



Switchboards Ltd.



CREDIT APPLICATION FORM

Account Name (in full).....
Trading Name (if applicable) .....
Billing Address.....
Delivery Address.....
Contact Name.....
Telephone No:..... Facsimile..... Cellphone:.....
Email Address:.....
Bank and Branch: .....

Credit References (service stations, banks, credit cards, telephone companies, power boards are not acceptable)

1/..... Telephone:.....
2/..... Telephone:.....
3/..... Telephone:.....

PAYMENT TERMS & CONDITIONS

I/We apply to open a monthly credit account and acknowledge that I/We have read the terms and conditions of sale and agree to abide by the terms and conditions, including the following:-

- 1. Payment is due on the 20th day of the month following the invoice date. Failure to do so may result in the stopping of credit facilities without notice, until payment is made. Overdue accounts will incur interest charges at 2% above bank overdraft interest rate.
2. Continued non-compliance will result in the account being closed and legal action taken to recover the amounts outstanding. All costs of collection including debt collector's fees and legal costs on a solicitor and client basis, will be added to the account and these costs become the responsibility of the account holder.
3. I/We authorize any seller or person to irrevocably provide you with such information as you may require in response to your credit enquiries for your provision of credit to me/us. I/We further authorize you to furnish any third party with any details contained in this application and on any details of subsequent details that I/We may have as a result of this application being action by you and to use for any lawful purpose connected with our business, any information which I/We or any third party may provide.
4. Title of these goods remains with the seller until they have been paid in full.

Signed..... Full Name: ..... Date: .....

INDIVIDUAL/SOLE TRADER: (strike out one not applicable)

Surname: ..... First Names: ..... Date of Birth:.....
Residential Address:.....
Previous Address:.....
Occupation: ..... Name of Employer: .....
Name & Address of relative residing elsewhere: .....
..... Telephone:.....

PARTNERSHIP DETAILS:

Surname: ..... First Names: ..... Date of Birth:.....
Residential Address:.....
Surname: ..... First Names: ..... Date of Birth:.....
Residential Address:.....
Surname: ..... First Names: ..... Date of Birth:.....
Residential Address:.....

LIMITED COMPANIES: (Please complete the following)

Registered Name of Company:.....
Full Names and Address of Directors/Shareholders:.....
.....
Accountant:..... Telephone:.....
Solicitor:..... Telephone:.....

PERSONAL GUARANTEE:

I/We acknowledge that I/we understand all the provisions and terms of this application & agree that in the consideration of Rickland Switchboards Limited (hereinafter called "the Company") agreeing to supply the above applicant with goods and services from time to time, the Guarantor/s will upon demand, pay such monies as shall be outstanding and shall be liable as a principal debtor in respect of all liabilities to the Company.

Full Name of Guarantor: ..... Signature:.....
Full Name of Witness:..... Signature:.....
Date: .....

