

Standard Terms and Conditions for the provision of services and goods

Please read these Terms carefully as they contain important information regarding the Customer's rights and obligations under this agreement and their dealings with MPS.

These terms and conditions are used by all customers of Mine Power Solutions Pty Ltd (ACN 120 669 285) including Credit Account Customers and these Terms are to be read together with the Credit Application & Security Agreement (if applicable).

1. Definitions

In these terms and conditions:

- 1.1 **Credit Account Customers** means - see clause 9.3.2.
- 1.2 **Credit Application & Security Agreement** means the credit application and security agreement of MPS.
- 1.3 **Customer** means the person, firm or organisation entering into, or that has entered into, a contract, transaction or arrangement to obtain Services or Goods from MPS or its agents as specified in any invoice, document or Job Order.
- 1.4 **Goods** means any good, product or material required to undertake the Services, including those goods described in a Job Order provided by MPS to the Customer.
- 1.5 **Job Order** means each tax invoice, quotation or job order or other paperwork provided by MPS to the Customer which describes the work or Services to be undertaken by MPS to the Customer, and includes any variations made by MPS.
- 1.6 **MPS** means Mine Power Solutions Pty Ltd (ACN 120 669 285) and includes its successors and permitted assigns and any person acting on behalf of and with the express authority of the directors of Mine Power Solutions Pty Ltd.
- 1.7 **PPS Act** means - see clause 24.1.
- 1.8 **Services** means the building and electrical maintenance and construction services of MPS and includes such other services or work undertaken by MPS from time to time and includes the services or work referred to in the Job Order.
- 1.9 **Site** means the place or places where the Customer's work will be carried out.
- 1.10 **Terms** means the terms and conditions set out in these standard terms and conditions, including such other terms agreed by MPS and the Customer in writing.
- 1.11 if there is more than one Customer, these Terms bind them jointly and each of them severally;
- 1.12 nothing in these Terms constitutes a relationship of employer and employee, partnership, principal and agent, or joint venture between the parties.
- 1.13 The whole or any part of any clause of these Terms that is illegal or unenforceable will be severed from these Terms and will not affect the continued operation of the remaining provisions of these Terms.
- 1.14 The failure of a party at any time to insist on performance of any obligation under these Terms is not a waiver of its right to insist on performance of that obligation or to claim damages unless that party acknowledges in writing that the failure is a waiver.
- 1.15 MPS accepts no responsibility for changes in any law which may affect the Services or the supply of Goods.
- 1.16 The Customer agrees to notify MPS in writing at least fourteen (14) days prior to any change whatsoever in ownership structure and, further, indemnifies MPS against any loss or damage that may result from the Customer's failure to notify MPS of any such change.

2. Application

The Terms apply to each contract, transaction or arrangement arising in respect of the supply of Services or Goods by MPS to the Customer. These Terms supersede any previous written or oral agreements or understandings (if any) entered into between MPS and the Customer in connection with the supply of Services or Goods.

3. Offers and Acceptance

- 3.1 Every Job Order is an estimate only and is subject to withdrawal, correction or alteration at any time prior to MPS's acceptance of the Job Order.

- 3.2 Unless otherwise agreed in writing, all quotations given by MPS are valid for thirty (30) days only.
- 3.3 All works performed will be performed by MPS during business hours Monday to Friday 7.00am to 5.30pm unless otherwise stated in the Customer's Job Order. Prices are quoted on the basis that works will be performed during business hours referred to in the clause. Work required by the Customer or otherwise necessitated outside of these hours, may increase the quoted price.
- 3.4 These Terms constitute the entire agreement between the parties regarding the provision of Services and Goods, unless otherwise agreed in writing between the parties.
- 3.5 These Terms take precedence over any terms and conditions which may be contained in any document provided by MPS.
- 3.6 In acceptance of the Job Order, the Customer warrants that it has not relied on any representation by MPS other than as supplied in writing in the quote
- 3.7 MPS may in its absolute discretion agree to provide credit to the Customer on terms set out in MPS's Credit Application and Security Agreement documentation. The Customer is deemed to have accepted any credit terms set out in MPS's Credit Application and Security Agreement documentation where they place any further orders after the initial execution of those terms.
- 3.8 MPS may in its absolute discretion require the Customer to complete a deed of guarantee and indemnity before undertaking any Service or deliver of Goods.

