

Uned Electrical & Appliance Services – Terms & Conditions of Trade

<p>1.1 Definitions 1.2 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract. 1.3 "Contractor" means TIA Uned Electrical & Appliance Services, its successors and assigns or any person acting on behalf of and with the authority of Chiu Han-Ping T/A Uned Electrical & Appliance Services. 1.4 "Client" means the person, entities or any person acting on behalf of and with the authority of the Client requesting the Contractor to provide or supply the Works under any proposal, quotation, order, invoice or other documentation; and: (a) if there is more than one Client, is a reference to each Client jointly and severally; and (b) if the Client is a partnership, it shall bind each partner jointly and severally; and (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and (d) includes the Client's executors, administrators, successors and permitted assigns. 1.5 "Works" means all Works (including consultation, manufacturing and/or installation services) 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). 1.6 "Intended Use" means an associated building product and the use thereof, for which the product is intended to be, or is to be used for. 1.7 "Non-Conforming Building Product" means associated building products that are regarded as Non-Conforming for an Intended Use if, when associated with the Works: (a) the product is not, or will not be, safe; or (b) does not, or will not, comply with the relevant regulatory provisions; and (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product. 1.8 "Worksite" means the address nominated by the Client to which Materials are to be supplied by the Contractor. 1.9 "Business Days" means Monday to Friday 7.00am-5.00pm for normal business to be conducted, excluding a Saturday, Sunday or public holiday. Outside of these trading hours will be subject to overtime rates (normal hourly rate plus overtime rate) or penal rates (Public Holiday – double time and a half). 1.10 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details. 1.11 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable/disable the Cookies first by selecting the option to enable/disable provided on the website prior to the Client's purchase. 1.12 "Price" means the Price payable (plus any GST where applicable) for the Works as agreed between the Contractor and the Client in accordance with clause 6 below. 1.13 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).</p>	<p>2.1 Acceptance The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works. 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail. 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties. 2.4 The Client acknowledges that the supply of Works on credit shall not take effect until the Client has completed a credit application with the Contractor and it has been approved with a credit limit established for the account. 2.5 In the event of any invoice of Works requested exceeds the Client's credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse delivery. 2.6 Where the Client is a tenant (and therefore not the owner of the land and premises where Works are to be carried out) then the Client warrants that they have obtained the full consent of the owner for the Contractor to carry out the Works on the owner's land and premises. The Client acknowledges and agrees that they shall be personally liable for full payment of the Price for the Works provided under this Contract and to indemnify the Contractor against any claim made by the owner of the premises (howsoever arising) in relation to the provision of the Works by the Contractor, except where the Client can prove that the negligence of the Contractor when undertaking the Works. Furthermore, the Client agrees that they shall, upon request from the Contractor, provide evidence that: (a) they are the owner of the land and premises upon which the Works are to be undertaken; or (b) where they are not the owner, they have the consent of the owner for the Works to be carried out on the land and premises. 2.7 Unless otherwise specified: (a) all Works shall be carried out during normal business hours (7.00AM – 5.00PM, Mon-Fri); (b) after hours work shall be carried out during 12.00PM, Mon-Fri, and afternoon bookings are from 11.00AM – 17.00PM, Mon-Fri. 2.8 In the event that the Client requests the Contractor to: (a) make an emergency Call-Out for critical equipment after hours or causes the Contractor to cancel or reschedule other work then the Contractor reserves the right to charge a minimum Call-Out fee of four hundred (\$400) Australian Dollars, plus a per kilometre travelled rate, plus any Materials used to undertake the Works unless otherwise agreed between the Contractor and the Client; or (b) provide the Works urgently, that may require the Contractor's staff to work outside normal business hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then the Contractor reserves the right to charge the Client additional labour costs (penalty rates) will apply at time and a half normal rates, unless otherwise agreed between the Contractor and the Client. 2.9 If the Contractor has been requested by the Client to diagnose a fault that requires investigation, disassembly and/or testing (including, but not limited to, Works supplied on weekends), a 7.3 diagnosis fee of ninety nine (\$99.00) Australian Dollars and all costs involved will be charged to the Client irrespective of whether or not the repairs are agreed. 2.10 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.</p>	<p>3. Authorised Representatives 3.1 The Client acknowledges that the Contractor shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to the Contractor, that person shall have the full authority of the Client to order any Works and/or to accept any variation thereto on the Client's behalf. The Client warrants that they will be solely liable to the Contractor for all additional costs incurred by the Contractor (including the Contractor's profit margin) in providing any Works or variations requested thereto by the Client's duly authorised representative.</p>	<p>4. Errors and Omissions The Client acknowledges and accepts that the Contractor shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s). (a) relating to an inadvertent mistake made by the Contractor in the formation and/or administration of this Contract; and/or (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Works. 4.2 In the event of such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of the Contractor; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.