# STANDARD CONDITIONS OF SALE

1. **GENERAL:**  
This tender is made upon and subject to the inclusion of the following terms and conditions. In the event of conflict between these conditions and those which may be included in, or implied by, any document forming part of any enquiry, specification, quotation, order or contract, then these conditions shall prevail except in as far as they are expressly varied by the company in writing or otherwise by law. All switchboards are quoted ex workshop and no delivery costs are included. The freight can be organised at the purchaser's cost and risk if requested, such freight shall only be to the site, with the off-loading from the carrier to be the purchaser's responsibility together with all associated costs.
2. **ACCEPTANCE:**  
Unless stated to the contrary, this tender is open for acceptance for a period of 30 days. The quotation is not to be construed as an offer or obligation to sell and Rickland Switchboards Limited (hereinafter called "the Company") reserves the right to accept or reject any orders received.
3. **LIMITS OF CONTRACT:**  
Any contract arising from acceptance of the tender will include only those goods, accessories and work that is specified in the tender.
4. **DESIGN DISQUALIFICATION CLAUSES:**  
Any design disqualification clauses in the specifications or on the plans provided to the Company are not accepted.
5. **VARIATIONS TO WORK:**  
5.1 The cost of any variation whether it be an addition to or subtraction from the original quoted sum, shall be agreed between the Company and the purchaser, but if there is no agreement when the varied work is carried out, the price shall be to the purchaser's account at the normal charge-out rates in force by the Company at that time.  
5.2 For all work the Company will specify a date by which full and final details of the purchaser's requirements must be advised. Variations after this date will be priced in accordance with paragraph 5.1. The Company shall be entitled to charge a cancellation charge for any deletions or substitutions after that date.  
5.3 In the event of the suspension or cancellation of the work by the purchaser's instructions or lack of instructions, the contract price may be increased to cover any extra expense thereby incurred. No firm order may be cancelled without the prior consent of the Company.  
5.4 Any extra work beyond that specified in this tender or any reduction in the work specified may be re-quoted by the Company, but in the event of a price not being agreed for variations prior to execution of the varied work the same shall be to the buyer's account at the normal charge out rates in force by the Company at the time of performance of the work. The Company undertakes to reduce the quoted sum by the amount originally included for such work prior to variation.  
5.5 In addition a date will be set by which full and final details of the purchaser's requirements must be advised. Variations after this date will be priced in accordance with paragraph 5.4 above and in addition deletions and substitutions may be subject to a cancellation charge. Also re-negotiation of delivery date as necessary.
6. **DRAWINGS:**  
6.1 All drawings, descriptive matter, weights, dimension and shipping specifications submitted with the tender and the description and illustrations contained in catalogues, price lists and other advertising matter are approximate only and are intended merely to present a general idea of the goods described therein. No particulars contained therein are binding on the Company. After acceptance of the tender a set of certified outline drawings will be supplied, if desired, free of charge.  
6.2 All drawing confirmations and approvals requested are subject to clause 5.2 above.  
6.3 Drawing time and material accrued on quotations accepted but subsequently cancelled is to the account of the purchaser at the normal charge-out rate then in force by the Company, in addition to any other remedies available to the Company in respect of any such a cancellation.  
6.4 The Company shall retain all intellectual property and design rights on all drawings prepared by it unless agreed in writing to the contrary.  
6.5 The parties agree that if the purchaser expects the Company verbally or in writing to design a switchboard according to their specifications, they will indemnify the Company against all liability, costs and expenses which the Company may incur as a result of the use of those specifications. It is further agreed that in the event of there being a dispute as to what the specifications were, the specification to which the equipment was built by the Company shall be deemed to be the correct specifications in the absence of written evidence to the contrary.
7. **TESTS:**  
Unless otherwise agreed all tests will be carried out on the Company's premises.
8. **WARRANTY:**  
8.1 The Company will at its sole option, subject to paragraph 8.4, repair or replace free of charge any goods or part thereof, being of the Company's own manufacture, which are found to be defective by reason of faulty material or workmanship, within 12 months of delivery to the purchaser provided that:  
8.1.1 the purchaser gives written notice to the Company of the alleged defect within 7 days of the defect becoming apparent, or if the defect is not readily apparent to the purchaser and;  
8.1.2 the purchaser returns the defective goods or part thereof to the Company at the purchaser's expense, provided however that such expense will be reimbursed if the item is found to come under the warranty.  
8.2 The warranty contained in paragraph 8.1 shall not apply:  
8.2.1 to goods altered or repaired by any person other than the Company so as in the Company's sole judgment to adversely affect the goods;  
8.2.2 to goods which have been subject to excessive wear and tear to improper or abnormal operation, use of storage, inexpert installation, unsuitable site of operation or inadequate protection;  
8.2.3 if access is not granted to inspect or carry out repairs on defective equipment within a reasonable time.  
8.3 With respect to goods or parts thereof not manufactured by the Company the obligations of the Company in those cases shall not exceed the terms of the written warranty given to the Company, if any, by the manufacturer or supplier of such goods or parts.  
8.4 If in any case the Company determines in its sole discretion that the nature of the defect precludes remedy by way of repair or replacement of the goods or part thereof the Company reserves the right to satisfy its warranty obligation in full by refunding the purchase price of the goods but in no event shall the Company's liability under this warranty exceed the purchase price for the goods or part thereof.  
8.5 The Company's warranty does not extend to consequential loss.  
8.6 The Company gives no warranty expressly or impliedly as to description, quality, merchantability, fitness or any other feature of the goods and all such warranties and any other warranties whether expressed or implied by law or otherwise are excluded from these conditions and any contract arising from acceptance of the Company's tender.
9. **DISPATCH**  
Unless otherwise stated in the tender, any times supplied for despatch run from confirmation by the Company of the purchaser's order to proceed and receipt by the Company of all information and particulars required to proceed to manufacture and/or supply. All such times are to be treated as estimated only and the Company will not be liable for failure to dispatch within such times unless otherwise agreed in writing and then only for such amount as the agreement may provide as liquidated damages.