4. **Prices**

- 4.1 In the event of an increase in supply costs, wages, duties or like charges incurred by MPS in respect of undertaking the Services or supply of Goods to the Customer, MPS may vary the quoted price provided to the Customer at any time by giving notice by any means to the Customer to take into account and recover from the Customer the increase in supply costs, wages, duties or like charges that MPS has incurred.
- 4.2 Unless otherwise expressly stated, the quoted price excludes the costs of transportation of any goods to the Customer's point of delivery.

5. **Variations**

- 5.1 Any requested variations, alterations or modifications to the Services ordered by the Customer must be put to MPS in writing.
- 5.2 MPS in its absolute discretion may decide to accept or reject the variation, alteration or modification and shall notify the Customer of its decision by any means.
- 5.3 Where MPS rejects any requested variations, alterations or modifications, and has undertaken, ordered or prepared Goods, the Customer will be required to accept the Goods and pay MPS in accordance with the original quotation.
- 5.4 Where any requested variation, alteration or modification is accepted, the original price quoted will be amended to reflect any consequential adjustment to the price of the Services.
- 5.5 Clauses 4 and 5 will not be invalid by reason of a failure of MPS stipulating the precise manner in which any variation in price is to be calculated.

6. **Services and Delivery of Goods**

- 6.1 Delivery of any Good occurs when the Good is delivered by MPS to the Customer or its agent, or to a storage location designated by the Customer, unless otherwise agreed in writing between the parties.
- 6.2 Delivery dates of Goods or start or completion dates of Services are estimates only. To the extent permitted by law, MPS will not be liable for any loss or damage for failure to deliver Goods or start or complete the Services by the date stated by MPS provided that MPS provides notice of any delay to deliver Goods or start or complete the Services.
- 6.3 The Customer must promptly supply MPS with all technical information and commercial documentation necessary to undertake the Services.
- 6.4 Notwithstanding Retention of Title provisions as per Clause 21 hereof, the risk in Goods purchased will pass to the Customer upon delivery to the Customer or its agent.
- 6.5 MPS reserves the right to suspend works (Suspension Date) if the Site of any infrastructure on the Site or aspect of the Site is found to be faulty or dangerous. If requested by MPS, the Customer must pay MPS the cost of works up to the Suspension Date.

7. **Site Plans and Information**

- 7.1 If requested by MPS,
 - 7.1.1 the Customer must assist MPS by providing MPS at least 5 (five) clear business days before the proposed commencement date of the Services site plans or other plans in respect of the Site that MPS may reasonably require; and
 - 7.1.2 the Customer must advise MPS of the precise location of all underground services on the Site and clearly mark the same. The underground mains & services the Customer 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 affect the Site
- 7.2 The Customer indemnifies MPS from any claim for costs, expenses or losses suffered by MPS as a result of, or relating to, the Customer failure to provide MPS:

- 7.2.1 with the plans or information as referred in clause 7.1; or
- 7.2.2 with the plans or information as referred in clause 7.1 by the time specified by MPS.

- 7.3 The Customer is solely responsible for notifying councils or appropriate authorities in relation to works done by MPS for the Customer.
- 7.4 Whilst MPS will take all care to avoid damage to any underground services the Customer agrees to indemnify MPS 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 7.1.

8. Delay in Services

Should the Services at the Site be held up for reasons beyond MPS's control, then:

- 8.1 MPS may recover the costs of such delay from the Customer;
- 8.2 the customer shall indemnify MPS from any increased costs, losses or expenses due to such delay.

