

1. Definitions

- 1.1 “Vendor” shall mean ECL Group Ltd (including Fuelquip NZ Ltd, Fuelquip Pty Ltd, Supalite Ltd, ECL Electronics Ltd, ECL Security Ltd, ECL Site Solutions) or its successors and assigns or any person acting on behalf of and with the authority of ECL Group Ltd.
- 1.2 “Purchaser” shall mean the Purchaser (or any person acting on behalf of and with the authority of the Purchaser) as described on any quotation, work authorisation or other form as provided by the Vendor to the Purchaser.
- 1.3 “Guarantor” shall mean that person (or persons), or entity, who agrees to be liable for the debts of the Purchaser on a principal debtor basis.
- 1.4 “Goods” shall mean Goods supplied by the Vendor to the Purchaser (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by the Vendor to the Purchaser.
- 1.5 “Services” shall mean all services supplied by the Vendor to the Purchaser and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 “Price” shall mean the price payable for the Goods as agreed between the Vendor and the Purchaser in accordance with clause 3 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Vendor from the Purchaser for the supply of Goods and/or the Purchaser's acceptance of Goods supplied by the Vendor shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Purchaser has entered into this agreement, the Purchasers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Purchaser the terms and conditions are binding and can only be amended with the written consent of the Vendor.
- 2.4 The Purchaser shall give the Vendor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Purchaser or any change in the Purchaser's name and/or any other change in the Purchaser's details (including but not limited to, changes in the Purchaser's address, facsimile number, or business practice). The Purchaser shall be liable for any loss incurred by the Vendor as a result of the Purchaser's failure to comply with this clause.
- 2.5 Goods are supplied by the Vendor only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Purchaser's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

3. Price And Payment

- 3.1 At the Vendor's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Vendor to the Purchaser in respect of Goods supplied; or
 - (b) the Vendor's quoted Price (subject to clause 3.2) which shall be binding upon the Vendor provided that the Purchaser shall accept the Vendor's quotation in writing within thirty (30) days.
- 3.2 The Vendor reserves the right to change the Price in the event of a variation to the Vendor's quotation.
- 3.3 At the Vendor's sole discretion a non-refundable deposit may be required.
- 3.4 The Vendor may submit a detailed payment claim at intervals for work performed up to the end of each month. The value of work so performed shall include the reasonable value of authorised variations and the value of materials delivered to the site but not yet installed. Progress payments shall be due on the 20th of the following month in which the invoice is posted to the Purchaser's address or address for notices.
- 3.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due by the 20th of the following month in which the invoice is posted to the Purchaser's address or address for notices.
- 3.6 A call out fee of two hundred and fifty dollars (\$250) plus gst shall be payable by the Purchaser (with the exception of Contract Customers) for all Goods and Services required to be delivered on public holidays or outside the Vendors core business hours of 8am to 5pm, Monday to Friday.
- 3.7 Payment will be made by cash, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Purchaser and the Vendor.
- 3.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4. Delivery Of Goods

- 4.1 At the Vendor's sole discretion delivery of the Goods shall take place when:
 - (a) the Purchaser takes possession of the Goods at the Vendor's address; or
 - (b) the Purchaser takes possession of the Goods at the Purchaser's nominated address (in the event that the Goods are delivered by the Vendor or the Vendor's nominated carrier).
- 4.2 At the Vendor's sole discretion the costs of delivery are:
 - (a) in addition to the Price; or
 - (b) for the Purchaser's account.
- 4.3 The Purchaser shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Purchaser is unable to take delivery of the Goods as arranged then the Vendor shall be entitled to charge a reasonable fee for redelivery.

- 4.4 Delivery of the Goods to a third party nominated by the Purchaser is deemed to be delivery to the Purchaser for the purposes of this agreement.
- 4.5 The Vendor may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.6 The failure of the Vendor to deliver shall not entitle either party to treat this contract as repudiated.
- 4.7 The Vendor shall not be liable for any loss or damage whatsoever due to failure by the Vendor to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of the Vendor.

5. Risk

- 5.1 If the Vendor retains ownership of the Goods nonetheless, all risk for the Goods passes to the Purchaser on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Purchaser, the Vendor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Vendor is sufficient evidence of the Vendor's rights to receive the insurance proceeds without the need for any person dealing with the Vendor to make further enquiries.

6. Damages

- 6.1 The Purchaser shall ensure that the Vendor has clear and free access to the work site at all times to enable them to undertake the works. The Vendor shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Vendor.

7. Underground Locations

- 7.1 Prior to the Vendor commencing any work the Purchaser must advise the Vendor of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Purchaser must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 7.2 Whilst the Vendor will take all care to avoid damage to any underground services the Purchaser agrees to indemnify the Vendor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 7.1.

