

## CLIENT TERMS AND CONDITIONS

### 1. ACCEPTANCE OF TENDER

- 1.1** By placing an order with the Supplier, the Client hereby accepts these Terms and Conditions. All other prior representations (written or oral) and any terms and conditions contained in the Client's enquiries, orders, confirmations, contracts or delivery notes and any other such document unless accepted in writing by the Supplier are hereby excluded.
- 1.2** The agreement between the Supplier and the Client is comprised of the following documents:
- (a) the Tender
  - (b) these Terms and Conditions,
  - (c) any terms and conditions of the Client (if accepted by the Supplier in writing).
- 1.3** To the extent of any inconsistency or discrepancy between any or all of the documents listed in clause 1.2, they shall be relied upon and interpreted in descending order of precedence from clause 1.2(a) to (c).

### 2. PRICE

- 2.1** The Price remains valid for a period of 30 days from the date of the Tender. The Supplier will confirm any changes to the Price if the Client wishes to place an order after 30 days have elapsed.
- 2.2** Unless otherwise provided in the Tender, the Price is based on the cost of labour and materials as at the date of the Tender and is subject to price variation in accordance with the National Electrical and Communications Association (State Chapter) Standard Price Variation Formula.
- 2.3** The Price is exclusive of GST. The Client must pay GST in addition to the price, which will be separately shown on tax invoices issued by the Supplier.
- 2.4** In the event that any new tax is imposed, or any current tax rate is increased, that increases the cost of materials, services or labour used by the Supplier, the Client agrees that the Supplier may increase its prices so that the extra costs are incurred by the Customer.
- 2.5** The Price is payable in Australian Dollars unless otherwise provided in the Tender.
- 2.6** Unless specifically stated in the Tender, the prices quoted in the Tender do not include any temporary electrical work, builder's temporary power, testing and tagging of Site power tools and equipment.
- 2.7** Unless specifically stated in the Tender, the Supplier will not test or upgrade any existing installation or earthing system.

### 3. PAYMENT STRUCTURE AND TERMS

- 3.1** Subject to the Client obtaining satisfactory credit approval, the Supplier's terms of payment for all invoices are 30 days from the date of the relevant tax invoice.
- 3.2** Where the Client fails to pay the tax invoice within 30 days from the date of the relevant tax invoice, the Supplier may suspend performance of Services and supply of the Goods

and interest shall be payable at the rate of 10.5% per annum.

- 3.3** Where the provision of Goods and Services extends beyond any calendar month, a Monthly Progress Claim will be made each month for the value of Goods supplied and Services completed and materials delivered to the Site in that calendar month.

- 3.4** The Supplier's payment structure is as follows:

#### For Installation Works:

Monthly Progress Claims will be made for:

- (a) all unfixed materials at Site;
- (b) all materials and equipment stored off Site due to delays in construction or unavailability of Site access;
- (c) all approved variations work in progress;
- (d) 80% of all unapproved variations work in progress.

In addition, the Supplier may also make an Initial Progress Claim for up to 10% of the contract value for mobilisation, project setting up, commitment for procurement of materials and subcontracts and other costs and obligations incurred at the commencement of the project.

#### For Electrical Switchboards:

Monthly Progress Claims will be made based on the following milestones:

- (e) 10% on placement of order;
- (f) 10% on completion of design ready for approval;
- (g) 20% on placement of major component orders;
- (h) 20% on completion of fabrication;
- (i) 20% on completion of fit out;
- (j) 10% on completion of works testing;
- (k) 10% on delivery.

#### For Workshop Repairs:

Monthly Progress Claims will be made based on the following milestones:

- (l) 20% on placement of order;
- (m) 20% on placement of major component orders.
- (n) 40% on completion of works.
- (o) 10% on completion of works testing.
- (p) 10% on delivery of repaired equipment.

#### For Testing, Maintenance and all other Service Work:

Monthly Progress Claims will be made for up to 95% of the value of work completed and the remaining 5% on presentation of the test reports.

- 3.5** If the provision of Goods and Services is delayed, the Supplier reserves the right to make an Initial Progress Claim for all materials ordered and all Goods supplied and Services performed to date.

