

1. Definitions

- 1.1 **“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.
- 1.2 **“MNE”** means Mike Nell Electrical Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Mike Nell Electrical Pty Ltd.
- 1.3 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting MNE to provide the Works as specified in 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.
- 1.4 **“Works”** means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by MNE 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).
- 1.5 **“Intended Use”** means an associated building product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Works.
- 1.6 **“Non-Conforming Building Product”** means any 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; or
 - (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.
- 1.7 **“Worksite”** means the address nominated by the Client to which the Materials are to be supplied by MNE.
- 1.8 **“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.
- 1.9 **“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 making enquiries via the website.
- 1.10 **“Price”** means the Price payable (plus any GST where applicable) for the Works as agreed between MNE and the Client in accordance with clause 6 below.
- 1.11 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 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 Where MNE gives any advice, recommendation, information, assistance or service provided by MNE in relation to Materials or Works supplied is given in good faith to the Client, or the Client’s agent and is based on MNE’s own knowledge and experience and shall be accepted without liability on the part of MNE. Where such advice or recommendations are not acted upon then MNE shall require the Client or their agent to authorise commencement of the Works in writing. MNE shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.
- 2.5 The Client acknowledges and accepts that:
- (a) the supply of Works on credit shall not take effect until the Client has completed a credit application with MNE and it has been approved with a credit limit established for the account;
 - (b) in the event that the supply of Works requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, MNE reserves the right to refuse delivery; and
 - (c) the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, MNE reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 6.2. In all such cases MNE will notify the Client in advance of any such substitution, and also reserves the right to place the Client’s order and/or Works on hold, as per clause 7.2 until such time as MNE and the Client agree to such changes.
- 2.6 In the event that the Client requests MNE to:
- (a) make an emergency Call-Out for critical equipment after hours or causes MNE to cancel or reschedule other work then MNE reserves the right to charge a minimum Call-Out fee of one (1) hour labour cost plus a per kilometre travelled rate plus any Materials used to undertake the Works unless otherwise agreed between MNE and the Client; or
 - (b) provide the Works urgently, that may require MNE’s staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then MNE 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 MNE and the Client.
- 2.7 If MNE 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.
- 2.8 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.

3. Authorised Representatives

- 3.1 The Client acknowledges that MNE shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to MNE, 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 MNE for all additional costs incurred by MNE (including MNE's profit margin) in providing any Works or variation/s requested thereto by the Client's duly authorised representative.

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that MNE shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by MNE 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 MNE in respect of the Works.
- 4.2 In the event 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 MNE; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

5. Change in Control

- 5.1 The Client shall give MNE 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 MNE as a result of the Client's failure to comply with this clause.

6. Price and Payment

- 6.1 At MNE's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by MNE to the Client in respect of Works performed or Materials supplied; or
 - (b) MNE's quoted Price (subject to clause 6.2) which shall be binding upon MNE provided that the Client shall accept MNE's quotation in writing within thirty (30) days.
- 6.2 MNE reserves the right to change the Price:
- (a) if during the course of the Works, the Materials are not or cease to be available from MNE's third-party suppliers, then MNE reserves the right to provide alternative Materials; or
 - (b) if a variation to the Materials which are to be supplied is requested; or
 - (c) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (d) 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 access and/or crawl spaces, prerequisite work by a third party not being completed, inaccurate measurements, plans or specifications supplied by the Client, 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, iron reinforcing rods in concrete, or hidden pipes and wiring, etc.) which are only discovered on commencement of the Works; or
 - (e) as a result of an increase in MNE's costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Works, increases to MNE in the cost of labour or Materials or due to relevant industry awards (e.g. Worksite allowance and severance pay), which are outside the control of MNE.
- 6.3 Variations will be charged for on the basis of MNE's quotation, and will be detailed in writing, and shown as variations on MNE's invoice. The Client shall be required to respond to any variation submitted by MNE within ten (10) days. Failure to do so will entitle MNE 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.
- 6.4 At MNE's sole discretion a non-refundable deposit may be required.
- 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by MNE, which may be:
- (a) on completion of the Works; or
 - (b) by way of progress payments in accordance with MNE's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the Worksite but not yet installed; or
 - (c) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by MNE.
- 6.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and MNE.
- 6.7 MNE may in its discretion allocate any payment received from the Client towards any invoice that MNE determines and may do so at the time of receipt or at any time afterwards. On any default by the Client MNE may re-allocate any payments previously received and allocated. In the absence of any payment allocation by MNE, payment will be deemed to be allocated in such manner as preserves the maximum value of MNE's Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 6.8 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 MNE nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to MNE an amount equal to any GST MNE must pay for any supply by MNE under this or any other contract for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Provision of the Works

- 7.1 Subject to clause 7.2 it is MNE's responsibility to ensure that the Works start as soon as it is reasonably possible.

