



western switchgear

Western Switchgear Limited

Standard Terms and conditions of Service

1. Definitions:

In these terms:

Agents means any personnel contracted by the Service Provider;

Contract means the Client's Purchase Order and these Terms together;

Client means the entity wishing to purchase goods and or services from the Service Provider

Fees means all fees, costs, expenses, charges howsoever arising payable for the Goods and or Services which shall be agreed and set out in the relevant Purchase Order and may be varied from time to time.

Force Majeure Event means Lightning, earthquake, cyclone or volcanic eruption, fire or explosion, a flood reasonably expected to occur less frequently than 100 years, epidemic or quarantine, war, invasion, act of foreign enemies, hostilities (where war be declared or not), civil war, terrorism act, rebellion, revolution, insurrection or military power acts, martial law, embargo, blockage, shipping delays, failure of a supplier or subcontractor, public utility or common carrier, to the extent such event is beyond the reasonable control of the party.

Goods means the Goods described in the Purchase Order, if any;

GST means in respect of Goods or Services provided to a Purchaser located in New Zealand, goods and services tax payable under the Goods and Services Tax Act 1985;

Quote means the sales quotation for the Goods or Services on these Terms;

Purchase Order means the purchasing document (excluding any terms and conditions that may be attached, which the Client acknowledge and agrees will not form part of the Contract) the Client submits to the Service Provider detailing the Goods and or Services they want to order to purchase on these Terms;

Personnel means any person(s) employed or contracted by the Service Provider or the Client;

Results mean any reports or findings derived from the outcomes of inspection or testing procedures carried out in accordance with the Client's instructions and includes the Service Provider's assessment of those outcomes on the basis of any Standards which should, in their opinion, be taken into account in providing the Services;

Services means any services agreed under the Contract;

Specifications means any technical or other specification relating to the Goods or Services referred to in the Purchase order;

Service Provider means the Company who sells the Goods and or provides the Services;

Terms means these Terms and Conditions of Service

Terms of Agreement

2. Acceptance:

(a) All Goods and or Services purchased will be governed by this Contract which may be updated or amended from time to time without any notice.

(b) The Client acknowledges and agrees that by submitting a Purchase Order to the Service Provider is deemed to be acceptance of the terms of this Contract.

(c) Any variation to these Terms must be provided in writing and the proposed change must be acknowledged and agreed to in writing by the Service Provider before coming into force. The Service Provider is entitled to reject any such variations at the Service Providers sole discretion.

3. Title and Risk:

The Client agrees that these Terms constitute a "security agreement" for the purposes of the *Personal Property Securities Act 1999(PPSA)*, and that the Service Provider has or will have a "security interest" in respect of the Goods for the purposes of the PPSA. The Client agrees that ownership and title of the Goods and or Services remains with the Service Provider until payment in full of all monies owed by the Client for the Goods and or Services completed as stated in the Purchase Order. Risk will pass to the Client on delivery of the Goods.

4. Invoicing and Payment:

(a) Payment shall be made electronically to the Service Provider's nominated bank account as stated on the Purchase Order.

(b) Unless mutually agreed, the time for payment for Services will be the 20th of the month following the invoice date.

(c) A claim or dispute raised by the Client does not entitle the Client to withhold payment due to the Service Provider for the undisputed portion of the Purchase Order.

(d) Late payment may incur interest at the rate of 2.5% per month calculated on a daily basis. This shall be payable on any amount outstanding under the Contract from the date payment was due until the date payment is received by the Service Provider.

(e) Without prejudice to any other remedies the Service Provider may have, if at any time the Client is in breach of any obligation (including those relating to payment); the Service Provider may suspend or terminate the supply of Services to the Client and any of its other obligations under Contract. The Service Provider will advise the Client before such suspension or termination. The Service Provider will not be liable to the Client for any loss or damage the Client suffers because the Service Provider exercised its rights under this clause.

