



JM Switchboards

CUSTOMER TERMS AND CONDITIONS

PARTICULARS

ITEM	DESCRIPTION	DETAILS
1	Supplier Address for Service	242-244 Hartley Street, Cairns, Queensland 4870
2	Supplier email for Service:	mail@jmswitchboards.com.au
3	Customer:	
4	Customer ACN and ABN:	
5	Customer Address for Service:	
6	Customer email for Service:	
7	Site:	
8	Goods	<i>Insert description of Goods</i>
9	Services	<i>Insert description of Services</i>
10	Commencement Date:	
11	Customer Classification:	Account Customer / Non-Account Customer (delete where applicable)
12	Extended Reliability Guarantee applicable?	Yes / No (delete where applicable)

1.0 DEFINITIONS

CAC Act means the *Competition and Consumer Act 2010 (Cth)*, as amended.

Consequential Loss means any special, indirect or consequential loss or damage of any nature, including but not limited to any loss of income, profit, revenue, business, goodwill, reputation, intellectual property, contracts or anticipated savings.

Customer means the party so named in Item 3 of the Particulars, and its employees, agents and contractors acting in those capacities.

Disclosed Purpose means a particular purpose for which the Customer acquires the Goods, where the Customer makes that purpose known to the Supplier or the manufacturer of the Goods, either expressly or by implication.

Excluded Defect means a defect that arose as a direct or indirect result of, or was caused or contributed to by, a breach or default by the Customer of clauses 11.0, 12.0, 13.0, 14.0 and/or 4.4, or is the subject of one or more of the exclusions detailed in clause 19.0.

Goods means the products and/or components provided by the Supplier identified in Item 8A of the Particulars, if any.

Guarantee means the JM Switchboards Reliability Guarantee which, subject to clause 19.0, applies to the provision of Goods or Services under the Terms and Conditions if Item 12 of the Particulars is marked 'Yes'.

Guarantee Terms and Conditions means the terms and conditions of the Guarantee.

Law means the relevant laws, including orders and awards of any Authority, Acts, rules and regulations (or such similar instruments) and applicable industry standards or codes that are applicable in connection with the supply and delivery of the Goods or Services.

Losses means losses, damages, costs, expenses, charges, interest, fines, or penalties, including those arising as a result of claims, demands, actions, proceedings or suits by any person.

Major Failure means where Goods and/or Services are unsafe and substantially unfit for normal purpose and cannot reasonably be made fit within a reasonable time.

Particulars means the Particulars appearing at page 1 of these Terms and Conditions.

Parties means the Customer and the Supplier together.

Services means the services provided by the Supplier to the Customer, including installation and repairs done by the Supplier, including any advice or recommendations, specified in Item 9 of the Particulars, if any.

Site means the location, premises or site of the Project listed in Item 7 of the Particulars to which the Goods are delivered, or upon which the Services are carried out.

Supplier means Closedane Pty Ltd (ACN: 45 011 004 514) trading as JM SWITCHBOARDS and its authorised agents, employees and subcontractors.

Terms and Conditions means this document, being the express written terms and conditions pursuant to which the Supplier supplies or provides the Goods or Services to the Customer.

2.0 APPLICATION OF TERMS AND CONDITIONS

2.1. The Parties acknowledge and agree that, except where otherwise expressly agreed by the Supplier prior the supply of Goods or Services:

- (a) all Goods and Services supplied by the Supplier to the Customer are supplied on the basis of and in accordance with these Terms and Conditions;
- (b) these Terms and Conditions apply to and exclusively govern the provision of the Goods and Services, on the basis detailed herein;
- (c) these Terms and Conditions operate to the exclusion of all other written documents, agreements and contracts to the extent of any inconsistency between these Terms and Conditions and those other documents or agreements.
- (d) any other terms and conditions the Customer may otherwise use in its commercial or other dealings with third parties do not apply to the provision of the Goods or Services.

2.2. A reference in these Terms and Conditions to a clause, is a reference to a clause in these Terms and Conditions, unless otherwise expressly provided.

3.0 PURCHASE ORDERS

3.1. From time to time the Customer may request the Supplier to supply Goods and/or Services, or request that the Supplier provide a quote for the supply of Goods and/or Services (**Quote**).

