

Master Agreement of Terms

Agreement made on the _____ day of _____ 20____

Between Poly Electrical Pty Ltd (ACN: 612 078 636) t/a POLYLEC A.B.N: 71 612 078 636, 92-94 Old Coach Road, Tamborine, QLD, 4270, Phone (07) 3290 6190, Email admin@polylec.net ("the Contractor")

And [Insert name]

of [insert address]

Other details [see Note 1 below]:

("the Customer")

Note 1: The below information is required for the PPSA.

If an individual - insert full name, address and date of birth. You must also provide a copy of your driver's licence.

If company - insert company name, address, ACN, names of directors, dates of birth and addresses of directors.

If trust/partnership - ensure you put in full details including any of the abovementioned details and any ABN. If individuals are involved, you must also provide a copy of your driver's licence.

And [Insert name]

of [insert address], Phone [insert phone] Facsimile [insert fax]

Other details [see Note 1 above]:

("the Guarantor")

Note: See Note 1 above. Same information is required for any Guarantor.

Background

- A. The Customer and the Contractor are entering into this Agreement where the parties agree to the terms and conditions of this Agreement to facilitate the supply of goods and/or services.
- B. Each Quotation accepted by the Customer constitutes a Contract which incorporates the provisions of this Agreement and any Security Interests created thereby are also governed by the provisions of this Agreement.

Terms

1. Definitions and Interpretation

1.1. Definitions

(a) In this Agreement and in any instrument created pursuant to or in accordance with it, unless the context otherwise requires:

- (i) "Agreement" means this Master Agreement of Terms and any subsequent amended version.
 - (A) Any amendments made to the Agreement will be provided to the Customer. If the Customer has any concerns with those amended terms, the Customer should contact the Contractor in Writing listing the concerns within ten (10) business days of the date when the amended terms were forwarded to the Customer. If agreement cannot be reached on any objected amended terms, the original Agreement will remain in full force and effect;
 - (B) If no Written objection to the terms as detailed in clause 1.1(a)(i)(A) is received within the time specified, the Customer will be deemed to have accepted the amended terms;
- (ii) "Business Day" means any day except Saturday or Sunday or a day that is a public or bank holiday in the capital city of the State in which the Contractor has its registered office if a corporation or State in which the Contractor has its principal place of business if not a corporation;
- (iii) "Commencement Date" means the date specified in a Quotation for commencement of the Works under a Contract;
- (iv) "Completion Date" means the date specified in a Quotation estimated for completion of the Works under a Contract;
- (v) "Confidential Information" means all information passing from the Contractor to the Customer relating to a Quotation, including but not limited to, trade secrets, drawings, know-how, techniques, concepts, projections, arrangements and Deeds with third parties, the Contractor's information and information proprietary to the Contractor, formulae, concepts not reduced to material form, designs, plans, models, financial data and pricing lists, other than information which is in the public domain for any reason other than by the breach of this Agreement by the Customer;
- (vi) "Contract" means a contract to carry out the Works between the Customer and the Contractor created by the acceptance of a

Quotation by the Customer and includes Contract Documents;

