

AGREED TERMS

1. Definitions and interpretation

1.1 Capitalised terms or expressions used in this agreement have the meanings set out in this clause.

Applicable Laws: all applicable laws, statutes, regulations and relevant electrical industry codes from time to time in force.

Available Services: the services as set out in Schedule 1.

Business Day: a day on which banks are open for business in Melbourne, other than a Saturday, Sunday or public holiday in that city.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Change Order: has the meaning given in clause 7.1

Commencement Date: the date of Purchase Order acceptance by Supplier.

Control: the definition given to that term in section 50AA of the Corporations Act, and the expression change of control shall be construed accordingly.

Corporations Act: the *Corporations Act 2001* (Cth).

Customer Materials: all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the Works, including the items provided pursuant to clause 5.1(b).

Customer means the entity issuing the PO.

Customer's Representative: has the meaning given in clause 5.2(a).

Deliverables: any output of the Works to be provided by the Supplier to the Customer as specified in a Statement Of Work.

GST: goods and services tax chargeable under *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs and unregistered designs, circuit layout designs, rights to use, and protect the confidentiality of, confidential information (including know-how, trade secrets, and technical data), technology and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future anywhere in the world.

Personal Information: has the meaning given in the Privacy Act.

Privacy Act: the *Privacy Act 1988* (Cth) as amended from time to time.

Purchase Order (PO) means the customer order or offer to procure the services provided by the Supplier according to the Quote including the Statement of Work.

Quote means project proposal provided with estimated costing or firm costing as requested or invited to offer by the Customer

Sensitive Information: has the meaning given in the Privacy Act.

SOW Charges: the sums payable for the Works as set out in a Statement Of Work.

Statement Of Work: a detailed plan, agreed in accordance with clause 3, describing the services to be provided by the Supplier, the timetable for their performance and the related matters listed in the template Statement Of Work set out in Statement of Work in this agreement or as included in a valid Quote.

Supplier means PRODATA ELECTRICAL PROJECTS (ABN 17 662 394 390) 1218 Glen Huntly Rd Glen Huntly VIC 3163.

Supplier's Representative: has the meaning given in clause 4.3.

Works: the services which are provided by the Supplier under a Statement Of Work, including services which are incidental or ancillary to the Works.

1.2 In this agreement the following rules of interpretation apply, unless the contrary intention appears or context otherwise requires:

- (a) headings and subheadings are for convenience only and do not affect the interpretation of this agreement;
- (b) references to clauses, Schedules, annexures, appendices, attachments and exhibits are references to the clauses of, and the Schedules, annexures, appendices, attachments and exhibits to, this agreement;
- (c) references to parties are references to the parties to this agreement;
- (d) references to a party to any agreement or document include that party's permitted assignees and successors, including executors and administrators and legal representatives;
- (e) words denoting the singular include the plural and words denoting the plural include the singular;
- (f) words denoting any gender include all genders;
- (g) a reference to a body (other than a party to this agreement), whether statutory or not, that ceases to exist or has its powers or functions transferred to another body is a reference to the body that replaces it or that substantially succeeds to its powers or functions;
- (h) a reference to any agreement or document (including this agreement) includes any amendments to or replacements of that document;

- (i) a reference to a law includes:
 - (i) legislation, regulations and other instruments made under legislation and any consolidations, amendments, re-enactments or replacements of them;
 - (ii) any constitutional provision, treaty or decree;
 - (iii) any judgment;
 - (iv) any rule or principle of common law or equity,and is a reference to that law as amended, consolidated, re-enacted, replaced or applied to new or different facts;
- (j) no provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of that provision or this agreement;
- (k) if a period of time begins on a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (l) a reference to time is a reference to Melbourne time unless otherwise specified;
- (m) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (n) if any act is required to be performed under this agreement by a party on or by a specified day and the act is performed after 5.00 pm on that day, the act is deemed to be performed on the next day;
- (o) if any act is required to be performed under this agreement on or by a specified day and that day is not a Business Day, the act must be performed on or by the next Business Day;