3.2. The Supplier may subsequently respond and provide the Quote in writing, setting out the:

- (a) rate(s) and/or price(s) of or applicable for such Goods or Services;
- (b) the time(s) at which the Supplier proposes the Goods will be delivered or can be collected, and/or the time(s) the Services are to be provided;
- (c) the price(s) of any freight, transport, or travel, or transport/freight related services
- (d) the period of time for which the Quote is valid; and
- (e) the amount or percentage of a deposit on the price of the Goods or Services the Customer must pay, if any, and the due date for payment of any deposit.

3.3. All Quotes provided by the Supplier are provided pursuant to these Terms and Conditions, a copy of which will be provided with the Quote and, if applicable, a copy of the Guarantee Terms and Conditions.

3.4. If the Customer accepts the Quote, the Customer must accept the Quote in writing.

3.5. The Supplier is not be obliged to supply any Goods or Services until:

- (a) the Customer has accepted the Quote in writing; and

- (b) if a deposit is required (as identified in a Quote), the deposit has been paid by the Customer.
- 3.6. Notwithstanding any other provision of these Terms and Conditions:
- (a) the Customer is not obliged to request, or accept, any Quote;
- (b) the Supplier is not obliged to provide a Quote, and may revoke, amend or cancel any Quote prior to the Customer accepting the Quote in writing;
- 4.0 GOODS AND SERVICES TAX**
- 4.1. GST means Goods and Services Tax under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) and terms used herein have the meanings given in the GST Act, and the Parties agree that:
- (a) the prices in any Quote and/or on any invoice are exclusive of the Supplier's liability of GST, unless otherwise specified;
- (b) the Supplier will render invoices which are compliant with the GST Act and include the applicable amounts for GST; and
- (c) the Customer will pay to the Supplier, in addition to the total purchase Price, the amount payable by the Supplier of GST on the taxable supply made by the Supplier under the Terms and Conditions, as detailed in the invoice(s).
- 5.0 SUPPLY AND DELIVERY OF GOODS**
- 5.1. The Supplier will determine in its absolute discretion the delivery method for the Goods and communicate the determination to the Customer.
- 5.2. Delivery of the Goods may occur by one of the following methods:
- (a) the Goods being collected by the Customer at a time acceptable to the Supplier;
- (b) the Customer arranging for the collection of the Goods by a nominated transport/freight provider;
- (c) the Supplier transporting the Goods to the Site; or
- (d) the Supplier transporting the Goods to the Site and installing the Goods.
- 5.3. Delivery of the Goods shall be deemed to be complete when:
- (a) the Goods are collected by the Customer or the Customer's nominated transport/freight provider; or
- (b) if the Supplier is responsible for unloading the Goods, when the Goods are delivered to Site and unloaded; or
- (c) if the Customer is responsible for unloading the Goods, when the Goods are delivered to Site and made available for unloading.
- 5.4. Unless specified by the Supplier to the contrary in the Order, the Supplier does not warrant that it can provide the Goods at specific times requested by the Customer during the Term, but will use its best endeavours to have the Goods delivered as soon as possible and at a time convenient to the Customer.
- 5.5. The Supplier may agree to vary an Order for Goods by providing, on the written request from the Customer, additional Goods not included in the original request or Order. The Supplier will be entitled to charge the Customer for the additional Goods and/or Services.
- 6.0 PASSING OF TITLE AND RISK**
- 6.1. Passing of Risk**
- Risk in the Goods passes to the Customer collection of the Goods by or on behalf of the Customer, or delivery of the Goods to the Site.
- 6.2. Clear Title**
- The Supplier warrants that it has title to the Goods and when title passes to the Customer, title will be free and clear of any securities, liens, restrictions or encumbrances.
- 6.3. Passing of Title**
- Notwithstanding clause 6.1, title to the Goods passes to the Customer only once the Customer makes final payment in full for the Goods.
- 6.4. Title Prior to Full Payment**
- Until such time as title passes in accordance with clause 6.3:
- (a) The Customer holds the Goods as Bailee for the Supplier and shall return the Goods to the Supplier if so requested;
- (b) The Customer holds the Goods at the Customer's own risk and is liable to compensate the Supplier for all loss or damage sustained to the Goods whilst they are in the Customer's possession and/or control;
- (c) The Supplier is authorised to enter the Site during the Site's regular business hours without liability for trespass or any resulting damage or consequential damages, and retake possession of the Goods until all amounts owed to the Supplier by the Customer in respect of the Goods are paid in full.
- 6.5. PPSR**
- The Customer acknowledges that the Supplier may produce this clause to register its legal and equitable interest of the Goods as a secured party in accordance with the provisions of the *Personal Property Securities Act 2009* (Cth) (as amended).
- 7.0 PROVISION OF SERVICES**
- 7.1. The Supplier may postpone, cancel or reschedule the time for provision of Services in its absolute discretion, and is not liable for any Loss or Consequential Losses arising as a result.
- 7.2. Unless otherwise specified in writing by the Supplier in the Quote, the Supplier does not warrant that it can provide the Services at specific times requested by the Customer during the Term.
- 7.3. The Supplier may agree to provide, on request from the Customer, additional Services not included or specifically excluded in the Quote, and is entitled to charge for those additional Services. Additional Services includes, but is not limited to, variations, alterations, amendments, and

any additional visits by the Supplier after provision of the Goods and/or Services at the request of the Customer.

