

1. Definitions

- 1.1 “Contractor” means TCA Innovative Ventures Pty Ltd T/as TCA Electrical Contractors, its successors and assigns or any person acting on behalf of and with the authority of TCA Innovative Ventures Pty Ltd T/as TCA Electrical Contractors.
- 1.2 “Client” means the person/s 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 “Equipment” means all Equipment including any accessories supplied on hire by the Contractor to the Client (and where the context so permits shall include any supply of Works). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other authorisation form provided by the Contractor to the Client.
- 1.5 “Price” means the Price payable for the Works and/or Equipment hire 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/Equipment.
- 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/s, or business practice). The Client shall be liable for any loss incurred by the Contractor 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/Equipment supplied; or
 - (b) the Contractor’s quoted Price (subject to clause 5) 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 At the Contractor’s sole discretion, a non-refundable deposit may be required.
- 4.3 Time for payment for the Works/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:
 - (a) on completion of the Works; or
 - (b) on delivery of the Equipment; or
 - (c) 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
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Contractor.
- 4.4 Unless agreed upon by both parties in writing, no allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, the Contractor reserves the right to treat all retentions as placing the Client’s account into default.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card – including VISA, Mastercard & Amex (plus a surcharge of up to 2.5% of the Price), or by any other method as agreed to 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 that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Variations

- 5.1 The Contractor reserves the right to change the Price:
 - (a) if a variation to the Materials/Equipment 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, 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.
- 5.2 Any existing wiring or equipment is subject to testing. Existing faults found will incur additional costs to rectify and will be treated as a variation to the Price.

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5.3 Main Earth, Main Water Bond, all light fixtures and general wiring installations are subject to an earthing inspection on commencement of the Works. Any necessary earthing will incur additional charges and will be treated as a variation.

6. Delivery of the Works

6.1 Subject to clause 6.2 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.

6.2 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.

6.3 At the Contractor's sole discretion delivery of the Equipment shall take place when the Equipment is supplied to the Client either at the Contractor's address or at the Client's nominated address.

6.4 The Contractor may deliver the Works Equipment by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

6.5 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/Equipment (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of the Contractor. In the event that the Contractor is unable to supply the Works/Equipment as agreed solely due to any action or inaction of the Client then the Contractor shall be entitled to charge a reasonable fee for re-supplying the Works/Equipment at a later time and date.

6.6 Due to the requirement to work "de-energised", power may from time to time be disconnected during the course of the Works. Any disconnection of power will be in consultation with the Client.

7. Client's Responsibilities

7.1 It shall be the responsibility of the Client to:

- (a) provide the Contractor (and their employees or sub-contractors), without the incur of penalties:
 - (i) access to carry out the Works as required during the working hours allowed by relevant statutory authorities;
 - (ii) with a safe, clean workplace free of an hazards such as toxic materials or unsafe working conditions. The Contractor reserves the right to suspend the Works without penalty until such time as such hazards are removed;
 - (iii) with secure on-site parking. Off-site parking must be provided where onsite parking is not available. Any payment of off-site parking by the Contractor shall be considered a variation to the Price;
 - (iv) suitable amenities; without any additional fees or charges to the Contractor.

7.2 The Client agrees to remove any furniture, furnishings or personal goods from the vicinity of the Works, prior to the commencement date, and agrees that the Contractor shall not be liable for any damage caused to those items through the Clients failure to comply with this clause.

8. Risk

8.1 If the Contractor retains ownership of the Materials under clause 11 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 the 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.

8.2 Notwithstanding the provisions of clause 8.1 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.

8.3 Where the Client has supplied goods for the Contractor to complete the Works, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in those goods. The Contractor shall not be responsible for any defects in the Works, any loss or damage to the Materials or goods (or any part thereof), howsoever arising from the use of goods supplied by the Client.

9. Underground Locations

9.1 Prior to the Contractor commencing any work the Client must advise the Contractor of the precise location 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

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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.

- 9.2 If the Client requests the Contractor to engage the service locator then this shall be in addition to the Price.
- 9.3 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 9.1.

10. Materials/Rubbish

- 10.1 On completion of the Works the Contractor shall remove from the site all rubbish, excavated materials, vegetation, demolished or dismantled structures and any surplus Materials relating to the Works. All demolished, dismantled or surplus Materials will be the property of the Contractor unless specified elsewhere in this contract.

11. Title

- 11.1 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.
- 11.2 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.
- 11.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Client in accordance with clause 11.1 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 act 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 it so directs.
 - (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.

12. Personal Property Securities Act 2009 ("PPSA")

- 12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 12.2 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/Equipment that have previously been supplied and that will be supplied in the future by the Contractor to the Client.
- 12.3 The Client undertakes to:
- (a) promptly sign any 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 12.3(a)(i) or 12.3(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/Equipment 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/Equipment 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.
- 12.4 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.

- 12.5 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.
- 12.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 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.
- 12.8 The Client shall unconditionally ratify any actions taken by the Contractor under clauses 12.3 to 12.5.
- 12.9 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.

