

**TERMS AND CONDITIONS ("T&C's")**

**SCHEDULE**

**The Customer**

**WHERE THE CUSTOMER IS AN INDIVIDUAL / SOLE TRADER / PARTNERSHIP / TRUST**

Business Name & Establishment Year (if applicable): \_\_\_\_\_

**Individual / Proprietor / Trustees' full names and private addresses:**

(1) \_\_\_\_\_ Address: \_\_\_\_\_ Tel: \_\_\_\_\_

(2) \_\_\_\_\_ Address: \_\_\_\_\_ Tel: \_\_\_\_\_

(3) \_\_\_\_\_ Address: \_\_\_\_\_ Tel: \_\_\_\_\_

**WHERE THE CUSTOMER IS A COMPANY / CORPORATE TRUSTEE OF A TRUST**

Registered Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Position: \_\_\_\_\_

ACN: \_\_\_\_\_ Year of Incorporation: \_\_\_\_\_

**Directors' full names and private addresses:**

(1) \_\_\_\_\_ Address: \_\_\_\_\_ Tel: \_\_\_\_\_

(2) \_\_\_\_\_ Address: \_\_\_\_\_ Tel: \_\_\_\_\_

(3) \_\_\_\_\_ Address: \_\_\_\_\_ Tel: \_\_\_\_\_

<b>Customer Services</b>	As provided in the Proposal or as expressed in the correspondences.
<b>The Site</b>	As provided in the Proposal or as advised by the Customer.
<b>Fee</b>	As provided in the Proposal or as per the Fee Schedule in T&C 1.4
<b>Deposit (Proposals Only)</b>	As provided in the Proposal or 50% due before Commencement Date.
<b>Services and Goods</b>	As provided in the Proposal or as requested by the Customer.
<b>Commencement Date</b>	The latter of the communicated commencement date from the Company or as at the first date the Company is on Site
<p><b><u>Acceptance by the Customer:</u></b></p> <p>Acknowledges that all trading with the Company shall be strictly subject to the Company's terms and conditions of sale as agreed to from time to time; declares that the information contained in the T&amp;C's are true and correct, consents to, and authorise the Company to obtain any trade reference in connection with any guarantee.</p>	<p>Signed: _____</p> <p>Name: _____</p> <p>Date: ____ / ____ / ____</p>

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**WHERE THE CUSTOMER IS A COMPANY**

**DEED OF GUARANTEE AND INDEMNITY**

In consideration of the Company providing its goods and services to the Customer, the persons named as Directors of the Customer (hereinafter called "the Guarantors") hereby personally GUARANTEE jointly and severally to pay on demand all monies now owing or payable or hereafter to become owing or remaining unpaid to the Company by the Customer and guarantee the performance and observance of any other obligation as between the Customer and the Company, and as a separate obligation the Guarantors undertake to INDEMNIFY and keep the Company indemnified against any loss that the Company may incur as a consequence of the failure for whatever reason of the Customer to pay all monies now owing or payable or hereafter to become owing or remaining unpaid and to fully comply with all of its obligations to the Company, and it is further agreed as follows:

- (a) the Company may at its discretion: -
  - (i) grant the Customer or any Guarantor under this guarantee an indemnity time or any other indulgence or consideration
  - (ii) vary or alter the terms of any agreement between the Company and the Customer;
  - (iii) compound with or release in whole or in part or discharge the Customer at any time and from time to time; or
  - (iv) grant any Guarantor the release either wholly or in part from any obligation contained in or implied by this guarantee and indemnity without discharging or releasing or in any way affecting the liability of any Guarantor or any other Guarantor (as the case may be);
- (b) any payment made to the Company and later avoided by the application of any Statutory provision shall be deemed not to discharge any of the Guarantors from liability and in such an event the parties are to be restored to the rights which each respectively would have had if the payment had not been made;
- (c) the Guarantors shall not be released by the death of any of the Guarantors or by reason of any act of the Company, which might result in prejudice to any of the Guarantors, or by any legal disability on the part of the Customer or any of the Guarantors under this guarantee and indemnity;
- (d) the Guarantors hereby grants to the Company a Charge over all their rights titles and interests in all and any real property now held by them or in future such Charge to secure their obligations under this Guarantee;
- (e) this agreement shall be and remain a continuing guarantee and indemnity until all liabilities of the Customer to the Company have been satisfied in full; and
- (f) any notice required to be served relating to this guarantee and indemnity shall be deemed as served if posted to the last known address of the Guarantors.

