

AKON ELECTRICAL TERMS + CONDITIONS OF TRADE

THE PARTIES AGREE AS FOLLOWS:

The Customer acknowledges and understands that this Agreement for the Provision of Services is subject to the following terms and conditions of trade, which supersede any previous terms and conditions in place between the Customer and Akon:

1. **DEFINITIONS**
 - 1.1 "Akon" shall mean Akon Electrical Engineering Limited, Akon Electrical, Data and Security (EDS) Limited, or any agents or employees thereof.
 - 1.2 "CCA" shall mean the Construction Contracts Act 2002.
 - 1.3 "CGA" shall mean the Consumer Guarantees Act 1993.
 - 1.4 "Customer" shall mean the, any person acting on behalf of and with the authority of the, or any person receiving Services and/or purchasing Products from.
 - 1.5 "Contract" shall mean and encompass this entire Agreement for the Provision of Services.
 - 1.6 "Contract Price" shall mean the cost of the Services and/or Products as agreed to between Akon and the Customer and includes all disbursements e.g. charges pay to others on the 's behalf.
 - 1.7 "Delivery Date" shall mean the date provided to the customer as the indicative timeframe to complete the Contract.
 - 1.8 "Guarantor" means that person (or persons), or entity that agrees herein to be liable for the debts of the Customer on a principal debtor basis.
 - 1.9 "Products" shall mean:
 - A All Products of the general description specified in the front of this Contract and supplied by Akon to the Customer; and
 - B all Products supplied by Akon to the Customer; and
 - C all inventory of the Customer that is supplied by Akon; and
 - D all Products supplied by Akon and further identified in any invoice issued by Akon to the Customer, which invoices are deemed to be incorporated into and form part of this Contract; and
 - E all Products that are marked as having been supplied by Akon or that are stored by the Customer in a manner that enables them to be identified as having been supplied by Akon; and
 - F all of the Customer's present and after-acquired Products that Akon have performed work on or to or in which goods or materials supplied or financed by Akon have been attached or incorporated.
 - G the above descriptions may overlap but each is independent of and does not limit the others.
 - 1.10 "Services" shall mean services, products, goods and advice provided by Akon to the Customer and shall include without limitation the supply or leasing of all electrical and air-conditioning services including design, mechanical wiring installations and maintenance, electrical, data, security and automation services and products, and the supply of associated products and all charges for time and attendances, hire charges, insurance charges, or any fee or charge associated with the supply of Services and Products by Akon to the Customer.
 - 1.11 "Variations to Contract Price" shall mean the additional cost of Services and/or Products provided by Akon to the Customer, as costs for variations to the Contract Price and will be at the hourly rates and/or cost pricing stipulated as part of the agreed Contract Price.
2. **ACCEPTANCE**
 - 2.1 Any instructions received by Akon from the Customer for the supply of Services and/or Products shall constitute a binding Contract and acceptance of the terms and conditions contained herein.
 - 2.2 Where more than one Customer has entered into this Contract, the Customer(s) shall be jointly and severally liable for all payments of the Contract Price and where necessary to variations to the Contract Price.
3. **SCOPE AND SERVICES PROVIDED**
 - 3.1 These terms and conditions form an integral part of the Contract between Akon and the Customer.
 - 3.2 Akon shall perform the Services, or supply the Products, to the Customer in an efficient, effective and professional manner exercising the degree of skill, care and diligence normally exercised by Akon in similar circumstances subject to any financial, physical, time or other restraints imposed by the Customer or necessarily resulting from the nature of the project.
4. **COLLECTION AND USE OF INFORMATION**
 - 4.1 The Customer authorises Akon to collect, retain and use any information about the Customer for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this Contract, or marketing any Services and Products provided by Akon to any other party.
 - 4.2 The Customer authorises Akon to disclose any information obtained to any person for the purposes set out in clause 4.
 - 4.3 Where the Customer is a natural person the authorities under clauses 4.1 and 4.2 are authorities or consents for the purposes of the Privacy Act 1993.
5. **CONTRACT PRICE**
 - 5.1 Where no Contract Price is stated in writing or agreed to orally the performance of Services and/or supply of Products shall be deemed to be provided at the current amount as such Services and Products are supplied by Akon at the time of the Contract.