- 7.4. If during the course of performing Services the Supplier identifies an issue within the Customer's Site which causes or may cause a safety issue to the Supplier's personnel, the Supplier may isolate power and cease performing Services until such time as the safety issue is rectified.
- 7.5. The Customer acknowledges and agrees that any additional costs for the Services arising as a result of a safety shutdown will be borne by the Customer, and that the Supplier is not liable to the Customer for any resultant Losses or Consequential Loss.

8.0 PAYMENT AND CREDIT POLICY

- 8.1. The Supplier will issue invoices to the Customer for Goods or Services from time to time.
- 8.2. The Customer will be designated an 'Account Customer' or 'Non-Account Customer' in accordance with Item 11 of the Particulars.
- 8.3. The Customer must make payment of all invoices issued by the Supplier at the following times:
- (a) For Account Customers – within the time specified in the Account Customer's credit account terms;
 - (b) For Non-Account Customers – within the time specified in the Quote for Services, and, for Goods, in full prior to the scheduled time for collection of the Goods or the scheduled date for the Goods to leave the Supplier's premises.
- 8.4. The Customer agrees that if it is a Non-Account Customer, the Supplier may, without liability for Loss or Consequential Losses, refuse to make the Goods available for collection or refuse to commence transport of the Goods, unless and until the Customer makes payment in full for the Goods.

9.0 CREDIT

- 9.1. Credit will only be granted at the sole discretion of the Supplier, and only if the Customer submits a completed Credit Application Form to the satisfaction of the Supplier. The Supplier may in its absolute discretion from time to time review any credit granted to the Customer, and withdraw any credit facility.
- 9.2. Where the Supplier withdraws a credit facility because of a breach by the Customer of the Terms and Conditions, because the Customer ceases to trade, because the Customer becomes subject to any legal proceedings or because the Supplier suspects the Customer has committed an act of insolvency, the Supplier shall notify the Customer of the decision and any and all monies owing on the account at that time shall become immediately due and payable.
- 9.3. Where the Supplier withdraws credit for any other reason, the Supplier shall notify the Customer of the withdrawal of credit and any and all monies owing on the account at that time shall be payable by the date for payment specified in the notice.

10.0 DEFAULT

- 9.1. The Customer will be deemed to be in default under the Terms and Conditions if it does not make payment of an invoice by the due date in clause 8.0. If the Customer is in default under this clause, the Supplier may, without

prejudice to any other remedy it may have, forward the Customer's outstanding account to a debt collection agency for further action.

- 9.2. The Customer acknowledges and agrees that where it is in default under this clause:
- (a) The Supplier shall be entitled to charge the Customer, and recover as part of the debt owed and due and payable to the Supplier, interest on all outstanding amounts under this clause (including any in clause 9.2(b) or (c)), at the interest rate equal to the rate of interest recoverable in a default judgment entered in civil proceedings in Queensland under Supreme Court Practice Direction 7 of 2013 (as amended or superseded);
 - (b) the Supplier shall be entitled to recover as a debt due and payable to the Supplier, in addition to the amount of the invoice(s), the legal costs and fees incurred in recovering the monies owed to the Supplier;
 - (c) and the overdue account is then referred to a debt collection and/or law firm for collection, the commission payable where the collection agency charges commission on a contingency basis shall be calculated as if the agency has achieved one hundred percent recovery and shall be added to the debt and the legal costs, whether incurred directly or by the agency shall be calculated on the indemnity basis and added to and form part of the debt and the total shall be treated as a liquidated demand.
- 9.3. Without prejudice to any other right the Supplier has under the Terms and Conditions or any remedy available to the Supplier at Law, where the Customer is in default under this clause the Supplier is entitled in its absolute discretion to cancel all or any part of any order of the customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to make a payment when it fall due;
 - (b) The Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the customer or any asset of the customer.