**3.6** Where the provision of Goods or Services requires the Supplier to order or purchase specialist materials or equipment, or materials or equipment of a nature or in a quantity that would preclude the Supplier from using it within a reasonable time on another project, the Supplier may require the Client to pay for such materials or equipment upfront.

**3.7** Where the Goods require design:

- (a) a claim of 10% of the value of the Goods will be made on submission of the design; and
- (b) a further claim of 10% of the value of the Goods will be made on design approval.

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**4. COST SCHEDULE OR COST BREAK-UP**

Where a schedule or cost break-up is provided by the Supplier (either as part of the Tender or otherwise), it is indicative only and not to be used by the Client for assessment of any variations, Initial Progress Claims or Monthly Progress Claims. Early claims by the Supplier will include preliminaries and Site establishment costs as detailed above in clause 2.

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**5. PRICE BASIS AND EXCHANGE RATES**

**5.1** The Price is conditional on the Supplier being able to order the Supplier's materials and store these materials either on Site or off Site with storage certificates issued and payment of materials so held

**5.2** Where the Supplier must import Goods, the price of the Goods is based on the applicable exchange rate at the time of the Tender. If, at the time that the Supplier purchases the equipment, the applicable exchange rate is more or less than 5% from the exchange rate specified in the Tender, the Supplier will adjust the price of the Goods accordingly. The Client agrees to pay for any increase in the Price as a result of a change in the applicable exchange rate.

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**6. TITLE AND RISK IN GOODS**

**6.1** Title for any Goods will remain with the Supplier until the Goods are paid for in full. The Client acknowledges and authorises entry to allow the Supplier to recover any Goods for which payment has not been received.

**6.2** The Client consents to the Supplier affecting a registration on the PPS Register (in any manner the Supplier considers appropriate) in relation to any security interest contemplated by this Agreement and the Client agrees to provide all assistance reasonably required to facilitate this. The Goods will include "other goods" as classified under the PPSA. The Client waives the right to receive notice of a verification statement in relation to any registration on the register.

**6.3** If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with the Agreement the Client agrees the following provisions of the PPSA will not apply to the enforcement of the Agreement: section 95 (notice of removal of accession) to the extent that it requires the Supplier to give a notice to the Client; section 96 (when a person with an interest in the whole may retain an accession); subsection 121(4) (enforcement of liquid assets – notice to grantor); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal) to the extent that it requires the Supplier to give a notice to the Client;

subsection 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).

**6.4** Without limiting the monies secured under clause 6.1, if the Client makes a payment to the Supplier at any time whether in connection with this Agreement or otherwise the Supplier may, at its absolute discretion, apply that payment to first satisfy obligations that are not secured, then obligations that are secured, but not by a purchase money security interest, in the order in which those obligations were incurred, and then obligations that are secured by a purchase money security interest in the order in which those obligations were incurred.

**6.5** Notices or documents required or permitted to be given to the Supplier for the purposes of the PPSA must be given in accordance with the PPSA.

**6.6** Where Goods have been delivered to the Client (whether or not at the Site) and/or installed by the Supplier, the property and risk in the Goods shall pass to the Client.

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**7. PROVISION OF GOODS AND SERVICES**

**7.1** Save in respect of works undertaken in Victoria and unless otherwise stated in the Tender, the Supplier will carry out the Services and supply the Goods based on a normal week of 38 hours over 5 Business Days. For works carried out in Victoria, the Supplier will carry out the Services and supply the Goods based on a 36 hour week.

**7.2** Any programme of work is to be mutually agreed between the Client and the Supplier.

**7.3** Unless otherwise provided in the Tender, the Supplier has not made any allowance for any Site inductions. If Site inductions are required, the Supplier will charge the Client in accordance with its standard hourly rates (as set by the Supplier from time to time).

**7.4** Delivery Dates are subject to change and the Client acknowledges that they should be treated as estimates only. The Supplier will use reasonable endeavours to meet Delivery Dates but does not accept any liability for failure to provide the Goods and Services by a specified Delivery Date unless otherwise expressly stated in the Tender.