- (p) a reference to an amount of dollars, Australian dollars, \$ or A\$ is a reference to the lawful currency of the Commonwealth of Australia, unless the amount is specifically denominated in another currency;
- (q) specifying anything in this agreement after the terms "include", "including", "includes", "for example", "such as" or any similar expression does not limit the sense of the words, description, definition, phrase or term preceding those terms unless there is express wording to the contrary;
- (r) this agreement includes all Schedules, annexures, appendices, attachments and exhibits to it;
- (s) a reference to **writing** or **written** includes fax but not email (unless otherwise expressly provided in this agreement);
- (t) references to a document in **agreed form** are to that document in the form agreed by the parties and initialled by them or on their behalf for identification;
- (u) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (v) an agreement other than this agreement includes a deed, undertaking or legally enforceable agreement or understanding whether in writing or not; and
- (w) if there is any conflict between the terms of the main body of this agreement and the terms of this agreement's Schedules and attachments, the terms of the main body of this agreement will prevail.

2. Commencement and term

- 2.1 This agreement starts on the Commencement Date and, unless terminated earlier in accordance with clause 14, ends when either party gives to the other party sixty (60) days written notice to terminate, such notice to terminate only:
 - (a) taking effect on the completion of all Statements Of Work entered into before the date on which the notice to terminate is served.
- 2.2 If there are no uncompleted Statements Of Work as at the date notice to terminate is served under clause 2.1, such notice will terminate this agreement with immediate effect.
- 2.3 The parties will not enter into any further Statements Of Work after the date on which notice to terminate is served under clause 2.1.

3. Statements of Work

- 3.1 A Statement of Work is deemed to be accepted and agreed as soon as the Customer issues a Purchase Order.
- 3.2 Once a Statement Of Work has been agreed in accordance with clause 3.1, no amendment will be made to it except in accordance with clause 7.
- 3.3 If there is an inconsistency between the terms set out in this document and the terms set out in a Statement Of Work, the Statement Of Work prevails to the extent of the inconsistency.

4. Supplier's obligations

- 4.1 The Supplier must use reasonable endeavours to manage the Works, and deliver the Deliverables to the Customer, in accordance with a Statement Of Work in all material respects.

4.2 The Supplier must use reasonable endeavours to meet any performance dates specified in a Statement Of Work but any such dates will be estimates only and time for performance by the Supplier will not be of the essence of this agreement.

4.3 The Supplier must identify in each Statement Of Work a manager who is appointed in respect of the relevant Works to be performed (**Supplier's Representative**).

5. Customer's obligations

5.1 The Customer must:

- (a) provide reasonable assistance to the Supplier in all matters relating to the Works;
- (b) provide to the Supplier in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or a third party) required under a Statement Of Work or otherwise reasonably required by the Supplier in connection with the Works and ensure that they are accurate and complete in all material respects; and

5.2 The Customer:

- (a) must identify in each Statement Of Work a manager who is appointed in respect of the relevant Works to be performed (**Customer's Representative**); and
- (b) warrants that the Customer's Representative has authority to contractually bind the Customer on all matters relating to the relevant Works under that Statement Of Work (including by signing Change Orders).

5.3 The Customer must comply with any additional responsibilities as set out in the relevant Statement Of Work.

5.4 The Customer must promptly pay any fees or charges that become payable or as agreed in the Statement of Works.

6. Non-solicitation

The Customer must not, without the prior written consent of the Supplier, at any time from the date on which any Works commence to the expiry of 12 months after the completion of such Works, canvass, solicit, interfere with or entice away, or attempt to canvass, solicit, interfere with or entice away, from the Supplier or employ or engage or attempt to employ or engage any person who is, or has been, engaged as an employee, consultant, contractor or subcontractor of the Supplier in the provision of such Works in the 12-month period prior to completion of the Works.

7. Change control

7.1 Either party may propose changes to the scope or execution of the Works but no proposed changes shall come into effect until a relevant **Change Order** has been signed by both parties. A Change Order is a document which sets out the proposed changes and the effect that those changes will have on:

- (a) the Works;
- (b) the SOW Charges;
- (c) the timetable for the Works; and
- (d) any of the other terms of the relevant Statement Of Work.

7.2 If the Supplier wishes to make a change to the Works it must provide a draft Change Order to the Customer.

7.3 If the Customer wishes to make a change to the Works:

- (a) it must notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed change; and

- (b) the Supplier must, as soon as reasonably practicable after receiving the information at clause 7.3(a), provide a draft Change Order to the Customer.

7.4 If the parties:

- (a) agree to a Change Order, they must sign it and that Change Order will amend the relevant Statement Of Work; or
- (b) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 25.