**EXECUTED AS A DEED** on \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

**SIGNED SEALED AND DELIVERED**

**IN THE PRESENCE OF**

Signature of Guarantor: \_\_\_\_\_ Signature of Witness: \_\_\_\_\_

Name of Guarantor: \_\_\_\_\_ Name of Witness: \_\_\_\_\_

Address of Guarantor: \_\_\_\_\_ Address of Guarantor: \_\_\_\_\_

Signature of Guarantor: \_\_\_\_\_ Signature of Witness: \_\_\_\_\_

Name of Guarantor: \_\_\_\_\_ Name of Witness: \_\_\_\_\_

Address of Guarantor: \_\_\_\_\_ Address of Guarantor: \_\_\_\_\_

Signature of Guarantor: \_\_\_\_\_ Signature of Witness: \_\_\_\_\_

Name of Guarantor: \_\_\_\_\_ Name of Witness: \_\_\_\_\_

Address of Guarantor: \_\_\_\_\_ Address of Guarantor: \_\_\_\_\_

**TERMS AND CONDITIONS (“T&C’s”)**

**1. SCOPE**

**1.1 Engagement**

- (a) The Company has provided as attached to these terms and conditions (**T&Cs**) a quotation or proposal (**Proposal**) or any Charge Up specifying, amongst other things, the scope of the Services and Goods (if applicable) to be provided to the Customer (each a **party**), and an estimate of the fees involved in providing those Services and Goods.
- (b) These T&Cs form part of the Proposal as if incorporated into the Proposal (together the **Agreement**).
- (c) The Company does not represent that it will provide any Services and Goods unless they are included in the Agreement.

**1.2 Acceptance**

- (a) The offer in the Proposal remains open for acceptance for the period specified in the Proposal, after which time the offer expires.
  - (b) The Customer accepts the Agreement (**Order**) by:
    - (i) signing the Proposal or these T&Cs;
    - (ii) clicking “Accept this quote” or “Accept this Estimate” in the Proposal email;
    - (iii) paying any money specified in the Proposal to the Company; or
    - (iv) their willing participation through oral, written or electronic communication.
- which constitutes an order to the Company.

**1.3 Fees**

- (a) The Customer must pay the Fee for the Services and Goods provided by the Company.
- (b) Any fee estimate provided by the Company for the Services and Goods is only an estimate of the likely costs of providing the Services and Goods and does not bind the Company for any period after it advises a change of that estimate.
- (c) The estimate can be revised by the Company at its discretion prior to Acceptance and the Customer will be notified of any revision of the Fee estimates.
- (d) The Company may apply a fee equivalent to the Service Call for any Customer failing to attend a scheduled appointment without prior notice of at least one business day to the Company (**No Show Fee**).
- (e) Subject to T&C8.1(b), the Company will charge the Customer a service call and its hourly rate as stated in the Proposal.
- (f) The Company may charge the Customer a minimum service call Fee.
- (g) Where a Customer requests the Company to provide its Services and Goods during the following hours, the Customer will be charged a minimum of 4 hours labour for its Fees at the following rate:

Mon - Fri	03:30pm – 07:00pm	Time and a Half
Mon - Fri	07:00pm – 07:30am	Double Time
Saturday	12:00am – 07:30am	Double Time
Saturday	07:30am – 03:30pm	Time and a Half
Saturday	03:30pm – 07:30pm	Double Time
Saturday	07:30pm – 12:00am	Double Time
Sunday	Anytime	Double Time
Public Holiday	Anytime	Double Time

- (h) Subject to T&C7.6, the Company may charge additional Fees for Services and Goods not included in the Order to the following extent, but not limited to:
  - (i) Labour in 1-minute increments;
  - (ii) Travel to and from the Site;
  - (iii) Sourcing and obtaining materials;

- (iv) Cost of Materials;
  - (v) Supply Authority charges and / or other fees / expenses incurred by the Company on behalf of the Customer; and
  - (vi) A Certificate of Electrical Safety.
- (i) The Company may charge, and the Customer will pay for all disbursements properly incurred in performing the Services and Goods.