9. Payment

- 9.1 The Customer must, within the time specified in the Customer's Job Order pay MPS the total amount set out in the invoice in full and with no deduction or set-off. If no time is specified with the Job Order or invoice delivered to the Customer, payment of the amount specified in the Job Order is payable within 7 days from the completion of Services.
- 9.2 Payment for Goods must be made upfront unless expressly waived by MPS.
- 9.3 At MPS's sole discretion:
 - 9.3.1 a deposit or deposits may be required prior to Services being undertaken.
 - 9.3.2 MPS may agree to supply credit to customers in accordance with MPS's Credit Application and Security Agreement documentation (**Credit Account Customers**).
- 9.4 If a deposit is so requested by MPS the Customer acknowledges MPS is under no obligation to undertake any work until the deposit is received by MPS in full and when all details pertaining to the Services are finalised. In the event of default as to payment owing to MPS or any breach of these Terms on the part of the Customer, MPS shall be entitled to the deposit (to recover any loss or cost incurred by MPS or for payment of Services undertaken, or Goods purchased, by MPS) and claim any profit or margin contemplated by or allowed for in the Job Order in addition to any remedy available to MPS at law or in equity.
- 9.5 No surcharge will apply to payments made via EFT (Electronic Funds Transfer) directly to MPS's bank account or payments made by Visa Card or Master Card (unless otherwise notified by MPS).
- 9.6 Credit Account Customers are required to pay all amounts for purchases, in full and with no deduction or set-off, within 30 days from completion of Services made to that Credit Account Customer or its agent.
- 9.7 In the event of a dispute, the complete un-disputed portion of the Services must be paid in accordance with the payment terms set out in these Terms.
- 9.8 In the event that the Customer (including a Credit Account Customer) fails to make any payment by the due date, all monies owing to MPS will become immediately due and payable, and MPS may in its discretion:
 - 9.8.1 refuse, change or withdraw the Credit Account for the Customer;
 - 9.8.2 cease Services, or withhold delivery of Goods, until all monies have been paid in full;
 - 9.8.3 exercise its rights under clause 14;
 - 9.8.4 engage any debt collection service or person or initiate legal proceedings to recover all outstanding monies;
 - 9.8.5 exercise all or any of its rights or powers of recovery or sale as provided for under these Terms or MPS's Credit Application and Security Agreement (if applicable).
- 9.9 Where work is to be carried out over a period exceeding one month, then pro-rata progress payments may be claimed and invoiced by MPS.
- 9.10 Interest on overdue amounts may be charged at a rate of 1 % per calendar month or part thereof and the Customer shall be liable for, and expressly undertakes to pay, all such interest.
- 9.11 Should it be considered necessary by MPS to incur legal or other expenses, including any such expenses to any debt collection agency, in obtaining, or attempting to obtain, payment for any amount due by the Customer, the Customer will be liable for all such expenses.
- 9.12 Amounts received by MPS may be applied first against interest, charges and expenses.
- 9.13 Any payment made by or on behalf of the Customer which is later avoided by the application of any Federal or State legislation or regulation or law shall be deemed not to discharge the Customer's indebtedness and, in such an event, the parties are to be restored to rights which each respectively would have had if the payment had not been made.
- 9.14 The Customer is liable for, and expressly undertakes to pay, all fees (including an including an Administration Fee in an amount to be set from time to time by MPS) incurred as a result of a cheque or electronic banking transaction being dishonoured for whatever reason.

10. Warranty

- 10.1 Any warranty as to the Goods shall be limited to the written warranty provided by the manufacturer to the Customer on or before installation of the Good.