</p>	<p>5. Change in Control 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 numbers, change of trustees, 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. 5.1 The Client warrants that they are the sole owner of the Client's interest in the Client's business. 5.2 The Client warrants that they are the sole owner of the Client's interest in the Client's business. 5.3 The Client warrants that they are the sole owner of the Client's interest in the Client's business. 5.4 The Client warrants that they are the sole owner of the Client's interest in the Client's business. 5.5 The Client warrants that they are the sole owner of the Client's interest in the Client's business.</p>	<p>6. Price and Payment At the Contractor's sole discretion the Price shall be either: (a) as indicated on an invoice provided by the Contractor to the Client in respect of Works performed or Materials supplied; or (b) the Price as at the date of delivery of the Works according to the Contractor's current price list; or (c) the Contractor's quoted Price (subject to clause 6.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within fourteen (14) days. The Contractor reserves the right to change the Price: (a) if a variation to the Materials which are to be supplied is requested; or (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to the Worksite, utility access and/or crawl spaces due to structure or any limitations by building or obstacles, prerequisite work by a third party not being completed, inaccurate measurements, plans, specifications or equipment supplied by the Client, availability of off peak electrical supply, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, hard rock or other barriers below the surface, non reinforcing rods in concrete, or hidden pipes and wiring, etc.) which are only discovered on commencement of the Works; or (d) if during the course of the Works, the Materials cease to be available or are delayed from the Contractor's third party suppliers, then the Contractor reserves the right to provide alternative Materials or provide the next available booking time, subject to prior confirmation and agreement of both parties; (e) as a result of an increase in the Contractor's costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Works, increases to the Contractor's cost of labour or Materials or due to relevant industry awards (e.g. Worksite allowances and severance pay), which are outside the control of the Contractor. Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Client shall be required to respond to any variation submitted by the Contractor within ten (10) days. Failure to do so will entitle the Contractor to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion. At the Contractor's sole discretion a non-refundable deposit may be required for the Works. Time for payment for the Works 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; (b) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices; (c) for certain approved Client's, due fourteen (14) days following the date of any invoice; (d) the date specified on any invoice or other form as being the date of 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. Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Contractor. The Contractor may in its discretion allocate any payment received from the Client towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Contractor may re-allocate any payments previously received and allocated, by the absence of any payment allocation by the Contractor, payment will be deemed to be allocated in such manner as preserves the maximum value of the Contractor's Purchase Money Security Interest (as defined in the PPSA) in the Materials. 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. 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 of the Contractor's goods or services, tools etc. required for the Works. 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.</p>	<p>7. Provision of the Works Subject to clause 7.2 it is the Contractor's responsibility to 9.1 ensure that the Works start as soon as it is reasonably possible. 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 Works ready for the Works; or (c) notify the Contractor that the Worksite is ready. At the Contractor's sole discretion, the cost of delivery is included in the Price. 7.2 Any time specified by the Contractor for delivery of the Works is an estimate only and the Contractor will not be liable for any loss or damage to the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that the Contractor is unable to supply the Works 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 at a later time and date, and/or for storage of the Materials. 7.3 The Contractor retains ownership of the Materials under clause 15: 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</p>	<p>have taken place immediately at the time that 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); or (b) where the Contractor supplies 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. 7.4 Notwithstanding the provisions of clause 8.1 if the Client specifically requests 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. The Contractor shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Contractor accepts responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information. The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical connections (including, but not limited to, metal boxes, switches, outlets, and cable) are of suitable capacity to handle the Materials once installed. If, for any reason (including but not limited to, the structure not being watertight, the discovery of asbestos, defective or unsafe wiring, or dangerous access etc.) the Contractor reasonably forms the opinion that the Client's property is not suitable for the installation of Materials to proceed then the Contractor shall be entitled to delay installation of the Materials (in accordance with clause 7.2) until the Contractor is satisfied that it is safe for the installation to proceed. The Contractor may in agreement with the Client bring the property up to a standard suitable for installation to proceed but all such Works shall be at the Client's expense and shall be treated as a variation and be charged for in addition to the Price. In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify the Contractor immediately upon any proposed changes. The Client agrees to indemnify the Contractor against any additional costs incurred with such a relocation of electrical wiring. All such variations shall be invoiced in accordance with clause 6.2. Where the Contractor gives advice or recommendations to the Client, or the Client's agent, regarding the