**7.5** The Tender is based on the equipment/plant conditions at the Site at the time of the Tender. The Supplier can only provide the Goods and Services at the Price if the Site equipment/plant is in the same condition as stated when the Tender was prepared. If the equipment/plant conditions at the Site change to the extent that the Supplier considers that it cannot provide the Goods and Services as set out in the Tender, the Supplier reserves the right to increase the Price (or extend a Delivery Date if applicable).

**7.6** The Client must provide the Supplier with free and unrestricted access to the Site and all required work areas and work faces as required by the Supplier to provide the Goods and Services. Any delays in accessing the Site, work areas or work faces will be charged at the Supplier's standard hourly rates (as set by the Supplier from time to time).

**7.7** Where practicable, the Supplier reserves the right to deliver the Goods and Services in instalments. In such instances payments for each instalment shall be due in accordance with the clause 3 above.

**7.8** The Client must provide all Site amenities for the Supplier's officers, employees, suppliers, agents and subcontractors use and suitable Site materials storage facilities at no cost to the Supplier.

**7.9** Any additional cost to the Supplier caused by any delay to the provision of the Services or supply of the Goods by matters outside the reasonable control of the Supplier shall be borne by the Client.

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## **8. TRANSPORTATION AND INSPECTION**

**8.1** The Supplier will make every effort to pack and seal Goods to minimise vibration and ingress of dust during transportation to the Site.

**8.2** Where applicable, the Client will be notified on completion of the installation of the Goods or performance of the Services and invited to witness operational and electrical performance tests.

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## **9. UNIT RATES**

Where unit rates are provided in the Tender, these are based on the quantities being within 5% of the quantities nominated in the Tender and for the quantities and equipment locations to be confirmed before the Goods and Services are provided. The Supplier may charge the Client for any further additions, deletions or relocations after the provision of the Goods or Services has commenced, based on the individually applicable situation.

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## **10. SPECIAL PAYMENT, SITE ALLOWANCE AND/OR SPECIAL ALLOWANCE**

Unless specifically stated in the Tender, no provision has been made for the payment of any special allowances, special site agreement, special award or disability allowances. Where the Supplier is required to make such payments, the Supplier will charge the Client these amounts as an additional sum.

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## **11. SECURITY**

**11.1** If specifically stated in the Tender, the Supplier agrees to

provide security for the Supplier's performance of its obligations under this Agreement in accordance with clause 11.2 (**Security**).

**11.2** The Supplier can, in its discretion, provide Security by either:

- (a) agreeing that the Client retains 10% of the amount of each Monthly Progress Claim up to a maximum cumulative amount of 5% of the Price; or
- (b) providing to the Client single or multiple insurance bonds or other performance undertakings, at the Supplier's discretion, in the cumulative amount of 5% of the unadjusted Price.

**11.3** If Security is provided by way of cash retention, the Client shall deposit the Security in an interest bearing trust account in the joint names of the Client and the Supplier and the Supplier shall be entitled to the interest earned thereon.

**11.4** The Supplier shall be at liberty at any time to provide in lieu of retention moneys, security in any of the forms permitted in clause 11.2. To the extent that such security

is provided, the Client shall not deduct retention moneys and shall forthwith release any retention monies withheld at that date.

**11.5** The Client may have recourse to the Security only where:

- (a) the Supplier has committed a material breach of its obligations under this Agreement; and
- (b) the Supplier has failed to remedy the material breach within 30 days' notice from the Client or such longer period as may be reasonable in the circumstances; and
- (c) an amount is due and payable by the Supplier to the Client; and
- (d) the Client has given the Supplier 7 days' notice in writing of its intention to have recourse to the security.

**11.6** Where the Goods and Services to be provided includes a defects liability period, the Client's right to Security will be reduced by 50% upon practical completion. The Client's right to the remaining Security will cease upon the expiry of the defects liability period. Within 14 days of the entitlement to Security ceasing, the Client shall release any retained amounts under clause 11.2(a) or return any insurance bond or other performance undertaking to the Subcontractor. Where the provision of Goods and Services does not include a defects liability period, within 14 days of the completion of the Goods and Services by the Supplier, the Client will either release any retained amounts under clause 11.2(a), or return any bond or performance undertaking provided under clause 11.2(b).