11.0 CUSTOMER INFORMATION

- 6.1. The Parties acknowledge that the Customer may provide certain information, measurements, specifications, designs, quantities, requirements, needs, or other such related material to the Supplier to enable the Supplier to provide the Goods or Services (**Customer Information**).
- 6.2. The Customer must provide to the Supplier in writing:
- (a) Details of any specific requirements relating to the Goods or Services as well as the Disclosed Purpose; and
 - (b) sufficient Customer Information to enable the Supplier to provide the Goods or Services.

- 6.3. In respect of such Customer Information:
- (a) the Customer warrants that:
- (i) it has verified the accuracy of the Customer Information; and
- (ii) the Customer Information is accurate for the purposes of the provision of the Goods or Services;
- (b) the Parties acknowledge and agree that:
- (i) the Supplier is not reasonably able to verify the Customer Information itself, and is therefore entitled to rely on the accuracy of the Customer Information;
- (ii) the Supplier relied on the accuracy of the Customer Information in the provision of the Goods or Services;
- (iii) the Supplier is not liable whatsoever for any direct or indirect loss, damages or costs, or any Consequential Loss, arising directly or indirectly as a result of the Customer's breach of the warranty in clause 6.1(a)(ii);
- (iv) the Customer releases and indemnifies the Supplier in respect of any and all claims, suits, demands or actions in relation to any losses, damages or costs arising directly or indirectly from the Customer's breach of the warranty in clause 6.1(a)(ii).
- (c) Any re-work or re-supply required as a result of the Customer Information being incorrect or inaccurate will be provided at the Customer's cost.
- 7.2. The Customer acknowledges and agrees that in respect of the Goods, to the extent permissible under the Law the Supplier is immediately and irrevocably released from any claim, action or suit the Customer has, had or may have under the Terms and Conditions or against the Supplier, where and to the extent the Customer has not complied with clause 7.1.
- 7.3. The Customer further acknowledges sole responsibility for any damage or injury to property or person caused by using the Goods in any way and shall indemnify in full the Supplier, its servants and/or agents in relation to all such claims.
- 7.4. The Customer shall be liable for the cost of any re-work or re-supply of Goods where a Defect was caused by a breach of this clause 12.0.
- 13.0 ACCESS**
- 8.1. The Customer acknowledges that the Supplier may require physical access to the Project site and/or access to electronic systems, programs, documents, records, or files of the Customer in order to supply the Goods and/or to perform the Services (**Access**).
- 8.2. The Customer will, at the Customer's own cost:
- (a) provide clear and free Access to the Supplier as and when requested by the Supplier;
- (b) provide a delineated, barricaded work area for the Supplier, for any inspections, work or services performed on site;
- (c) obtain all necessary permits required for the Supplier to undertake inspections, work or services on site;
- (d) supply such water and/or electricity to the Supplier as required for the Supplier to undertake any work on site.
- 8.3. The Supplier will avail itself of the Access solely for the purposes of supplying Goods and/or providing Services.
- 8.4. The Supplier shall not be liable for any disruption or delay caused to the Customer as a result of the Customer giving the Supplier Access.
- 14.0 UNDERGROUND SERVICES**
- 14.1. The Customer must, prior to the scheduled commencement of any Services, advise the Supplier of the location of all underground services and utilities, and
- 7.1. In respect of Goods supplied by the Supplier to the Customer, the Customer must not:
- (a) apply or use the Goods other than for their intended purpose(s) and any Disclosed Purpose;
- (b) intentionally, negligently or recklessly misuse or damage the Goods;
- (c) use or operate the Goods other than in accordance with the Supplier's specifications, manuals, or recommendations and any equipment manual or industry standard;
- (d) inadequately or improperly store, house, cover, maintain or protect the Goods from environmental or weather conditions, causing deterioration;
- (e) modify or alter the Goods other than where the Supplier:
- (i) provides its prior written consent;
- (ii) approves the modification methodology; and
- (iii) inspects and approves the modifications or alterations after completion.
- (f) integrate into the Goods, any additional goods, materials, spare parts, or consumables other than those recommended or approved for such use by the Supplier;
- (g) repair, or have the Goods repaired, other than by a competent, qualified and authorised repairer;
- (h) place, store or affix the Goods on structure unable to withstand the installation of the Goods or connect with any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cables) incapable of handling the Goods once installed; and
- (i) fail to provide Access (as that term is defined in the Terms and Conditions) or to make the Goods available for inspection or repair within a reasonable time after the Customer became or should have become aware of a defect or issue.