8. Title

- 8.1 The Vendor and Purchaser agree that ownership of the Goods shall not pass until:
 - (a) the Purchaser has paid the Vendor all amounts owing for the particular Goods; and
 - (b) the Purchaser has met all other obligations due by the Purchaser to the Vendor in respect of all contracts between the Vendor and the Purchaser.
- 8.2 Receipt by the Vendor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Vendor's ownership or rights in respect of the Goods shall continue.
- 8.3 It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until the Vendor shall have received payment and all other obligations of the Purchaser are met; and
 - (b) until such time as ownership of the Goods shall pass from the Vendor to the Purchaser the Vendor may give notice in writing to the Purchaser to return the Goods or any of them to the Vendor. Upon such notice being given the rights of the Purchaser to obtain ownership or any other interest in the Goods shall cease; and
 - (c) the Purchaser is only a bailee of the Goods and until such time as the Vendor has received payment in full for the Goods then the Purchaser shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Purchaser owes to the Vendor for the Goods, on trust for the Vendor; and
 - (d) until such time that ownership in the Goods passes to the Purchaser, if the Goods are converted into other products, the parties agree that the Vendor will be the owner of the end products; and
 - (e) if the Purchaser fails to return the Goods to the Vendor then the Vendor or the Vendor's agent may enter upon and into land and premises owned, occupied or used by the Purchaser, or any premises where the Goods are situated as the invitee of the Purchaser and take possession of the Goods, and the Vendor will not be liable for any reasonable loss or damage suffered as a result of any action by the Vendor under this clause.

9. Personal Property Securities Act 1999 ("PPSA")

- 9.1 Upon assenting to these terms and conditions in writing the Purchaser 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 Vendor to the Purchaser (if any) and all Goods that will be supplied in the future by the Vendor to the Purchaser.
- 9.2 The Purchaser 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 Vendor 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 Vendor 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 Vendor; and
 - (d) immediately advise the Vendor 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.
- 9.3 The Vendor and the Purchaser agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 9.4 The Purchaser waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 9.5 Unless otherwise agreed to in writing by the Vendor, the Purchaser waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 9.6 The Purchaser shall unconditionally ratify any actions taken by the Vendor under clauses 9.1 to 9.5.

10. Purchaser's Disclaimer

- 10.1 The Purchaser hereby disclaims any right to rescind, or cancel any contract with the Vendor or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Purchaser by the Vendor and the Purchaser acknowledges that the Goods are bought relying solely upon the Purchaser's skill and judgment.

11. Defects

- 11.1 The Purchaser shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Vendor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Purchaser shall afford the Vendor an opportunity to inspect the Goods within a reasonable time following delivery if the Purchaser believes the Goods are defective in any way. If the Purchaser shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Vendor has agreed in writing that the Purchaser is entitled to reject, the Vendor's liability is limited to either (at the Vendor's discretion) replacing the Goods or repairing the Goods.
- 11.2 Goods will not be accepted for return other than in accordance with 11.1 above.

12. Returns

- 12.1 Returns will only be accepted provided that:
- (a) the Purchaser has complied with the provisions of clause 11.1; and
 - (b) the Vendor has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Purchaser's cost within seven (7) days of the delivery date; and
 - (d) the Vendor will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) 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 reasonably possible in the circumstances.
- 12.2 The Vendor may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of fifteen percent (15%) of the value of the returned Goods plus any freight.
- 12.3 Non-stock items or Goods on special order are under no circumstances acceptable for credit or return.

13. Warranty

- 13.1 Subject to the conditions of warranty set out in Clause 13.2 the Vendor warrants that if any defect in any workmanship of the Vendor becomes apparent, labour and materials for service and maintenance and project and installation reported to the Vendor within six (6) months of the date of delivery (time being of the essence) then the Vendor will either (at the Vendor's sole discretion) replace or remedy the workmanship.
- 13.2 The conditions applicable to the warranty given by Clause 13.1 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 Purchaser to properly maintain any Goods; or
 - (ii) failure on the part of the Purchaser to follow any instructions or guidelines provided by the Vendor; 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; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and the Vendor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Vendor's consent.
 - (c) in respect of all claims the Vendor shall not be liable to compensate the Purchaser for any delay in either replacing or remedying the workmanship or in properly assessing the Purchaser's claim.
- 13.3 For Goods not manufactured by the Vendor, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Vendor shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

14. Consumer Guarantees Act 1993

- 14.1 If the Purchaser is acquiring Goods for the purposes of a trade or business, the Purchaser acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Vendor to the Purchaser.

15. Intellectual Property

- 15.1 Where the Vendor has designed, drawn or written Goods for the Purchaser, then the copyright in those designs and drawings and documents shall remain vested in the Vendor, and shall only be used by the Purchaser at the Vendor's discretion.
- 15.2 The Purchaser warrants that all designs or instructions to the Vendor will not cause the Vendor to infringe any patent, registered design or trademark in the execution of the Purchaser's order and the Purchaser agrees to indemnify the Vendor against any action taken by a third party against the Vendor in respect of any such infringement.