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## **12. LIQUIDATED DAMAGES**

Liquidated damages shall not apply unless the Supplier agrees in writing that liquidated damages can be charged by the Client. If the Supplier agrees that liquidated damages are applicable, any liquidated damages shall be limited to a maximum of 0.5% of the net Tender amount per week to an overall maximum of 5% of the net Tender amount. The Client shall only be entitled to charge liquidated damages where the Supplier is solely responsible.

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## **13. INFORMATION**

All descriptive specifications, illustrations, drawings, dimensions and other similar material furnished by the Supplier in the Tender are indicative only and are intended to be a general description of the goods or service and do not form part of this Agreement unless specifically identified as such by the Supplier in writing.

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## **14. CONFIDENTIAL INFORMATION**

**14.1** The Client must:

- (a) keep confidential all information relating to the Goods and Services;
- (b) ensure that each of its officers, employees, suppliers, agents and subcontractors comply with the terms of clause 14.1(a)

**14.2** The Client is obliged to keep confidential any information relating to the Goods and Services unless:

- (a) it is otherwise in the public domain through no default of the Supplier; or

- (b) the disclosure is:
- (1) strictly and necessarily required for the performance of the order;
  - (2) in connection with legal proceedings relating to this Agreement; or
  - (3) given with the written consent of the Supplier.

**14.3** The obligations of this clause shall survive termination or completion of this Agreement.

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**15. WARRANTY**

**15.1** Subject to clause 20, the Supplier warrants that Goods have been installed in a proper tradesman-like manner in accordance with standard installation practices, for a period of 12 months from the Delivery Date. This warranty is given in addition to other rights and remedies of the Client under a law in relation to the Goods or Services.

**15.2** The warranty in clause 15.1 excludes fair wear and tear, incorrect use or misuse by the Client. The warranty is limited to the Supplier making good or replacing those parts found to be incorrectly selected by the Supplier, connected or fitted on the basis that the Goods will be returned to the Supplier by the Client at the Client's expense.

**15.3** The Client may make a claim under the warranty in clause 15.1 by notice in writing to the Supplier's registered office.

**15.4** Where Goods supplied to the Supplier by third parties are defective, these Goods are subject to the manufacturer or supplier warranty.

**15.5** Where Goods have been damaged in transit, the cost of repair is borne by the Client unless the Tender expressly includes freight and transit insurance.

**15.6** By law the Supplier is required to state:

"Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if goods fail to be of acceptable quality and the failure does not amount to be a major failure."

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**16. LIMITATION OF LIABILITY**

**16.1** The Client releases the Supplier from, and agrees that the

Supplier is not liable, to the maximum extent permitted by law, for Claims arising from or in connection with:

- (a) the performance, purported performance or non-performance of the Goods or Services;
- (b) the performance, purported performance or non-performance of a supplier or subcontractor of the Supplier;
- (c) except as specified under clause 15, any breach of the Supplier's warranties or other terms of this Agreement;
- (d) acts of negligence, omissions or wilful misconduct of the Supplier, its officers, employees, suppliers, agents and subcontractors resulting in:

- (1) injury to or death of any person;
- (2) loss or damage to any property; or
- (3) any other additional loss.

**16.2** Where the Goods or Services supplied by the Supplier are subject to statutory guarantees, the Supplier's liability for any loss or damages in relation to the Goods or Services, including representations, advice or other services, and damage or economic loss, is limited to the maximum extent permitted by law. The Supplier's liability is no more than (at the Supplier's election):

- (a) in relation to Goods, to replace or repair the Goods or to pay the cost of replacement or repair; or
- (b) in relation to Services, to supplying the Services again or to pay the cost of having the Services supplied again.

**16.3** Without limiting clause 16.1 and to the maximum extent permitted by law, the maximum liability of the Supplier for any Claims arising from or in connection with this Agreement is limited to the amount recoverable pursuant to an applicable policy of insurance where such policy responds to the Claim(s).

**16.4** Despite any other clause of this Agreement, under no circumstances will the Supplier be liable to the Client for any indirect or consequential loss, which shall include, but not be limited to, loss of profit, loss of earnings, loss of use, loss of overheads, loss or reputation or loss of opportunity (other than Claims relating to injury to or death of any person or loss or damage to any property).