- ensure such services and utilises are clearly marked and delineated, and if necessary, isolated.
- 14.2. The underground services and utilities for which the Customer must give the advice to the Supplier includes electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, and any other services that may be on Site.
- 14.3. Whilst the Supplier will take all care to avoid damage to any underground services, the Customer indemnifies the Supplier in respect of all and any Losses, Consequential Losses, claims, actions, or fines relating to damage to services arising due to the Customer failing to adequately notify the Supplier in accordance with this clause.
- 15.0 COMPETITION AND CONSUMER ACT**
- 15.1. The Parties acknowledge and agree that:
- (a) the CAC Act may apply to the supply of the Goods or to the provision of the Services under the Terms and Conditions, and may provide rights and remedies to the Customer thereunder;
 - (b) to the extent that the CAC Act applies, the Terms and Conditions and, if applicable, the Guarantee Terms and Conditions, supplement the provisions of the CAC Act; and
 - (c) nothing in the Terms and Condition and, if applicable, the Guarantee is an exclusion, restriction or modification of the rights the Customer may have under the CAC Act.
- 15.2. The Customer acknowledges and agrees that:
- (a) the Supplier has made no representation to the Customer, express or otherwise, as to whether the CAC Act applies to the Terms and Conditions or the supply of the Goods or Services thereunder, or if it does apply, to what extent and in what manner; and
 - (b) the Customer has had the opportunity to obtain independent legal advice on the Terms and Conditions and, if applicable, the Guarantee.
- 16.0 WARRANTY FOR GOODS**
- 4.1. **Goods not manufactured by the Supplier**
- The Parties acknowledge and agree that nothing in the Terms and Conditions or, if applicable, the Guarantee, is an exclusion of or restriction on any rights the Customer may have under any applicable warranty or guarantee or under the CAC Act, for any Goods manufactured other than by the Supplier.
- The Supplier will use its best endeavours to provide reasonable assistance to the Customer in relation to any claim the Customer may have against the manufacturer of the Goods.
- 4.2. **Goods manufactured by the Supplier**
- The Supplier warrants that the Goods:
- (a) will comply with all requirements of the Terms and Conditions and Laws;
 - (b) are of merchantable quality and fit for their intended purpose and/or any Disclosed Purpose;
 - (c) are free from defects and imperfections affecting performance;
 - (d) are the property of the Supplier and that title will pass to the Customer upon payment in full; and
 - (e) are not subject to any undisclosed securities.
- 4.3. **Repair or replacement**
- Where the Goods have experienced a Major Failure, then upon request from the Customer and the Supplier verifying the Goods can't be economically repaired, the Supplier will replace the Goods.
- 4.4. **Exclusion**
- The Customer acknowledges and agrees that to the extent permissible under the Law (including but not limited to the CAC Act), the Customer is not entitled to any claim or relief as against the Supplier under this clause 16.0, or otherwise where the defect or issue affecting the Goods:
- (a) are covered by the exclusions in clause 19.0; and/or
 - (b) was directly or indirectly caused or contributed to by the Customer or by a breach of clauses 11.0, 12.0, 13.0, 14.0 and/or 4.4.
- 17.0 WARRANTY FOR SERVICES**
- 17.1. The Supplier warrants that the Services will at all times be performed:
- (a) by suitably qualified and experienced;
 - (b) in accordance with the Terms and Conditions and the Law; and
 - (c) to the standards of diligence, skill, care and efficiency expected of a competent tradesperson in the circumstances.
- 17.2. The Customer acknowledges and agrees that the Supplier's liability under this clause is limited to rectifying and/or remedying the defective Services.
- 17.3. **Exclusion**
- The Customer acknowledges and agrees that to the extent permissible under the Law (including but not limited to the CAC Act), where issues with the Services are covered by the exclusions in clause 19.0 and/or were directly or indirectly caused or contributed to by the Customer or by a breach of clauses 11.0, 12.0, 13.0, 14.0 and/or 4.4, the Customer is not entitled to any claim or relief as against the Supplier under clause 17.0, or otherwise.
- 18.0 NOTIFICATION OF CLAIMS OR ISSUES, AND SUPPLIER RESPONSE**
- 10.1. As soon as reasonably possible after identifying an issue, claim, defect or potential issue, claim or defect in respect of any Goods or Services, the Customer must:
- (a) package up any Goods (insofar as that is possible) and/or secure or isolate the Goods;
 - (b) preserve the site or location of any in-situ Goods to prevent any contamination or disturbance of the site or location; and
 - (c) within five (5) business days of identifying a claim or potential claim, commence the claim process detailed in clause 10.2 below.

