

# TERMS AND CONDITIONS OF TRADE

## DEFINITIONS

- 1.1 "Dalton Electrical Company Limited" Shall mean Dalton Electrical or any agents or employees thereof.
- 1.2 "Customer" Shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from Dalton Electrical
- 1.3 "Products" Shall mean:
  - 1.3.1 All products supplied by Dalton Electrical to the Customer, and
  - 1.3.2 All inventory of the Customer that is supplied by Dalton Electrical and
  - 1.3.3 All products supplied by Dalton Electrical and further identified in any invoice issued by Dalton Electrical to the Customer, which invoices are deemed to be incorporated into and form part of this agreement, and
  - 1.3.4 All products that are marked as having been, supplied by Dalton Electrical or that are stored by the Customer in a manner that enables them to be identified as having been supplied by Dalton Electrical and
  - 1.3.5 All of the Customer's present and after-acquired Products that Dalton Electrical has performed work on or to in which goods or materials supplied or financed by Dalton Electrical have been attached or incorporated.
  - 1.3.6 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Products and Services" Shall mean all products, goods, services and advice provided by Dalton Electrical to the Customer and shall include without limitation all electrical, lighting, heating and security products and services and all charges for labour, hire charges, insurance charges or any fee or charge associated with the supply of products and services by Dalton Electrical to the Customer.
- 1.5 "Price" Shall mean the cost of the products and services as agreed between Dalton Electrical and the Customer and includes all disbursements e.g. charges Dalton Electrical pay to others on the Customer's behalf subject to clause 4 of this contract.

## 2 ACCEPTANCE

- 2.1 Any instructions received by Dalton Electrical from the Customer for the supply of products and services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

## 3 COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises Dalton Electrical to collect, retain and use any information about the Customer, for the purposes of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Products and Services provided by Dalton Electrical to any other party.
- 3.2 The Customer authorises Dalton Electrical to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

## 4 PRICE

- 4.1 Where no price is stated in writing or agreed to orally the products and services shall be deemed to be sold at the current amount as such products and services are sold by Dalton Electrical at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the product and services that is beyond the control of Dalton Electrical between the date of the contract and delivery of the products and services.

## 5 PAYMENT

- 5.1 Payment for products and services shall be made in full within seven (7) days of the date of the invoice (the due date).
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Dalton Electrical in the enforcement of any rights contained in this contract shall be paid by the Customer, including and reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 If the Customer fails to make payment on the due date then without prejudice to any of Dalton Electrical other rights Dalton Electrical may suspend or cancel deliveries of any other products and services to the Customer.

## 6 QUOTATION

No quotation given by Dalton Electrical for products and services shall be valid unless it is recorded in writing and is signed for and on behalf of Dalton Electrical

- 6.1 Where a quotation is given by Dalton Electrical for products and services:
  - 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue and
  - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary
  - 6.1.3 Dalton Electrical reserves the right to alter the quotation at any time because of circumstances beyond its control.
- 6.2 Where Products and Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Products and Services.

## 7. RISK

- 7.1 The products and Services remain at Dalton Electrical risk until delivery to the Customer.
- 7.2 Delivery of Products and Services shall be deemed complete when Dalton Electrical gives possession of the products and Services directly to the Customer or possession of the products and services is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.

## 8 TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 8.1 Title in any Products and services supplied by Dalton Electrical passes to the Customer only when the Customer has made payment in full for all Products and Services provided by Dalton Electrical and of all other sums due to Dalton Electrical by the Customer on any account whatsoever. Until all sums due to Dalton Electrical by the Customer have been paid in full, Dalton Electrical has a security interest in all Products and Services.
- 8.2 If the Products and Services are attached, fixed or incorporated into any property of the Customer, by the way of any manufacturing or assembly process by the Customer or any third party, title in the Products and Services shall remain with Dalton Electrical until the Customer has made payment for all products and services, and where those Products and Services are mixed with other property so as to be part of a constituent of any Products and Services, title to these new products and Services shall be deemed to be assigned to Dalton Electrical as security for the full satisfaction by the Customer of the full amount owing between Dalton Electrical and the Customer.
- 8.3 The Customer gives irrevocable authority to Dalton Electrical to enter any premises occupied by the Customer or on which products and services are situated at any reasonable time after default by the Customer or before default if Dalton Electrical believes a default is likely and to remove and repossess any Product and Services and any other property to which Products and Services are attached or in which Products and services are incorporated. Dalton Electrical shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort otherwise in any way whatsoever unless by statute such liability cannot be excluded. Dalton Electrical may either resell any repossessed products and services and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Products and Services and credit the Customer's account with the invoice value thereof less such sum as Dalton Electrical reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 8.4 When Products and Services are retained by Dalton Electrical pursuant to clause 8.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.
- 8.5 The Customer:
  - (a) Agrees that nothing in sections 114 (1)(a) or 117(1)(c) , 133 and 134 of the PPSA will apply to this agreement, or the security under this agreement.
  - (b) Waives the Customers rights contained in section 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 8.5 The Following shall constitute defaults by the Customer:
  - 8.5.1 Non Payment of any sum by the due date
  - 8.5.2 The Customer intimates that it will not pay any sum by the due date.
  - 8.5.3 Any Products and Services are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Products and Services.