7.5 The Supplier may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 7.3 on a time and materials basis at the Supplier's daily rates specified in Statement of Work.

8. Charges and payment

8.1 In consideration of the provision of the Works by the Supplier, the Customer must pay the SOW Charges.

8.2 Where the SOW Charges are calculated on a time and materials basis:

- (a) the Supplier's standard daily fee rates for each individual person as set out in Statement of Work are calculated on the basis of an eight-hour day, worked during Business Hours;
- (b) the Supplier shall be entitled to charge overtime rates as set out in Statement of Work on a pro-rata basis for any time worked by individuals whom it engages on the Works outside Business Hours; and
- (c) the Supplier must ensure that every individual whom it engages on the Works completes time sheets to record time spent on the Works, and

the Supplier will indicate the time spent per individual in its invoices.

8.3 Where the SOW Charges are calculated on a fixed price basis, the amount of those charges will be as set out in a Statement Of Work.

8.4 The SOW Charges exclude the following, which will be payable by the Customer monthly in arrears, following submission of an appropriate invoice:

- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Works; and
- (b) the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Works as such items and their cost are set out in the Statement Of Work.

8.5 The Supplier will invoice the Customer for the SOW Charges at the intervals specified in the Statement Of Work. If no intervals are specified, the Supplier will invoice the Customer at the end of each month for Works performed during that month.

8.6 The Customer must pay each invoice submitted to it by the Supplier within seven (7) days of receipt to a bank account nominated in writing by the Supplier from time to time.

8.7 Without prejudice to any other right or remedy the Supplier may have:

- (a) if any sum due for payment under this agreement is not paid on the due date, the Customer must pay interest on the amount unpaid at the daily 11.00 am cash rate quoted on RBA plus four (4)%;
- (b) interest payable under clause 8.9(a) accrues on a day-to-day basis from

the due date up to and including the date of actual payment;

- (c) interest payable under clause 8.9(a) may be capitalised by the Supplier on a monthly; and
- (d) the Supplier may suspend part or all of the Works until payment has been made in full.

8.8 All sums payable to the Supplier under this agreement:

- (a) are exclusive of GST, and the Customer must in addition pay an amount equal to any GST chargeable on those sums on delivery of a GST invoice; and
- (b) must be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9. Intellectual Property Rights

9.1 In relation to the Deliverables:

- (a) the Supplier will retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Materials;
- (b) the Supplier grants to the Customer, or will procure the direct grant to the Customer of, Australia wide, non-exclusive, royalty-free licence during the term of this agreement to use the Deliverables (excluding the Customer Materials) for the sole purpose of receiving and using the Works and the Deliverables in its business; and
- (c) the Customer must not sub-license, assign or otherwise transfer the rights granted in clause 9.1(b):
 - (i) to its Related Bodies Corporate and customers; and

- (ii) subject to their entry into appropriate confidentiality undertakings, to third parties for the purpose of the Customer's receipt of services similar to the Works.

9.2 In relation to the Customer Materials, the Customer:

- (a) and its licensors will retain ownership of all Intellectual Property Rights in the Customer Materials; and
- (b) grants to the Supplier a non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this agreement for the sole purpose of providing the Works to the Customer.

9.3 The Supplier:

- (a) warrants that the receipt, use and onward supply of the Works and the Deliverables by the Customer will not infringe the rights, including any Intellectual Property Rights, or any rights of third parties to the extent that the infringement results from copying;
- (b) must, subject to clause 13, keep the Customer indemnified in full against any direct liabilities, costs, charges, or expenses, damages and losses and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered or incurred by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights, to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt, use of the Works and the Deliverables; and

(c) will not be in breach of the warranty at clause 9.3(a), and the Customer will have no claim under the indemnity at clause 9.3(b) to the extent the infringement arises from:

- (i) the use of Customer Materials in the development of, or the inclusion of the Customer Materials in, the Works or any Deliverable;
- (ii) any modification of the Works or any Deliverable, other than by or on behalf of the Supplier; and
- (iii) compliance with the Customer's specifications or instructions[, where infringement could not have been avoided while complying with such specifications or instructions and provided that the Supplier notifies the Customer if it knows or suspects that compliance with such specification or instruction may result in infringement].

