

## **TERMS AND CONDITIONS OF TRADING**

**of Watts Electrical, 1 Chaffinch Chase, GILLINGHAM, Dorset SP8 4GP**

### **1 DEFINITIONS**

The following expressions shall have the following meanings:

- 1.1 'Supplier' means WATTS ELECTRICAL of 1 Chaffinch Chase, GILLINGHAM, Dorset SP8 4GP. 'WATTS ELECTRICAL' is a trading name of Mark Watts of the same address.
- 1.2 'Customer' means any person who purchases Services and/or Products from the Supplier;
- 1.3 'Proposal' means a statement of work, quotation, estimate or other similar document describing the Services and/or the Products;
- 1.4 'Services' means the services as described in the Proposal and includes any materials required to complete the work;
- 1.5 'Products' means any products supplied by the Supplier to the Customer;
- 1.6 'Terms and Conditions' means the terms and conditions of supply of Services and/or Products set out in this document and any subsequent terms and conditions agreed in writing by the Supplier;
- 1.7 'Order' means the formal acceptance by the Customer of the Proposal;
- 1.8 'Agreement' means the contract between the Supplier and the Customer for the provision of the Services and/or Products incorporating these Terms and Conditions;
- 1.9 'Intellectual Property Rights' means any patent, trademark, service mark, registered design, copyright, design right, right to extract or exploit information from a database, database rights, know-how, confidential information or process, any application for any of the above, and any other Intellectual Property Right recognised in any part of the world whether or not presently existing or applied for;
- 1.10 'Adjudicator' is the party nominated to resolve a dispute between the Customer and the Supplier.

### **2 GENERAL**

- 2.1 These Terms and Conditions shall apply to the Agreement for the supply of Services and/or Products by the Supplier to the Customer and shall supersede any other documentation or communication between the Supplier and the Customer.
- 2.2 Any variation to these Terms and Conditions must be agreed in writing by the Supplier.
- 2.3 Nothing in these Terms and Conditions shall prejudice any condition or warranty, express or implied, or any legal remedy to which the Supplier may be entitled in relation to the Services and/or Products, by virtue of any statute, law or regulation.
- 2.4 The Proposal must be accepted by the Customer in its entirety.
- 2.5 The Customer shall be deemed to have accepted the Proposal by placing an Order with the Supplier.
- 2.6 The Agreement between the Supplier and the Customer, incorporating these Terms and Conditions, shall only come into force when the Supplier confirms an Order in writing to the Customer. Prior to any confirmation the Supplier has the right to refuse any Order.

### **3. BASIS OF TENDER / QUOTATION**

- 3.1 Acceptance of the tender/quotation includes acceptance of all of the following Terms and Conditions contained therein. The tender/quotation and your acceptance shall constitute the "Agreement" and it is a condition of this agreement that you shall have obtained all such licences and consents as are required for the lawful undertaking of the works.
- 3.2 Any drawings, descriptions or specifications contained in advertising material, brochures or catalogues issued by the Supplier are for the sole purpose of giving an approximate idea of the Products and/or Services and will not form part of this agreement
- 3.3 We will endeavour to provide all services within a reasonable time. Dates given for the delivery of Services and/or Products are estimates only and not guaranteed. Time for delivery shall not be of the essence of the Agreement and the Supplier shall not be held liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery.

**3.4 Planning permission:** By your acceptance of this contract you are confirming that you have received planning permission for the proposed installation or alternatively ascertained that planning permission is not required. We cannot be held responsible for any installation where planning permission was required but not obtained, and no refunds will be offered.

**3.5 Building Regulation:** By your acceptance of this contract you are confirming that you have received building regulations for the proposed installation or alternatively ascertained that building regulations are not required. We cannot be held responsible for any installation where building regulations were required but not obtained, and no refunds will be offered.

