

Charlie's Electrical Services Pty Limited – Terms & Conditions of Trade

1.	Definitions		other material (including, but not limited to, rock and shale) then reasonable extra cost will be added to the Price.	9.7	The Client acknowledges and accepts that:
1.1	"CES" means Charlie's Electrical Services Pty Limited, its successors and assigns or any person acting on behalf of and with the authority of Charlie's Electrical Services Pty Limited.	7.			(a) where CES has performed temporary repairs that:
1.2	"Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting CES to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:	7.1	Price and Payment At CES' sole discretion, the Price shall be either:		(i) CES offers no guarantee against the recurrence of the initial fault, or any further damage caused; and
	(a) if there is more than one Client, is a reference to each Client jointly and severally; and		(a) as indicated on invoices provided by CES to the Client in respect of Works performed or upon placement of an order for the Materials; or		(ii) CES will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair required.
	(b) if the Client is a partnership, it shall bind each partner jointly and severally; and		(b) the Price as at the date of delivery of the Works according to CES' current price list, as previously disclosed to the Client upon the Client's placement of an order for Materials; or		(b) CES is only responsible for components that are replaced by CES 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;
	(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and		(c) CES' quoted Price (subject to clause 7.2) which shall be binding upon CES provided that the Client shall accept CES' quotation in writing within thirty (30) days.		(c) CES shall not be responsible or liable for any defect in other appliances or power points as a coincidence of CES installing the Materials;
	(d) includes the Client's executors, administrators, successors and permitted assigns.	7.2	CES reserves the right to change the Price:		(d) any defects in the Materials or appearing in the Works after completion due to the Client or any third party using any items that overloads the structure or system to which CES' Materials are installed or connected to, or by workmanship not performed by CES, shall not be covered by any applicable warranty pertaining to the Materials;
1.3	"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.		(a) if a variation to the Materials which are to be supplied is requested; or		(e) it is the Client's responsibility to insure any equipment partly or completely installed on the Worksite, against theft or damage.
1.4	"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.		(b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or		(f) under no circumstances, will CES handle removal of asbestos product. In the event asbestos (or other hazardous material) is discovered on the Worksite:
1.5	"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 on the background when using CES' 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 making enquiries via the website.		(c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the Worksite and/or crawl spaces, obscured building/Worksite defects, incorrect measurements, plans and/or specifications provided by the Client, as a result of delays from third party suppliers, safety considerations (discovery of asbestos, etc.), prerequisite work by any third party not being completed, lack of required utilities, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, additional excavation required, hard rock barriers below the surface, iron reinforcing rods in concrete or hidden pipes, etc.) which are only discovered on commencement or during the course of the Works; or		(i) CES shall suspend the Works;
1.6	"GST" means Goods and Services Tax as defined within the 'A New Tax System (Goods and Services Tax) Act 1999' (Cth).	7.3	(d) as a result of an increase in CES' costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Works, increases to CES in the cost of Materials, labour overheads by virtue of acceleration of the agreed work schedule or otherwise or due to relevant industry awards (e.g. Worksite allowance and severance pay), which are agreed to between the Client and CES.	9.8	(ii) the Client shall be fully responsible for the resolution of any resulting problems; and
1.7	"Intended Use" means a building product and the use thereof, for which the building product is intended to be, or is reasonably likely to be, associated with a building.				(iii) any additional cost incurred by CES shall be added to the Price under clause 7.2.
1.8	"Non-Conforming Building Product" means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:				(g) Materials supplied may exhibit variations in shade, colour, texture, surface and finish, which may:
	(a) the product is not, or will not be, safe; or	7.4			(i) fade or change colour over time;
	(b) the product does not, or will not, comply with the relevant regulatory provisions; or				(ii) expand, contract or distort as a result of exposure to heat, cold, weather;
	(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.	7.5			(iii) mark or stain if exposed to certain substances; and
1.9	"Price" means the Price payable (plus any GST where applicable) for the Works as agreed between CES and the Client in accordance with clause 7 below.				(iv) be damaged or disfigured by impact or scratching.
1.10	"Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by CES 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).				CES will make every effort to match variations in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
1.11	"Worksite" means the address nominated by the Client to which the Materials/Works are to be supplied by CES.				Worksite Access and Condition The Client shall ensure that CES has clear and free access to the Worksite at all times to enable them to undertake the Works (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Materials). CES shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of CES.