- 10.2 MPS reserves the right to make null and void the warranty should the Goods or any part of the works be modified, altered, damaged or put to any undue stress other than in the way the Goods or works were designed to perform.
- 10.3 MPS warrants that Goods supplied shall be of merchantable quality provided that the Goods are used for their intended purpose. Where the Good is used contrary to any reasonable instructions provided by MPS the warranty is excluded.
- 10.4 Without limiting clause 10.3, and to the extent permitted at law, MPS expressly excludes all statutory warranties including but not limited to all warranties relating to title, defects or conformity of the Goods or works.
- 10.5 Any defects that arise in the Goods during any warranty period specified by MPS for those Goods will be replaced or repaired in accordance with this clause 10.
- 10.6 MPS warrants that if any defect in any workmanship of MPS becomes apparent and is reported to MPS within thirty (30) days of the date of practical completion of the works (time being of the essence) then MPS will either (at its sole discretion) replace or remedy the workmanship.
- 10.7 MPS excludes all other conditions and warranties except any implied conditions or warranties the exclusion of which would contravene any Federal or State legislation or regulation or law or cause any clause of this agreement to be void (**Non-excludable Condition**).
- 10.8 The warranty referred to in clause 10.5 and clause 10.6 will not apply:
- 10.8.1 unless notice of any defect and any claim in respect thereof is given in writing to MPS within the warranty period (if there is no warranty period – then thirty (30) days from the date of practical completion of the works);
- 10.8.2 if any serial number or identification or instalment plate attached to the relevant Goods has been altered, rendered illegible or removed;
- 10.8.3 if the Goods or any part of the works have been:
- (a) subject to misuse, abuse, negligence or accident otherwise than by MPS;
- (b) connected to improper, inadequate or faulty power, water or drainage services or operated using incorrect, insufficient or contaminated lubricants, coolants, refrigerants, or additives;
- (c) installed, maintained or operated otherwise than in accordance with the instructions of MPS;
- (d) damaged by foreign objects;
- (e) serviced, repaired, altered or moved otherwise than by MPS or its nominees or using non approved replacement parts.
- 10.8.4 if the Goods (or any part of the works) are used for any purpose or subjected to any operating conditions varying from that for which it was specifically supplied by MPS; or
- 10.8.5 if damage to the Goods or works arose from corrosion, or physical or chemical properties of water, steam or chemical compounds unless the Goods were supplied by MPS for a purpose which contemplated these contributing elements and in respect of which there was specific and detailed prior disclosure by the Customer.
- 10.9 MPS's liability to the Customer in respect of the warranty referred to in clause 10.5 and clause 10.6, breach of any Non-excludable Condition, breach of contract or any negligent act or omission, is limited at MPS's option, to:
- 10.9.1 in the case of Goods, replacement or repair of the Product, or any part thereof, or the supply of equivalent Goods; and
- 10.9.2 in the case of Services, the re-supply of the Service (by MPS or a contractor of MPS), or the cost of re-supply of that Service.
- 10.10 The Customer will be responsible for, and must meet all charges in respect of:
- 10.10.1 making the Goods accessible for service including the removal, dismantling or reinstatement of any equipment to which the Goods may be connected or from premises where the Goods are installed;
- 10.10.2 labour, transportation, travelling or communication expenses necessarily incurred in the provision of services or repairing Goods at locations; and
- 10.10.3 any surcharge applicable in respect of the provision of services or repairing Goods outside normal working hours.
- 10.11 Notwithstanding any other provision of these Terms, MPS is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Customer for:
- 10.11.1 any increased costs or expenses;
- 10.11.2 any loss of profit, revenue, business, contracts or anticipated savings;
- 10.11.3 any loss or expense resulting from a claim by a third party; or
- 10.11.4 any loss or damage, including any consequential loss or damage, arising from any delay in delivery or failure to deliver any Goods or Service, either whole or in part, due to circumstances beyond MPS's control.

11. Intellectual Property Indemnity

- 11.1 All intellectual property created by or on behalf of MPS in relation to the Services supplied by MPS will be and remain the sole property of MPS. The Customer does not acquire any rights in MPS's intellectual property under these Terms, other than the right to use such intellectual property within its business, and will

not exploit, replicate, reverse-engineer or use for any other purpose MPS's intellectual property or any materials or documents in which the intellectual property is recorded.

- 11.2 The Customer warrants that MPS will not breach any third party's intellectual property or other rights in consequence of supplying the Services in accordance with directions, instructions, drawings, designs or specifications provided by the Customer. The Customer indemnifies MPS against all liabilities, claims, losses, damages or costs (on a full indemnity basis and whether incurred by or awarded against MPS) that MPS may incur as a direct or indirect result of a breach of this warranty.
- 11.3 The Customer acknowledges that all technical information, advice, know-how, drawings, designs and samples submitted to the Customer by MPS are confidential and the proprietary information of MPS. The Customer will keep all such information secret and confidential and will not disclose it or any part thereof to any person without the express written authority of MPS.

12. **Marketing materials**

The Customer grants to MPS the right to:

- 12.1 take photographs, film, videotape or other images of the works completed in or otherwise located at the Customer's premises, and to use, reproduce, publish, edit, modify, dispose of or otherwise deal with those images; and
- 12.2 reproduce and publish the Customer's name and trademarks, and disclose the fact that MPS has provided Services to the Customer.

13. **Confidentiality**

- 13.1 The Customer must keep confidential all confidential information (**Confidential Information**) of MPS that comes into the Customer's possession or control in connection with these Terms or otherwise (including without limitation the intellectual property and proprietary information referred to in clause 11).
- 13.2 The obligations of confidentiality under these Terms do not extend to information that:
 - 13.2.1 is rightfully known to or in the possession or control of the Customer and not subject to an obligation of confidentiality;
 - 13.2.2 is public knowledge (otherwise than as a result of a breach of these Terms); or
 - 13.2.3 is required by law to be disclosed.
- 13.3 The Customer must promptly return to MPS all Confidential Information upon request.