9.4 The Customer:

- (a) warrants that the receipt and use in the performance of this agreement by the Supplier, its agents, subcontractors or consultants of the Customer Materials will not infringe any rights of third parties to the extent that infringement results from copying; and
- (b) must keep the Supplier indemnified in full against any liabilities, costs, charges, or expenses, damages and losses and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered or incurred by the Supplier arising out of or in

connection with any claim brought against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights, to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt or use in the performance of this agreement of the Customer Materials.

9.5 If either party (**Indemnifying Party**) is required to indemnify the other party (**Indemnified Party**) under this clause 9, the Indemnified Party must:

- (a) notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 9.3(b) or clause 9.4(b) (as applicable) (**IPRs Claim**);
- (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party obtains the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- (c) provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
- (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

10. Compliance with laws and policies

10.1 In performing its obligations under this agreement, the Supplier must comply with:

- (a) the Applicable Laws in Australia; and

10.2 Changes to the Works required as a result of changes to the Applicable Laws shall be agreed via the change control procedure set out in clause 7.

11. Privacy

11.1 The Supplier warrants that it complies with and will continue to comply with the Privacy Act and all other applicable privacy laws.

11.2 The Customer warrants that it complies with and will continue to comply with the Privacy Act and all other applicable privacy laws.

11.3 If the Supplier collects, holds, uses or discloses Personal Information in the course of or relating to this agreement, the Supplier must:

- (a) handle all Personal Information in accordance with the Supplier's privacy policy;
- (b) only use Personal Information for the purpose of performing its obligations under this agreement; and
- (c) not disclose Personal Information to any third party (including any subcontractor) without the Customer's prior written consent or as required by law.

11.4 The Customer warrants that it:

- (a) will not provide any Sensitive Information to the Supplier unless that information is necessary for the Supplier to perform its obligations under the agreement and then only with the Supplier's specific written consent; and

12. Confidentiality

12.1 Each party (**Recipient**) must keep secret and confidential and not disclose any information relating to another party or its business (which is or has been disclosed to the Recipient by the other party, its representatives or advisers) or the terms of this agreement, except:

- (a) where the information is in the public domain as at the date of this agreement (or subsequently becomes in the public domain other than by breach of any obligation of confidentiality binding on the Recipient);
- (b) if the Recipient is required to disclose the information by applicable law or the rules of any recognised securities exchange, provided that the Recipient has to the extent practicable having regard to those obligations and the required timing of the disclosure consulted with the provider of the information as to the form and content of the disclosure;
- (c) where the disclosure is expressly permitted under this agreement;
- (d) if disclosure is made to its officers, employees and professional advisers to the extent necessary to enable the Recipient to properly perform its obligations under this agreement[or to conduct their business generally], in which case the Recipient must ensure that such persons keep the information secret and confidential and do not disclose the information to any other person;
- (e) where the disclosure is required for use in legal proceedings regarding this agreement; or
- (f) if the party to whom the information relates has consented in writing before the disclosure.

12.2 Each Recipient must ensure that its directors, officers, employees, agents, representatives and Related Bodies Corporate comply in all respects with the Recipient's obligations under this clause 12.

12.3 This clause 12 survives for a period of five (5) years following termination or expiry of this agreement.

12.4 The obligations of confidentiality in this clause 12 are not affected by the expiry or termination of this agreement.

13. Limitation of remedies and liability

13.1 Nothing in this agreement limits or excludes the Supplier's liability:

- (a) for death or personal injury caused by its negligence or wilful misconduct or that of its employees, as applicable;
- (b) for fraud or fraudulent misrepresentation by it or its employees, as applicable; or
- (c) where liability cannot be limited or excluded by Applicable Laws.

13.2 Subject to clause 13.1, the Supplier excludes any liability to the Customer, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with this agreement, including any:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of production;
- (d) loss of agreements or contracts;
- (e) loss of business opportunity;
- (f) loss of anticipated savings;
- (g) loss of or damage to goodwill;
- (h) loss of reputation; or
- (i) loss of use or corruption of software, data or information.

13.3 Subject to clause 13.1, the Supplier's aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with this agreement or any collateral contract, whether in contract or tort (including negligence) or otherwise, will in no circumstances exceed 25% of the total charges payable by the Customer to the Supplier under this agreement in that calendar year.