2.	Acceptance				It is the Client's responsibility to provide CES, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities.
2.1	The parties acknowledge and agree that:	7.6			Where CES requires that Materials, tools etc. required for the Works be stored at the Worksite, the Client shall supply CES 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.
	(a) they have read and understood the terms and conditions contained in this Contract; and	7.7			The Client agrees to be present at the Worksite when and as reasonably requested by CES and its employees, contractors and/or agents.
	(b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Works.				Worksite Inductions (a) In the event the Client requires an employee or sub-contractor of CES 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 CES' standard (and/or overtime, if applicable) hourly labour rate; or
2.2	In the event of any inconsistency between the terms and conditions of this Contract and any other prior agreement or schedule that the parties have entered into, the terms of this Contract shall prevail.	7.8			(b) where CES is in control of the Worksite, the Client and/or the Client's third-party contractors must initially carry out CES' Health & Safety induction before being permitted to access the Worksite. CES 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 and/or third party acting on behalf of the Client must at all times be accompanied by CES.
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.				Hidden Services Prior to CES commencing any work the Client must advise CES of the precise location of all hidden services in the Worksite and clearly mark the same. The 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, oil pumping mains, and any other services that may be on the Worksite.
2.4	The Client acknowledges and accepts that the supply of Works on credit shall take effect until the Client has completed a credit application with CES and it has been approved with a credit limit established for the account.				Whilst CES will take all care to avoid damage to any hidden services the Client agrees to indemnify CES in respect of all and any liability claims, loss, damage, costs and claims as a result of damage to services not precisely located and notified as per clause 11.1.
2.5	In the event that the Client's request for supply of Works exceeds the Client's credit limit and the account exceeds the payment terms, CES reserves the right to refuse delivery.	7.9			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 CES is obligated to inform the Client prior to commencement of any of the prescribed Works in compliance 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 deters termites from gaining entry to a building via a concealed route.
2.6	Any advice, recommendation, information, assistance or service provided by CES in relation to Materials or Works supplied is given in good faith to the Client, or the Client's agent and is based on CES' own knowledge and experience and shall be accepted without liability on the part of CES. Where such advice or recommendations are not acted upon then CES shall require the Client or their agent to authorise commencement of the Works in writing, in accordance with any written agreement for any damages or losses that occur after any subsequent commencement of the Works. Accordingly, CES offers no warranty in regard to the aforementioned.				The BCA requirements apply where:
2.7	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 CES 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 of the Works provided under this Contract and to indemnify CES against any claim made by the owner of the premises (howsoever arising) in relation to the provision of the Works by CES, except where such claim has arisen because of the negligence of CES when undertaking the Works. Furthermore, the Client agrees that they shall, upon request from CES, provide evidence that:	8.			(a) the BCA requirements apply where:
	(a) they are the owner of the land and premises upon which the Works are undertaken; or	8.1			(a) present a potential risk of attack, and
	(b) where they are a tenant, that they have the consent of the owner for the Works to be carried out on the land and premises.	8.2			(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:
2.8	This Contract (and Price) is based on CES performing the Works at ordinary time rates for pay for labour and on a thirty-eight (38) hour working week. CES' standard working hours are between 7:00am to 3:30pm, Monday to Friday (excluding weekends and public holidays), except if otherwise agreed in writing by both parties. Should the Client require CES to perform the Works outside the standard working hours, which would oblige CES to pay labour at rates in excess of ordinary time rates for pay, then the cost of such statutory charges shall be treated as a variation under clause 7.2, and added to the Price.	8.3			(i) Steel, aluminium and other metals;
2.9	IF CES has been requested by the Client to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.	8.4			(ii) Concrete;
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.				(iii) Masonry;
3.	Authorised Representatives				(iv) Fibre-reinforced cement;
3.1	The Client acknowledges that CES shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to CES, that person shall have the full authority of the Client to order any Works and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to CES for all additional costs incurred by CES (including CES' profit margin) providing any Works or variations requested thereto by the Client's duly authorised representative.	9.			(v) naturally termite resistant (in accordance with AS 3660.1);
4.	Errors and Omissions	9.1			(vi) Timber – preservative treated.
4.1	The Client acknowledges and accepts that CES shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s).				Regular maintenance and monitoring is very important to ensure the effectiveness of a termite management system. CES recommends regular inspections, at least every twelve (12) months and to have a licenced pest controller inspect and report on the Client's property. CES does not accept any form of liability in the event that the Client chooses not to follow CES' recommendations outlined under this clause 12, once the Works have been completed.