suitability of the Worksite for the installation of the Materials or similar works and such advice or recommendations are not acted upon then the Contractor shall require the Client or their agent to authorise commencement of the Works in writing. The Contractor shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works. The Client acknowledges and accepts that: (a) where the Contractor has performed temporary repairs that: (i) the Contractor offers no guarantee against the recurrence of the initial fault, or any further damage caused; and (ii) the Contractor will immediately advise the Client of the fault and shall provide the Client with an estimate for the cost of any additional costs incurred with such a relocation of electrical wiring. All such variations shall be invoiced in accordance with clause 6.2. (b) the Contractor is only responsible for components that are replaced by the Contractor and does not at any stage accept any liability in respect of previous goods and/or services supplied by any other third party that subsequently fail and found to be the source of the failure; and (c) the Contractor is not responsible or liable for any defect in other appliances or power points as a coincidence of the Contractor installing the Materials; and (d) any defects in the Materials or appearing in the Works after completion due to the Client or any third party using any items such as tools, structure or systems which the Contractor's Materials are not intended to be used for, or by workmanship not performed by the Contractor, shall not be covered by any applicable warranty pertaining to the Materials; and (e) it is the Client's responsibility to: (i) insure any equipment partly or completely installed on the Worksite against theft of damage; and (ii) uninstall any custom built, wall mount or any other structure around the Client's appliances; (f) the Contractor shall not be liable for any loss or damage caused in accessing the work area beyond reasonable control of the Contractor (including, without limitation, to ceiling tiles, any partition, face brickwork and rendered masonry services) which the Contractor may have to break into or disturb in performance of the Works), unless due to the negligence of the Contractor; and (g) under no circumstances, will the Contractor handle removal of asbestos product. In the event asbestos (or other hazardous material) is discovered on the Worksite: (i) the Contractor shall suspend the Works; and (ii) the Client shall be fully responsible for the resolution of any resulting problems; and (iii) any additional cost incurred by the Contractor shall be added to the Price under clause 6.2; and (h) Materials supplied may: (i) exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. The Contractor will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur; and (ii) expand, contract or distort as a result of exposure to heat, cold, weather; and (iii) be marked or stain if exposed to certain substances; and (iv) be damaged or disfigured by impact or scratching. Where the Contractor's usual tools, tools etc. required for the Works to be stored at the Worksite, the Client shall supply the Contractor a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.</p>	<p>8. Inspection Electrical inspections will be carried out in accordance with the requirements of AS/NZS 3000:2018 (a copy of these standards may be obtained from Standards Australia). The purpose of the inspection is to provide advice about the condition of the property in regards to electrical infrastructure of the property, as outlined in the scope of this Contract. All inspections will be a visible non-invasive visual inspection and will be limited to those areas and sections of the property to which reasonable access (see clauses 9.3 and 9.4 below) is both available and permitted on the date and time of inspection. An invasive inspect will only be performed under a separate contract between the parties. The inspection will not involve any invasive inspection, including cutting, breaking apart, dismantling, removing or moving objects (including but not limited to, light fittings, power outlets, exhaust fans, ceiling wall and ceiling fans, ceiling, foliage coverings, debris, roof insulation, skirting, slat, floor or wall coverings, switches, fixtures, floors, pavers, furnishings, appliances or personal items). The Contractor cannot see or inspect inside walls, between floors, inside skirting or inside the eaves, behind stored goods in cupboards or in other areas that are concealed or obstructed. Insulation in the roof may conceal ceiling timbers and make the inspection unsafe. The Contractor will not dig, gouge, force or perform any other intrusive procedures. The Client acknowledges that if the property to be inspected is occupied during the inspection, the Client may be concealing electrical usage or problems which may only be revealed when the items are moved or removed; in some cases, the concealment may be deliberate. If the Client is the purchaser (or potential purchaser) and not the owner of the property to be inspected then they should obtain a statement from the owner as</p>	<p>to any existing electrical problems that is known to them, and what (if any) remedial actions have been carried out to the property. It is important to obtain copies of any paperwork issued and the details of any repairs carried out; ideally the information should be provided to the Contractor prior to the inspection being carried out. 10. Report The Report: (a) supersedes all previous reports, information and opinions provided to the inspection of the property; (b) is prepared on the basis that the Client has provided the Contractor with a full and frank disclosure of all information and other material facts which may affect the preparation of the Report. The Contractor accepts no responsibility or liability whatsoever; (c) if the Client's full disclosure has been made to the Contractor; and (d) for errors in any information obtained or statements from the Client or other applicable parties, or any matter outside the scope of the Works to be provided by the Contractor; (e) provided by the Contractor will be a factual statement of the inspection carried out within stated limitations (as per clause 9) and with opinions given in good faith as far as seen as accessible at the time of the inspection. It carries with it no guarantee against latent defects or suitability of the property for any particular purpose, nor any guarantee of compliance with any particular national or state requirement, regulation, law, standard or code (subject to clause 9.1), unless specifically requested as a special instruction and confirmed in the text of the Report. 