10. **DELAYS:**  
The Company will not accept liability or responsibility for circumstances due directly to Act of God, war, strikes, lockouts or other causes beyond its control, including failure of suppliers to deliver the whole or any part of the goods where proof of early order is established.
11. **EXTRA COST:**  
In the event of the suspension or cancellation of the work by your instructions or lack of instructions, the contract price may be increased to cover any extra expense thereby incurred.
12. **DELIVERY AND TRANSFER OF RISK:**  
12.1 Unless otherwise stated in this tender all quotations are for the cost of work up until the date the work is completed in this Company's premises and for the purpose of this contract such date is termed "the completion date". Risk passes to the purchaser on such date.  
12.2 Delivery can be arranged to your instructions and cost, also at your request and expense equipment dispatched will be insured to your advised requirements.  
12.3 If the purchaser is unable to take delivery of equipment, suitable storage will be arranged against the purchaser's instructions and cost.  
12.4 Title does not pass from "Seller" to "Buyer" until payment has been made in full.
13. **TRANSFER OF OWNERSHIP:**  
13.1 Ownership does not pass until full payment has been made and if the purchaser fails to make full payment, the company shall be entitled to enter any premises where goods are held and re-take possession and hold the goods until payment is made or to resell the goods and recover any deficiency on re-sale provided that the provisions of this clause shall not in any way prejudice or alter the provisions relating to transfer of risk contained in clause 12. The purchaser acknowledges that any sum the purchaser receives relating to the sale by it of goods supplied by the Company that have not been fully paid for by the purchaser shall to the extent that there are funds owed by the purchaser to the company then the purchaser shall hold funds received by them from third parties in respect of such goods sold by them as a fiduciary in trust and shall bank such proceeds in a separate account the purchaser to advise the bankers of the nature of this arrangement.  
13.2 Purchaser's right to possession of the goods shall cease if the purchaser not being a company commits an act of bankruptcy or if being a company it does something or fails to do something that would permit the appointment of a receiver or which would entitle the presentation of a petition for winding up the purchaser not having paid the full purchase price.
14. **INSTALLATION:**  
Unless otherwise stated in the tender no provision has been made for erection, installation or commissioning of these goods.
15. **TERMS OF PAYMENT:**  
15.1 Unless otherwise stated all prices are in New Zealand currency. Prices are nett and payment in full shall be made on or before the 20<sup>th</sup> day of the month following invoicing.  
15.2 The Company reserves the right during the course of a contract to submit claims for progress payments for work completed and for the value of materials on hand.  
15.3 Interest will be charged at 2% per month or part thereof on the unpaid balance outstanding from the due date of payment until the date of full payment.
16. **RETENTIONS & LIQUIDATED DAMAGES:**  
No retentions or liquidated damages will be accepted unless specifically agreed to in writing by the Company.
17. **PATENTS:**  
You warrant that any design or instruction furnished or given by you shall not be such as will cause us to infringe any letters patent, registered design, trade mark or copyright in the performance of the contract.
18. **STATUTORY AND OTHER REGULATIONS:**  
The Company shall be relieved of liabilities incurred under this contract wherever possible and to the extent to which the fulfilment of such obligations is prevented, frustrated or impeded as a consequence or conforming to any Statute, or any rule, regulation, order or requisition made thereunder.
19. **ARBITRATION:**  
If at any time any question, dispute or difference whatsoever shall arise between you and ourselves upon, in relation to, or in connection with any contract arising from this tender either party may give to the other notice in writing of the existence of such question, dispute or difference and the same shall thereupon be referred to the arbitration in New Zealand of a person to be mutually agreed upon. The submission shall be deemed to be a submission to arbitration within the meaning of the terms of Arbitration Laws in force in New Zealand.
20. **LEGAL CONSTRUCTION:**  
The contract shall in all respects be construed and operate as a New Zealand contract and in conformity with the Laws of New Zealand.
21. **RECOVERY OF INCREASED COSTS:**  
21.1 **Statutory Requirements:**  
If by reason of any increase in costs due to conforming with any Act of Parliament, Order in Council or to any order regulation or by-law made with statutory authority by governments or by local body or other authorities, introduced since the date of this tender, then such costs shall be to the purchaser's account.  
21.2 **Variation in Rates of Exchange, Custom or Other Duties, Insurance and Freight Charges:**  
Imported items per inclusion in this tender are based on rates of exchange. Customs or other duties, insurance and freight charges ruling at the date of this tender. Any increase in cost due to changes in these rates will be to the purchaser's account.  
21.3 **General increases:**  
Any rise or fall in the cost of materials, labour or transport shall be to the purchaser's account. The method of calculating such a movement shall be in accordance with the following attached formula:-  
**PRICE VARIATION FORMULA:**  
A. Labour - For the purpose of this tender, labour content is estimated as being X% of the contract price and is based on figures published in the Real Wage Rate Index - All groups combined (Series RWISA) for the quarter ending prior to the date of this tender.  
B. Material - for the purpose of this tender material content is divided into two parts-  
a) Nominated materials, identifiable items of significant value which will be adjusted by the total nett difference in cost of these materials between date of tender and date of delivery. These items and their unit cost at the date of tender are stated.  
b) For the purpose of this tender, material content is estimated as being Y% of the total contract price and is based on figures published in the Producers Price Index, Inputs (Table 1) - Machinery and Metal Products (Series PPSAIL).  
For this tender any movement in the above Table shall be calculated on the following basis:  
The labour and material content as paragraph (B) is adjusted separately at the rate of 1% increase or decrease for every 1% movement in the respective Table between the published quarter figure prior to the date of this tender and the figure published for the quarter prior to the date of delivery.
- | Summary of Tender:    | Fixed | 10%  |
|-----------------------|-------|------|
| Labour                | X%    |      |
| Nominated Materials - | -     |      |
| Other Materials       | Y%    |      |
| Total                 |       | 100% |
22. **LIMITATION OF LIABILITY:**  
22.1 The Company is not liable to the purchaser for any loss or damage arising directly or indirectly in connection with this agreement, the equipment, its use, misuse or otherwise including (but without limitation) any loss of profit, business, revenue, goodwill or anticipated savings. This exclusion of liability applies to liability in contract and/or tort (including negligence) or any other principle of legal liability.