	(a) resulting from an inadvertent mistake made by CES in the information and/or administration of this Contract; and/or				Compliance with Laws The Client and CES 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 laws (WHs) or any other relevant safety standards or legislation pertaining to the Works.
4.2	(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by CES in respect of the Works.				Both parties acknowledge and agree:
	In circumstances where the Client is required to place an order for Materials, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Materials (whether they are made to order or Materials or not) ("Client Error"). The Client must pay for all Materials it orders from CES notwithstanding that such Materials suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take delivery of such Materials. CES is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.	9.2			(a) to comply with the National Construction Code of Australia (NCC) and the Building Products (Safety) Act 2017, in respect of all workmanship and building products to be supplied during the course of the Works; and
5.	Change in Control				(b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
5.1	The Client shall give CES not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number(s), change of trustees, or business practice). The Client shall be liable for any loss incurred by CES as a result of the Client's failure to comply with this clause.	9.3			Where the Client has supplied products for CES to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in CES' opinion, it is believed that the products supplied are Non-Conforming products and will not conform with state and/or territory regulations, then CES shall be entitled, without prejudice, to halt the Works until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be involved in accordance with clause 7.2.
6.	Additional Costs	9.4			The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
6.1	Unless specified otherwise, in writing, no allowance has been made for the following, and such costs to CES shall be added to the Price:				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.
	(a) charges in connection with the Works which are levied by Distribution Network Supply Providers (DNSP), or other statutory authorities; and	9.5			If during the course of installation when the Works are being conducted within and around the neighbourhood and if the same is found defective or deemed to be unsafe by CES, then CES 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.
	(b) the cost of trench excavation and equipment hire. Where this is included in the Price, it shall mean the Works being performed in soil or clay, and the Worksite to be free of rock. Should it be necessary for CES to excavate in	9.6			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 Electrical Installations, relevant Commonwealth and Statutory Acts and Work Place Regulations". CES' live Works procedures are designed to eliminate risk of injury to CES' 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 involved in accordance with clause 7.2.

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14.	Title	(b)	the Client using the Materials for any purpose other than that for which they were designed;	(e)	details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
14.1	CES and the Client agree that ownership of the Materials shall not pass until:	(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;	(f)	advice of consumer credit defaults (provided CES is a member of an approved OAC (External Dispute Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and CES has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
14.2	(a) the Client has met all of its other obligations to CES;	(d)	interference with the Works by the Client or any third party without CES prior approval;	(g)	information that, in the opinion of CES, the Client has committed a serious credit infringement; and/or
14.3	Receipt by CES of any form of payment or cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised. It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 14.1:	(e)	the Client failing to follow any instructions or guidelines provided by CES; and/or	(h)	advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
	(a) the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to CES on request;	(f)	fear wear and tear, any accident, or act of God.		The Client shall have the right to request (by e-mail) from CES:
	(b) the Client holds the benefit of the Client's insurance of the Materials on trust for CES and must pay to CES the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;		Notwithstanding anything contained in this clause if CES is required by a law to accept a return then CES will only accept a return on the conditions imposed by that law. Subject to clause 17.1, customised, or non-stocklist items or Materials made or ordered to the Client's specifications are not acceptable for credit or return.	(a)	a copy of the Personal Information about the Client retained by CES and the right to request that CES correct any incorrect Personal Information; and
	(c) the production of these terms and conditions by CES shall be sufficient evidence of CES' rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with CES to make further enquiries;	17.11		(b)	that CES does not disclose any Personal Information about the Client for the purpose of direct marketing.
	(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 CES and must pay or deliver the proceeds to CES on demand;	17.12			CES will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
	(e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of CES and must sell, dispose of or return the resulting product to CES as it so directs;	18.	Intellectual Property	21.9	The Client can make a privacy complaint by contacting CES via e-mail. CES will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au .
	(f) unless the Materials have become fixtures the Client irrevocably authorises CES to enter any premises where CES believes the Materials are kept and recover possession of the Materials;	18.1	Where CES 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 CES, and shall only be used by the Client at CES' discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of CES.	21.10	
	(g) CES may recover possession of any Materials in transit whether or not delivery has occurred;	18.2	The Client warrants that all designs, specifications or instructions given to CES will not cause CES to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify CES against any action taken by a third party against CES in respect of any such infringement.	21.11	
	(h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of CES; and	18.3	The Client agrees that CES may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which CES has created for the Client.		