**1.4 Fee Schedule**

Service Call	\$130.00 plus GST
Hourly Rate	\$120.00 plus GST
Certificate of Electrical Safety (Non-Prescribed)	\$ 19.00 plus GST
Certificate of Electrical Safety (Prescribed)	\$ 50.00 plus GST

**2. DEFINITIONS**

In this Agreement, unless the context otherwise requires capitalised works have the meaning set out below or in the schedule:

**Charge Up** means cost plus labour and materials, or any works completed at the request of a Customer which does not require a Proposal or Quotation or Estimate or that the Customer has not requested for a Proposal or Quotation or Estimate from the Company before Commencement Date.

**Claims** means all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise);

**Collateral** means the Customer’s property that remains unpaid in relation to Services and Goods supplied by the Company. It includes anything in respect of which the Customer has at any time a sufficient right, interest or power to grant a Security Interest.

**Company** means E J Lack (Vic) Pty Ltd ACN 065 303 764 trading as E J Lack Electrical, its servants and any subsidiary or duly appointed agent or contractor;

**Customer** means the person or entity named in this T&C’s, in the Proposal or Order and any successor or permitted licensee. Any reference to Customer shall include all Customers, unless it refers to specific group of Customers or conversely referred to as Clients;

**Consequential Loss** means all indirect, special and/or consequential losses, damages, costs or expenses of any nature whatsoever incurred or suffered, including any economic loss or other loss of turnover, any loss of reputation or goodwill, any loss of value of intellectual property, any legal costs and other expenses of any nature whatsoever in respect of them;

**Default Date** means the date that payment is due;

**Default Rate** means the lesser of 10.5% p.a. and the applicable statutory rate;

**Force Majeure Event** means an event, or series of events, outside the reasonable control of the Company including (but not limited to) death or TPD of a Company Affiliate, fire, lightning, explosion, flood, earthquake, storm, hurricane, action of the elements, riots, civil commotion, malicious damage, armed conflicts, acts of terrorism, war (declared or undeclared), blockade, revolution, sabotage, radioactive contamination, toxic or dangerous chemical contamination or any other catastrophes;

**Goods** means all documentation and products, components and equipment supplied by the Company on hire or/and sold by the Company;

**Guarantors** means those named persons acting as directors of the Customer who have executed the Deed of Guarantee and Indemnity;

**GST Law** means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**PPSA** means the *Personal Property Securities Act 2009* (Cth);

**Proposal** means any Quotation or Estimate whether written or issued by oral or electronic communication.

**Orders** means approval by the Company to provide Services and Goods at the Site nominated by the Customer upon

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receipt of executed Agreement from the Customer;  
**Security Interest** has the meaning given to that term in Section 12 of the PPSA;

**Services** means all delivery or/and supply of Goods, provision of services for the installation and repairs conducted by the Company, including, but not limited to any advice or recommendations;

**Site** means the nominated address location on which land or land and buildings where the provision of Services and Goods by the Company as to be performed as stated in this Agreement;

### 3. INTERPRETATION

- 3.1 The T&Cs are binding on the Customer, his heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 3.2 In these T&Cs, the singular shall include the plural, the masculine shall include feminine and neuter and words importing persons shall apply to corporations.
- 3.3 Where there is more than one Customer completing this Agreement, each shall be liable jointly and severally.
- 3.4 If any of the T&Cs shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired and the offending T&C provision shall be deemed as severed from these T&Cs.
- 3.5 Should any of the T&C provisions not be enforceable by the Company, this ought to be construed as a waiver of that T&C provision, nor shall it affect the Company's right to subsequently enforce such T&C provision.
- 3.6 The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 3.7 The Customer acknowledges that the Company may publish these T&Cs on the Company's website. As such any T&Cs on the Company's website shall apply to any future dealings with the Customer to which the Customer is deemed to have been give notice of any such T&Cs as may be amended.
- 3.8 The Customer covenants that on executing this Agreement the Customer is either the owner of the Site or is acting with the authority of the owner.

### 4. APPLICATION

- 4.1 The Customer acknowledges that these T&Cs apply in relation to all sales of Services and Goods by the Company to the Customer and to all Orders placed with the Company.
- 4.2 No person acting or purporting to act on the Company's behalf has the authority to make any promise, representation or undertaking, or to add to or change in any way these T&Cs except expressly in writing.
- 4.3 These T&Cs are in addition to and in no way are intended to limit, vary or exclude any rights conferred by the conditions and warranties implied by the Competition and Consumer Act 2010 or by any similar legislation of a State or Territory of Australia which prohibits any such limitation variation or exclusion. Prices are subject to change without notice.
- 4.4 The Company reserves the right to vary these terms and conditions of sale without prior written notice to the Customer. The Customer's rights under these T&Cs are not assignable or transferable.