22.2 In the event that any limitation or provision contained in this agreement is invalid for any reason and the Company becomes liable for loss or damage that would otherwise have been excluded, such liability is limited to the amount of the cost of replacing the equipment or \$10,000.00 whichever shall be the lesser.

23. **PERSONAL PROPERTY SECURITIES ACT 1999**

23.1 Agreement – The purchaser hereby confirms that it accepts that this agreement is a security agreement which provides for a security interest in favour of the seller in all goods previously supplied by the seller to you (if any) and all after acquired goods supplied by the seller to you (or for your account) to secure the payment from time to time and at a time, including future advances. The purchaser agrees to grant a purchase money security interest to the seller, as that term is defined in the Personal Property Securities Act 1999.

23.2 Security – the purchaser acknowledges and agrees that:

By assenting to these Terms, the purchaser grants a security interest (by virtue of the retention of title clause in these Terms) to the seller in all goods previously supplied by the seller to the purchaser (if any) and all after acquired goods supplied by the seller to the purchaser (or for the purchaser's account); and  
These terms shall apply notwithstanding anything expressed or implied to the contrary contained in the purchaser's purchase order.

The purchaser undertakes to:

- (a) Sign any further documents and/or provide any further information (which information the purchaser warrants to be complete, accurate and up-to-date in all respects) which the seller may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register.
- (b) Not register a financing change statement or a change demand in respect to the goods (as those Terms are defined in the PPSA) without the seller's prior written consent; and
- (c) Give the seller not less than fourteen (14) days prior written notice of any proposed change in the purchaser's name and/or any other changes in the purchaser's details (including but not limited to, changes in the purchaser's address, facsimile number, trading name or business practice).
- (d) All expenses, costs (including actual legal costs) fees and disbursements incurred by the seller in recovering the money and any other amounts payable under the Terms shall be recoverable from the purchaser.
- (e) The purchaser agrees that it will, upon demand by the seller, pay all costs incurred by the seller in registering and maintaining a financing statement (including financing change statements) on the Personal Property Securities Register and/or enforcing or attempting to enforce the security interest created by these conditions of sale including subordination agreements.
- (f) The purchaser also agrees that it will be responsible for the full cost incurred by the seller (including actual legal fees and disbursements on a solicitor and client basis) of obtaining an order pursuant to Section 167 of the PPSA.

23.3 Unless otherwise agreed to in writing by us the purchaser waives the right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest. To the maximum extent permitted by law, the purchaser waives its rights and, with our agreement, contracts of its rights under sections referred to in sections 107(2)(c) to (e) and (g) to (i) of the PPSA.

23.4 The purchaser agrees that nothing in sections 114(a), 133 and 134 of the PPSA shall apply to these Terms, and, with our agreement, contracts out of such sections.

23.5 The purchaser and the seller agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if and only for as long as the Company is not the secured party with priority over all other secured parties in respect of those Goods.

23.6 The purchaser agrees that immediately on request by the seller you will procure from any persons considered by the seller to be relevant to its security position such agreement and waivers and the seller may at any time require.

23.7 The seller shall be entitled to enter into your premises for the purpose of recovering goods supplied for which payment in full has not been made. If such goods are sold by you prior to any payment for the goods to the seller then the proceeds of the sale shall be the property of the seller.

23.8 Any payment received from the purchaser may be applied by the seller to all or part of the amount owing for any goods as the seller sees fit, irrespective of whether that payment is intended by the customer to be for particular goods in respect of a particular invoice.