	(i) CES may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.	19.	Default and Consequences of Default	22.	Unpaid Seller's Rights
		22.1	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 CES' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.	22.1	Where the Client has left any item with CES for repair, modification, exchange or for CES to perform any other service in relation to the item and CES has not received or been tendered the whole of any monies owing to it by the Client, CES shall have, until all monies owing to CES are paid:
		19.2	If the Client owes CES any money, the Client shall indemnify CES from and against all costs and disbursements:		(a) a lien on the item; and
			(a) incurred; and/or	(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.
			(b) which would be incurred and/or		The lien of CES shall continue despite the commencement of proceedings, or judgment for any monies owing to CES having been obtained against the Client.
			(c) for which by the Client would be liable;	22.2	
15.	Personal Property Securities Act 2009 ("PPSA")		in regard to legal costs on a solicitor and own client basis incurred in exercising CES' rights under these terms and conditions, internal administration fees, CES' Contract fees owed for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.	23.	Service of Notices
15.1	In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.		Further to any other rights or remedies CES may have under this Contract, if a Client has made payment to CES, 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 CES under this clause 19 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.	23.1	Any written notice given under this Contract shall be deemed to have been given and received:
15.2	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 CES for Works – that have previously been supplied and that will be supplied in the future by CES to the Client. The Client undertakes to:	19.3		(a)	by handing the notice to the other party, in person;
15.3	(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 CES may reasonably require to:		Without prejudice to CES' other remedies at law CES shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to CES shall, whether or not due for payment, become immediately payable if:	(b)	by leaving it at the address of the other party as stated in this Contract;
	(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;	19.4	(a) any money payable to CES becomes overdue, or in CES' opinion the Client will be unable to make a payment when it falls due;	(c)	by sending it by registered post to the address of the other party as stated in this Contract;
	(ii) register any other document required to be registered by the PPSA; or		(b) the Client has exceeded any applicable credit limit provided by CES;	(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; or
	(iii) correct a defect in a statement referred to in clause 15.3(a)(i) or 15.3(a)(ii).		(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; or	(e)	if sent by email to the other party's last known email address.
	(b) indemnify, and upon demand reimburse, CES 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;		(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.		Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
	(c) not register a financing change statement in respect of a security interest without the prior written consent of CES;	20.	Cancellation	24.	Trusts
	(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 CES; and	20.1	Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("the Breaching Party") the other party may suspend or terminate the supply or purchase of Materials and/or Works to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has ended its relationship with the other under this clause.	24.1	If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not CES may have notice of the Trust, the Client covenants with CES as follows:
15.4	CES 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.	20.2	If CES, due to reasons beyond CES' reasonable control, is unable to deliver any Materials and/or Works to the Client, CES may cancel any Contract to which these terms and conditions apply or cancel delivery of Materials and/or Works at any time before the Materials and/or Works are delivered by giving written notice to the Client.		(a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
15.5	The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.		On giving such notice CES shall repay to the Client any money paid by the Client for the Materials and/or Works. CES shall not be liable for any loss or damage whatsoever resulting from such cancellation.	(b)	the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be 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, the trustees and 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;
15.6	The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.		The Client may cancel delivery of the Materials and/or Works by written notice served within forty-eight (48) hours of placement of the order. If the Client cancels delivery in accordance with this clause 20.3, the Client will not be liable for the payment of any costs of CES, except where a deposit is payable in accordance with clause 7.4.	(c)	the Client will not during the term of the Contract without consent in writing of CES (CES will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
15.7	Unless otherwise agreed to in writing by CES, the Client waives its right to receive a written statement under section 157 of the PPSA.	20.3	However, cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.	(i)	the removal, replacement or retirement of the Client as trustee of the Trust;
15.8	The Client shall unconditionally ratify any actions taken by CES under clauses 15.3 to 15.5.	20.4		(ii)	any alteration to or variation of the terms of the Trust;
15.9	Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.			(iii)	any advancement or distribution of capital of the Trust; or
				(iv)	any resettlement of the trust fund or trust property.
