

Terms and Conditions for the Supply of Goods and Services

1. Definitions

In these Terms and Conditions:

“Business Hours” means between 08:30 and 17:30 on a Working Day;

“Customer” “you” and “your” means the customer for Goods, as identified in the Application for Credit Account (“the Application”);

“Force Majeure Event” means an event, or a series of related events, that is outside the reasonable control of the party affected (including power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

“Goods” means all materials, products and equipment provided by us, details of which are set out in our Proposal & Pricing document or our Invoice (or, to the extent that no such details are set out in an invoice, details of which will be agreed between the parties acting reasonably from time to time);

“Invoice” means the document issued by us detailing the scope of the Goods, Services and other matters;

“Maintenance Services” means Goods and Services provided by us for the ongoing maintenance of Goods we have provided or for the maintenance of material, products and equipment we have not provided but that we have agreed to maintain or repair under a specific Proposal and Pricing Document;

“Price” means the price payable by you to us in respect of Goods and Services, which is specified in our Invoice and which may be varied in accordance with Clause 4;

“Proposal & Pricing document” means the quotation or estimate we provide to you prior to commencing the provision of any Goods or Services;

“Services” means the specialist services provided by us, details of which are set out in our Proposal & Pricing document or our Invoice (or, to the extent that no such details are set out in an invoice, details of which will be agreed between the parties acting reasonably from time to time);

“Site” mean the premises or location that the Goods are provided to you by us, or the Services are performed for you by us;

“The Party” or “the Parties” means the Customer and/or the Seller separately or together as the context indicates;

“We” “us” and “our” means Intelligent Environments Ltd and its successors and assigns or any person acting on behalf of and with the authority of Intelligent Environments Ltd;

“Working Day” means any weekday, other than a bank or public holiday in Auckland;

2. What is the purpose of these terms and conditions?

2.1 These terms and conditions must be read together with our accompanying Proposal & Pricing document and are collectively referred to as ‘our agreement’. Additionally, when the ‘works required’ are not covered by an existing contract, or for which our Proposal & Pricing document has not been supplied, these terms and conditions, along with communications between you and us are also collectively referred to as ‘our agreement’.

2.2 If any provision of these terms and conditions conflicts with any provision of our agreement, then the provisions of these terms and conditions will override the conflicting provision.

2.3 If you accept our agreement, it then forms the basis on which we supply the goods or services to you, and our agreement is therefore a construction contract as defined in the Construction Contracts Act 2002.

2.4 Any changes to our agreement must be agreed to by us in writing in order for those changes to be valid.

2.5 In regard to the provision of Goods and Services in the absence of a Proposal & Pricing document, your request to us to supply goods and/or services for any ‘works required’ is deemed to be your acceptance of these terms and conditions.

- 2.6 Any statute referred to includes any of its amendments or substitutions.
- 2.7 If any provision of these terms and conditions is held to be invalid, that will not affect the enforceability of any other provision of these terms and conditions.
- 2.8 We may communicate with you and serve you notices by post, facsimile or email.
- 2.9 We reserve the right to change these terms and conditions from time to time, and you agree to be bound by the most current version as displayed on our website and referred to in each Proposal and Pricing document.

3. What do you need to provide to us?

- 3.1 You must give us safe and unimpeded access to the Site to carry out our work in an efficient and safe manner, and unless otherwise agreed in writing, you will provide, without limitation, the following where relevant:
- installation of specialist or comms cables (cabling carried out according to schedule, drawings or instructions that we provide to the electrical contractor);
 - all cabling to be tested prior to our attendance to ensure it is safe;
 - proper facilities for carrying out the work, including safe access to all required work areas, and a safe environment for our engineers to complete commissioning tasks without risk to personnel or equipment;
 - it should be noted that during the course of commissioning it may be necessary to turn off power, to turn off lighting in various areas, or to 'flash' the lights on/off. Ideally commissioning should be scheduled for when other trades have completed and left the Site. If we are requested to attend the Site while other trades are still working, we will not be responsible for any disruption caused by the turning off of power, lighting etc. as above;
 - rubbish removal facilities;
 - temporary power and water supply;
 - storage space;
 - ablutions and safety lighting to allow the works to be carried out safely and efficiently;
 - all builders' work, including penetrations and structural supports or any alteration as may be required to any part of the building to allow work to proceed;
 - any required consent or other authority necessary for the work, including approvals from owners, occupiers and others.
- 3.2 Where you have agreed to provide materials or to engage other contractors or consultants to perform work, you will ensure that the relevant materials or services are provided:
- at the time agreed or stated in our Proposal and Pricing document;
 - if no time has been agreed, within a reasonable time so as not to impede the reasonable progress of our work.
- 3.3 You will ensure that:
- the specified or requested scope of our work is fit for the purpose of the building and integrated with other trades;
 - you supply all information reasonably necessary for us to properly coordinate our work.
- 3.4 Any changes required to the Goods and Services proposed, or to the Goods and Services reasonably foreseeable by us at the date of our proposal, will be a variation ("Variation"), unless the proposal states that it is a fixed price.