8.5.4 Any Products and Services in the possession of the Customer are materially damaged while any sum due from the Customer to Dalton Electrical remains unpaid.

8.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customers assets or a landlord distrains against any of the Customers assets.

8.5.6 A court judgement is entered against the Customer and remains unsatisfied for seven (7) days.

8.5.7 Any material adverse change in the financial position of the Customer.

8.5.8 The Customer changes or proposes to change its name without first notifying Dalton Electrical of the new name not less than 7 days before the change takes effect.

8.6 Where the company has the rights in addition to those in Part 9 of the PPSA, *the Buyer* agrees that those rights shall continue to apply and in particular will not be limited by section 109 of the PPSA.

## **9 SECURITY INTEREST FOR SERVICE PROVIDERS**

9.1 The Customer gives Dalton Electrical a security interest in all of the Customers present and after acquired property that Dalton Electrical has performed services on or to or in which or materials supplied or financed by Dalton Electrical have been attached or incorporated.

9.2 On the request of Dalton Electrical the Customer shall promptly execute any documents and do anything else required by Dalton Electrical to ensure that the security interest created under this Agreement constitutes a first ranking perfected security interest over the property and their proceeds including providing any information Dalton Electrical reasonably requires to complete financing statement of financing change statement. The Customer waives any right to receive a copy of a verification statement under the Act.

9.3 The Customer will pay to Dalton Electrical all costs, expenses and other charges incurred, expended or payable by Dalton Electrical in relation to the filing of a financing statement or a charge statement in connection with these terms and conditions.

## **10 PAYMENT ALLOCATION**

10.1 Dalton Electrical may in its discretion allocate any payment received from the Customer towards any invoice that Dalton Electrical determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by Dalton Electrical, payment shall be deemed to be allocated in such manner as preserves the maximum value of Dalton Electrical's purchase money security interest in the Products and Services.

## **11. LIABILITY**

11.1 The Customer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Dalton Electrical which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed in Dalton Electrical, liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

11.2 Except as otherwise provided by clause 11.1 Dalton Electrical shall not be liable for:

11.2.1 Any loss or damage of any kind whatsoever, arising from the supply or Products and Services by Dalton Electrical to the Customer including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Products and Services provided by Dalton Electrical to the Customer, and

11.2.2 The Customer shall indemnify Dalton Electrical against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing or this clause whether caused or arising as a result of the negligence of Dalton Electrical or otherwise, brought by any person in connection with any matter, act, omission or error by Dalton Electrical its agents or employees in connection with the Products and Services.

## **12 WARRANTY**

12.1 Manufacturer's warranty applies where applicable.

12.2 Any warranty that Dalton Electrical provide to the Customer will also form part of these terms and conditions of trade.

12.3 No representation, undertaking or warranty made by Dalton Electrical or any agent or representative to the Customer shall be of any effect or apply to any contract between Dalton Electrical and the Customer unless recorded in writing and signed by both parties.

## **13 COPYRIGHT AND INTELLECTUAL PROPERTY**

13.1 Dalton Electrical, owns and has copyright in all products, work, designs, specifications, documents and software produced by Dalton Electrical in connection with the Products and Services provided pursuant to this contract and the Customer may use the Products and Services only if paid for in full and for the purposes for which they were intended and supplied by Dalton Electrical.

## **14 CONSUMER GUARANTEE ACT**

14.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Products and Services from Dalton Electrical for the purposes of a business in terms of section 2 and 43 of that Act.

## **15 PERSONAL GUARANTEE OR COMPANY DIRECTORS OR TRUSTEES**

15.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Dalton Electrical agreeing to supply Products and Services and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Dalton Electrical the payment of any and all monies now or hereafter owed by the Customer to Dalton Electrical and indemnify Dalton Electrical against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

## **16 DISPUTES AND RETURN OF PRODUCTS**

16.1 No claim relating to the Products and Services will be considered unless made within twenty (20) days of receipt of invoice.

## **17 MISCELLANEOUS**

17.1 Dalton Electrical shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

17.2 Failure by Dalton Electrical to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Dalton Electrical has under this contract.

17.3 If any provision of this contract 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.