### 5. QUOTATION

- 5.1 Any verbal quotation will be confirmed in writing as a written quotation unless agreed by the Company and

where the Customer has confirmed that quotation is accepted as communicated by the Company.

- 5.2 All quotations given by the Company are to be provided in writing and are subject to acceptance by the Customer within 30 days of the date of quotation unless otherwise specified in the said quotation.
- 5.3 After this time the quotation can be voided at the option of Company, which may in its absolute discretion subsequently revise the price or any other of the conditions so quoted.
- 5.4 The Company may vary prices where a significant error or fact can be shown in the original quotation.
- 5.5 All prices are based on taxes and statutory charges current as at the time of the Quotation. Should there be any variation during the period from the date of Quotation to the date of the invoice, that variation will be accounted for in the invoice to the Customer as a liability payable by the Customer.
- 5.6 Quotations may not include any unknown factors that may only be identifiable upon an inspection when on Site. This may include, but not limited to, subsequent switchboard upgrades, findings and or rectifying of previously unknown pre-existing faults.

### 6. ORDERS

All Orders and instructions issued to the Company by the Customer or its agents or servants by telephone are deemed valid.

Any variation to an Order at the request of the Customer will attract additional charges payable to the Company.

### 7. GST

- 7.1 Unless the contrary intention appears, any amount specified in the Proposal is exclusive of GST.
- 7.2 For the purposes of this clause, the terms words defined in the GST Law, have the same meaning in this Agreement.
- 7.3 If GST has any application to any supply made under or in connection with this Agreement, the party making the supply (for the purposes of this clause only, **Supplier**) may in addition to any amount or consideration expressed as payable elsewhere in this Agreement, recover from the recipient of the supply (for the purposes of this clause only, **Recipient**) an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable by the Recipient for the relevant supply by the prevailing GST rate.
- 7.4 Any additional amount on account of GST recoverable from the Recipient under this clause shall be calculated without any deduction or set-off of any amount and is payable by the Recipient at the same time and in the same manner as paying the amount or consideration for the relevant supply under this Agreement.
- 7.5 The Supplier must issue to the Recipient a tax invoice and must do anything else which may be reasonably required to enable or assist the Recipient to claim or verify any input tax credit, set off, rebate or refund in relation to any GST payable under this Agreement or in respect of any supply under this Agreement.
- 7.6 Where an adjustment event in relation to a supply under this Agreement has occurred, the Supplier must issue an adjustment note to the Recipient no later than 14 days after that adjustment event

### 8. PROVISION OF SERVICES AND GOODS

#### 8.1 Company's rights and obligations

- (a) Subject to the terms in this clause, the Company will commence the Services and Goods on the Commencement Date, subject to any variation agreed by the parties, and provide the Services and Goods at the Site.

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- (b) The Company will provide the Services and Goods to the Customer at the Site from Monday to Friday 7:30am – 3:30pm being its normal working hours. Any provision of Services and Goods by the Company at the request of the Customer outside these hours will be at the higher rate as stated in T&C1.3(f).
- (c) Any failure by the Customer to make payment of any amount of the Fee or Deposit (as applicable), the Company may, at its discretion:
  - (i) decline to provide the requested Services and Goods; or
  - (ii) postpone or cancel the Services and Goods.
- (d) The Customer acknowledges that the Company will not be liable for any loss or damage arising as a result a cancellation under clause 8.1(b)(i).
- (e) The Company does not warrant that it will be able to provide the Services and Goods at specific times, unless expressly specified in the Proposal or otherwise by the Company in writing.
- (f) The Company will comply with all reasonable directions given by the Customer as to the provision of the Services and Goods. If in the reasonable opinion of the Company a direction by the Customer results in reasonable additional costs or expenses to the Company, the Customer must pay these amounts to the Company.
- (g) The Company will use its discretion as to the most suitable manner of providing the Services and Goods to the Customer.
- (h) The Company reserves its right to:
  - (i) decline requests for Services and Goods requested by the Customer;
  - (ii) cancel or postpone the delivery of Services and Goods at its discretion.
- (i) Nothing in the Agreement will affect the Company’s right to use its own judgment with reasonable care and skills in order to achieve compliance with any laws, regulations, standards, directions, resolutions or other obligations in relation to the delivery of its Services and Goods to the Customer.
- (j) The Company is not responsible for any representation made in relation to Goods or any delay in the delivery of Goods made by any third party, including, but not limited to, supplier or manufacturer.