**3.6 Listed Building Consent:** By your acceptance of this contract you are confirming that you have received listed building consent for the proposed installation or alternatively ascertained that listed building consent is not required. We cannot be held responsible for any installation where listed building consent was required but not obtained, and no refunds will be offered.

**3.7** All increases or decreases in labour and/or material cost arising after the date of tender or quotation maybe recovered from or allowed to the Customer unless the tender/quotation expressly excludes this condition.

**3.8** The tender/quotation is based on the work being affected during normal working hours, Monday to Friday.

**3.9** The tender/quotation is based on a continuous working period. If circumstances beyond our control necessitate a split programme of works we reserve the right to charge for additional time unless such a split programme has been previously agreed.

**3.10** Variations or additional work shall be charged on a time and materials basis unless the subject of a separate tender/quotation accepted by the customer.

**3.11** Work by other trades including any Statutory fees, or charges for work done by Supply Authority or Local Authority is not included.

**3.12** The laying of cables and conduits runs is by the shortest practicable routes.

#### **4. PRICE AND PAYMENT TERMS**

**4.1** The price quoted on this agreement to carry out the works specified on the form attached shall be valid for 21 days from the date of tender/quotation provided that we have not withdrawn or revised the same prior to your written acceptance. For the avoidance of doubt, in the event that the tender/quotation is revised ("Revised Tender/Quotation") then it shall be valid for acceptance by you for 30 days from the date of the revised tender/quotation unless withdrawn by us prior to your acceptance.

**4.2** The price for Services and/or Products is as specified in the Proposal and is inclusive of VAT and any other charges as outlined in the Proposal.

**4.3** The price for any materials required to complete the Services is as specified in the Proposal.

**4.4** The terms for payment are as specified in the Proposal.

**4.5** Unless specifically included the tender/quotation excludes the cost of:

(a) Making good works of decorative finish (such terms to include plastering to a decorative finish, redecoration, wallpapering, painting and generally reinstatement to a state that may require finishing by an appropriately skilled craftsman) save for damage caused by our negligence.

(b) Damage caused to fixed fitted carpets and other floor coverings as a result of our non negligent removal of the same and the re-fitting or re-fixing of any fitted carpet or floor covering. All reasonable care will be taken but we accept no further liability.

(c) All structure reinforcement required to support and accommodate the proposed installation requirements.

**4.6** Where the customer is not a residential occupier, then within 5 days after the due date for payment specified above, he shall notify the Supplier in writing of the amount of the payment to be made, and how it is calculated (which may be reference to the relevant application or invoice). If the Customer intends to withhold payment, he shall, not later than 7 days before the final date for payment, serve a written notice on the Supplier complying with Section 111 of the Housing Grants, Construction and

Regeneration Act 1996 (or any later legislation replacing it)

4.7 The Payment in full shall be due on completion of the work and shall be made within 7 days of the date of a written application/invoice submitted by the Supplier.

4.8 Where Interim Payment has been agreed written applications/invoices may be submitted for the total value of work executed – less previous payment if any- the net amount due to be paid by the customer within 7 days.

4.9 Failure by the customer to make payment as aforesaid shall entitle the Supplier to suspend work and/or charge interest on the amount outstanding at up to 3% above the base rate of the Supplier's bank from time to time in force. The Supplier is also entitled to recover all reasonable expenses incurred in obtaining payment from the Customer where any payment due to the Supplier is late. If payment of invoices is not received, we reserve the right to recover any costs, commissions or fees incurred for the collection of payment including those which may be incurred by using a debt collection agency.

4.10 **VAT.** This section is reserved for future use.

4.11 **Cooling off period:** After signing this contract you have a 14 day period during which time you may cancel the contract without penalty. After this time, cancellation will incur a charge of 15% of the total contract sum, which must be paid immediately on receipt of invoice. Cancellation must be made in writing to our address.

4.12 The Supplier is entitled to vary the price to take account of:

(a) any additional Services and/or Products requested by the Customer which were not included in the original Proposal;

(b) any increase in the cost of materials;

(c) any additional work required to complete the Services which was not anticipated at the time of the Proposal; and any variation must be intimated to the Customer in writing by the Supplier.