11. Access The Client shall ensure that the Contractor has clear and free access to the Worksite or unit at all times to enable them to undertake the Works. At the Contractor's sole discretion, should the Client fail to comply with this clause, then a call out fee may apply and shown as a variance in accordance with clause 6.2. The Contractor shall not be liable for any loss or damage to the Worksite or unit (including, without limitation, should the Client request the Contractor to remove or adjust obstacles to access the unit or Worksite, damage to, flooring, water damage, pathways, driveways and concrete or paved or grassed areas), unless due to the negligence of the Contractor. The Client's responsibility to provide the Contractor, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities as required. 11.1 Worksite Inductions (a) in the event the Client requires an employee or subcontractor of the Contractor to undertake a Worksite induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Client shall be liable to pay the Contractor's standard (and/or overtime, if applicable) hourly labour rate; or (b) where the Contractor is in control of the Worksite, the Client and/or the Client's third party contractors must initially carry out the Contractor's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works will be by appointment only and unless otherwise agreed, in such an event the Client's third party contractors acting on behalf of the Client must at all times be accompanied by the Contractor. 12. Underground Locations Prior to the Contractor commencing the Works the Client must advise the Contractor of the precise location of all underground services (including the Worksite) and mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, air pumping mains, and any other services that may be on the Worksite. 12.1 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 12.1. 13. Termite Protection In the event of discovery of termites at the time of quoting or where the Works may be subject to an area that has the potential to be susceptible to termites, then the Contractor is obliged to inform the Client prior to commencement of any of the prescribed Works or the requirements to comply with the Building Code of Australia ("BCA") requirements of Part 3.1.3 of Volume Two which covers the BCA Deemed-to-Satisfy Provisions for termite risk management for Class 1 and 10 buildings (together with any cost implications). The intent of these requirements under the BCA is to provide a termite management system that detects termites from gaining entry to a building via a concealed route. The BCA requirements apply where: (a) the building is constructed in an area where subterranean termites are known to present a potential risk of attack; and (b) a primary element of the building is subject to termite attack (i.e. the building element does not consist of, or a combination of, any of the following material: (i) Steel, aluminium and other metals; (ii) Concrete; (iii) Masonry; (iv) Wire-reinforced cement; (v) Timber – naturally termite resistant (in accordance with AS 3660.1); and (vi) Timber – preservative treated. 13.1 Regular maintenance and monitoring is very important to ensure the effectiveness of a termite management system. The Contractor recommends regular inspections, at least every twelve (12) months and to have a licensed pest controller inspect and report on the Client's property. The Contractor does not accept any form of liability in the event that the Client chooses not to follow the Contractor's recommendations outlined under this clause 13, once the Works have been completed. 14. Compliance with Laws 14.1 The Client and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any work health and safety (WHS) laws relating to building construction sites and any other relevant safety standards or legislation. 14.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works. 14.3 Both parties acknowledge and agree: (a) to comply with the National Construction Code of Australia (NCC) (Building Code of Australia) (Sched 2 of the Building Code of Australia) (Sched 2 of the Building Code of Australia) (Sched 2 of the Building Code of Australia) in respect of all workmanship and building products to be supplied during the course of the Works; and (b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable. 14.4 Where the Client has supplied materials for the Contractor to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose and is for their Intended Use, quality and any faults inherent in those materials. However, if in the Contractor's opinion, it is believed that the materials supplied are Non-Conforming products as per state regulations, then the Contractor shall be entitled, without prejudice, to stop the Works until the appropriate conforming materials are sourced and all costs associated with such a change to the plans will be invoiced in accordance with clause 6.2. 14.5 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with all relevant Australian and New Zealand Wiring standards. 14.6 If during the course of installation when the Works are being conducted within and around switchboards that if the same is</p>
---	--	--	---	--	--	--	---	---	--

Uned Electrical & Appliance Services – Terms & Conditions of Trade

<p>found defective or deemed to be unsafe by the Contractor, then the Contractor shall notify the Client immediately. The power if isolated will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations. The Client accepts and agrees that any costs associated with the rectification Works including any Materials and labour shall be to the Client's account.</p> <p>14.7 Any live Works or Works undertaken near live conductors where it is safe to do so shall be dealt with in accordance with Australian and New Zealand Wiring standards being "Safe working on Low Voltage" (including, but not limited to, the Commonwealth and Statutory Acts and Work Place Regulations". The Contractor's live Works procedures are designed to eliminate risk of injury to the Contractor's employees, damage to the Client's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Works for which additional charges may be applicable. This shall be invoiced in accordance with clause 6.2.</p>	<p>as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Contractor to inspect the Materials or to review the Works provided.</p> <p>18.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).</p> <p>18.3 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>18.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.</p> <p>18.5 If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.</p>	<p>Cancellation 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 or offensive behaviour) under these terms and conditions the Contractor may suspend or terminate the supply of Works to the Client. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.</p> <p>23.2 The Contractor may cancel any contract with which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>23.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).</p>	<p>received or been tendered the whole of any monies owing to it by the Client, the Contractor shall have, until all monies owing to the Contractor are paid:</p> <p>(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.</p> <p>The lien of the Contractor shall continue despite the commencement of proceedings, or judgment for any monies owing to the Contractor having been obtained against the Client.</p>