**8.2 Customer’s obligations**

- (a) The Customer must:
  - (i) provide the Customer Services as required or directed by the Company;
  - (ii) co-operate with the Company as reasonably required;
  - (iii) provide clear unhindered, safe, and full access to the Site (more specifically the area that works are to be carried out) for the Company and to make provisions of necessary essential services, resources, equipment, materials, and information;
  - (iv) provide sufficient information as requested by the Company in a timely manner to enable the Company to deliver the Services and Goods as requested in the Proposal or Order;
  - (v) ensure that the Company is made aware of any special requirements pertaining to the Order and the Company relies upon the integrity of the information supplied to it;
  - (vi) ensure that the Site is secured to prevent any loss of stock and supply of Goods;
  - (vii) ensure that any Site provided to the Company comply with all applicable laws,

- regulations and standards including, but not limited to, obtaining all necessary permits;
- (viii) ensure that the Customer’s staff and agents co-operate with and assist the Company;
- (ix) supply water, electricity to the Company to carry out the Order at the Customer’s costs; and
- (x) ensure that the Site has insurance coverage for the provisions of Services and Goods by the Company as required by the Customer
- (b) If the Customer does not comply with clause 8.2(a), then any additional costs and expenses which are reasonably incurred by the Company will be paid by the Customer and the Company will not be responsible for any delay in provision of the Customer Services resulting from a breach of clause 8.2(a).
- (c) If the information and specifications are wrong and inaccurate, the Customer will be liable for the expenses incurred by the Company for any work required to rectify the inaccurate or incorrect specifications of the Order.
- (d) If the information by the Customer is insufficient, the Customer will be responsible and liable for any damages and costs resulting in the delivery of Services and Goods being faulty which results from the insufficient information.
- (e) If the Customer requests for additional Services and Goods not included or specifically excluded in the Proposal or Order, the Company agree to provide such additional Services and Goods subject to the Customer paying the additional charges for the additional Services and Goods which may include, but not limited to, alterations, amendments, and any additional visits by the Company for the provision of the additional Services and Goods.
- (f) If the Customer cancels the Agreement after Acceptance and prior to the commencement of the Services and Goods, the Customer must pay to the Company the cost (if any) of any materials, custom or special order materials, restocking fees, disbursements, and any Company personnel or contractors reasonably procured in anticipation of commencing and providing the Services and Goods.
- (g) The Customer warrants that it is solely responsible and liable for the Goods and supply of stock secured at the Site should there be any loss, damage or theft whether supplied by the Company or otherwise and further indemnifies the Company form any such loss, liability or claim.

**9. PAYMENT**

- 9.1 Payment for all Services and Goods purchased from the Company is due and payable within 7 days from the date of issue of the invoice to the Customer (**Due Date**) unless a credit account application has been approved by the Company and the Consumer Credit Code does not apply, in which event payment must be made in accordance with the trading terms approved by virtue of a credit application and in that case:
  - (a) payment must be prompt and notwithstanding any previous indulgences, the Company may in its absolute discretion require immediate payment of any amount owing and / or refuse credit or supply of Goods or services without giving any notice whatsoever.
  - (b) withdraw any credit application facility upon any breach by the Customer of these T&Cs or upon the Customer:
    - (i) ceasing to trade;
    - (ii) being subject to any legal proceedings;

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- (iii) is insolvent.
- (c) If payment in full is not received within the specified terms defined by the credit application, the Company has the right to and the Customer shall in addition be liable for:
  - (i) terminate any provision of Services and Goods without notice and collect the Goods from any Site. Goods, which are unable to be moved for whatever reason will remain on Site or in location until the Company at its discretion determines the Goods, may be removed safely. During the period of termination and return to the Company premises the Goods shall be charged to the Customer.
  - (ii) all reasonable legal fees which are to be calculated on a solicitor / client basis
  - (iii) agency commissions
  - (iv) all reasonable disbursements
  - (v) the Company own internal costs; together with the original debt
  - (vi) recover all costs associated with the exercise of collection of material
  - (vii) Interest at the penalty interest rate (calculated daily) on any overdue amount, and
  - (viii) All expenses (including any amount charged to the Company by a debt collection agency) incurred in recovering or attempting to recover an overdue amount

