.

15. Privacy Act 1993 15.1 The Customer and the Guarantor/s (if separate to the Customer) authorises the Seller to: (a) collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and (b) to disclose information about the Customer, whether collected by the Seller from the Customer directly or obtained by the Seller 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 Customer. 15.2 Where the Customer is an individual the authorities under (clause 15.1) are authorities or consents for the purposes of the Privacy Act 1993. 15.3 The Customer shall have the right to request the Seller for a copy of the information about the Customer retained by the Seller and the right to request the Seller to correct any incorrect information about the Customer held by the Seller.

16. Customers Disclaimer 16.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Customer acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Customer and shall not be transferable to any subsequent Customer.

17. Contractual Remedies Act 1979 17.1 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if Section 15(d) of the Act which states that nothing in the Act shall affect the Sale of Goods Act 1908, were omitted from the Contractual Remedies Act 1979.

18. Consumer Guarantees Act 1993 18.1 This agreement is subject, in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded), to the provisions of the Consumer Guarantees Act 1993.

19. Lien 19.1 Where the Seller has not received or been tendered the whole of the price, or the payment has been dishonoured, the Seller shall have: (a) a lien on the goods; (b) the right to retain them for the price while the Seller is in possession of them; (c) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and (d) a right of resale, (e) the foregoing right of disposal, provided that the lien of the Seller shall continue despite the commencement of proceedings or judgement for the price having been obtained

20. Construction Contracts Act 2002 20.1 In the event that the Customer is an owner occupier as defined by the Construction Contracts Act 2002 the Customer hereby expressly acknowledges that (a) The Seller 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 Customer, and: (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Seller by a particular date; and (iv) The Seller has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract. (b) If the Seller 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 Customer or by any person claiming through the Customer; 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 Seller 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 Seller under the Contractual Remedies Act 1979; or (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of the Seller suspending work under this provision.

21. General 21.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired. 21.2 All Goods and Services supplied by the Seller are subject to the laws of New Zealand and the Seller takes no responsibility for changes in the law that affect the Goods or Services supplied. 21.3 The Seller shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions. 21.4 In the event of any breach of this contract by the Seller the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods. 21.5 Neither party shall be liable for any default due to any act of God, terrorism, war, strike, lock out, industrial action, flood, storm or other event beyond the reasonable control of either party. 21.6 The Customer shall not set off against the Price amounts due from the Seller. 21.7 The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent. 21.8 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Seller notifies the Customer of such change.

22. Force Majeure 22.1 The Seller cannot be held liable if it is unable to carry out its obligations under these Terms of Trade due to a Force Majeure event. A Force Majeure event means any event beyond The Sellers reasonable control and includes, but is not limited to, strikes, power failures, fires, earthquakes and other natural disasters