 - 5.2 The Contract Price may be increased by the amount of any reasonable increase in the cost of supply of the Services and Products that is beyond the control of Akon between the date of the Contract and supply of the Services and Products.
6. **PAYMENT**
 - 6.1 Payment for Services and Products shall be made in full on or before the 20th day of the month following the date of the invoice or as otherwise indicated on the GST Tax Invoice ("the due date").
 - 6.2 Where the CCA applies, all invoices for progress payments will be prepared to meet the provisions of the CCA and shall be in the form of a payment claim within the meaning of the CCA. The Customer is hereby put on notice of the requirements of the CCA in terms of the issuing of payment schedules.
 - 6.3 Interest may be charged on any amount owing after the due date at the rate of 8.5% per month or part month.
 - 6.4 Any expenses, disbursements and legal costs incurred by Akon in the enforcement of any rights contained in this Contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
 - 6.5 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
 - 6.6 A deposit of up to 50% may be required for new Customers prior to commencement of work.
 - 6.7 The Customer expressly acknowledges that no retentions shall apply unless provision for a retention is incorporated within the prevailing terms and conditions.
 - 6.8 Failure by Akon to enforce any of the terms and conditions contained in the Contract shall not be deemed to be a waiver of any of the rights or obligations Akon have under this agreement for the provision of services.
7. **QUOTATION**
 - 7.1 Where a quotation is given by Akon for Services and/or Products:
 - A unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
 - B the quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
 - C Akon reserve the right to alter the quotation because of circumstances beyond its control.
8. **VARIATIONS**
 - 8.1 Akon shall be entitled to adjust the Contract Price, from time to time, and the Customer agrees to pay the variation to Contract Price, to take account of variations in the cost to Akon of carrying out the whole of the services or any part thereof, and/or providing the Products or any part thereof, provided that the variations are reasonable and within the scope of the Contract.
 - 8.2 Akon will notify the Customer, in writing, of any variations and acceptance by the Customer cannot be unreasonably withheld.
9. **DELAY IN SERVICES AND PRODUCTS**
 - 9.1 If at any time Akon is not making sufficient progress to meet the Delivery Date of providing Services and/or supplying the Products, Akon shall immediately (within 24 hours) notify the Customer in writing, informing them of the delay and the duration of the delay.
10. **DELIVERY OF PRODUCTS**
 - 10.1 Delivery of Products shall be made to the Customer's address. The Customer shall make all arrangements necessary to take delivery of the Products whenever they are tendered for delivery, or delivery of the Products shall be made to the Customer at the Customer's address.
 - 10.2 Delivery of the Products to a carrier, either named by the Customer or failing such naming to a carrier at the discretion of Akon for the purpose of transmission to the Customer, is deemed to be a delivery of the Products to the Customer.
 - 10.3 The costs of carriage and any insurance which the Customer reasonably directs Akon to incur shall be reimbursed by the Customer (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Customer's agent. The failure of Akon to deliver shall not entitle either party to treat this Contract as repudiated.
 - 10.4 Akon shall not be liable for any loss or damage whatsoever due to failure by Akon to deliver the Products (or any of them) promptly or at all.
11. **RISK & INSURANCE**
 - 11.1 Akon will retain a property interest in the Products however all risk for the Products passes to the Customer upon delivery.
 - 11.2 If any of the Products are damaged or destroyed prior to property in them passing to the Customer, Akon is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Products), to receive all insurance proceeds payable in respect of the Products. This applies whether or not the Contract Price has become payable under this Contract. The production of these terms and conditions by Akon is sufficient evidence of Akon's rights to receive the insurance proceeds without the need for any person dealing with Akon to make further enquiries.
 - 11.3 The Customer must provide insurance for the provision of Services and/or supply of Products, which comprise the Contract. All risk and responsibility and liability for insurance premiums and calls in relation to insuring the Services and Products, shall remain with the Customer.