## **5. AVAILABILITY OF GOODS**

5.1 Our obligation to complete the agreed works is dependant upon the availability of the required goods and/or materials being available from the manufacturer/wholesaler.

5.2 In the event that the manufacturer/wholesaler shall be unable to provide the specified/requested materials and/or goods then we shall inform you of the same; and provide you with a choice of alternative goods or materials (if possible) of equal standard or quality, whereupon you shall provide us within 7 days of being so informed of either your instruction to proceed or to cancel this Agreement.

5.3 Should you wish to cancel this agreement under clause 5.2 then we shall be entitled to charge you reasonable charges incurred for services and/or goods rendered and/or supplied up until the date of cancellation.

## **6. TITLE AND RISK**

6.1 As soon as we have delivered the goods you will be responsible for them.

6.2 Ownership and legal title of the goods or any part thereof shall not pass until payment in full of the Agreed Contract Price has been made

## **7. DATES AND COMPLETION DATE**

7.1 Whilst we shall endeavour to adhere to any dates stipulated for the delivery of materials and/or goods and for the installation and completion of the Agreed Works such dates are deemed as estimates only. In the unforeseen circumstances beyond our control, we may not be able to do so. In such circumstances we will contact you and agree an alternative date. You will also do all that you reasonably can do to enable the delivery, installation and completion to take place on the given dates. In the case of unforeseen circumstances beyond your reasonable control you may not be able to do so. In such circumstances you will contact us and agree an alternative date.

## **8. HAZARDOUS MATERIALS**

8.1 It is the responsibility of the customer to inform us of any known Asbestos or other hazardous materials contained within the fabric/construction of the building, however remote, which would result in our operatives coming into contact during the execution of their duties of the agreed works.

8.2 Unless the agreement specifically provides for otherwise, if materials we consider to be hazardous are found during the execution of the agreed works, we shall;

- (a) inform you that we have encountered such material; or
- (b) be entitled to withdraw our operatives immediately upon discovery of the hazardous material until the installation address is made safe or terminate this agreement; or
- (c) if requested by you and we agree, we shall arrange and dispose of such materials provided that you agree to pay additional charges incurred.

## **9. GUARANTEE / WARRANTY**

9.1 You must notify us as soon as is reasonably possible about any fault or defect to the agreed works once this has been discovered within 12 months only.

9.2 Subject to clause 9.1 we shall endeavour to remedy any defect due to our faulty workmanship or defective design at our own cost provided that we shall not be liable to remedy any:

- (a) damage due to fair wear and tear or loss, direct or indirect, improper use, neglect, accident or other failure by you to operate and maintain properly the installation;
- (b) repairs or alterations to the agreed works carried out by you or upon your instructions without prior written approval;
- (c) extra work entailed due to the apparatus being put into operation by the Customer or by the Supplier, his servants, or agents at the Customer's request before it is handed- over for beneficial use.
- (d) resetting or replacement of a circuit protective device due to circumstances unrelated to the agreed works;
- (e) Loss or damage caused by winds and rain i.e. any weather conditions.
- (f) lamps or fuses requiring replacement.

9.3 If within 12 months of completion of the agreed works we are satisfied that any appliance, or mechanical/electronic device installed by us is faulty then we may either replace or repair the appliance or the device at our own cost. The repair or replacement of any faulty work or materials shall only be carried out by the Supplier, his servants or agents, otherwise the Suppliers guarantee/ warranty as to repair or replacement shall not apply.

9.4 The Supplier accepts no responsibility for any drawing, design or specification not prepared by him.

9.5 Nothing in these Terms and Conditions will reduce your statutory rights relating to faulty goods or services provided. If you have any doubts about your statutory rights please contact your local Trading Standards Department or Citizens Advice Bureau.