- 10.2. To submit a claim or notification, the Customer must:
- (a) firstly, contact the Supplier by telephone on (07) 4035 2411 to notify the Supplier of the issue, claim or defect; and
 - (b) secondly, submit the claim to the Supplier in writing by email to mail@jmswitchboards.com.au, providing details of the alleged issues or defects, together with the proof of purchase of the Goods or Services; and
 - (c) provide or make arrangements for Access.

- 10.3. Upon receipt of a claim or notification submitted in accordance with this clause 18.0, the Supplier will:
- (a) commence inspections or investigations of the claim and the Goods and Services; and
 - (b) if in the Supplier's opinion the defects or issues are covered by the Supplier's warranties under clause 16.0 and/or clause 17.0, attend to the repair or rectification obligations under those clauses or, only in the case of a Major Failure (as verified in writing by the Supplier), the replacement of the Goods.

19.0 EXTENDED JMS RELIABILITY GUARANTEE

- 19.1. Subject to the remainder of this clause 19.0, the Customer acknowledges and agrees that:
- (a) the Supplier provides the Guarantee to the Customer with respect to the Goods or Services only if and when:
 - (i) Item 12 of the Particulars is marked 'Yes'; and
 - (ii) The Guarantee is fully executed by the Parties.
 - (b) the purpose and effect of the Guarantee is to provide for an extended period of time over which the Customer may require the Supplier to repair, rectify or remedy defects in Goods or Services, or in the case of a Major Failure require the replacement of Goods by the Supplier;
 - (c) the Guarantee provides additional rights, entitlements and protections to the Customer, and may impose additional obligations and liabilities on the Supplier, above the minimum statutory thresholds and limitation periods provided under the CAC Act and the Law generally; and
 - (d) the Guarantee applies only to the Goods manufactured and supplied by the Supplier to the Customer under these Terms and Conditions.
- 19.2. To the extent of any inconsistency between these Terms and Conditions and the Guarantee Terms and Conditions, these Terms and Conditions prevail.
- 19.3. The Customer acknowledges and agrees that if the Guarantee applies, it does not operate retrospectively, and applies only to Goods supplied or Services provided after the date the Parties executed the Guarantee.

20.0 EXCLUSIONS

20.1. Consequential Loss

To the extent permissible under the Law, notwithstanding any other provision of the Terms and Conditions, the Supplier will not be liable to the Customer in contract (including under any indemnity in the Guarantee), tort (including in negligence or for breach of statutory duty) or otherwise, for any Consequential Loss related to or connected with the Goods, the Services, the Terms and Conditions or the Guarantee, except to the extent such Consequential Loss is caused by the fraud or wilful or deliberate breach of the Terms and Conditions or the Guarantee by the Supplier.

20.2. Exclusions Generally

The Parties acknowledge and agree that to the extent permitted under the Law and/or the CAC Act, the Supplier is not liable under or with respect to any warranty or other obligations under the Terms and Conditions (or the Guarantee) if:

- (a) the Customer failed to comply with the claims process under clause 18.0 of the Guarantee;
- (b) the Customer breached, or was in default of, the Customer's obligations under clauses 11.0, 12.0, 13.0, 14.0 and/or 4.4;
- (c) the Defect to which the claim or potential claim relates is an Excluded Defect;
- (d) the Defect with the Goods or the Services was directly or indirectly caused or contributed to by the Customer, whether or not it arose through a breach of or default under clauses 11.0, 12.0, 13.0, 14.0 and/or 4.4 or otherwise;
- (e) the Defect was the result of fair or reasonable wear and tear of the Goods or Services;
- (f) undertaking inspections, re-work, re-performance of Services or re-supply of the Goods will require the Supplier's personnel to come into contact with asbestos material or other hazardous materials or working conditions contrary to the *Workplace Health & Safety Act 2011* (Qld) (as amended or superseded) or Law;
- (g) the Defects in the Goods arose, was caused by or contributed to directly or indirectly by abuse, vandalism, theft, fire, flood, cyclones, wind, freezing, inclement weather, brown outs, inadequate power supply, electrical surge, lightning, wiring, ductwork, improper installation, unauthorised modifications or repairs, improper use, use of parts or materials not authorised by the Supplier, unusual atmospheric conditions, acts of war, or acts of God;
- (h) the Services required under the Guarantee became necessary because of improper storage, improper ventilation, non-compliant repairs or products not complying with electrical standards, reconfiguration of products;
- (i) The damages to or faults, failures or defects in the Goods are cosmetic or superficial or are to non-functional parts or expendable items, and do not affect the functionality of the Goods;
- (j) The damages to or faults, failures or defects in the Goods are in respect of consumable items easily replaced by the Customer, including but not limited to filters, surge diverters, lamps and globes;