- (vii) "Contract Documents" includes this Agreement, a Quotation and all drawings, plans and specifications and all other information provided by the Contractor to the Customer in relation thereto;
- (viii) "Controller" has the same meaning as in the PPSA;
- (ix) "Deposit" means the amount specified in a Quotation and which is payable by the Customer to the Contractor immediately upon formation of a Contract;
- (x) "Dispute Resolution" means the process of resolving disputes between the parties set out in clause 37;
- (xi) "Documentation Costs" means all fees and outlays associated with the registration of any Security Interest on the PPSR;
- (xii) "Goods" means the goods and/or materials and, where applicable, includes installation and any other related services which are either specified in a Quotation or reasonably necessary to complete the Works;
- (xiii) "Grantor" means the Customer and Guarantor jointly and severally;
- (xiv) "GST Act" means the Act titled *A New Tax System (Goods and Services Tax) Act 1999* as amended from time to time;
- (xv) "GST" has the meaning given to this term by the GST Act;
- (xvi) "Guarantors" means the person executing this document as Guarantor;
- (xvii) "Industrial Action" has the same meaning as defined in the *Fair Work Act 2009 (Cth)*;
- (xviii) "Insolvency Event" means official management, appointment of an administrator and /or receiver, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, assignment for the benefit of creditors, scheme of composition or arrangement of creditors, insolvency, bankruptcy or any similar procedure;
- (xix) "Irremediable breach" means a breach of an obligation under this Agreement that cannot be remedied but does not include a breach in the performance of an obligation within a time specified in this Agreement unless the obligation is incapable of being performed after the end of the time specified;
- (xx) "Order" has the meaning given to this term by clause 3.3;
- (xxi) "Receipt Day" for a Regulated Contract means the day on which the Customer receives the following documents from the Contractor: a copy of the signed Contract; a copy of the appropriate Contract information statement for the Contract or if these documents are received by the Customer from the Contractor on different days – the later of the days;
- (xxii) "Regulated Contract" has the meaning given to this term by the *Domestic Building Contracts Act 2000 (Qld)*;
- (xxiii) "Personal Property" has the same meaning as in the PPSA as it relates to:
 - (A) all personal property of the Grantor, including without limitation present and after acquired property of the Grantor;
 - (B) any personal property provided by the Contractor (the secured party) to the Grantor on a retention of title basis;
 - (C) any personal property leased or provided on bailment by the Contractor (the secured party) to the Grantor; and
 - (D) including without limitation, any Proceeds associated with the above personal property;
- (xxiv) "PMSI" means a purchase money security interest as defined in the PPSA;
- (xxv) "PPSA" means the *Personal Property Securities Act 2009 (Cth)* and any regulations made pursuant to it;
- (xxvi) "PPSR" means the Personal Property Securities Register established pursuant to the PPSA;
- (xxvii) "Practical Completion" means the stage when the Works have been completed in accordance with this Agreement and all relevant statutory requirements apart from minor omissions or minor defects;
- (xxviii) "Price" means the price to be paid by the Customer to the Contractor for the performance of the Works in accordance with the Quotation;
- (xxix) "Proceeds" has the same meaning as in the PPSA;
- (xxx) "Provisional Sum" is the amount that is the Contractor's estimate of the cost of performing a part of the Works, for which the Contractor, after making all reasonable enquiries, can not determine a definite amount at the time a Contract is entered into;
- (xxxi) "Quotation" means a Written quotation given by the Contractor to the Customer which may specify the scope of the Works, any Deposit, the Commencement Date, Completion Date of the Works, Price of the Works, any specifications and which is deemed to incorporate and be governed by this Agreement;
- (xxxii) "Retention" means the proportion or percentage the Customer is entitled to retain from a progress claim specified in the Quotation, but which shall not exceed 10% of any progress claim nor 5% of the total Contract Price prior to Practical Completion and which may be substituted at the election of the Contractor with a bank guarantee in lieu thereof. Any retention shall be reduced on the date of Practical Completion to no more than 2.5% of the total Contract Price and any retention in excess of 2.5% of the total Contract Price is to be returned to the Contractor;
- (xxxiii) "Security Interest" has the same meaning as in the PPSA;
- (xxxiv) "Servants" means and includes servants, employees, agents, contractors and sub-contractors;
- (xxxv) "Site" means where any Works under a Contract are carried out as specified in a Quotation;
- (xxxvi) "Contractor" means the Contractor, secured party and any lawful assignee, transferee or successor of the Contractor in relation to the Security Interest, this Agreement, any Contract and any other related document(s);
- (xxxvii) "Variation" means to vary the Works by:
 - (A) carrying out additional work;
 - (B) omitting any part of the Works; or
 - (C) changing the scope of the Works;
- (xxxviii) "Works" means the work to be carried out under a Contract including Variations and Goods to be supplied thereunder or to be

consumed in effecting the Works;

(xxxix) "Written" or "Writing" means communication in written form including being delivered to the party on whom notice is being given, sent by facsimile, post and electronic communication. Provided however that where termination of this Agreement is given, such Written notice must be by delivery to the party on whom notice is being given, by facsimile or post.