- 7.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that MNE claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond MNE's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the Worksite ready for the Works; or
 - (c) notify MNE that the Worksite is ready.
- 7.3 At MNE's sole discretion, the cost of delivery is in addition to the Price.
- 7.4 MNE may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 Any time specified by MNE for delivery of the Works is an estimate only and MNE will not be liable for any loss or damage incurred by 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 MNE is unable to supply the Works as agreed solely due to any action or inaction of the Client, then MNE 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.

8. Risk

- 8.1 If MNE retains ownership of the Materials under clause 14 then:
- (a) where MNE is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by MNE or MNE's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address); and
 - (b) where MNE is to both supply and install Materials then MNE shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 8.2 MNE 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, MNE accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.3 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, meter boxes, main switches, circuit breakers, and electrical 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.) MNE reasonably forms the opinion that the Client's property is not safe for the installation of Materials to proceed then MNE shall be entitled to delay installation of the Materials (in accordance with clause 7.2) until MNE is satisfied that it is safe for the installation to proceed. MNE may in agreement with the Client bring the property up to a standard suitable for installation to proceed but all such Works undertaken and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.
- 8.4 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 MNE immediately upon any proposed changes. The Client agrees to indemnify MNE against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 6.2.
- 8.5 Where MNE 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 MNE shall require the Client or their agent to authorise commencement of the Works in writing. MNE shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.
- 8.6 The Client acknowledges and accepts that:
- (a) where MNE has performed temporary repairs that:
 - (i) MNE offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (ii) MNE will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair required;
 - (b) MNE is only responsible for components that are replaced by MNE 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) MNE shall not be responsible or liable for any defect in other appliances or power points as a coincidence of MNE installing the Materials,
 - (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 MNE's Materials are installed or connected to, or by workmanship not performed by MNE, shall not be covered by any applicable warranty pertaining to the Materials;
 - (e) it is the Client's responsibility to insure any equipment partly or completely installed on the Worksite, against theft or damage;
 - (f) MNE shall not be liable for any loss or damage caused in accessing the work area beyond reasonable control of MNE (including, without limitation, to ceiling tiles and panels, face brickwork and rendered masonry services) which MNE may have to break into or disturb in performance of the Works), unless due to the negligence of MNE;
 - (g) under no circumstances, will MNE handle removal of asbestos product. In the event asbestos (or other hazardous material) is discovered on the Worksite:
 - (i) MNE shall suspend the Works;
 - (ii) the Client shall be fully responsible for the resolution of any resulting problems; and
 - (iii) any additional cost incurred by MNE shall be added to the Price under clause 6.2;
 - (h) Materials supplied may:
 - (i) exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. MNE 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;
 - (ii) expand, contract or distort as a result of exposure to heat, cold, weather;
 - (iii) mark or stain if exposed to certain substances; and

(iv) be damaged or disfigured by impact or scratching.

- 8.7 The Client acknowledges and agrees that MNE accepts no responsibility for any damage or performance related problems with any Materials where they have not been used and/or maintained in accordance with MNE's and/or the manufacturers' recommendations.
- 8.8 Where MNE requires that Materials, tools etc. required for the Works be stored at the Worksite, the Client shall supply MNE 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.

9. Air-Conditioning Risk

- 9.1 Whilst the final location of the condensing unit is at the discretion of the Client, a charge will apply as a variation as per clause 6.2, if the Client requests the unit to not be located adjacent to the external wall, due to the underground piping required.
- 9.2 The final location of the wall, window or floor unit must be determined on the Worksite by the Client.
- 9.3 The Client acknowledges and agrees that MNE does not guarantee any noise levels (external or internal) and MNE shall not be held liable for any loss, damages, or costs, however resulting from noise levels.
- 9.4 Where installations are in a corrosive environment (eg. sea air, industrial or geothermal sulphur contaminating environment), it is recommended the Materials should be treated with additional corrosion protection prior to installation. MNE shall not be held liable for any loss or damages resulting from corrosion should the Client subsequently approve installation without following this recommendation.
- 9.5 In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Client shall be responsible for any and all costs involved.