5. Default:

(a) The Service Provider shall be entitled to cancel all or any part of any Services under a Purchase Order from the Client that remains unperformed and all amounts owing to the Service Provider shall, whether or not due for payment, immediately become payable, if:

(A) any money payable to the Service Provider becomes overdue; or

(B) the Client 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

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- (C) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- (b) If all reasonable efforts by the Service Provider to receive amounts past due from the Client are unsuccessful, the Service Provider reserves the right to engage a debt collecting agency to recover the amounts past due. The costs of the debt collecting agency shall be met by the Client.
- (c) If the Services are not able to be provided as scheduled in the Purchase Order as a result of the Client, the Client shall be responsible for all additional charges caused thereby.
- (d) The Service Provider reserves the right to increase the fees for alterations to specifications of Services after the Purchase order has been placed. These will be discussed with the Client and approved by the Service Provider in writing.

6. Disputes:

If either party believes that there is a dispute in respect of this Contract, it will first notify the other party in writing giving details of the dispute. If the parties cannot resolve the dispute within 10 working days, either party may pursue its legal remedies, provided that a party will consider any alternative dispute resolution process proposed by the other party prior to pursuing legal remedies.

7. Limitation of Liability:

To the extent permitted by law, in no event shall the Service Provider be liable to the Client or any third party under, or in connection with this Contract (whether in contract, tort or otherwise) for any consequential loss or damage, indirect loss or damage, or any economic loss, including any loss of profits.

The provisions of clauses 3, 4, 6, 7, 10, 15 & 21 shall survive termination of the Purchase Order howsoever arising.

8. Subcontractors:

may be fulfilled by subcontractors engaged by the Service Provider on such terms and conditions agreed between the Service Provider and the subcontractor.

9. Access for provision of Services:

- (a) The Services will be performed on the dates and at the location specified in the Purchase Order.
- (b) The Client shall arrange or provide for the purposes of provision of Services, at no cost to the Service Provider, all necessary facilities potentially including but not limited to power, lighting, unloading, hoisting and lifting facilities, labour, site preparation and employee amenities which comply with the statutory requirements or anything else that would reasonably be required to allow the Service Provider or their contractors to carry out the Services
- (c) Upon the Service Provider delivering equipment and any other items to be used in the provision of Services to the contracted site, the Client shall ensure adequate safe storage facilities are provided for protection against theft and damage of any equipment belonging to the Service Provider, at no cost to the Service Provider.
- (d) The Client shall be responsible for arranging and/or providing safe and convenient access to the proposed place of installation or performance of service. If the Client fails to do this, the Service Provider may make a further charge to the Client to cover the additional costs it incurs as a result of the failure.
- (e) If the Services are not able to be provided as scheduled, as a result of the Client, the Client shall be responsible for all additional charges caused thereby.

10. Intellectual Property:

- a) The Client agrees that all intellectual property rights (whether registered or not) held by the Service Provider prior to the provision of Goods and/or Services shall remain the Service Providers property.
The Service Provider owns and has copyright to all intellectual and industrial property rights and interests, owned or held by the Service Provider, or lawfully used by the in connection with the Services provided under this Contract.
The Service Provider's trademarks and other intellectual property and rights in respect of Services remain the Service Provider's property and the Client may not use, remove, interfere with or alter them in anyway.
The Client agrees that all intellectual property rights created during the provision of Services will vest in the Service Provider immediately upon creation.

11. Governing Law and Jurisdiction:

The Client agrees that the Contract and any claim or dispute will be governed by the laws of New Zealand, and agree to submit to the exclusive jurisdiction of the courts of New Zealand.

12. Force Majeure:

Neither party will be in default or breach of the Contract as a result of a Force Majeure Event.

13. Assignment and Novation:

Service Provider may assign or novate all or any of its rights and/or obligations under this Contract by giving notice in writing to the Client.

14. Severability:

Any part of these Terms that is unenforceable or partly unenforceable will be, where possible, severed to the extent necessary to make the Terms enforceable, unless this would materially change the intended effect of the Contract.

15. Privacy and Confidential Information:

- (a) The Service Provider agrees not to disclose the Client's confidential or personal information for purposes other than the purpose for which it was collected unless permitted to do so by the Client or by law. See the Service Provider's full Privacy policy www.wells.co.nz/privacy-statement
- (b) Neither party shall disclose any information relating to this agreement for distribution through any communications media without prior written approval.
- (c) Neither party shall disclose without the Service Provider's prior written approval from the other, any information marked as confidential to any person other than the to the Personnel who need the information for the purposes of this Contract.

