

# Leading Energy Pty Ltd – Terms & Conditions of Trade

- 1. Definitions**
    - 1.1 "Contractor" means Leading Energy Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Leading Energy Pty Ltd.
    - 1.2 "Client" means the person ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
    - 1.3 "Works" means all Works or Materials supplied by the Contractor to the Client at the Client's request from time to time (where the context so permits the terms "Works" or "Materials" shall be interchangeable for the other).
    - 1.4 "Price" means the Price payable for the Works as agreed between the Contractor and the Client in accordance with clause 4 below.
  - 2. Acceptance**
    - 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
    - 2.2 These terms and conditions may only be amended with the Contractor's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Contractor.
  - 3. Change in Control**
    - 3.1 The Client shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number), or of any change in the Client's details (including but not limited to, changes in the Client's details) as a result of the Client's failure to comply with this clause.
  - 4. Price and Payment**
    - 4.1 At the Contractor's sole discretion the Price shall be either:
      - (a) as indicated on invoices provided by the Contractor to the Client in respect of Works performed or Materials supplied; or
      - (b) the Contractor's quoted Price (subject to clause 4.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days.
    - 4.2 The Contractor reserves the right to change the Price:
      - (a) if a variation to the Materials which are to be supplied is requested; or
      - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
      - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations to accessing the site, obscured building defects, safety considerations, removal of hazardous Materials, prerequisite work by any third party not being completed hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Works; or
      - (d) in the event of increases to the Contractor in the cost of labour or Materials which are beyond the Contractor's control.
    - 4.3 At the Contractor's sole discretion a non-refundable deposit may be required.
    - 4.4 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date determined by the Contractor, which may be:
      - (a) on completion of the Works; or
      - (b) by way of progress payments in accordance with the Contractor's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or
      - (c) thirty (30) days following the date specified on the invoice which is posted to the Client's address or address for notices; or
      - (d) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices; or
      - (e) the date specified on any invoice or other form as being the date for payment; or
      - (f) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by the Contractor.
    - 4.5 Payment may be made by cheque, bank cheque, electronic/line banking, credit card (via PayPal, or by any other means as agreed between the Client and the Contractor.
    - 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties which are applicable in addition to the Price except where they are expressly included in the Price.
  - 5. Delivery of the Works**
    - 5.1 Subject to clause 5.2 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.
    - 5.2 The Works commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Client to:
      - (a) make a selection; or
      - (b) have the site ready for the Works; or
      - (c) notify the Contractor that the site is ready.
    - 5.3 At the Contractor's sole discretion, the date of delivery is included in the Price.
    - 5.4 The Contractor may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
    - 5.5 Any time or date given by the Contractor to the Client is an estimate only. The Contractor shall not be liable for any loss or damage whatsoever due to failure by the Contractor to deliver the Works (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of the Contractor.
  - 6. Risk**
    - 6.1 If the Contractor retains ownership of the Materials under clause 12 then:
      - (a) where the Contractor is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at time that either:
        - (i) the Client or the Client's nominated carrier takes possession of the Materials at the Contractor's address; or
        - (ii) the Materials are delivered by the Contractor or the Contractor's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
      - (b) where the Contractor is to both supply and install Materials then the Contractor shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
    - 6.2 Notwithstanding the provisions of clause 6.1 if the Client specifically requests the Contractor to leave Materials outside the Contractor's premises for collection or to deliver the Materials to an unattended location then such Materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
  - 7. Installation**
    - 7.1 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with the Australian and New Zealand Wiring Standards.
    - 7.2 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. If, for any reason (including the discovery of asbestos, defective or unsafe wiring, or dangerous access to roofing), the Contractor reasonably forms the opinion that the Client's premises is not safe for the installation of Materials to proceed then the Contractor shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 5.2) until the Contractor is satisfied that it is safe for the installation to proceed.
    - 7.3 Where the Client has supplied Materials for the Contractor to complete the Works, the Client acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in the Materials. The Contractor shall not be responsible for any defects in the Materials, any loss or damage to the Materials (or any part thereof), however arising from the use of Materials supplied by the Client.
    - 7.4 The Client acknowledges that the Contractor is only responsible for parts that are replaced by the Contractor, and in the event that other parts/Materials, subsequently fail, the Client agrees to indemnify the Contractor against any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.
  - 8. Accuracy of Client's Plans and Measurements**
    - 8.1 The Contractor shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Contractor accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
    - 8.2 In the event the Client gives information relating to measurements and quantities of the Materials required to complete the Works, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or the Contractor places an order based on these measurements and quantities. The Contractor accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.
  - 9. Access**
    - 9.1 The Client shall ensure that the Contractor has clear and free access to the work site at all times to enable them to undertake the Works. The Contractor 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 Contractor.
  - 10. Underground Locations**
    - 10.1 Prior to the Contractor commencing any work the Client must advise the Contractor of the presence of all underground services on the site and clearly mark the same. The underground mains services the Client 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.
    - 10.2 Whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor 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 10.1.
  - 11. Compliance with Laws**
    - 11.1 The Client and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
    - 11.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
    - 11.3 The Client agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
  - 12. Title**
    - 12.1 The Contractor and the Client agree that ownership of the Materials shall not pass until:
      - (a) the Client has paid the Contractor all amounts owing to the Contractor; and
      - (b) the Client has met all of its other obligations to the Contractor.
    - 12.2 Receipt by the Contractor 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.
    - 12.3 It is further agreed that:
      - (a) once the Client has passed the Materials to the Client in accordance with clause 12.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Contractor on request.
      - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
      - (c) the production of these terms and conditions by the Contractor shall be sufficient evidence of the Contractor's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Contractor to make further enquiries.
      - (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such sale or disposal on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand.
      - (e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as its proceeds.
      - (f) unless the Materials have become fixtures the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials.
      - (g) the Contractor may recover possession of any Materials in transit whether or not delivery has occurred.
      - (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Contractor.