10. Alarm Risk

- 10.1 It shall be the Client's responsibility:
- (a) to ensure the security system equipment is tested and maintained to full operational condition;
 - (b) for all phone calls emanating from the security system panel; and
 - (c) to ensure all electronically protected areas are free from obstacles which may impair the operation of the system.
- 10.2 The Client acknowledges and agrees that all electronic security systems, smoke detectors, heat detectors and any similar devices installed at or attached to the address are:
- (i) for monitoring and detection purposes only and should not be regarded as life saving devices; and
 - (ii) do not guarantee that the address will be free from malicious damage or loss caused by attack and/or breaking or entering.

11. Access

- 11.1 The Client shall ensure that MNE has clear and free access to the Worksite at all times to enable them to undertake the Works. MNE 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 MNE.
- 11.2 It is the Client's responsibility to provide MNE, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities as required.
- 11.3 Worksite Inductions
- (a) in the event the Client requires an employee or sub-contractor of MNE 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 MNE's standard (and/or overtime, if applicable) hourly labour rate; or
 - (b) where MNE is in control of the Worksite, the Client and/or the Client's third party contractors must initially carry out MNE'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 and/or third party acting on behalf of the Client must at all times be accompanied by MNE.

12. Underground Locations

- 12.1 Prior to MNE commencing the Works the Client must advise MNE of the precise location of all underground services on the Worksite and clearly 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, oil pumping mains, and any other services that may be on the Worksite.
- 12.2 Whilst MNE will take all care to avoid damage to any underground services the Client agrees to indemnify MNE 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. Compliance with Laws

- 13.1 The Client and MNE shall comply with the provisions of all statutes, regulations and bylaws of government (including but not limited to, Building Acts relating to communications and wiring requirements for electrical contractors etc), 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.
- 13.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 13.3 Both parties acknowledge and agree:
- (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
 - (b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 13.4 Where the Client has supplied materials for MNE 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 MNE's opinion, it is believed that the materials supplied are Non-Conforming products as per state regulations, then MNE shall be entitled, without prejudice, to halt 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.

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- 13.5 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.
- 13.6 If during the course of installation when the Works are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by MNE, then MNE 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.
- 13.7 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 Electrical Installations, relevant Commonwealth and Statutory Acts and Work Place Regulations". MNE's live Works procedures are designed to eliminate risk of injury to MNE'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.

14. Title

- 14.1 MNE and the Client agree that ownership of the Materials shall not pass until:
- the Client has paid MNE all amounts owing to MNE; and
 - the Client has met all of its other obligations to MNE.
- 14.2 Receipt by MNE 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.
- 14.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 14.1:
- the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to MNE on request;
 - the Client holds the benefit of the Client's insurance of the Materials on trust for MNE and must pay to MNE the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
 - the production of these terms and conditions by MNE shall be sufficient evidence of MNE's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with MNE to make further enquiries;
 - 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 MNE and must pay or deliver the proceeds to MNE on demand;
 - 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 MNE and must sell, dispose of or return the resulting product to MNE as it so directs;
 - unless the Materials have become fixtures the Client irrevocably authorises MNE to enter any premises where MNE believes the Materials are kept and recover possession of the Materials;
 - MNE may recover possession of any Materials in transit whether or not delivery has occurred;
 - 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 MNE;
 - MNE may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

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

- 15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 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 MNE for Works – that have previously been supplied and that will be supplied in the future by MNE to the Client.
- 15.3 The Client undertakes to:
- 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 MNE may reasonably require to:
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA; or
 - correct a defect in a statement referred to in clause 15.3(a)(i) or 15.3(a)(ii);
 - indemnify, and upon demand reimburse, MNE 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;
 - not register a financing change statement in respect of a security interest without the prior written consent of MNE;
 - 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 MNE;
 - immediately advise MNE 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.
- 15.4 MNE 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.
- 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.
- 15.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7 Unless otherwise agreed to in writing by MNE, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Client shall unconditionally ratify any actions taken by MNE under clauses 15.3 to 15.5.