1.2. Interpretation

- (a) In this Agreement and in any instrument created pursuant to or in accordance with this Agreement, unless the context otherwise requires:
- (i) the singular includes the plural and vice versa;
 - (ii) a reference to a person includes an individual and a corporation, partnership, joint venture, association, authority, trust, State or Government and vice versa;
 - (iii) a person includes the legal personal representatives, successors and assigns of that person;
 - (iv) a reference to any gender includes all genders;
 - (v) a reference to a recital, clause, schedule, annexure, appendix or exhibit is to a recital, clause, schedule, annexure, appendix or exhibit of or to this Agreement;
 - (vi) a recital, schedule, annexure, appendix or exhibit or description of the parties forms part of this Agreement;
 - (vii) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
 - (viii) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
 - (ix) where an expression is defined anywhere in this Agreement it has the same meaning throughout;
 - (x) a reference to "dollars" or "\$" is to an amount in Australian currency;
 - (xi) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provisions substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
 - (xii) All headings throughout this Agreement have been inserted for the purpose of ease of reference only and will not define, limit or affect the meaning or interpretation of this Agreement or of any instrument created pursuant to or in accordance with this Agreement.

2. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State in which the Contractor has its registered office if a corporation or State in which the Contractor has its principal place of business if not a corporation and the parties agree to submit to the jurisdiction of the Courts of that State in all matters arising out of this Agreement made between the parties.

3. Formation of Agreement and Cooling Off Period

- 3.1. The Customer may accept a Quotation within the period specified in a Quotation or as extended pursuant to this sub-clause. The Contractor may, at its option and absolute discretion, extend the period within which a Quotation may be accepted by notice in Writing to the Customer. For the sake of clarity, if the period for acceptance of a Quotation (as specified in a Quotation or as extended pursuant to this sub-clause) lapses/expires, then acceptance of the relevant Quotation by the Customer does not create, and is incapable of creating, a Contract.
- 3.2. The Contractor may, at its absolute discretion, and without incurring any liability to the Customer whatsoever, revive or withdraw a Quotation at any time before communication by the Customer of its acceptance of a Quotation is received by the Contractor.
- 3.3. The Customer may accept a Quotation including by signing and returning a copy of a Quotation to the Contractor or otherwise acknowledging and agreeing to the terms of a Quotation (an "Order").
- 3.4. The parties will be deemed to have formed a Contract on the terms of this Agreement together with a Quotation, upon communication to the Contractor of acceptance by the Customer of a Quotation and the Customer will be bound by this Agreement. Acceptance of a Quotation may be by any one of the following ways:-
- (a) The Customer signing and returning a copy of the Quotation and/or this Agreement to the Contractor; or
 - (b) The Customer signing and sending to the Contractor a copy of the signed Quotation and/or Agreement by facsimile or electronic transmission; or
 - (c) The Customer verbally advising the Contractor that the Customer accepts the Quotation and/or Agreement; or
 - (d) The Customer, by conduct, such as giving us instructions after receiving the Agreement from the Contractor or by failing to advise the Contractor within a reasonable time of the offer that it does not agree to the terms of the Quotation and/or this Agreement; or
 - (e) Providing the Contractor with the Customer's order form (or equivalent); or
 - (f) Whether or not the Customer has executed this Agreement, if the Customer provides the Contractor with its purchase order in any of the ways mentioned in clause 3, the Customer is deemed to have agreed to and be bound by the terms contained in this Agreement.
- 3.5. In the event of any inconsistencies between a Quotation and this Agreement, the Quotation will prevail. Further in the event that the Contractor accepts a Customer's order in which the Customer attaches its own form of conditions, the conditions in this Agreement will prevail over the Customer's conditions.
- 3.6. If a Contract is a Regulated Contract, the Customer may withdraw from the Contract under this clause where:-
- (a) The Customer withdraws from the Contract within five (5) Business Days after the Receipt Day for the Contract;
 - (b) The Customer withdraws from the Contract if five (5) Business Days have elapsed since the Contract was entered into and there is no Receipt Day for the Contract.