9.2 The Company reserves the right to charge the Customer a processing fee if a payment is made by credit card.

- 9.3 The Company reserves the right to charge the Customer a dishonoured cheque fee of \$44.00 where a cheque issued by the Customer or by any third party in payment of the Fee is dishonoured. The Company:
- (a) may refuse to supply any further Services and Goods until satisfactory payment is received in full settlement of the invoice, including bank fees and charges;
  - (b) is entitled to treat the dishonoured cheque as a repudiation of this Agreement where the Company may elect to terminate or affirm this Agreement whereby in each case claiming and recovering compensation for loss or damage suffered from the Customer.

**10. DEFAULT**

- 10.1 If the Customer:
- (a) makes a default in any payment;
  - (b) is insolvent;
  - (c) is bankrupt;
  - (d) has liens placed on a project or assets frozen or restrained;
  - (e) becomes subject to any form of external administration;
  - (f) an application for any form of external administration is made;
- the Company may at its option withhold further deliveries or cancel the Agreement without prejudice to its rights there under. Where such default occurs, this shall not in any way prejudice the right of the Company to recover any amounts due for Services and Goods previously supplied to the Customer.
- 10.2 Without prejudice to any other rights of the Company, the Customer may be charged an account keeping fee of \$25.00 per month plus interest at the rate of 2% per month on any outstanding amount in arrears after the Due Date of the invoice.
- 10.3 If the Company does not receive the outstanding amount on or before the Due Date of the Invoice, the Company may, without prejudice to any other remedy

it may have, forward the Customer's outstanding amount on account of the debt owed to a debt collection agency for further action. The Customer acknowledges and agrees that:

- (a) after the Due Date, the outstanding amount shall include, but not limited to, all applicable fees and charges under this Agreement;
- (b) where the outstanding amount is then referred to a debt collection agency, or/and a law firm for collection or debt recovery, the Customer shall be liable to pay the legal costs or debt collector's fees as a liquidated debt on the indemnity basis.

**11. PPSA SECURITY**

- 11.1 The Customer grants a Security Interest in the Customer's Collateral to the Company and charges the Customer's Collateral to secure the payment of the Fees and the performance of the Customer's obligation under this Agreement.
- 11.2 The Customer agrees that the Company may do anything the Company considers reasonably necessary including registering its Security Interest under the PPSA in order to perfect the Security Interest and comply with the requirements of the PPSA.
- 11.3 The Customer agrees that it will do all things necessary to assist the Company to take the steps referred to in sub-clause 12.2 of this clause.
- 11.4 The Customer and the Company agree that the provisions of section 115(1) of the PPSA that may be excluded are excluded in relation to the Security Interest created under this Agreement.
- 11.5 The Customer and the Company agree that neither of them will disclose information of the kind mentioned in section 275(1) of the PPSA pursuant to section 275(4) of the PPSA.
- 11.6 Upon termination or cessation of a Security Interest in favour of the Company under this Agreement, the Company must, on request from the Customer, do all things necessary to remove or withdraw the registration of the Security Interest from the PPSR as soon as practicable and in any event within 14 days of receiving the request from the Customer.

**12. INDEMNITY AND LIABILITY**

- 12.1 The Customer indemnifies and release the Company from any claim in respect of faulty and defective designs of any Goods supplied or as a result of any loss incurred by the Customer as a result of delay, or for failure to provide the Goods or due to any delay in the delivery of Goods due to an event of force majeure, being by any cause or circumstances beyond the Company's reasonable control.
- 12.2 The Company's liability for damages, whether based upon the Company's negligence, breach of contract, breach of warranty or otherwise, shall not exceed the price with respect to which a claim is based and shall not include liability for special, incidental, indirect, punitive or consequential damages including, but not limited to, lost profits, injury to good will, and damages for injuries to persons or property.
- 12.3 Provisions of the *Competition and Consumer Act 2010 (Cth)* (**ACL**) or any applicable State, Territory or Commonwealth legislation may imply warranties, confer statutory guarantees or impose other obligations on the Company which cannot be excluded, restricted, modified at all or except to a limited extent.
- 12.4 To the extent permitted by law, the Customer indemnifies the Company, its affiliates and their employees, agents, contractors and keeps them indemnified and hold harmless from and against any liability, cost, claim, expense (including attorney's fees

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and expenses) or any loss or damage of any kind whatsoever including, without limitation, any material or immaterial damage in the form of personal injury, illness or death to any person or damage to any property arising directly from or in connection with any breach of failure to perform obligations under these T&Cs by the Customer.