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- 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.
- 16. Security and Charge**
- 16.1 In consideration of MNE 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 money).
- 16.2 The Client indemnifies MNE from and against all MNE's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising MNE's rights under this clause.
- 16.3 The Client irrevocably appoints MNE and each director of MNE as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.
- 17. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 17.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within forty-eight (48) hours of delivery notify MNE 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 MNE to inspect the Materials or to review the Works provided.
- 17.2 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).
- 17.3 MNE acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 17.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, MNE makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. MNE's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.5 If the Client is a consumer within the meaning of the CCA, MNE's liability is limited to the extent permitted by section 64A of Schedule 2.
- 17.6 If MNE is required to replace any Materials under this clause or the CCA, but is unable to do so, MNE may refund any money the Client has paid for the Materials.
- 17.7 If MNE 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 MNE 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.
- 17.8 If the Client is not a consumer within the meaning of the CCA, MNE'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 MNE at MNE's sole discretion;
 - (b) limited to any warranty to which MNE is entitled, if MNE did not manufacture the Materials;
 - (c) otherwise negated absolutely.
- 17.9 Subject to this clause 17, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 17.1; and
 - (b) MNE 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.
- 17.10 Notwithstanding clauses 17.1 to 17.9 but subject to the CCA, MNE 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 MNE's prior approval;
 - (e) the Client failing to follow any instructions or guidelines provided by MNE;
 - (f) fair wear and tear, any accident, or act of God.
- 17.11 MNE may in its absolute discretion accept non-defective Materials for return in which case MNE may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Materials plus any freight costs.
- 17.12 Notwithstanding anything contained in this clause if MNE is required by a law to accept a return then MNE will only accept a return on the conditions imposed by that law.
- 17.13 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.
- 18. Intellectual Property**
- 18.1 Where MNE 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 MNE, and shall only be used by the Client at MNE's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of MNE.
- 18.2 The Client warrants that all designs, specifications or instructions given to MNE will not cause MNE to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify MNE against any action taken by a third party against MNE in respect of any such infringement.
- 18.3 The Client agrees that MNE may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which MNE has created for the Client.

19. Default and Consequences of Default

- 19.1 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 MNE's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes MNE any money the Client shall indemnify MNE from and against all costs and disbursements incurred by MNE in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, MNE's contract default fee, and bank dishonour fees).
- 19.3 Further to any other rights or remedies MNE may have under this Contract, if a Client has made payment to MNE, 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 MNE 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.
- 19.4 Without prejudice to MNE's other remedies at law MNE shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to MNE shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to MNE becomes overdue, or in MNE's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by MNE;
 - (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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20. Cancellation

- 20.1 Without prejudice to any other remedies MNE may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions MNE may suspend or terminate the supply of Works to the Client. MNE will not be liable to the Client for any loss or damage the Client suffers because MNE has exercised its rights under this clause.
- 20.2 MNE may cancel any contract to 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 MNE shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to MNE for Works already performed. MNE shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 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 MNE as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.4 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.

21. Privacy Policy

- 21.1 All emails, documents, images or other recorded information held or used by MNE is Personal Information, as defined and referred to in clause 21.3, and therefore considered Confidential Information. MNE 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"). MNE acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by MNE that may result in serious harm to the Client, MNE 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.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to MNE in respect of Cookies where the Client utilises MNE's website to make enquiries. MNE 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:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to MNE when MNE sends an email to the Client, so MNE may collect and review that information ("collectively Personal Information")
- If the Client consents to MNE's use of Cookies on MNE's website and later wishes to withdraw that consent, the Client may manage and control MNE's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 21.3 The Client agrees for MNE 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 MNE.
- 21.4 The Client agrees that MNE may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 21.5 The Client consents to MNE being given a consumer credit report to collect overdue payment on commercial credit.
- 21.6 The Client agrees that personal credit information provided may be used and retained by MNE for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works; and/or

- (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Works.
- 21.7 MNE may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 21.8 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 MNE is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (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);
 - (f) advice of consumer credit defaults, 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 MNE has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of MNE, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 21.9 The Client shall have the right to request (by e-mail) from MNE:
- (a) a copy of the Personal Information about the Client retained by MNE and the right to request that MNE correct any incorrect Personal Information; and
 - (b) that MNE does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 21.10 MNE 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.
- 21.11 The Client can make a privacy complaint by contacting MNE via e-mail. MNE 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.

22. Building and Construction Industry Security of Payments Act 1999

- 22.1 At MNE'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.
- 22.2 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.

23. Service of Notices

- 23.1 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.
- 23.2 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.

24. Trusts

- 24.1 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 MNE may have notice of the Trust, the Client covenants with MNE as follows:
- (a) the Contract 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 MNE (MNE 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.

25. General

- 25.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, arbitration in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 25.2 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 the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

Mike Nell Electrical Pty Ltd – Terms & Conditions of Trade

- 25.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which MNE has its principal place of business, and are subject to the jurisdiction of the Sydney Courts in New South Wales.
- 25.4 Subject to clause 17, MNE 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 MNE of these terms and conditions (alternatively MNE's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 25.5 MNE may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 25.6 The Client cannot licence or assign without the written approval of MNE.
- 25.7 MNE 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 MNE's sub-contractors without the authority of MNE.
- 25.8 The Client agrees that MNE 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 MNE to provide Works to the Client.
- 25.9 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.
- 25.10 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.