14. Termination

14.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) the other party:
 - (i) is insolvent as defined by section 95A of the Corporations Act as disclosed in its accounts or otherwise;
 - (ii) states that it is insolvent;
 - (iii) is presumed to be insolvent under an Applicable Law (including under section 459C(2) or section 585 of the Corporations Act); or
 - (iv) otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (d) a liquidator or provisional liquidator is appointed to the other party;

- (e) an administrator is appointed to the other party under section 436A, section 436B or section 436C of the Corporations Act;
 - (f) a controller (as defined in section 9 of the Corporations Act) is appointed to the other party or any of its assets;
 - (g) a receiver is appointed to the other party or any of its assets;
 - (h) an application is made to a court for an order, or an order is made, that the other party may be wound up, declared bankrupt or that a provisional liquidator, receiver or receiver and manager be appointed to that other party, and that application is not withdrawn, struck out or dismissed within 15 Business Days of it being made;
 - (i) the other party enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
 - (j) the other party proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
 - (k) the other party it is taken to have failed to comply with a statutory demand under section 459F(1) of the Corporations Act;
 - (l) a notice is issued to the other party under section 601AA or section 601AB of the Corporations Act, and not withdrawn or dismissed within 15 Business Days;
 - (m) the other party ceases to carry on business or threatens to do so, other than in accordance with the terms of this agreement; or
 - (n) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1(d) to clause 14.1(n) (inclusive).
- 14.2 For the purposes of clause 14.1(b) material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:
- (a) a substantial portion of this agreement; or
 - (b) any of the obligations set out in clauses 1,9,12,13,14,18, 20, 25,26.
- over the term of this agreement. In deciding whether any breach is material no regarding will be had to whether it occurs by some accident, mishap, mistake or misunderstanding.
- 14.3 Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than seven (7) days after being notified in writing to make such payment; or
 - (b) there is a change of Control of the Customer.
- 14.4 On termination of this agreement under this clause 14:
- (a) all existing Statements Of Work will terminate automatically;
 - (b) the Customer must immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Works

supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;

- (c) the Supplier must on request return any of the Customer Materials not used up in the provision of the Works; and
- (d) the following clauses will continue in force: clause 1 (Interpretation), clause 6 (Non-solicitation), clause 9 (Intellectual property rights), clause 12 (Confidentiality), clause 13 (Limitation of remedies and liability), this clause 14 (Termination), clause 18 (Waiver), clause 20 (Severability), clause 25 (Multi-tiered dispute resolution procedure) and clause 26 (Governing law and jurisdiction).

14.5 Termination or expiry of this agreement will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

15. Force Majeure

15.1 Neither party is in breach of this agreement or is liable to the other party for any loss incurred by that other party as a direct result of a party (**Affected Party**) failing or being prevented, hindered or delayed in the performance of its obligations under this agreement where such prevention, hindrance or delay results from events, circumstances or causes beyond the Affected Party's control (**Force Majeure Event**).

15.2 If a Force Majeure Event occurs, the Affected Party must notify the other party (**Non-affected Party**) in writing as soon as practicable and that notice must state the particulars of the Force Majeure Event and the anticipated delay.

15.3 On providing the notice in clause 15.2, the Affected Party will be entitled to a reasonable extension of time for performing its obligations under the agreement, however, the Affected Party must continue to use all reasonable endeavours to perform those obligations.

15.4 The performance of the affected obligations must be resumed as soon as practicable after such Force Majeure Event is removed or has ceased.

15.5 If the delay due to the Force Majeure Event continues for sixty (60) days, the Non-affected Party may terminate this agreement immediately on providing notice to the Affected Party.

16. Assignment, novation and other dealings

16.1 The Customer may not assign, novate, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under this agreement without the prior written consent of the Supplier.

16.2 If the Customer breaches clause 16.1, the Supplier may terminate this agreement.

16.3 Clause 16.2 does not affect the construction of any other part of this agreement.

16.4 The Supplier may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this agreement, provided that the Supplier gives prior written notice of such dealing to the Customer.

17. Variation

Subject to clause 7, an amendment or variation of any term of this agreement must be in writing and signed by each party.

18. Waiver

18.1 No party may rely on the words or conduct of any other party as being a waiver of any right,

power or remedy arising under or in connection with this agreement unless the other party or parties expressly grant a waiver of the right, power or remedy. Any waiver must be in writing, signed by the party granting the waiver and is only effective to the extent set out in that waiver.