4. What do you agree to once you have accepted our proposal?

- 4.1 Once you have accepted our Proposal & Pricing document for the provision of Goods and Services :
- you agree to be bound by these standard terms and conditions
 - you represent that you will have sufficient funds to pay for the Goods and Services as it is performed
 - you undertake to provide reasonable proof of capability to make that payment if we request you to do so
 - you authorise us to use and to collect information that we may reasonably require from you and from third parties for credit references or debt collection or otherwise relating to the performance of our agreement and any subsequent dealings we may have with you, and we reserve the right to decline acceptance if credit checks are unsatisfactory

- we will create a project file and appoint a controls engineer for the project who will liaise with you regarding the scheduling of the job.

5. What are our payment terms?

- 5.1 Where a credit account is not in place, we require you to make payment for the claimed amount of all of the Goods, including any of the Goods that we receive for programming, plus GST, and without any retention before delivery of the Goods to Site (or other such place as you advise).
- 5.2 If we have accepted your application for credit, and the appropriate form has been filled out by you and returned to us, invoices will be due for payment on the 20th of the month following date of invoice.
- 5.3 If there are any Variations to the Goods provided or Services performed, they will be invoiced separately, but under the same terms and conditions.
- 5.4 Where alternative payment terms are required (such as for additional stage payments), any Variation to our standard terms must be accepted by us in writing before we perform any Services or supply any of the Goods.
- 5.5 If you disagree for any reason with the claimed amount, you must respond to us in writing with a payment schedule before payment is due, detailing:
- a scheduled amount (the amount that you propose to pay)
 - your reasons and basis of calculation for any item in the payment claim that you do not propose to pay in full.
- 5.6 You must pay the scheduled amount by the due date. If we disagree with your payment schedule we may refer the matter to adjudication (see the section 'How are disputes resolved?' below).
- 5.7 We will not accept contra charges unless you notify us in advance and we agree to those charges.
- 5.8 The specific payment terms stated below in clause 5.11 and 5.12 will apply to each project, unless alternative terms have been agreed to by us in writing.
- 5.9 Maintenance Services are charged at our standard hourly service rate, plus associated standard fees, plus materials. If you require it we will provide an estimate of costs. We can provide a firm quotation of price upon request if you have provided the full parameters for the 'works required'. If there are any Variations to the job additional to the original scope of work quoted, they will be charged in addition to the price quoted, but under these same terms and conditions, and at the same rates.
- 5.10 For any project where work is undertaken over a period exceeding one month, we may issue payment claims/invoices for progress payment covering work done and costs incurred, including Variations, up to the end of each month.
- 5.11 Progress payments are payable as follows:
- 20% Preliminary and General (P&G) costs are claimed to allow for provision of marked up drawings and specialist cable (where applicable) to the electrical contractor for installation. Hardware for initial requirement is also ordered from suppliers to ensure no delays. Once we receive the hardware, programming of the units commences.
 - 35% of the total cost of the project is claimed to supply the output units, pre-programmed and labelled, ready for ease of installation by the electrical contractor. If you do not have a credit account in place, we cannot supply the hardware until this payment is made.
 - A further 35% is claimed to supply the input units, pre-programmed and labelled, ready for ease of installation by the electrical contractor. If you do not have a credit account in place, we cannot supply the input units until this stage of payment is received. Once installed, on-site commissioning and testing can commence.
 - Please note: Where the acceptance of our Proposal and Pricing document and commencement of the project coincide, or where output and input units are required within the same calendar month, we may require that the above progress payments are combined into one or two stages in place of the standard three.