14. **Cancellation**

- 14.1 MPS may cancel or postpone the Services or delivery of Goods at any time before commencement of the Services by giving reasonable notice to the Customer by any means.
- 14.2 In the event that the Customer causes a delay in the commencement of the Services in accordance with a Job Order or any cancellation or postponement of the provision of the Services or delivery of Goods:
 - 14.2.1 MPS is not be liable for any loss or damage, including any consequential loss or damage, as a result of any such delay or cancellation or postponement;
 - 14.2.2 the Customer is liable for any costs incurred by MPS up to the time of the cancellation or postponement.

15. **Insurance**

The Customer is responsible for obtaining insurance for any loss or damage which occurs at the Site as a result of, whether directly or indirectly, from the provision of Services or the Goods, including for food and product loss and other consequential losses arising from breakdown of Goods or failure to perform, as and from the date of delivery of the Goods by MPS or its agent.

16. **Assignment**

The Customer may not assign or transfer any of its rights or obligations under these Terms to any other person without the prior written approval of MPS which may be withheld by MPS in its absolute discretion.

17. **Termination**

- 17.1 These Terms will continue in force until terminated in accordance with these Terms.
- 17.2 MPS may terminate these Terms with immediate effect upon written notice to the Customer if:
 - 17.2.1 the Customer suffers an insolvency event, including if a receiver/receiver and manager, liquidator, provisional liquidator, administrator, trustee in bankruptcy or other like person is appointed, or a scheme of arrangement is proposed or approved in respect of the Customer, or a deed of company arrangement is proposed or approved in respect of the Customer, or a mortgagee enters into possession of any of the Customer's assets or an application is made for the winding up or sequestration of the estate of the Customer;
 - 17.2.2 the Customer breaches a term of this agreement, and fails to remedy that breach within 14 days of a written notice requiring it to do so; or
 - 17.2.3 the Customer does not agree with MPS's proposed variation to the Terms in accordance with clause 19.2.
- 17.3 Either party may terminate these Terms upon one month's prior written notice to the other party.
- 17.4 Upon termination of these Terms:
 - 17.4.1 all monies owing to MPS will immediately become due and payable;

- 17.4.2 MPS may, in its discretion, exercise its rights under clause 21;
 - 17.4.3 MPS may stop all work;
 - 17.4.4 the Customer will be required to reimburse MPS for all reasonable costs incurred by MPS, up until the date of termination, in connection with the supply of Goods and Services up to termination.
- 17.5 Termination of these Terms will not affect any accrued rights or remedies any party may have as at the date of termination.

18. **Force Majeure**

Neither MPS nor the Customer shall be liable for any breach of any provision of any contract between them arising from an act of their respective God, natural disaster, terrorism, war or any other, specified or un-specified, occurrence beyond the control of either party.

19. **Variation of Terms**

- 19.1 These Terms may be amended or superseded from time to time by notice given by MPS by any means.
- 19.2 If the Customer does not agree to MPS's proposed variations, the contract between MPS and the Customer will terminate.
- 19.3 Where the Customer places a further Job Order after provision of the amended Terms, the Customer is deemed to have accepted the proposed variations.

20. **Jurisdiction**

- 20.1 These Terms shall be read and construed in accordance with the laws of the State of South Australia and, where applicable, the Commonwealth of Australia and the Customer submits to the non-exclusive jurisdiction of the courts of South Australia in respect of any dispute or any other matter arising out of these Terms.
- 20.2 Should a dispute arise between the Customer and MPS, either party may refer the dispute to mediation by the Australian Commercial Disputes Centre (**ACDC**) for resolution in accordance with the Guidelines for Commercial Mediation of the ACDC. Each party must bear its own costs of resolving a dispute under this clause and the parties must bear equally the costs of any appointed person and independent premises used for resolving or attempting to resolve a dispute.
- 20.3 If a dispute is not resolved under subclause 20.2 within 30 days, a party that has complied with this clause may terminate the dispute resolution process by giving notice in writing to the other party.