- (k) the original serial numbers of the Goods have been removed, altered, tampered with or cannot be readily determined; respect of the Customer or any asset of the Customer.
- (l) the Defects were the result of accident damage; or
- (m) the Defects were the result of or were caused or contributed to by loss or corruption of data or damage due to computer viruses, and/or the restoration or update of software, firmware or operating systems.
- 20.3. The Customer agrees that where one or more of the exclusions in clause 20.2 above apply or have occurred, to the extent permissible under the Law the Supplier is not liable in respect of such Defects.
- 21.0 INTELLECTUAL PROPERTY**
- 21.1. Except where otherwise expressly agreed in writing by the Supplier, all copyright and other intellectual property rights in respect of all designs, drawings, documents and other materials, contained within or provided in conjunction with the Goods or Services, remain the exclusive property of the Supplier, provided that the Supplier hereby grants to the Customer a limited licence for the use of the intellectual property to the extent required for the operation of the Terms and Conditions and, if applicable, the Guarantee.
- 13.2. The Customer warrants that the provision of any designs, specifications, instructions or Customer Information by the Customer to the Supplier will not infringe any third party's intellectual property rights.
- 13.3. The Customer agrees to indemnify and keep indemnified the Supplier against any action, suit, claim or demand taken by a third-party against the Supplier in respect of any breach of the warranty in Clause 13.2.
- 13.4. The Customer agrees that the supplier may (at no cost) use for the purpose of marketing or entry into any competition, any documents, designs, drawings or goods which the supplier has created for the Customer.
- 22.0 TERMINATION AND CANCELLATION BY SUPPLIER**
- 14.1. The Supplier may cancel any order to which these Terms and Conditions apply or cancel provision of Services or delivery of Goods at any time before the Goods are delivered, by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any deposit paid in respect of the Price.
- 14.2. The Supplier shall not be liable for any Loss or Consequential loss whatever arising from such cancellation under clause 14.1.
- 14.3. Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
- (a) Any money payable to the Supplier becomes overdue; or
- (b) The Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in
- 23.0 TERMINATION AND CANCELLATION BY CUSTOMER**
- 15.1. An order cannot be cancelled by the Customer unless expressly agreed to by the Supplier in writing.
- 15.2. If the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.
- 15.3. If the Customer accepts a Quote and the Supplier places an order with a third-party Supplier to meet the Customer's request, the Customer shall be liable for the Price of the Goods ordered if the Customer cancels the order and the Goods have already been dispatched.
- 24.0 SET-OFF**
- 24.1. The Customer shall have no right of set-off in any suit, claim or proceeding brought by the Supplier against the Customer for default in payment.
- 24.2. The Customer acknowledges that the Supplier can produce this clause in bar of any proceeding for set-off.
- 25.0 CHANGE IN CONTROL / ASSIGNMENT**
- 25.1. The Customer may only assign its interests in the supply of Goods or Services and/or the Guarantee with the express prior written approval of the Supplier, which approval may be withheld at the Supplier's absolute and unfettered discretion.
- 25.2. If the Customer wishes to assign its interest in the supply of Goods or Services and/or the Guarantee (**Proposed Assignment**), it must provide in writing:
- (a) At least twenty-eight (28) days' prior written notice to the Supplier; and
- (b) provide in writing within five (5) business days, any information (including documentation) regarding the proposed assignee requested by the Supplier.
- 25.3. For the avoidance of doubt, the Parties acknowledge and agree that:
- (a) where the Customer is a corporate entity or an entity other than a natural person, or is acting in the capacity of trustee for a trust, any change or proposed change in the effective control and/or shareholding of the Customer entity or change or proposed change in representative capacity amounts to a deemed assignment of the Customer's rights and obligations under the Terms and Conditions and/or Guarantee, triggering the application of clause 25.0 of the Guarantee and the corresponding clause in the Terms and Conditions;
- (b) the Supplier may withhold its approval in its absolute and unfettered discretion, and is not required to communicate or provide to the Customer any reason for its decision;
- (c) the Supplier makes no representation or promise with respect to its decision on approval of a request for consent to an assignment merely by requesting any information from the Customer regarding the proposed assignment, or reviewing same.
- 25.4. The Customer acknowledges and agrees that where the Supplier consents to the assignment, the Customer will at

its own cost arrange for the assignee to enter into a deed of assignment, assumption and amendment with the Customer and the Supplier, sufficient to cover the assignee's agreement to be bound by the terms of the Terms and Conditions and the Guarantee.