4. Variations

- 4.1. Any party seeking a Variation to a Contract shall notify the other party in Writing of the details of the required changes to the Goods and/or Works.

- 4.2. Where both parties consent to varying a Contract, a variation document will be prepared by the Contractor (where practicable) which should (but does not have to):
 - (a) be signed by both the Customer and the Contractor;
 - (b) state the scope of the Variation;
 - (c) state the reason for the Variation;
 - (d) state the change in the Price by reason of the Variation; or where it is not practicable to state the change in the Price by reason of the Variation or where no agreement is reached by the Customer and the Contractor as to the value of the variations, then additions shall be charged at cost (exclusive of GST) plus 15%, plus any and all GST payable with respect to the addition and in the case of deletions or reductions in the scope of the Works the actual reduction in the cost of the Works is to be deducted with any and all GST payable with respect to the deletion;
 - (e) state the revised Completion Date (if applicable and practicable);
- 4.3. If a Variation varies the Price then the Price is to be adjusted accordingly in the next payment made after the commencement of the Works, the subject of the Variation.

5. Progress Payments

- 5.1. The Customer shall pay to the Contractor the Deposit stated in the Quotation upon the formation of the Contract.
- 5.2. The Customer will pay the Contractor the Price by way of progress payments, calculated in accordance with clause 5.3 (in addition to paying the Deposit pursuant to clause 5.1).
- 5.3. The Contractor shall submit to the Customer Written progress claims which may be in the form of a Tax Invoice, under the GST Act; and consist of:
 - 5.4. the amount payable for Goods and/or Works carried out and which have not previously been charged; and
 - 5.5. any other amounts then payable to the Contractor under the Contract.
- 5.6. The Customer must pay the progress claim within seven (7) days of submission of the progress claim.
- 5.7. Should the Customer neglect or refuse to pay the amount of any progress claim by the due date, then the Contractor may, at its option, with or without notice to the Customer, suspend performance of the Works until such payment has been received in full.
- 5.8. The Contractor shall be entitled to charge interest on any moneys not paid when due, calculated in accordance with Section 67P(3)(a) of the *Queensland Building Services Authority Act 1991* (Qld) or at the election of the Contractor, at the rate of twenty-four percent (24%) per annum, calculated at two percent (2%) per month on outstanding balances (including on any unpaid interest), whichever the Contractor elects to use.
- 5.9. All fees incurred by the Contractor in recovering unpaid amounts payable by the Customer will be payable by the Customer including legal fees on an indemnity basis.

6. Retention

- 6.1. If a Quotation includes a Retention, the Customer shall be entitled to deduct from any progress claim the amount of the Retention when paying the progress claim.
- 6.2. Any Retention held by the Customer is to be released on or before the expiration of the maintenance period following Practical Completion as specified in the Quotation.