      - (i) the Contractor may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
  - 13. Personal Property Securities Act 2009 ("PPSA")**
    - 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
    - 13.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials that have previously been supplied and that will be supplied in the future by the Contractor to the Client.
    - 13.3 The Client undertakes to:
      - (a) to change information to further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to:
        - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
        - (ii) register any other document required to be registered by the PPSA; or
        - (iii) correct a defect in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);
      - (b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;
      - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor;
      - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials in favour of a third party without the prior written consent of the Contractor; and
      - (e) immediately advise the Contractor of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
    - 13.4 The Contractor and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
    - 13.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
    - 13.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
    - 13.7 Unless otherwise agreed to in writing by the Contractor, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
    - 13.8 The Client shall unconditionally ratify any actions taken by the Contractor under clauses 13.3 to 13.5.
    - 13.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
  - 14. Security and Charge**
    - 14.1 In consideration of the Contractor agreeing to supply the Materials, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
    - 14.2 The Client understands that the Contractor may, from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
    - 14.3 The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.
  - 15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
    - 15.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify the Contractor in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Contractor to inspect the Materials or to review the Works provided.
    - 15.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
    - 15.3 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
    - 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
    - 15.5 If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.
    - 15.6 If the Contractor is required to replace any Materials under this clause or the CCA, but is unable to do so, the Contractor may refund any money the Client has paid for the Materials.
    - 15.7 If the Contractor is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then the Contractor may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Client which were not defective.
    - 15.8 If the Client is not a consumer within the meaning of the CCA, the Contractor's liability for any defect or damage in the Materials is:
      - (a) limited to the value of any express warranty or warranty card provided to the Client by the Contractor at the Contractor's sole discretion;
      - (b) limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Materials;
      - (c) otherwise negated absolutely.
    - 15.9 Subject to this clause 15, returns will only be accepted provided that:
      - (a) the Client has complied with the provisions of clause 15.1; and
      - (b) the Contractor has agreed that the Materials are defective; and
      - (c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
  - 16. Default and 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 a half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
    - 16.2 If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's contract default fee, and bank dishonour fees).
    - 16.3 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Works to the Client. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.
    - 16.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
      - (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;
      - (b) the Client becomes insolvent or bankrupt, 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 Client or any asset of the Client.
  - 17. Cancellation**
    - 17.1 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any sums paid in respect of the Works less any amounts owing by the Client to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
    - 17.2 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).
    - 17.3 The Contractor's cancellation of orders for products made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.
  - 18. Privacy Act 1988**
    - 18.1 The Client agrees for the Contractor to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B., occupation, previous applications, credit history) about the Client in relation to credit provided by the Contractor.
    - 18.2 The Client agrees that the Contractor may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
      - (a) to assess an application by the Client; and/or
      - (b) to notify other credit providers of a default by the Client; and/or
      - (c) to change information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
      - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
    - 18.3 The Client consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit.
    - 18.4 The Client agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other agreed purposes or required by):
      - (a) the provision of Works; and/or
      - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
      - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
      - (d) enabling the collection of amounts outstanding in relation to the Works.
    - 18.5 The Contractor may give information about the Client to a CRB for the following purposes:
      - (a) to obtain a consumer credit report;
      - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
    - 18.6 The information given to the CRB may include:
      - (a) personal information as outlined in 18.1 above;
      - (b) name of the credit provider and that the Contractor is a current credit provider to the Client;
      - (c) whether the credit provider is a licensee;
      - (d) type of consumer credit;
      - (e) details concerning the Client's application for credit or commercial credit (e.g. date of application, amount of credit, terms and conditions of the credit account and the amount requested);
      - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Contractor has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments).
    - 18.7 information that, in the opinion of the Contractor, the Client has committed a serious credit infringement;
    - 18.8 advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
  - 18.7 The Client shall have the right to request (by e-mail) from the Contractor:
    - (a) a copy of the information and/or stored information retained by the Contractor and the right to request that the Contractor correct any incorrect information; and
    - (b) that the Contractor does not disclose any personal information about the Client for the purpose of direct marketing.
  - 18.8 The Contractor will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
  - 18.9 The Client can make a privacy complaint by contacting the Contractor via e-mail. The Contractor will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the response provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 19. Building and Construction Industry Security of Payment Act 2002**
  - 19.1 At the Contractor's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.
  - 19.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.
- 20. General**
  - 20.1 The failure by the Contractor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Contractor's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable for any reason, the validity, enforceability and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
  - 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria in which the Contractor has its principal place of business, and are subject to the jurisdiction of the Dandenong Courts in Victoria.
  - 20.3 Subject to clause 15 the Contractor shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of or as a result of a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
  - 20.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
  - 20.5 The Contractor may license or sub-contract all or any part of its rights and obligations without the Client's consent.
  - 20.6 The Client agrees that the Contractor may amend these terms and conditions at any time. If the Contractor makes a change to these terms and conditions, then that change will take effect from the date on which the Contractor notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Contractor to provide any Works to the Client.
  - 20.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

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20.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.