12.	TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)		
12.1	Title in any Services and/or Products supplied by Akon passes to the Customer only when the Customer has made payment in full for all Services and/or Products provided by Akon and of all other sums due to Akon by the Customer on any account whatsoever. Until all sums due to Akon by the Customer have been paid in full, Akon has a security interest in all Services and Products.		C In any event, the Customer shall indemnify Akon against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Akon or otherwise, brought by any person in connection with any matter, act, omission, or error by Akon its agents or employees in connection with the Services and/or Products; and
12.2	If the Services and Products are attached, fixed, or incorporated into any property of the Customer by way of any manufacturing or assembly process by the Customer or any third party, title in the Services and Products shall remain with Akon until the Customer has made payment for all Services and Products, and where those Services and Products are mixed with other property so as to be part of or a constituent of any new Services and Products, title to these new Services and Products shall be assigned to Akon as security for the full satisfaction by the Customer of the full amount owing between Akon and the Customer.	16.3	If contrary to the disclaimer of liability contained in this Contract Akon is deemed liable to the Customer, following and arising from the supply of Services and/or Products by Akon to the Customer, then such liability is limited in its aggregate to \$500.
12.3	The Customer gives irrevocable authority to Akon to enter any premises occupied by the Customer or on which Services and Products are situated at any reasonable time after default by the Customer or before default if Akon believes a default is likely and to remove and repossess any Services and Products and any other property to which Services and Products are attached or in which Services and Products are incorporated. Akon 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 or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Akon may either resell any repossessed Services and Products 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 Services and Products and credit the Customer's account with the invoice value thereof less such sum as Akon reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.	17.	DEFAULT
		17.1	Without prejudice to other remedies, Akon may terminate this Contract and any other Contract for supply with the Customer, if the Customer: A Breaches these Terms of Trade; or B Becomes or take any steps towards becoming insolvent; or C No longer carries on business or threatens to cease carrying on business; or D Ownership or effective control is transferred or the nature of the Customer's business is materially altered.
		17.2	Termination or postponement of this Contract or any other Contract will be effective immediately upon receiving written notice.
		17.3	All amounts owing by the Customer to the Akon are immediately due and payable on termination.
12.4	Where Services and Products are retained by Akon pursuant to clause 12.3 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.	18.	WARRANTY
12.5	The following shall constitute defaults by the Customer: A Non payment of any sum by the due date. B The Customer intimates that it will not pay any sum by the due date. C Any Services and Products are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Services and Products. D Any Services and Products in the possession of the Customer are materially damaged while any sum due from the Customer to Akon remains unpaid. E The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets. F A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days. G Any material adverse change in the financial position of the Customer. H If the Credit Repossession Act applies to any transaction between the Customer and Akon, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.	18.1	All Services and/or Products are guaranteed to be of merchantable quality.
		18.2	For Services and/or Products not manufactured by Akon, the warranty shall be the current warranty provided by the manufacturer. Akon shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer.
		18.3	Where, however, products are supplied to the specifications of the Customer, those products are guaranteed by Akon to be in accordance with those specifications.
		19.	COPYRIGHT AND INTELLECTUAL PROPERTY
		19.1	Akon owns and has copyright in all designs, software, systems, solutions, work, drawings, specifications, electronic data and documents produced by Akon in connection with the provision of Services and supply of Products, provided pursuant to this Contract and the Customer may use the Services and/or Products only if paid for in full and for the purpose for which they were intended and supplied by Akon.
		20.	CONSUMER GUARANTEES ACT 1993
		20.1	The guarantees contained in the CGA are excluded where the Customer acquires Services and Products from Akon for the purposes of a business in terms of section 2 and 43 of that Act.
		21.	CONSTRUCTION CONTRACTS ACT 2002
		21.1	Akon acknowledges that the obligations and benefits of the CCA shall apply in respect of any supply deemed construction work. Construction work should have the same meaning as in the CCA.
		21.2	Akon shall be entitled to exercise any or all powers available to it under the CCA including suspension of work; adjudication; and seeking charging orders.
13.	SECURITY INTEREST FOR SERVICE PROVIDERS	22.	OCCUPATIONAL HEALTH AND SAFETY
13.1	The Customer gives Akon a security interest in all of the Customer's present and after-acquired Property, in that Akon has performed services on or to or in which Services and Products, goods or materials supplied or financed by Akon have been attached or incorporated.	22.1	The Customer warrants that any site that Akon, its employees, contractors, servants or agents may have a Contract with must meet all requirements and obligations as specified in the Health & Safety in Employment Act 1992. The Customer warrants that such sites are under their control and the Customer warrants they have eliminated, isolated and minimised all hazards and any breach of the same will be at the liability of the Customer.
14.	DEFECTS/RETURNS	23.	PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES
14.1	The Customer shall inspect the Services and/or Products on delivery and shall within seven (7) days of delivery notify Akon of any alleged defect, shortage in quantity, damage or failure to comply with the description or quotation. The Customer shall afford Akon an opportunity to inspect the Services and/or Products within a reasonable time following delivery if the Customer believes the Services and/or Products are defective in any way. If the Customer shall fail to comply with this provision then the Services and/or Products shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.	23.1	If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Akon agreeing to supply Services and/or Products, 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 Akon the payment of any and all monies now or hereafter owed by the Customer to Akon and indemnify Akon 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.
14.2	For defective Services and/or Products, which have been agreed to in writing by Akon, the Customer is entitled to reject, and Akon's liability is limited to either replacing the Services and/or Products or repairing the Services and/or Products provided that the Customer has complied with these provisions. All Services and/or Products must be returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonable possible in the circumstances.	24.	MISCELLANEOUS
14.3	Akon is not liable for Services and/or Products which have not been stored or used in a proper manner.	24.1	Akon shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
15.	DISPUTES	24.2	Failure by Akon to enforce any of the provisions contained in this Contract shall not be deemed to be a waiver of any of the rights or obligations Akon has under this Contract.
15.1	No claim relating to Services and/or Products will be considered unless made within seven (7) days of the provision of Services and/or supply of Services, or in accordance with the CCA.	24.3	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.
16.	LIABILITY	24.4	If the Customer defaults in payment then the Customer agrees that where the Products and/or Services relate to Customer's land, then the amount of such default gives rise to a legal or equitable estate or interest in the Customer's land which entitles Akon to enter a caveat against the Customer's land pursuant to the Land Transfer Act 1952 and its amendments or any legislation in substitution thereof.
16.1	The CGA, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Akon 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 on Akon, Akon's 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.	24.5	Akon cannot be held liable if it is unable to carry out its obligations under this Contract due to a Force Majeure event. A Force Majeure event means any event beyond Akon's reasonable control and includes, but is not limited to, strikes, power failures, fires, earthquakes and other natural disasters.
16.2	Except as otherwise provided by clause 16.1, Akon shall not be liable for: A Any loss or damage of any kind whatsoever, arising from the supply of Services and/or Products by Akon 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 Services and/or Products provided by Akon to the Customer; or B Any loss or damage of any kind as a result of the supply of the Products and/or Services being delayed, and Akon expressly limits both liquidated and general damages arising from the delay to \$NIL, and therefore Akon's aggregate liability for the liquidated and general damages is limited to 0% of the Contract Price; and		