## **10. INSOLVENCY**

If the customer ceases to pay his debts in the ordinary course of business or cannot pay his debts as they become due or being a company is deemed to be unable to pay its debts or has a winding up petition issued against it or being a person commits an act of bankruptcy or has a bankruptcy petition against him and without prejudice to other remedies including those contained within clause 4 in these Terms and Conditions shall have the right not to proceed further with the contract or any other work for the customer and be entitled to charge for work already carried out (whether completed or not) and materials purchased for the customer, such charge to be an immediate debt due to him. If payment of invoices is not received, we reserve the right to recover any costs, commissions or fees incurred for the collection of payment including those which may be incurred by using a debt collection agency

## **11. LIMITATION OF LIABILITY**

Except for death or personal injury caused by our negligent acts or omissions we shall only be liable for

any loss or damage which is a reasonable foreseeable consequence of a breach of this agreement. In the event that you are using the installation address in part for commercial purposes, no liability for loss of profits or other economical loss arising out of a breach of this agreement can be accepted.

## **12. WAIVER**

Any delay on our part in enforcing any of the Terms and Conditions or any rights or remedy in respect of this agreement shall not be deemed to be a waiver of any right or remedy what so ever.

## **13. FORCE MAJEURE**

13.1 We shall not be liable for failure to perform any of our obligations under this agreement if such failure is due to any event beyond our reasonable control or that of our sub contractors. This includes loss from fire, adverse weather or loss arising from the existing condition of the premises or other factors beyond our control.

## **14. TERMINATION**

Either you or we may terminate this agreement in the event that the party in default is in material breach provided that such breach shall have been notified in writing to the defaulting party and has not been remedied within a reasonable time specified in the notice.

## **15. NOTICES**

Notices required under this agreement shall be in writing and delivered by hand or by fax or by e-mail or by first class post to, in the case of ourselves, to our registered office shown below and in the case of yourself to the installation address.

## **16. COMPLAINTS PROCEDURE**

16.1 In the event of a complaint the Customer should first contact the Supplier who will record the time, date and nature of the complaint and attempt to find resolve the problem within a reasonable time and to the satisfaction of the Customer.

16.2 ADJUDICATION Where a complaint cannot be satisfactorily resolved using our own complaints procedure either party may refer the matter to an Adjudicator for dispute resolution provided that the Adjudicator used is accepted by both parties. A party wishing to refer a dispute to the Adjudicator shall advise the other party of this intention in writing at any time during the term of this Agreement. The dispute must then be referred to the Adjudicator within seven (7) days of this intention being intimated. The Adjudicator shall act impartially and be free to take the initiative in ascertaining the facts and the law. The Adjudicator must reach a decision within twenty eight (28) days of referral or such longer period as both parties may agree. During the period of adjudication both parties must continue with their obligations as stated in this Agreement. The decision of the Adjudicator is binding on both parties unless and until revised by legal proceedings, arbitration or agreement. The Adjudicator will decide which party is liable to meet the fees of the adjudication and in what proportion if both parties are held liable.

## **17. RELATIONSHIP OF PARTIES**

Nothing in the Agreement shall be construed as establishing or implying a partnership or joint venture between the parties or suggest that either of the parties are agent for the other.

## **18. ASSIGNMENT**

The Customer shall not be entitled to assign its rights or obligations or delegate its duties under the Agreement without the prior written consent of the Supplier.

## **19. SEVERANCE**

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any

reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

## **20. NOTICES**

Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in the Proposal or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

## **21. THIRD PARTY RIGHTS**

Nothing in these Terms and Conditions intend to or confer any rights on a third party.

## **22. JURISDICTION**

This agreement and any disputes arising there from shall be governed by the laws of England and Wales if the installation address is in England or Wales and subject to the exclusive jurisdiction of the courts of England or Wales or the laws of Scotland if the installation address is in Scotland and subject to the exclusive jurisdiction of the courts of Scotland.