### 13. WARRANTY

Subject to T&C12.3. the Company warrants that the Customer's rights and remedies in this Agreement arising from a warranty against defects are in addition to other rights and remedies under any applicable law in relation to the Services and Goods to which the warranty relates:

#### 13.1 Services Warranty

- (a) The Company provides warranty for a period of 12 months from the date of Service having been provided at the Site to the Customer, subject to the Customer reporting the defect of the Service rendered by the Company within 14 days of when the defect became apparent to the Customer (time is of the essence).
- (b) To the extent permitted by law, the Company's liability under such provisions shall be limited at the Company's option to the:
  - (i) re-supply of the Service;
  - (ii) payment of cost of having the Service supplied again;
  - (iii) refund of Fee charged by the Company to the Customer in respect of the Service.
- (c) In respect of all Claims, the Company is not liable to compensate the Customer for any delay in remedying the defective Service or in assessing the Customer's Claims. The Customer warrants that it will use its best endeavours to assist the Company with identifying the nature of the Service Claims.

#### 13.2 Goods Warranty

- (a) The Company warrants that:

"the Goods come with guarantees that cannot be excluded under the ACL. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is entitled to have the Goods repaired or replaced if the Goods are not of acceptable quality and the failure does not amount to a major failure, subject to the Customer reporting the defect of the Goods supplied by the Company within 14 days of when the defect became apparent to the Customer (time is of the essence).
- (b) To the extent permitted by law, the Company's liability under such provisions shall be limited at the Company's option to the:
  - (i) replacement of any affected Goods;
  - (ii) refund of the price paid for any affected Goods;
  - (iii) payment of any amount equal to the cost of replacing any affected Goods.
- (c) As the Goods Warranty only cover the costs of Goods, the Customer acknowledges that additional costs incurred, such as labour and/or freight, will be borne by the Customer.
- (d) In respect of all Claims, the Company is not liable to compensate the Customer for any delay in remedying the defective Goods or in assessing the Customer's Claims. The Customer warrants that it will use its best endeavours to assist the

Company with identifying the nature of the Goods Claims.

Where the Services and Goods are not a kind ordinarily acquired for personal, domestic or household use or consumption, the Company's liability for a consumer warranty under ACL in relation to these Services and Goods are limited to, at the discretion of the Company to the:

- (a) re-supply of the Service or/and Goods;
- (b) payment of the cost of providing the Service or/and Goods again.

The Customer must give written notice to the Company of the Claim together with proof of purchase by:

- (a) postal mail at business address of the Company as stated in this T&Cs;
- (b) email at office@ejlack.com.au;

Where a Claim is made in relation to Goods that are to be returned to the Company, such Goods are to be left in the state and conditions in which they are delivered to the Company until such time as the Company or its agent has inspected the Goods where the inspection is to be carried out within a reasonable time after notification.

### 14. RETENTION OF TITLE

- 14.1 The Customer acknowledges that the Company, as a secured party, may produce this clause to register its legal and equitable interest in Goods supplied to the Customer pursuant to the provisions of the PPSA.
- 14.2 The Customer acknowledges while the risk in Goods shall pass on delivery or/and supply (including all risks associated with unloading), legal and equitable title in Goods shall remain with the Company until full payment of all Goods supplied by the Company to the Customer is made. Pending such payment, the Customer:
  - (a) shall hold the Goods as bailee for the Company and shall return the Goods to the Company if so requested.
  - (b) agrees to hold the Goods at the Customer's own risk and is liable to compensate the Company for all loss or damage sustained to the Goods whilst they are in the Customer's possession.
- 14.3 The Customer agrees and authorise the Company to enter the Site where the Customer stores the Goods without liability for trespass or any resulting damage in retaking possession of the Goods until the accounts owed to the Company are fully paid by the Customer.