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**17. INSURANCE POLICIES**

**17.1** Where the Client provides insurance on the Supplier's behalf, the Client must ensure that policy conditions of the insurance do not affect the Supplier's normal policies and the deductibles must be not greater than those of the Supplier's normal policies.

**17.2** Where clause 17.1 applies, if requested by the Supplier, the Client must provide to the Supplier a copy of each policy of insurance and other insurance certificate and evidence of the payment of premiums.

**17.3** The Client must immediately notify the Supplier of the cancellation or lapse of any insurance policy to which clause 17.1.

**17.4** Where insurance is to be provided by the Supplier, the Supplier will note the interest of the Client, if requested.

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**18. INTELLECTUAL PROPERTY RIGHTS**

The Supplier retains all Intellectual Property Rights in any technical information, consisting of drawings, specifications, calculations, design and other materials used by the Supplier to prepare the Tender or in the provision of the Goods and Services. The Client must not copy or disclose to any third party any materials containing the Supplier's Intellectual Property Rights unless authorised by the Supplier in writing.

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**19. ASBESTOS, PCBS AND OTHER HAZARDOUS SUBSTANCES**

Unless specifically stated in the Tender, the Price is based on the assumption that the Goods and Services for which the Tender is submitted will be provided in an environment

free of asbestos, PCB and other hazardous substances. The Client accepts full responsibility for the resolution of any problems and for any delays and additional costs which may result from the presence of these materials in or about the Site or workplace where the Goods and Services (or any part thereof) are to be provided or performed.

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## 20. RESIDUAL CURRENT DEVICES

Where the provision of the Goods and Services will include Residual Current Devices, the Supplier warrants its workmanship for a period of three months and will issue a test certificate showing compliance in accordance with the applicable Australian Standards. The Supplier takes no responsibility for any incident accident that may occur after the installation. The Client acknowledges that it must conduct regular testing of all electrical appliances and Residual Current Devices in accordance with applicable Australian Standards. Such testing will not be undertaken by the Supplier unless specifically stated in the Tender. If required, the Supplier can undertake the testing at an additional cost for the Client.

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## 21. SWITCHING, ISOLATION AND RECONNECTION

Unless specifically included in the Tender, any switching, isolation and reconnection will be by the Customer or will be an addition to the Price. This includes isolation and reconnection charges by the network operator, distributor or similar, which will be on-charged to the Customer at cost plus a nominal handling fee.

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## 22. PERFORMANCE AND PERFORMANCE DATA

Where the Tender indicates that the Supplier will provide performance data, the data is based on the Supplier's experience and from up-to-date and regularly calibrated test equipment. The Supplier does not accept any liability if performance parameters are changed after final testing and verification.

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## 23. CONDITIONS OF CONTRACT TO AUSTRALIAN STANDARD AS4910

Any matters not specifically addressed in the Tender or these Terms and Conditions are subject to the terms of AS4910 "General conditions of contract for the supply of equipment with or without installation".

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## 24. HEADWORKS AND UTILITY SUPPLY ARRANGEMENTS

No allowance has been made in the Tender for any charges or fees which may be payable to any utility or other service provider for incoming services at the Site such as the power supply, telephone or communications connections, which are to be provided at the Client's cost.

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## 25. EXCAVATIONS

Where the Tender indicates that the Supplier will undertake excavation work, the Price is based on any soil encountered being rock free, allowing excavation using a standard 1.5 tonne mini excavator or similar backhoe machine with a dig rate of approximately 8m<sup>3</sup>/hr and that the soil will not require shoring or de-watering and be suitable for backfill. The Client agrees that all costs for excavating rock, for shoring or for de-watering will be charged to the Client.

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## 26. LIVE WORK

**26.1** It is the Supplier policy to only undertake live work, or work near live conductors, where it is lawful and safe to do so. Consideration is given to:

- (a) compliance with AS/NZS 4836:2001 'Safe Working on Low Voltage electrical installation';
- (b) the relevant Commonwealth and State statutory acts and workplace regulations;
- (c) the Supplier's live work procedures;
- (d) there being no risk of injury to the Supplier's officers, employees, suppliers, agents and subcontractors;
- (e) there being no risk of damage to your installation;
- (f) there being no risk of unexpected power disconnection.