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16. Entire Agreement:

The Client acknowledges that this Contract constitutes the full understanding between the parties in relation to the provision of Goods and Services by the Service Provider. In particular the Client acknowledges that all prior understandings (whether written or oral) including any terms and conditions attached to the Purchase Order do not apply and are of no further force or effect.

17. Health, Safety and Environment:

- (a) at all times the Service Provider or its Agents will comply with all directions and applicable laws in the place where the Goods and/or Services are provided by the Service Provider, including those direction, laws and regulations relating to health, safety and environment which are relevant to any of the Goods and/or Services;
- (b) The Client will also identify, assess and control hazards; inform the Service Provider’s staff as appropriate, record and investigate injuries, and report serious harm incidents to the Service Provider’s management as soon as practicable.
- (c) The Client warrants the inclusion of the Service Provider’s staff in a full health and safety site induction where applicable.
- (d) The Service Provider is committed to safe work practices. On sight of any, in the opinion of the Service Provider, adversely risky or dangerous situations, the Service Provider’s staff may stop work until such situation has been rectified to the satisfaction of the Service Provider.

18. Warranty:

- (a) The Client agrees that, where the Goods and/or Services are acquired for the purposes of a business, the Consumer Guarantees Act 1993 does not apply to anything done (or not done) under or in connection with this Contract.
- (b) The parties acknowledge and agree for the purposes of section 5D of the Fair-Trading Act 1986 that:
 - (A) the Goods and/or Services are being supplied and acquired in trade;
 - (B) each of the parties are in trade;
 - (C) sections 9, 12A, 13 and 14(1) of the Fair-Trading Act 1986 do not apply to this Contract or to any matters, information, representations or circumstances covered by this Contract; and
 - (D) it is fair and reasonable that the parties are bound by this clause 18(b).
- (c) All other representations, warranties and guarantees (statutory, express or implied), except any which may not lawfully be excluded (including any rights under the Consumer Guarantees Act 1993 if the Goods and/or Services are not acquired for the purposes of a business), are expressly excluded.

19. Insurance

- (a) The Service Provider will maintain in full force and effect during the term of this Contract and for at least 12 months thereafter:
 - (A) third party public and product liability insurance up to a maximum cover amount of \$10,000,000; and
 - (B) professional indemnity insurance up to a maximum cover amount of \$10,000,000
- (b) The Client shall at its own expense effect all relevant insurance at its cost for the Goods and/or Services for the minimum amounts that are prudent to cover the risks inherent in the Goods and/or Services, which the Client shall maintain in full force and effect during the term of this Contract and for at least 12 months thereafter.

20. Waiver:

An election by the Service Provider not to exercise any rights they may have on the Client’s breach of these terms will not constitute a waiver of any of the Service Provider’s rights relation to any other breach.

21. Indemnity:

Subject to Clause 18, Warranty, the Client will indemnify and hold the Service Provider harmless against any and all loss, liability, cost (including legal costs on a full indemnity basis) and expense incurred by the Service Provider: in connection with any act or omission by the Client in connection with Service and or Goods; Loss of, loss of use of, or damage to, the Service Provider’s property; and Claims by any person against the Service Provider in respect of personal injury or death, or loss of, loss of use of, or damage to, any other property arising out of or as a consequence of any act or omission by the Client in connection with the performance of the Contract.

22. Variation and Cancellation:

To be binding any variation or cancellation of this Contract or any Purchase Order must be approved by the Service Provider in writing.

23. Notices

- (a) Each notice under this Contract is to be made in writing and sent by personal delivery or by post or electronically to the addressee at the number or address or electronic mail address and marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other parties. The initial number, address, electronic mail address and relevant person or office holder of each party is set out in the Purchase Order details.
- (b) No communication will be effective until received. A communication is, however, deemed to be received:
 - (A) In the case of a letter, on the second Business Day after posting; and
 - (B) In the case of an electronic communication, at the time the electronic communication enters the information system of the recipient party.

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Executed as an Agreement

We (*name of Client's company*) _____),
acknowledge and accept **Western Switchgear Limited** terms of trade as above.

SIGNED by the company:

Signature of authorised person:

Name of authorised person:

Position:

Date:

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