16. Default & Consequences Of Default

- 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the Vendor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 In the event that the Purchaser's payment is dishonoured for any reason the Purchaser shall be liable for any dishonour fees incurred by the Vendor.
- 16.3 If the Purchaser defaults in payment of any invoice when due, the Purchaser shall indemnify the Vendor from and against all costs and disbursements incurred by the Vendor in pursuing the debt including legal costs on a solicitor and own client basis and the Vendor's collection agency costs.
- 16.4 Without prejudice to any other remedies the Vendor may have, if at any time the Purchaser is in breach of any obligation (including those relating to payment), the Vendor may suspend or terminate the supply of Goods to the Purchaser and any of its other obligations under the terms and conditions. The Vendor will not be liable to the Purchaser for any loss or damage the Purchaser suffers because the Vendor has exercised its rights under this clause.
- 16.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 16.6 Without prejudice to the Vendor's other remedies at law the Vendor shall be entitled to cancel all or any part of any order of the Purchaser which remains unfulfilled and all amounts owing to the Vendor shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Vendor becomes overdue, or in the Vendor's opinion the Purchaser will be unable to meet its payments as they fall due; or
 - (b) the Purchaser 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 Purchaser or any asset of the Purchaser.

17. Security And Charge

- 17.1 Despite anything to the contrary contained herein or any other rights which the Vendor may have howsoever:
- (a) where the Purchaser and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Purchaser 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 Vendor or the Vendor's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Purchaser and/or the Guarantor acknowledge and agree that the Vendor (or the Vendor's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should the Vendor elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Purchaser and/or Guarantor shall indemnify the Vendor from and against all the Vendor's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Purchaser and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Vendor or the Vendor's nominee as the Purchaser's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 17.1.

18. Dispute Resolution (NZ)

- 18.1 All disputes and differences between the Purchaser and the Vendor touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

19. Cancellation

- 19.1 The Vendor may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Purchaser. On giving such notice the Vendor shall repay to the Purchaser any sums paid in respect of the Price. The Vendor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.2 In the event that the Purchaser cancels delivery of the Goods the Purchaser shall be liable for any loss incurred by the Vendor (including, but not limited to, any loss of profits) up to the time of cancellation.

20. Privacy Act 1993

- 20.1 The Purchaser and the Guarantor/s (if separate to the Purchaser) authorises the Vendor to:
- (a) collect, retain and use any information about the Purchaser and/or Guarantors, for the purpose of assessing the Purchaser's and/or Guarantors creditworthiness or marketing products and services to the Purchaser and/or Guarantors; and
 - (b) disclose information about the Purchaser and/or Guarantors, whether collected by the Vendor from the Purchaser and/or Guarantors directly or obtained by the Vendor 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 Purchaser and/or Guarantors.
- 20.2 Where the Purchaser and/or Guarantors are an individual the authorities under clause 20.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 20.3 The Purchaser and/or Guarantors shall have the right to request the Vendor for a copy of the information about the Purchaser and/or Guarantors retained by the Vendor and the right to request the Vendor to correct any incorrect information about the Purchaser and/or Guarantors held by the Vendor.

21. Unpaid Vendor's Rights

- 21.1 Where the Purchaser has left any item with Vendor for repair, modification, exchange or for the Vendor to perform any other Service in relation to the item and Vendor has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Vendor shall have:
- (a) a lien on the item;
 - (b) the right to retain the item for the Price while the Vendor is in possession of the item;
 - (c) a right to sell the item.
- 21.2 The lien of the Vendor shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.

22. Construction Contracts Act 2002

- 22.1 The parties agree that for the purposes of the Construction Contracts Act 2002 where the Vendor is a commercial provider this contract is not a commercial construction contract or a construction contract whether for work on a commercial or residential property and liability under this contract shall be in no way limited by any contract that the Purchaser may have entered into with a third party in relation to the supply of Goods and/or Services to that third party or the payment by the third party to the Purchaser of any monies whether by progress payments or otherwise.

23. General

- 23.1 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.
- 23.2 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.
- 23.3 The Vendor shall be under no liability whatsoever to the Purchaser for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Purchaser arising out of a breach by the Vendor of these terms and conditions.
- 23.4 In the event of any breach of this contract by the Vendor the remedies of the Purchaser shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 23.5 The Purchaser shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Purchaser by the Vendor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 23.6 The Vendor may license or sub-contract all or any part of its rights and obligations without the Purchaser's consent.
- 23.7 The Vendor reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Vendor notifies the Purchaser of such change.
- 23.8 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 23.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 23.10 The failure by the Vendor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Vendor's right to subsequently enforce that provision.