- 25.5. The Customer will pay the Supplier's costs of and incidental to the assignment process on an indemnity basis.

26.0 DISPUTE RESOLUTION

- 26.1. If a dispute arises between the Parties, then either party shall send the other party a notice of dispute in writing adequately identifying and providing details of the dispute.
- 26.2. Within fourteen (14) days after service of notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute.
- 26.3. At any such conference, each party shall be represented by a person having authority to agree to a resolution of the dispute, and may be legally represented.
- 26.4. In the event the dispute is not resolved, then either party may (but is not obliged to) by further notice in writing delivered to the other party's physical and email addresses listed in the Particulars, refer such dispute to arbitration.
- 26.5. The Parties acknowledge and agree that nothing in this clause 26.0:
- (a) is or should be interpreted as an arbitration agreement (within the meaning of the *Commercial Arbitration Act 2013 (Qld)* or equivalent); and
 - (b) limits, restricts or removes the right of either party to commence proceedings in a court or tribunal of competent jurisdiction to enforce any rights it may have under this Terms and Conditions or the Guarantee.

27.0 MISCELLANEOUS PROVISIONS

27.1. Entire Agreement

Subject to clause 2.0 and clause 19.0, the documents exchanged in accordance with clause 3.0, these Terms and Conditions and the Reliability Guarantee (if applicable) together constitute the whole agreement made between the Customer and the Supplier.

27.2. Amendment

The Terms and Conditions can only be amended in writing signed by each of the parties. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by him or on his behalf that are in conflict with any clauses in this document in any way.

16.1. Persons or entities Bound

The Terms and Conditions are binding on the Customer and the Customer's heirs, permitted assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.

27.3. Severability

Should any provision or clause of the Terms and Conditions be deemed by an Authority of competent jurisdiction to be void, illegal or unenforceable, that provision or clause is severable from the Terms and Conditions and the remainder of the Terms and Conditions remains in full force and effect.

27.4. Contravention

Nothing in the Terms and Conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010* or the Fair Trading Acts in each of the States and Territories of Australia.

27.5. Waiver

The Supplier does not waive any provision of or right under the Terms and Conditions unless such waiver is expressed in writing and signed by an authorised representative of the Supplier, and does so only to the extent of such written waiver.

27.6. Governing Law & Jurisdiction

The Parties agree that the Terms and Conditions are construed in accordance with and governed by the laws of Queensland, Australia, and the parties unconditionally submit to the exclusive jurisdiction thereof.

27.7. Interpretation

In the Terms and Conditions, unless the contrary intention appears:

- (a) A reference to the Terms and Conditions is a reference to the Terms and Conditions as novated, altered or replaced from time to time;
- (b) the singular includes the plural and vice versa;
- (c) headings are for ease of reference only and do not affect meanings;
- (d) other grammatical forms of defined words or expressions have corresponding meanings;
- (e) the words 'include' and 'including' are to be construed without limitation;
- (f) words importing a gender include other genders;
- (g) a reference to a clause, schedule or appendix is a reference to a clause, schedule or appendix to the Reliability Guarantee
- (h) 'A\$', '\$A', 'AUD', 'dollar' or '\$' is a reference to Australian currency;
- (i) a person includes any individual, firm, body corporate, partnership, unincorporated association, government, state or agency of a state, joint venture or relevant Federal or State or Local Government, court or tribunal;
- (j) a party includes its executors, administrators, successors and permitted assigns;
- (k) a day means a period of 24 consecutive hours from midnight;
- (l) a week means 7 consecutive days commencing and ending at midnight on Sunday; and
- (m) a month means a calendar month;
- (n) where a party is more than one person they are all bound separately and together;
- (o) if the due date for anything to be done under the Terms and Conditions falls on a day that is not a Business Day, then it must be done on the next Business Day.

27.8. Force majeure

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.

27.9. Counterparts

This document may be executed in any number of counterparts. A party may execute this document by signing any counterpart. All counterparts together are taken to constitute one instrument.

27.10. Electronic Transactions

Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with the *Electronic Transactions Act 2000* (Cth) or any other applicable provisions of that Act or any Regulations referred to in that Act.