- Final 10% of the total cost is due after the on-site commissioning is complete and before we hand-over all documentation. On receipt of the final payment, we will provide you all documentation, including programming database, in order for the full warranties to apply. Please note: where applicable, software provided is a 30-day trial version and an activation key (included in the documentation outlined above) is necessary to upgrade to the full version.

5.12 If you do not pay us by the due date:

- no further materials, if any, will be supplied;
- we reserve the right to give 5 working days' notice of our intention to suspend work;
- we will resume work when the overdue payment has been made in full, and all costs and losses incurred in suspending and resuming work will be charged as a Variation;
- we reserve the right to cancel our agreement if payment remains overdue for more than 10 working days, and you will remain liable for all costs and losses including loss of profit arising out of such termination;
- you agree to pay any expenses that we may incur in recovering your debt to us, including legal costs on a solicitor-client basis.

5.13 If you do not pay us within 30 days after the due date:

- we have the right to charge you interest on overdue payments at a rate of 1.5% per calendar month;
- our debt recovery agency may charge you a fee equal to 25% of the unpaid portion of the debt, but not less than \$25;
- where the total costs arising from recovery of any amount owing exceeds the debt recovery fee charged, our agent is also entitled to recover those additional costs from you.

5.14 This clause is intended to be for the benefit of and enforceable by our debt recovery agency under the Contract and Commercial Law Act 2017.

6. What health and safety standards must be maintained?

6.1 We will perform the work in line with all relevant health and safety requirements, including the provisions of the Health and Safety at Work Act 2015, and with any site-specific safety requirements notified to us.

6.2 You will inform us of any workplace hazards to which we may be exposed in working on your premises and we will provide a site-specific safety plan in writing if you request us to.

6.3 We may refuse to perform work if we are not satisfied that it can be performed safely.

7. What are our limitations of liability?

7.1 We are entitled to rely on the accuracy of documents supplied to us and will not be obliged to check the accuracy or completeness of any plans, specifications, schedules of quantities or other information so provided. Any discrepancy between documents provided and the actual requirements will be considered a Variation and invoiced as such.

7.2 We will provide reasonable protection for our goods while our engineers are programming (both on and off site), but we do not accept responsibility for any damage caused to our goods by anyone not engaged by us or otherwise under our direct control. The repair or replacement in respect to any damage caused to our goods by anyone not engaged by us or otherwise under our direct control will be a Variation.

7.3 We will not perform any design, design checks, calculations, inspections, certifications or tests that may be required for a Certificate of Compliance or for any other requirement under the Building Act 2004 or otherwise, unless we expressly agree otherwise in writing.

7.4 Where we are required to design part or all of the work, our design will be based on information provided to us, which will include:

- the construction sequence and temporary works
- special requirements related to building use, occupancy or performance.

7.5 Notwithstanding the provisions of section 21 of the Copyright Act 1994, we will retain the copyright in any design work commissioned by you and undertaken by us, until such time as our invoice has been paid whereupon we will transfer ownership of copyright to you.

- 7.6 We will:
- supply and install the brand or model of the goods nominated or specified by the manufacturer
 - comply with the specified manufacturer's product literature or performance standards.
- 7.7 Our supply of the goods does not imply a warranty as to suitability. We may at our option supply equivalent alternative brands or models and will let you know beforehand in writing if this is necessary.
- 7.8 You agree that liability for any claims, damages, costs, including legal costs, and expenses resulting from any act or omission on our part is strictly limited to the amount of any fees receivable by us in respect of the specific Goods or Services that are the subject of the potential claim and that we are not liable for any other loss.

8. What insurance must be maintained?

- 8.1 We undertake to maintain insurance for public liability and for vehicles for the duration of our work on site, and will provide evidence of cover if requested.
- 8.2 You will insure for contractor's risk and other risks including consequential losses, fire, earthquake, theft or other damage, and will pay any excess under those policies, unless we agree otherwise in writing. Where work is being performed on an existing building, you will notify your insurer and amend any policies that may be in force. Where you do not own the building, you will ensure that the owner is so notified and amends insurances as necessary.