<p>15. Title 15.1 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.</p> <p>15.2 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.</p>	<p>18.6 If the Contractor is required to replace any Materials under this clause or the CCA, but is unable to do so, the Contractor may refund any money the Client has paid for the Materials.</p> <p>18.7 If the Contractor is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then the Contractor may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Client which were not defective.</p>	<p>23.4 The Contractor may cancel any contract with which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>23.5 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).</p>	<p>24. Service of Notices Any written notice given under this Contract shall be deemed to have been given and received: (a) by handing the notice to the other party, in person; (b) by leaving it at the address of the other party as stated in this Contract; (c) by sending it by registered post to the address of the other party as stated in this Contract; (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission; (e) if sent by email to the other party's last known email address.</p>
<p>15.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 15.1: (a) 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 Client warrants and conditions by 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;</p>	<p>18.8 The Contractor's liability for any defect or damage in the Materials is: (a) limited to the value of any express warranty or warranty card provided to the Client by the Contractor at the Contractor's sole discretion; (b) limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Materials; (c) otherwise negated absolutely.</p> <p>18.9 Subject to this clause 18, returns will only be accepted provided that: (a) the Client has complied with the provisions of clause 18.1; and (b) the Contractor has agreed that the Materials are defective; and (c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.</p>	<p>23.6 The Contractor may cancel any contract with which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>23.7 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).</p>	<p>25. Trusts If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Contractor may have notice of the Trust, the Client covenants with the Contractor as follows: (a) the Contractor extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund; (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity; (c) the Client will not without consent in writing of the Contractor (the Contractor will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events: (i) the removal, replacement or retirement of the Client as trustee of the Trust; (ii) any alteration to or variation of the terms of the Trust; (iii) any advancement or distribution of capital of the Trust; or (iv) any resettlement of the trust property.</p>
<p>16. Personal Property Securities Act 2009 ("PPSA") 16.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA. 16.2 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 and/or collateral (account) – being a monetary obligation of the Client to the Contractor for Works – that have previously been supplied and that will be supplied in the future by the Contractor to the Client.</p>	<p>18.10 Notwithstanding clauses 18.1 to 18.9 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; (b) the Client using the Materials for any purpose other than that for which they were designed; (c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user; (d) interference with the Works 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.</p> <p>18.11 In the case of second hand Materials, 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, other than otherwise 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 18.11.</p>	<p>23.8 The Contractor may cancel any contract with which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>23.9 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).</p>	<p>26. Dispute Resolution Where a dispute arises between the Client and the Contractor, it will be referred to the Contractor and Client or the Client's representative for resolution. The Contractor and Client agree to solve any disputes amicably and in good faith and on a without prejudice basis and not begin court proceedings or mediation or arbitration proceedings until the dispute resolution channel provided in this clause has been exhausted. The dispute resolution process will be as follows: (a) a party may give notice to the other party about the nature of the dispute (a "Dispute Notice") and the parties will seek to reach settlement amongst themselves within ten (10) Business Days of receipt of the Dispute Notice ("Negotiation Period"). Should the parties fail to determine the dispute within the Negotiation Period, the parties may seek within a further period of ten (10) Business Days (or such longer period as agreed in writing between the parties) to reach agreement on: (i) a mediation procedure out of courts and arbitration proceedings (such as mediation, reconciliation or expert determination process should initially be dealt with by the Australian Commercial Disputes Centre ("ACDC") in accordance with the Mediation Guidelines); (ii) the steps to be taken by each party and the timing of those steps; (iii) who will be the independent person/body conducting the mediation process and who will pay for such independent person/body's professional fees and expenses; and (b) if the parties fail to solve the entire dispute or fail to reach agreement on any of the matters described above within twenty (20) Business Days (or any other period agreed in writing) from the date of the Dispute Notice, either the Contractor or the Client may commence court proceedings or arbitration proceedings to resolve the dispute.</p>