**26.2** Live work, or work near live conductors, may require the Supplier to disconnect or isolate parts of the installation, or may require working out of hours, for which additional charges may be applicable to be advised to the Client by the Supplier.

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## 27. OPENING OR REMOVAL OF DOORS, COVERS AND ESCUTCHEONS ON ELECTRICAL SWITCHBOARDS

**27.1** Where providing the Goods and Services requires the Supplier to open or remove any doors, covers and escutcheons from Electrical Switchboards, distribution boards, control panels or similar equipment, the Supplier will remove these only on the strict understanding that all devices, busbars, equipment and wiring that cannot be seen until the doors, covers and escutcheons are removed:

- (a) are properly secured.
- (b) are fitted with all required insulation and this is in good condition.
- (c) have all electrical connections properly tightened.
- (d) are installed in a safe and proper manner that complies with all safe workplace requirements and applicable Australian Standards.

**27.2** The Supplier does not accept any Claims whatsoever arising as a consequence of incidents where such incidents occur through non-compliance by the Client with this clause.

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## 28. DELAYS, CANCELLATION AND TERMINATION

**28.1** If the Supplier cannot provide Goods and Services due to factors outside of its control at any particular time and no alternative activities can be undertaken by the Supplier to provide the Goods and Services, the Supplier may charge the Client a cancellation fee or re-scheduling fee.

**28.2** The Supplier may at its option and at any time, and without cause, cancel any unshipped Goods or unperformed Services and terminate this Agreement by written notice to the Client.

**28.3** On the occurrence of clause 28.2, the Client shall only be obliged to pay for all Goods shipped and accepted and all Services performed prior to the date of cancellation.

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## 29. FORCE MAJEURE

29.1 Where a circumstance or event beyond the reasonable control of the Client or the Supplier causes a delay to the Delivery Date ("Force Majeure Event"), the Supplier may, at its sole discretion, extend the Delivery Date. Force Majeure Events shall include fire, tempest, government intervention and acts of God, shortages of material, labour or utilities of the Supplier or its subcontractors or suppliers.

29.2 If a Force Majeure Event continues for ninety (90) days or longer, the Supplier or the Client may cancel any undelivered Goods or unperformed Services and the Client shall only be obliged to pay for all Goods shipped and accepted and all Services performed prior to the date of cancellation.

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## 30. DISPUTE RESOLUTION

30.1 In the event of a dispute arising between the parties, both parties shall genuinely attempt amicable resolution by conference between authorised representatives of the parties,

30.2 If the parties fail to resolve their dispute in accordance with clause 30.1, the dispute must be referred to mediation.

30.3 The choice of a mediator shall be mutually agreed between the parties or, failing agreement, chosen by the President of Engineers Australia in the State of the Site.

30.4 The parties must each pay half the costs of the mediator incurred by the mediation.

30.5 The parties must each provide all information and assistance reasonably requested by the mediator.

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## 31. CONSTRUCTION INDUSTRY TRAINING ACT LEVY (South Australia Only)

The Construction Industry Training Act Levy of 0.25%, applicable in South Australia (**Levy**), has not been included in the Price on the assumption that the project owner, builder, or another agent will make, or has made, such payment on behalf of all subcontractors on the total estimated contract value. Should the Supplier not receive a statement from the Client that the Levy has been or will be paid, the Price will be increased by a sum equal to 0.25% of the Price to compensate the Supplier for paying the Levy in relation to Goods and Services provided to the Client.

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## 32. GENERAL

### 32.1 Governing Law

These Terms and Conditions shall be deemed to have been made in the State where the Goods and Services are provided, and shall be subject to the laws of that State. The parties shall be subject to the non-exclusive jurisdiction of that State and any courts that may hear appeals from those courts in relation to any proceedings concerning these Terms and Conditions.

### 32.2 Severability

Any provision in these Terms and Conditions which is or becomes invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the

remaining provisions of these Terms and Conditions in any other jurisdiction.

## 32.3 Notices

Any notice or document required by this Agreement shall be deemed to have been given and received by:

- (a) if hand delivered to the party, on the date of receipt;
- (b) in the case of facsimile, on production of a confirmation of correct transmission of facsimile but provided always that if the facsimile is received after 4:00pm it is deemed to have been received on the next business day;
- (c) in the case posting within Australia, three (3) business days after posting, or
- (d) in the case posting outside Australia, ten (10) business days after posting,

and provided where faxed as (b) above or posted as (c) above, it is to the correct address of the party as indicated in the Tender or the address last communicated in writing, to the person giving the notice. A transmission by e-mail shall not be regarded as a notice under this clause.