9. What security rights do we have?

- 9.1 You carry the risk of any loss, damage or deterioration to the Goods when they are delivered to you or to a location nominated by you. You become the owner of the Goods only when you have paid us in full for them and for any other money owing to us. Until then, we retain ownership in the goods and you hold them as bailee.
- 9.2 You hold the benefit of your insurance of the Goods on trust for us and must pay to us the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- 9.3 The production of these terms and conditions by us shall be sufficient evidence of our rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with us to make further enquiries;
- 9.4 You 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 you sell, dispose or part with possession of the Goods then you must hold the proceeds of any such disposition on trust for us and must pay or deliver the proceeds to us on demand;
- 9.5 You should not convert or process the Goods or intermix them with other goods but if you do so then you hold the resulting product on trust for the benefit of us and must sell, dispose of or return the resulting product to us as we so direct;
- 9.6 Unless the Goods have become fixtures you irrevocably authorise us to enter any premises where we believe the Goods are kept and recover possession of them;
- 9.7 We may recover possession of any Goods in transit whether or not delivery has occurred;
- 9.8 You shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain our property;
- 9.9 You agree that we may register a financing statement under the Personal Property Securities Act 1999 to give us a perfected security in any of the Goods supplied.
- 9.10 If any money remains unpaid or you are in breach of any obligation to us, you authorise us or our agents to enter your premises, or the site to which they have been supplied, to recover and resell any or all of those goods.

10. What happens if there are any Variations to the project?

- 10.1 Variations include, without limitation, any:
- change to the scope, quality or timing of the work;
 - circumstance that changes the cost of performing our work from that reasonably foreseeable at the time of our proposal;

- other circumstance that is stated in these terms and conditions to be a Variation, whether arising out of any oral or written instruction from you or your representative or otherwise.

10.2 We will advise you as soon as practicable of any change to our Proposal and Pricing document arising out of any Variation.

10.3 We may, at our sole discretion and by providing written notice to you, withhold performance of any work that we reasonably consider to be a Variation until either:

- we have received your written instruction, or;
- you have agreed in writing to our submission of a price for the Variation.

10.4 Variations will generally be valued on the same basis or rates as the corresponding original work. Where work does not directly correspond to our proposal, or cannot be performed in the most economical manner, Variations may, at our sole discretion, be priced on the basis of time and goods (charge-up) at our standard hourly rates and margins current at the time of performing the work.

11. When will we complete the project?

11.1 We will try to meet the reasonable target completion date that you request or that we agree to. In the absence of any agreed target date, will complete our work within a reasonable time.

11.2 Unless expressly agreed, we will not be liable for any damages for completion delays. The time for completion will be extended for any event beyond our reasonable control that directly or indirectly causes delay, including but not limited to access, weather conditions, labour disputes, strikes, accidents, fire, changed work sequence, lack of information or approvals, or for any suspension of work.

11.3 Should it be necessary, due to circumstances beyond our reasonable control, to engage other resources or to work outside ordinary working hours to try to meet your completion target, any extra cost so incurred will be a Variation.

11.4 Where relevant, you will ensure that the work of other relevant trades is completed so as to allow our finishing or commissioning work to proceed. We will notify you in advance of our requirements.

11.5 When our work, or a section of our work, has been completed we may request that you accept that work in writing. Within 5 working days of that written request, unless you notify us otherwise, that work will be deemed complete and you will be responsible for its on-going protection.

11.6 You will not unreasonably withhold acceptance of our work and our work will be deemed complete when we hand it over to you for use.

11.7 We will not provide detailed drawings and maintenance manuals, unless otherwise agreed. Where we have agreed to provide detailed working drawings, they will be based on the fully detailed and dimensioned drawings that you provide. Unless otherwise agreed, 'as-built' drawings will comprise the drawings to which the work was installed, marked up to show any variations to the completed installation.

11.8 No allowance has been made for any maintenance work, unless otherwise stated in our Proposal and Pricing document and on the terms of paragraph 5.9.

12. What warranties do we provide to you?

12.1 You will notify us promptly of any defects discovered in our workmanship or Goods. As long as you advise us in writing within 90 days of completion of our work or any defined stage of our work, we will:

- remedy any defective workmanship;
- repair or replace, at our sole discretion, any faulty Goods.

12.2 We will not be liable for any consequential costs or losses arising directly or indirectly out of any defect or failure in our workmanship or the Goods.

12.3 All Goods come with the manufacturer's standard warranty, which is usually between one and five years, depending on the product. We do not warrant that repair facilities and parts will be available for the Goods.