21. **Retention of Title**

- 21.1 Title in all the Goods supplied shall remain vested in MPS and shall not pass to the Customer until all monies owing to MPS by the Customer together with all collection, repossession and/or legal costs incurred have been paid in full. If any of the Goods are damaged or destroyed prior to the title passing to the Customer, MPS is entitled, without affecting any other rights and remedies under this agreement, to any insurance proceeds payable for the Goods in accordance with the PPS Act.
- 21.2 The Goods, whether as separate chattels or as components, and the proceeds from the use or sale of the Goods, shall be stored in such a manner as to be clearly identifiable and traceable as the property of MPS until title has passed to the Customer.
- 21.3 Where the Customer is liable for and has failed to pay for the Goods or the Services, MPS may demand at any time until title has passed to the Customer that the Customer returns the Goods or any part of them.
- 21.4 In the event that the Customer defaults in the payment of any monies owing to MPS, MPS and its employees or agents shall have the right to enter without notice upon the Customer's premises or any other premises where the Goods are known to be stored (and the Customer must ensure that MPS has the right to enter such premises at all times) to repossess the Goods and for this purpose the Customer shall grant reasonable access rights and MPS, its employees or agents shall be entitled to do all things required to secure repossession or render inoperative such Goods or associated equipment by the removal of some component, part or device there from.
- 21.5 MPS may, without notice to the Customer, resell any Goods it repossesses under this clause. In the event that MPS repossess and sells any Goods under this clause, MPS will repay to the Customer such amounts (if any), up to the amount paid by the Customer for the relevant Goods, remaining after deduction of all costs and expenses incurred by MPS in exercising its rights under this clause (including repossession, selling and storage costs, and revaluing the Good to ascertain its resale value). The amount payable by MPS under this clause will be reduced in accordance with any reduction in the value of the Good due to damage while in the possession or control of the Customer.

22. **Taxes**

- 22.1 Unless specifically described as 'GST inclusive', any consideration to be paid or provided for a supply by MPS to the Customer does not include any amount on account of goods and services tax, or any similar tax applicable in Australia (**GST**). Where any supply is subject to GST (other than a supply the consideration for which is specifically described as 'GST inclusive'), the Customer must, at the same time and in the same manner as the GST exclusive consideration is payable or to be provided for that supply, pay to MPS an amount equal to the GST payable by MPS in respect of that supply.
- 22.2 Other government and council charges are in addition to prices quoted and are payable by the Customer and if paid by MPS are refundable by the Customer to MPS.

23. **South Australian/Cth Legislation**

- 23.1 The Customer warrants that the Goods are supplied by MPS to a Customer for the purposes of a business, and that the provisions of the National Credit Code contained in the National Consumer Credit Protection Act 2009 (Cth) do not apply.
- 23.2 If the Customer purchases any Goods from MPS for resupply as, or to incorporate any of MPS's Goods into goods ordinarily acquired for personal household or domestic use (**Consumer Goods**) the Customer warrants that:
- 23.2.1 if a Customer supplies the Consumer Goods for resupply, the Customer will ensure that its terms and conditions of supply require the Customer's customer (and each person in the distribution chain) to include in their supply agreements or conditions of sale obligations requiring their customers to also exclude liability for any claims under the National Credit Code; and
- 23.2.2 if the Customer supplies the Consumer Goods directly to an end user/consumer the Customer will do so using terms and conditions of supply which exclude liability for claims under the National Credit Code.
- but only where the end user/customer acquires the Consumer Goods for business purposes.
- 23.3 Where the Customer purchases the Goods for resupply, the Customer indemnifies MPS to the maximum extent of the law for all claims arising from the resale and use by the Customer's purchaser.