13. Security and Charge

- 13.1 In consideration of the Contractor agreeing to supply the Materials/Equipment, 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).
- 13.2 The Client indemnifies the Contractor 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.
- 13.3 The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

14. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 14.1 The Client must inspect all Materials/Equipment 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/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Contractor to inspect the Materials/Equipment or to review the Works provided.
- 14.2 The Contractor's liability for a failure to comply with any statutory warranty shall not apply if the failure is arising solely from a design or specification prepared by or on behalf of the Client (but not by or on behalf of the Contractor) where the Contractor has advised the Client in writing that the design or specification contravenes the Building Code of Australia, the Australian Standards for Wiring Rules, or any other applicable laws.
- 14.3 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**).
- 14.4 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.5 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/Equipment/Works. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.6 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.
- 14.7 If the Contractor is required to replace any Materials/Equipment 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/Equipment.
- 14.8 If the Contractor is required to rectify, re-supply, or pay the cost of re-supplying the Works/Equipment 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/Equipment but only to the extent that such refund shall take into account the value of Works/Equipment and Materials which have been provided to the Client which were not defective.
- 14.9 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/Equipment 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.
- 14.10 Subject to this clause 14, returns will only be accepted provided that:
 - (a) the Client has complied with the provisions of clause 14.1; and
 - (b) the Contractor has agreed that the Materials/Equipment are defective; and
 - (c) the Materials/Equipment are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Materials/Equipment are returned in as close a condition to that in which they were delivered as is possible.
- 14.11 Notwithstanding clauses 14.1 to 14.10 but subject to the CCA, the Contractor shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - (a) the Client failing to properly maintain or store any Materials/Equipment;
 - (b) the Client using the Materials/Equipment for any purpose other than that for which they were designed;
 - (c) the Client continuing to use any Materials/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Works/Equipment by the Client or any third party without the Contractor's prior approval;

- (e) the Client failing to follow any instructions or guidelines provided by the Contractor;
- (f) fair wear and tear, any accident, or act of God.

- 14.12 In the case of second hand Materials, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Materials prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Contractor as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that the Contractor has agreed to provide the Client with the second hand Materials and calculated the Price of the second hand Materials in reliance of this clause 14.12.
- 14.13 The Contractor may in its absolute discretion accept non-defective Materials for return in which case the Contractor may require the Client to pay handling fees of up to ten percent (10%) of the value of the returned Materials plus any freight costs.

15. Intellectual Property

- 15.1 Where the Contractor has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Contractor, and shall only be used by the Client at the Contractor's discretion.
- 15.2 The Client warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.
- 15.3 The Client agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Contractor has created for the Client.

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/Equipment 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/Equipment at any time before the Works are commenced/Equipment is delivered 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 Price, less any amounts owing by the Client to the Contractor for Works already performed/Equipment already supplied. 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/Equipment 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 Cancellation of orders for Materials made to the Client's specifications, or for non-stocklist 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 agency a credit report containing personal credit information 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 either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency 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 exchange 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.

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The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

- 18.3 The Client consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 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 purposes as shall be agreed between the Client and Contractor or required by law from time to time):
- (a) the provision of Works/Equipment; and/or
 - (b) the marketing of Works/Equipment by the Contractor, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works/Equipment; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Works/Equipment.
- 18.5 The Contractor may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 18.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that the Contractor is a current credit provider to the Client;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of the Contractor, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Client by the Contractor has been paid or otherwise discharged.

19. Unpaid Seller's Rights

- 19.1 Where the Client has left any item with the Contractor for repair, modification, exchange or for the Contractor to perform any other service in relation to the item and the Contractor has not received or been tendered the whole of any moneys owing to it by the Client, the Contractor shall have, until all moneys owing to the Contractor are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 19.2 The lien of the Contractor shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Contractor having been obtained against the Client.

20. Equipment Hire

- 20.1 Equipment shall at all times remain the property of the Contractor and is returnable on demand by the Contractor. In the event that Equipment is not returned to the Contractor in the condition in which it was delivered the Contractor retains the right to charge the Client the full cost of repairing the Equipment. In the event that Equipment is not returned at all the Contractor shall have right to charge the Client the full cost of replacing the Equipment.
- 20.2 The Client shall:
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.
 - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
 - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by the Contractor to the Client.
- 20.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, the Contractor's interest in the Equipment and agrees to indemnify the Contractor against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

21. Building and Construction Industry Security of Payments Act 1999

- 21.1 At the Contractor's sole discretion, if there are any disputes or claims for unpaid Works then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.

21.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 2002 of Victoria, except to the extent permitted by the Act where applicable.

22. Force Majeure and Excusable Delays

22.1 Unless the performance by either party of its obligations under this Agreement is delayed by the occurrence of a Force Majeure Event for a period of more than thirty (30) days (and such delay is excused under the foregoing provisions), no Force Majeure Event shall excuse permanent non-performance, but shall excuse only delays in performance and only to the extent that such delays are directly attributable to such clause. Should any Force Majeure Event delay performance for a period of more than thirty (30) days, either party may terminate and rescind this Agreement upon providing seven (7) days notice to the other party. Notwithstanding, neither party shall be liable or responsible for any costs or damages attributable to failure or delay in performance arising out of any Force Majeure Event.

23. Dispute Resolution

23.1 If the Contractor or Client considers a dispute has arisen in relation to any matter covered by this contract, that party must give the other written notice of the items in dispute. The parties may confer with a mutually agreed third party to assist to resolve the dispute by mediation. If the dispute relates to workmanship and cannot be resolved by mediation, either party may refer the matter to Consumer Affairs Victoria.

24. General

24.1 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 the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

24.2 These terms and conditions and any contract to which they apply shall be governed by the laws Victoria in which the Contractor has its principal place of business, and are subject to the jurisdiction of the Melbourne Courts in that state.

24.3 Subject to clause 14 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 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/Equipment).

24.4 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.

24.5 The Contractor may license or sub-contract all or any part of its rights and obligations without the Client's consent.

24.6 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/Equipment to the Client.

24.7 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.