7. Practical Completion

- 7.1. The Contractor shall complete the Works to Practical Completion on or before the Completion Date specified for the Works (as amended or varied by the terms hereof).
- 7.2. When, in the opinion of the Contractor, the Works have been completed to a stage of Practical Completion, the Contractor may give the Customer notice thereof and the maintenance period specified in the Quotation will commence.
- 7.3. Within five (5) days after receipt of such notice, the Customer, if not satisfied that the Works are practically complete, shall give to the Contractor notice of those matters which the Customer requires to be carried out in order for the Works to reach Practical Completion. If the Customer does not do so then the Works shall be deemed to be practically complete without any omissions or defects.
- 7.4. Upon receipt of a notice from the Customer in accordance with clause 7.3 the Contractor may give the Customer a notice that:
 - (a) lists the minor defects and minor omissions that both the Customer and the Contractor agree exist and provide a value of the cost to rectify those defects and/or omissions ("Defect Costs"); and
 - (b) the Contractor is to use all reasonable endeavours to rectify, as soon as is reasonably practicable, the listed defects and omissions referred to in the list issued pursuant to clause 7.4(a); and
 - (c) lists the minor defects and omissions the Customer claims exist, but which are not agreed by the Contractor to exist; and
 - (d) is signed by the Contractor.Upon receipt of any such notice, the Customer shall then immediately pay the Contractor all moneys forming part of the Price (as may have been varied) which are otherwise payable but shall be entitled to retain the Defect Costs.
- 7.5. The Contractor must make a reasonable effort to have the Customer sign the notice referred to in clause 7.4 to acknowledge its contents.
- 7.6. If, without a Written agreement to do so the Customer takes possession of and/or uses the Works or any part thereof, the Works shall be deemed to have been practically completed on the date of such possession and/or occupancy and/or use.
- 7.7. Once the Contractor has rectified the defects referred to in the list issued pursuant to clause 7.4(a), it shall give notice to the Customer whereupon, the Customer shall immediately pay to the Contractor the amount of the Defect Costs.

8. Defects and Extra Work Arising out of Existing Installation

- 8.1. Unless otherwise specified in a Quotation, the Quotation is provided on the basis that the existing installations comply with statutory regulations and are in a reasonable state of repair.

- 8.2. Should the Contractor in the course of any Works, discover any defect or non-compliance in any part of the Site, premises or the existing installation therein or connection thereto which makes it impracticable, unlawful or inexpedient for the Contractor to continue work under a Contract without repairing or replacing any part of the said Site, premises, installation or connection (and the Contractor shall be the sole judge thereof) the Contractor shall be entitled to suspend the Works without liability to the Customer and any third parties and shall immediately notify the Customer of the Variation required in accordance with clause 4. If the Customer fails to sign a variation document for the Contractor to carry out the Variation, the Contract shall at the election of the Contractor, at anytime, be at an end and in either case the Contractor shall be entitled to payment for all Works done and Goods supplied up to and including the date of the suspension of the Works, notwithstanding anything to the contrary contained in this Agreement.
- 8.3. Any Works ordered by any competent statutory authority, local authority inspector or person authorised by such authorities will be a Variation and the Contractor will notify the Customer of the Variation required in accordance with clause 4 of this Agreement.

9. Existing Services

- 9.1. For the purposes of a Quotation, it is assumed the existing services are in good order. The reinstatement of such services cut or damaged by the Contractor during the course of the Works is included in the Price.
- 9.2. However if the services have to be replaced or renewed for reasons not reasonably expected or caused by the Contractor (in its sole discretion) this will be a Variation and the Contractor will notify the Customer of the Variation in accordance with clause 4 of this Agreement.
- 9.3. Any damage to existing utility services not located by the Customer and not able to be reasonably located by the Contractor will be repaired at the Customer's cost and is not included in the Price. Such damage shall be considered a Variation and the Contractor will notify the Customer of the Variation in accordance with clause 4 of this Agreement.

10. Contractor's Acknowledgement

- 10.1. The Contractor may use its Servants or any third party for the purpose of completing the Works provided such person(s) are careful, skilled and experienced in their respective trades or occupations. The Contractor will be solely responsible for any and all payments to any of its Servant or third party.

11. Manufacturer's Warranty / Performance of Goods / Warranty on Goods and Works

- 11.1. The Contractor does not warrant the quality or performance of any Goods supplied by the Contractor but not manufactured by the Contractor.
- 11.2. It is the Customer's responsibility to establish any warranty relationship with the manufacturer (if applicable) by ensuring that warranty cards or other registration requirements of the manufacturer of any Goods supplied or installed by the Contractor are complied with.
- 11.3. Without limiting clauses 11.1 and 11.2, no responsibility will be accepted by the Contractor unless the Contractor has told the Customer that the Goods are considered fit for the purpose for which the Customer requires the Goods and the Customer has provided complete details of the intended purpose.
- 11.4. The Contractor's warranty on Goods and Works is contained in Annexure "A" to this Agreement.