24. **Personal Property Securities Act 2009 (Cth)**

- 24.1 For the purpose of these Terms, as appropriate, any words contained in the subsequent clauses have the respective meanings as defined in the Personal Property Securities Act 2009 (Cth) (**PPS Act**) and the parties acknowledge that:
- 24.1.1 the Customer is the grantor,
- 24.1.2 MPS is the secured party;
- 24.1.3 the Goods, which are commercial property, are the collateral; and
- 24.1.4 attachment occurs on acceptance of the Customer's Job Order.
- 24.2 The Customer agrees that where the Services or the Goods are supplied on credit by MPS then:
- 24.2.1 the Customer charges, and agrees to charge, all of the Goods with payment of all amounts owed in accordance with these Terms;
- 24.2.2 the Customer confirms that the Goods are held on trust for MPS; and
- 24.2.3 that the Customer holds the Goods subject to the powers and rights of MPS contained or implied in these Terms and the PPS Act.
- 24.3 The customer acknowledges these terms give rise to a Security Interest in favour of MPS, which MPS may, in its discretion, affect a registration on the PPS Act register (in any manner MPS deems appropriate) in relation to any security interest arising under or in connection with or contemplated by these Terms.
- 24.4 The Customer waives its right to receive notice of a verification statement in relation to any registration by MPS on the register.
- 24.5 The Customer agrees to promptly execute any documents, provide all relevant information, fully cooperate with MPS and do any other act or thing that MPS requires to ensure that MPS has a perfected security interest in, and has priority over any other security interests in, the Goods or otherwise. In the event that the Customer does not provide the necessary details to complete a valid financing statement for the purposes of the PPS Act, then the Customer agrees that, until all monies owing to MPS are paid in full, it shall not sell or grant any other security interest in the Goods.
- 24.6 The Customer will not:
- 24.6.1 register a financing change statement in respect of the Security Interest; or
- 24.6.2 agree to or create another Security Interest in the Goods;
- without MPS's prior written consent.
- 24.7 If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising in connection with these terms, the Customer agrees that the following provisions of the PPS Act will not apply to the enforcement of these terms: section 95 (notice of removal of accession), to the extent that it requires MPS to give a notice to the Customer; section 96 (when a person with an interest in the whole may retain an accession); subsection 121(4) (enforcement of liquid assets – notice to grantor); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal), to the extent that it requires MPS to give a notice to the Customer; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); subsection 134(1) (retention of collateral); section 135 (notice of retention); section 142 (redemption of collateral); and, section 143 (reinstatement of security agreement).
- 24.8 Notices or documents required or permitted to be given to MPS for the purpose of the PPS Act must be given in accordance with the PPS Act.
- 24.9 MPS agrees with the Customer not to disclose information of the kind mentioned in subsection 275(1) of the PPS Act except in circumstances required by paragraphs 275(7)(b)-(e).
- 24.10 If MPS receives any notice in relation to the Customer under section 64 of the PPS Act, all outstanding monies may, at MPS's discretion, become immediately due and payable.
- 24.11 The Customer agrees to reimburse MPS, upon demand, for all costs and/or expenses incurred or payable by MPS in relation to registering or maintaining any financing statement, releasing in whole or in part MPS's security interest or any other document in respect of any security interest.

25. **Privacy**

- 25.1 The Customer hereby authorises MPS to collect, retain, record, use and disclose consumer and/or commercial information about the Customer, in accordance with the Privacy Act 1988 and subsequent amendments, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by MPS, a debt collector, credit reporting agency and/or any other individual or organisation which maintains credit references and/or default listings.
- 25.2 MPS may give information about the Customer to a credit reporting agency for the purposes of obtaining consumer and commercial credit reports and/or lodging consumer and commercial defaults on the Customer's credit file. This information may be given before, during or after the provision of credit to the Customer and will be in accordance with the Privacy Act 1988 and subsequent amendments.

26. **Security & Charge**

The Customer hereby charges all property both equitable and legal, present or future of the Customer in respect of any monies that may be owing by the Customer to MPS under the terms and conditions or otherwise and hereby authorises MPS or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the Customer at any time.

27. **Indemnity**

To the full extent permitted by law, the Customer will indemnify MPS and keep MPS indemnified from and against any liability and any loss or damage MPS may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these terms and conditions by the Customer or its representatives.

28. **South Australia, Building and Construction Industry Security of Payments Act 2009**

- 28.1 At MSP's sole discretion, the provisions of the *Building and Construction Industry Security of Payments Act 2009* may apply.
- 28.2 Nothing in these Terms is intended to have the effect of contracting out of any applicable provisions of the *Building and Construction Industry Security of Payments Act 2009* of South Australia, except to the extent permitted by the Act where applicable.
- 28.3 The Customer accepts that email is a valid format to receive payment claims made under the *Building and Construction Industry Security of Payments Act 2009*.