<p>16.3 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 16.3(a)(i) or 16.3(a)(ii); (b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby; (c) 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 and/or collateral (account) in favour of a third party without the prior written consent of the Contractor; (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.</p>	<p>18.12 The Contractor may in its absolute discretion accept non-defective Materials for return in which case the Contractor may deduct the Materials for handling fees of up to five percent (5%) of the value of the returned Materials plus any freight costs.</p> <p>18.13 Notwithstanding anything contained in this clause if the Contractor is required by a law to accept a return then the Contractor will only accept a return on the conditions imposed by that law.</p> <p>18.14 Subject to clause 18.1, customised, or non-stock items or Materials made or ordered to the Client's specifications are not acceptable for credit or return.</p> <p>18.15 For Materials not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Materials. The Contractor shall not be bound by or responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.</p>	<p>23.10 The Contractor may cancel any contract with which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>23.11 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).</p>	<p>27. Building and Construction Industry Security of Payments Act 1999 At the Contractor's sole discretion, if there are any disputes or claims for unpaid Works and/or Materials then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply. Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.</p>
<p>16.4 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.</p> <p>16.5 The Client hereby waives its rights to receive notices under sections 96, 115, 121(4), 130, 132(3)(d) and 132(4) of the PPSA. The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>16.7 The Client agrees in writing by the Contractor, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.</p> <p>16.8 The Client shall unconditionally ratify any actions taken by the Contractor under clauses 16.3 to 16.5.</p> <p>16.9 Subject to any express provisions to the contrary (including those contained in this clause 16), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p>	<p>19. Intellectual Property 19.1 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. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Contractor.</p> <p>19.2 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 Contractor's work. The Client agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.</p> <p>19.3 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.</p>	<p>23.12 The Contractor may cancel any contract with which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>23.13 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).</p>	<p>28. General The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party'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. The Contractor may licence and/or assign any contract to which they apply shall be governed by the laws of New South Wales, the state in which the Contractor has its principal place of business, and are subject to the jurisdiction of the courts in Penrith, New South Wales. Subject to clause 18, 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). The Contractor may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent. The Client cannot licence or assign without the written approval of the Contractor. The Contractor may elect to subcontract out any part of the Works that shall be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor. The Client agrees that the Contractor may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Contractor to provide Works to the Client. 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. Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.</p>
<p>17. Security and Charge 17.1 In consideration of the Contractor agreeing to supply the Materials, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any monies).</p> <p>17.2 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.</p> <p>17.3 The Client irrevocably appoints the Contractor and each director of the Contractor as the Contractor's and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Client's behalf.</p>	<p>20. Default and Consequences of Default 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 before any judgment. 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 disbursement fees). Further to any other rights or remedies the Contractor may have under this Contract, if a Client has made payment to the Contractor, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 20 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract. 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 which falls due; (b) the Client has exceeded any applicable credit limit provided by the Contractor; (c) 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; (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p>	<p>23.14 The Contractor may cancel any contract with which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>23.15 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).</p>	<p>29. Unpaid Seller's Rights 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</p>
<p>18. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA) 18.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify the Contractor in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works</p>	<p>20.1 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 before any judgment. 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 disbursement fees). Further to any other rights or remedies the Contractor may have under this Contract, if a Client has made payment to the Contractor, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 20 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract. 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 which falls due; (b) the Client has exceeded any applicable credit limit provided by the Contractor; (c) 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; (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p>	<p>23.16 The Contractor may cancel any contract with which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>23.17 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).</p>	<p>29.1 The Contractor may cancel any contract with which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>29.2 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).</p>