16.	Security and Charge			25.	Building and Construction Industry Security of Payments Act 1999
16.1	In consideration of CES agreeing to supply the Materials and/or provide its Works, the Client grants CES a security interest by way of a floating charge (registerable by CES pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client or owned by the Client in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Materials and/or Works under this Contract and/or for the purpose to appoint a receiver to the Client in accordance with the Corporations Act 2001 (Cth).	21.	Privacy Policy	25.1	At CES' sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
16.2	The Client indemnifies CES from and against all CES' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising CES' rights under this clause.	21.1	All emails, documents, images or other recorded information held or used by CES is Personal Information, as defined and referred to in clause 21.3, and therefore considered Confidential Information. CES acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 (the "Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). CES acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by CES that may result in serious harm to the Client, CES will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.	25.2	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.
16.3	In the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 14.1, 15.2 and 16.1 as applicable, is deemed insufficient by CES to secure the repayment of monies owed by the Client to CES, the Client hereby grants CES a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).	21.2	Notwithstanding clause 21.1, privacy limitations will extend to CES in respect of Cookies where the Client utilises CES' website to make enquiries. CES agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's IP address, browser, email client type and other similar details;	26.	General
17.	Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")		(a) IP address, browser, email client type and other similar details;	26.1	Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
17.1	The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify CES 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 as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow CES to inspect the Materials or to review the Works provided. 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).	21.3	(b) tracking website usage and traffic; and	26.2	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, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
17.2	CES acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.	21.4	(c) reports are available to CES when CES sends an email to the Client, so CES may collect and review that information ("collectively Personal Information").	26.3	These terms and conditions and any Contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts in Penrith, New South Wales. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).
17.3	Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, CES makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. CES' liability in respect of these warranties is limited to the fullest extent permitted by law.	21.5	If the Client consents to CES' use of Cookies on CES' website and later wishes to withdraw that consent, the Client may manage and control CES' privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.	26.4	CES may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.
17.4	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).	21.6	The Client agrees for CES to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. 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) about the Client in relation to credit provided by CES.	26.5	The Client cannot licence or assign without the written approval of CES.
17.5	If the Client is a consumer within the meaning of the CCA, CES' liability is limited to the extent permitted by section 64A of Schedule 2.		The Client agrees that CES may exchange information about the Client with those credit providers and with related body corporates for the following purposes:	26.6	CES may elect to subcontract out any part of the Works but shall not 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 CES' sub-contractors without the authority of CES.
17.6	If CES is required to replace any Materials under this clause or the CCA, but is unable to do so, CES may refund any money the Client has paid for the Materials.	21.7	(a) to assess an application by the Client; and/or	26.7	The Client agrees that CES 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 CES to provide Works to the Client.
17.7	If CES 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 CES 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.	21.8	(b) to notify other credit providers of a default by the Client; and/or	26.8	Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargos, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to CES, once the parties agree that the Force Majeure event has ceased.
17.8	If the Client is not a consumer within the meaning of the CCA, CES' liability for any defect or damage in the Materials is:	21.9	(c) to exchange information with other credit providers as to the status of this credit account where the Client is in default with other credit providers; and/or	26.9	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.
	(a) limited to the value of any express warranty or warranty card provided to the Client by CES at CES' sole discretion;		(d) to allow the CRB to create or maintain a credit information file about the Client including credit history.	26.10	The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.
17.9	(b) limited to any warranty to which CES is entitled, if CES did not manufacture the Materials; and/or		The Client consents to CES being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.	26.11	If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.
17.10	(c) otherwise negated absolutely.		The Client agrees that personal credit information provided may be used and retained by CES for the following purposes (and for other agreed purposes or required by):		
	Subject to this clause 17, returns will only be accepted provided that:		(a) the provision of Works; and/or		
	(a) the Client has complied with the provisions of clause 17.1; and		(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or		
	(b) CES has agreed that the Materials are defective; and		(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or		
	(c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and		(d) enabling the collection of amounts outstanding in relation to the Works.		
	(d) the Materials are returned in as close a condition to that in which they were delivered as is possible.		CES may give information about the Client to a CRB for the following purposes:		
	Notwithstanding clauses 17.1 to 17.9 subject to the CCA, CES shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:		(a) to obtain a consumer credit report; and/or		
	(a) the Client failing to properly maintain or store any Materials;		(b) allow the CRB to create or maintain a credit information file about the Client including credit history.		
			The information given to the CRB may include:		
			(a) Personal Information as outlined in 21.3 above;		
			(b) name of the credit provider and that CES is a current credit provider to the Client;		
			(c) whether the credit provider is a licensee;		
			(d) type of consumer credit;		