- 12.4 This warranty is in addition to any rights you may have as a consumer under the Consumer Guarantees Act 1993. The guarantees implied by that Act are expressly excluded if you are acquiring Goods for the purpose of a business, to the extent that the Goods are being used in a commercial or trade context.
- 12.5 We also warrant our work for a period of 2 years from the date of installation. This warranty does not cover any defects arising from physical damage or from any changes to the original programming.
- 12.6 The above warranties are subject to:
- no damage or misuse of the Goods;
 - correct installation and operation of the Goods;
 - adequate packaging, cleaning and maintenance of the Goods;
 - authorised repairs and modifications to the Goods;
 - the addition of compatible hardware and software;
 - correct compatible transformers being used on all lighting circuits.
- 12.7 The warranties are also subject to:
- installation of Cat5, or any other specialist or comms cable by an electrical contractor, being carried out to accepted industry standards;
 - origins and destinations being correct as per wiring diagrams provided by us;
 - all circuits being tested and proven correct before connection to our equipment.
- 12.8 If the cable is not correctly installed by you or your installer, or if it is damaged in any way, we cannot warrant that the system will operate correctly and will bear no responsibility for costs involved in replacing or repairing the faulty wiring; we are willing to provide advice or training on correct cabling procedures on request.

13. What happens if there is a problem with delivery?

- 13.1 You must notify us in writing of shortage in a delivery or damaged items in a delivery within 5 days of receipt of that delivery.
- 13.2 We reserve the right to make partial deliveries of any of the Goods ordered and, where we are supplying Goods only, to invoice such deliveries separately.
- 13.3 You can return the Goods to us as long as you:
- report the situation to us and obtain an RMA (returned materials authority) number within 10 days of supply of the Goods to you;
 - return the Goods to us within a further 10 days of the RMA being issued;
 - pay for the cost of returning the Goods to us.
- 13.4 If the Goods are not returned within the above timeframes, or are not received in acceptable packaging, we may, at our discretion, refuse to accept them into our store or may charge a restocking fee.
- 13.5 If you want to cancel your order, any Goods already supplied must be returned in the original, undamaged and unopened packaging
- 13.6 If you believe the Goods to be faulty, they must be returned to us in acceptable packaging to protect them from further physical damage during transit. We may then, at our sole discretion, notify the manufacturer of the Goods of any defect and/or request the manufacturer to repair or replace any defective Goods.
- 13.7 Orders for indented Goods cannot be cancelled. We will notify you prior to ordering any indented Goods.

14. What rights do we have to cancel our agreement?

- 14.1 We will be entitled to cancel all or any part of our agreement, in addition to our other remedies, if:
- we have suspended your work for more than 10 days due to your non-payment;
 - you fail to meet any obligation under our agreement or under any other contract or obligation with us;
 - you default in taking a delivery on time;
 - you become insolvent;
 - a receiver is appointed in respect of your assets;

- you no longer carry on business or threaten to cease carrying on business;
- an arrangement with your creditors is made or likely to be made;
- your ownership or effective control is transferred or the nature of your business is materially altered;
- you fail to allow us unimpeded access to the site to carry out the work in an efficient and safe manner, or to provide proper facilities for carrying out the work, or builders work required for the work to proceed, or any required consent or other authority necessary for the work.

14.2 We shall not be liable for any loss or damages whatsoever arising from such cancellation.

15. How are disputes resolved?

15.1 If any dispute or difference arises in connection with work done or payments claimed, or any other matter relating to this contract, we will try to resolve the matter by amicable negotiation with you.

15.2 Either of the Parties may at any time refer any dispute to adjudication in terms of Part 3 of the Construction Contracts Act 2002, and may refer any matter that is not finally resolved by adjudication to arbitration under the Arbitration Act 1996.

16. What other terms and conditions apply?

16.1 This agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this agreement, and supersedes any prior understanding, arrangement, representation or agreements between the parties as to the subject matter contained in this agreement.

16.2 Our failure to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect our right to subsequently enforce that provision.

16.3 If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

16.4 Nothing in this contract will constitute a partnership, agency relationship or contract of employment between the parties.

16.5 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.

16.6 You warrant that you have the power to enter into this agreement and have obtained all necessary authorisations to allow you to do so, you are not insolvent and that this agreement creates binding and valid legal obligations on you.

16.7 We may freely assign our rights and obligations under these Terms and Conditions without your consent. Save as expressly provided in this Clause or elsewhere in these Terms and Conditions, you may not, without our prior written consent, assign, transfer, charge, license or otherwise dispose of or deal in any rights or obligations under this contract.

16.8 This contract is entered into for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement relating to the contract are not subject to the consent of any third party.