## 32.4 Amendment

No amendment or variation of this Agreement is valid or binding on the Supplier unless accepted in writing by the Supplier.

## 32.5 Waiver

A party's failure or delay to exercise a power or right is not a waiver of that right. A waiver by the Supplier is only effective if it is in writing and then only in relation to the particular obligation or breach in respect of which it was given and not in respect of any other breach or of any other provision.

## 32.6 Assignment

The Client may not assign this Agreement in whole or in part without the Supplier's prior written consent, which may be granted at the Supplier's sole discretion.

## 32.7 Relationship

The Supplier provides all Goods and Services under these Terms and Conditions as an independent contractor of the Client. The Supplier and the Client are not principal and agent, partners, trustee and beneficiary, or employer and employee.

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## 33. DEFINITIONS AND INTERPRETATION

### 33.1 Definitions

In these Terms and Conditions:

**Agreement** means the agreement between the Client and the Supplier specified in clause 1.2 of these Terms and Conditions;

**Australian Standards** means all applicable Australian Government standards (including Standards Australia standards);

**Business Day** means a day that is not a Saturday, Sunday or public holiday in the State where the Works are being carried out;

**Claim** means any claim, action, proceeding, demand, cost, damage, loss, fine, judgement, expense, liability or other outgoing howsoever incurred or suffered by, or brought or made or recovered howsoever arising (whether or not presently ascertained, immediate, future or contingent);

**Client** means the party to which the Tender is addressed and who places the order for the Goods and Services;

**Delivery Dates** are the estimated delivery dates for the Goods and Services set out in the Tender;

**Electrical Switchboards** means a device that directs electricity from one or more sources of supply to several smaller regions of usage;

**Goods** means the goods specified in the Tender;

**GST** has the meaning given within the A New Tax System (Goods and Services Tax) Act 1999;

**Initial Progress Claim** means the first Monthly Progress Claim issued by the Supplier for the initial provision of the Goods and Services set out in the Tender;

**Installation Works** means the installation of the Goods and Services on the Client's premises or on premises managed by the Client;

**Intellectual Property Rights** means letters patent, a pending patent; registered and unregistered, trademarks, copyright, design, trade secrets, confidential information or similar protection whether granted by the Australia or any foreign state or the common law;

**Monthly Progress Claim** means tax invoices issued by the Supplier for the provision of the Goods and Services in the previous calendar month;

**PPSA** means the *Personal Property Securities Act 2009 (Cth)*;

**PPS Register** means the register established under the PPSA;

**Price** means the amount(s) specified in the Tender for the Goods and Services, as adjusted by any changes to the price or additional charges incurred under this Agreement;

**Residual Current Devices** are electrical safety devices designed to immediately switch off the supply of electricity when electricity leaking to earth is detected at harmful levels;

**Services** means the services specified in the Tender;

**Site** means the location at which the Goods and Services are to be provided;

**Supplier** means the Supplier company supplying the Goods and/or Services and identified as such on the Tender to which this Agreement applies;

**Tender** means the quotation for the Works in relation to the Client's project, as attached to these Terms and Conditions;

**Works** means the provision of Goods and Services as specified in the Tender; and

**Workshop Repairs** means repair of Goods carried out at the Supplier's premises (or non-Client premises).

#### **Interpretation**

In these Terms and Conditions unless the context otherwise requires:

- (a) the singular shall include the plural and vice versa;
- (b) words importing persons shall include corporations and words importing the masculine gender shall include the feminine gender;
- (c) the headings shall not affect the interpretation of these Terms and Conditions;
- (d) reference to any statute shall mean that statute as amended, modified or replaced from time to time and includes orders, ordinances, regulations and rules and by-laws made in terms of or pursuant to the relevant legislation;
- (e) reference to a party or parties includes a reference to its successors and permitted assigns in accordance with these Terms and Conditions; and
- (f) "including" means "including (without limitation)".