18.2 Words or conduct referred to in clause 18.1 include any delay in exercising a right, any election between rights and remedies and any conduct that might otherwise give rise to an estoppel.

19. Remedies cumulative

Except as provided in this agreement and permitted by law, the rights, powers and remedies provided in this agreement are cumulative with and not exclusive to the rights, powers or remedies provided by law independently of this agreement.

20. Severability

20.1 If the whole or any part of a provision of this agreement is or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.

20.2 Clause 20.1 does not apply if the severance of a provision of this agreement in accordance with that clause would materially affect or alter the nature or effect of the parties' obligations under this agreement.

21. Entire agreement

This agreement states all the express terms agreed by the parties about its subject matter. It supersedes all prior agreements, understandings, negotiations and discussions in respect of its subject matter.

22. Relationship of the parties

22.1 Nothing in this agreement gives a party authority to bind any other party in any way.

22.2 Nothing in this agreement imposes any fiduciary duties on a party in relation to any other party.

23. Notices

23.1 A notice or other communication to a party under this agreement (**Notice**) must be:

- (a) in writing and in English;
- (b) signed by the sender or a person authorised to sign on behalf of the sender; and
- (c) addressed to that party in accordance with the details provided in the Statement of Work (or any alternative details given in writing to the sending party):

23.2 A Notice must be given by one of the methods set out in the table below.

23.3 A Notice is regarded as given and received at the time set out in the table below. However, if this means the Notice would be regarded as given and received outside the period between 9.00 am and 5.00 pm (addressee's time) on a Business Day (**Business Hours Period**), then the Notice will instead be regarded as given and received at the start of the following Business Hours Period.

Notice delivery method	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address.
By pre-paid post to the nominated address	At 9.00 am (addressee's time) on the second Business Day after the date of posting.
[By email to the nominated email address]	Five (5) hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.]

23.4 A Notice must not be given by electronic means of communication (other than fax or email as permitted).

23.5 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

24. NOT USED

25. Multi-tiered dispute resolution procedure

25.1 A party to this agreement claiming that a dispute has arisen from or in connection with this agreement (**Dispute**) must not commence court or arbitration proceedings arising from or relating to the Dispute, other than a claim for urgent interlocutory relief, unless that party has attempted to resolve the Dispute in accordance with this clause 25.

25.2 Compliance with this clause is a condition precedent to the right of any party to commence litigation or arbitration arising from, or in connection with, the Dispute.

25.3 A party to this agreement claiming that the Dispute has arisen must give a written notice to the other party or parties to this contract in accordance with clause 23 of this agreement, specifying the nature of the Dispute (**Dispute Notice**) together with relevant supporting documents.

25.4 Following service of the Dispute Notice, a responsible manager of the Customer and a manager of the Supplier must meet promptly and attempt in good faith to resolve the Dispute.

25.5 If the manager of the Customer and the manager of the Supplier have for any reason been unable to resolve the Dispute within seven (7) days of service of the Dispute Notice, the Dispute must be referred to a director of the Customer and a director of the Supplier who must attempt in good faith to resolve it.

25.6 If a director of the Customer and a director of the Supplier are for any reason unable to resolve the Dispute within seven (7) days of it being referred to them, the parties will attempt to settle it in good faith by mediation administered by the Australian Disputes Centre (ADC), in accordance with the ADC Guidelines for Commercial Mediation applicable at the time the matter is referred to the ADC and which are deemed to be incorporated into this agreement.

25.7 This clause 25 survives termination or expiry of this agreement.

26. Governing law and jurisdiction

26.1 This agreement is governed by the law in force in Victoria, Australia.

26.2 Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Victoria, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement.

26.3 Each party irrevocably waives any right it has to object to the venue of any legal process in the courts described in clause 26.2 on the basis that:

(a) any proceeding arising out of or in connection with this agreement has been brought in an inconvenient forum; or

(b) the courts described in clause 26.2 do not have jurisdiction.

Schedule 1 Available Services

1. Electrical Fit Out projects,
2. Electrical Services including:
 - a. Power,
 - b. Lighting,
 - c. Data,
 - d. Security systems,
 - e. General Maintenance,
 - f. Regulatory compliance,
3. Other as agreed in writing.