### 15. CANCELLATION

- 15.1 The Company:
  - (a) may cancel any Order to which these T&Cs apply or cancel the delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On issuing such notice to the Customer, the Company shall repay the Customer any sums paid in respect of the Goods. The Company shall not be liable for any loss or damage or consequential loss or damage whatever arising from such cancellation.
  - (b) may, without prejudice to other available remedies at law, the Company shall be entitled to cancel all or any part of any Order of the Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:
    - (i) any money payable to the Company becomes overdue; or
    - (ii) the Customer is insolvent, or convenes a meeting with its creditors, or proposes or enters into an arrangement with creditors, or

**TERMS AND CONDITIONS ("T&C's")**

- makes an assignment for the benefit of its creditors; or
- (iii) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any of the Customer's assets.
- 15.2 The Customer:
- (a) cannot cancel any Order unless it is expressly agreed to in writing by the Company;
- (b) subject to T&C15.2(a), where the Company has agreed to a cancellation for the Order of the Customer, the Customer is liable for any loss incurred by the Company including, but not limited to, any loss of profits, up to the time of cancellation;
- (c) subject to T&C15.2(a), where an Order of a Customer involves the Company sourcing the Goods from a third party to meet the Customer's request, the Customer is liable to pay for the full value of the Goods ordered should the Goods have been dispatched at the time of the cancellation of the Order by the Customer.
- 16. NO SET OFF**  
The Customer:
- 16.1 shall have no right to set-off in any suit, claim, or proceeding brought by the Company against the Customer for a default in payment;
- 16.2 acknowledges that the Company can produce this clause in bar of any proceedings for set-off;
- 17. ACCESS**
- 17.1 The Customer will be charged an additional fee where the Company's work is interfered with or that there is a failure to provide clear unhindered, proper, or safe access to the Site (more specifically the area that works are to be carried out) for the Company;
- 17.2 The Company will not be held responsible or liable for any delay due to inclement weather or Force Majeure Event, failure of the Customer to provide required items, or changes requested to be made by the Customer, or in any circumstances beyond the Company's reasonable control;
- 18. AGREED INTENDED USE**  
The Customer acknowledges and agree:
- 18.1 to forfeit any rights (if any) against the Company where Goods are:
- (a) applied for any other use to which the Goods were intended to be used or use in a manner not consistent with the Goods manual;
- (b) altered in a way that is not consistent with the intended use of the Goods;
- (c) not repaired by an authorised repairer.
- 18.2 sole responsibility and liability for any damage or injury to property or person caused using Goods and shall indemnify the Company in compliance with T&C12.
- 19. PRIVACY ACT 1988**  
The Customer and its Guarantors (if applicable) agree:
- 19.1 for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and its Guarantors (if applicable) in relation to a credit application by the Customer with the Company;
- 19.2 the Company may exchange information about the Customer and its Guarantors (if applicable) with credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency;
- 19.3 to provide consent to the Company to be given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) *Privacy Act 1988*)
- 20. GENERAL**
- 20.1 Amendment**  
The Agreement may only be amended in writing and signed by each of the parties.
- 20.2 Severability**  
If any provision in the Agreement is void, invalid, illegal or unenforceable the existence, validity, legality and enforceability of the residual provisions will not be affected, prejudiced or impaired and the offending provision will be deemed severed from the Agreement.
- 20.3 Waiver**  
No failure or delay by a party in exercising any right, power or privilege in the Agreement will impair the same or operate as a waiver of the same nor may any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- 20.4 Joint and several liability**  
If more than one person is the Customer, each will be jointly and severally liable, regardless of the person to whom the invoice is addressed to and regardless of which person received the benefit of the Services and Goods.
- 20.5 No reliance**  
Each of the parties acknowledges that, in entering into the Agreement, it does not do so in reliance on any representation, warranty or other provision except as provided in writing. Any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.
- 20.6 Priority of documents**
- (a) Subject to T&C20.6(b), if there are any inconsistencies between the Agreement and any other document, the Agreement will prevail.
- (b) If there are inconsistencies between these T&Cs and the Proposal, the T&Cs will prevail.
- 20.7 Application of law**  
The rights and remedies provided in the Agreement are cumulative and not exclusive of any rights and remedies provided by law.
- 20.8 Governing law**
- (a) This Agreement will be governed by, and construed in accordance with the laws in Victoria, Australia.
- (b) The parties irrevocably submit to the exclusive jurisdiction of the courts of Victoria, Australia.