12. Increased and Cancellation Costs

- 12.1. If, after 30 days from the formation of a Contract, the Contractor's costs in connection with a Contract are increased as a result of the introduction of new, or changes to existing, government taxes or charges or Provisional Sum (or under clause 13) then the Price shall be increased to reflect such changes and the Customer shall pay the increased Price to the Contractor in accordance with the provisions of clause 5.
- 12.2. If any Contract, or any part of the Works is postponed or cancelled by the Customer, then the Customer shall reimburse to the Contractor all costs and expenses actually incurred by it in relation to its preparation for undertaking the Works together with (at the election of the Contractor) an amount equivalent to the profit which the Contractor would have made had the Works not been so cancelled or postponed. In the event of any dispute as to the Contractor's entitlements hereunder, the matter shall be referred to Dispute Resolution.

13. Supply Fluctuation Costs

Where Goods to be supplied have increased in price after this Contract was formed, then the Contract Price shall be varied by the amount of the difference between the price of those Goods plus the Contractor's margin on the Goods at the time the Contract was entered into and the actual cost to the Contractor including any duty or tax payable thereon plus the Contractor's margin on the Goods.

14. GST

- 14.1. The Contractor warrants that as at the date of this Agreement, the Contractor is registered under the GST Act and that the Contractor is not aware of any circumstances existing which would require the Commissioner of Taxation to cancel the registration.
- 14.2. Unless expressly stated to the contrary, any Price, Provisional Sum or the costs of any Variation (for the purposes of this clause, referred to collectively and individually as "costs") is exclusive of GST. The Customer shall pay any GST applicable to any supply in terms of the GST Act in addition to any costs.

15. Excepted Risks

- 15.1. The Contractor shall not be liable for any delay or failure to perform its obligations under this Agreement if such failure or delay results directly or indirectly from any cause, matter or thing beyond the reasonable control of the Contractor, including but not limited to:
- (a) any act, default or omission on the part of the Customer, its employees and or agents or any third party carrying out work on the Site;
 - (b) the timing of work performed or not performed on the Site by other Contractors;
 - (c) damage by fire, explosion, earthquake, lightning, storm, flood, acts of God, civil or military authority, public enemy, war, civil commotion, strikes, labour disputes or industrial conditions;
 - (d) electric power supply failure;
 - (e) inclement weather;
 - (f) unavailability of suitable materials;
 - (g) failure of transportation affecting the Contractor, its Contractor or any other person company or firm;

- (h) latent conditions;
- (i) variations directed by the Customer or required to complete the Works safely and effectively;
- (j) Industrial Action or any acts of civil disobedience or similar actions affecting the Contractor's ability to effect the Works or supply Goods under any Contract including any such action against a third party;
- (k) changes in the law; or
- (l) directions or delays by municipal, public or statutory authorities.

16. Risk and Ownership

- 16.1. Risk of loss, damage or destruction to the Works or any part thereof shall pass to the Customer as and when delivery is made to the Customer.
- 16.2. If any fixtures, fittings, or Goods are supplied by the Customer all care will be taken but fixtures, fittings and Goods so supplied will be stored, handled and installed at the Customer's risk.
- 16.3. A certificate purporting to be signed by an authorised representative of the Contractor identifying the Goods shall be conclusive evidence of the Contractor's title thereto.
- 16.4. The Customer has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation the Contractor owes to the Customer.
- 16.5. The Customer cannot claim any lien over the Goods.
- 16.6. The Customer will not create any interest in the Goods in relation to any third party except as may be authorised by the Contractor.
- 16.7. Where the Customer is in actual or constructive possession of the Goods the Customer will not deliver them or any document of title to the Goods to any person except as directed by the Contractor and is in possession of the Goods as a bailee of those Goods and owes the Contractor the duties and liabilities of a bailee.
- 16.8. The property of the Contractor in the Goods remains with the Contractor until the Contractor has received payment in full of the Price and any other moneys due to the Contractor under this Agreement between the parties.
- 16.9. The Customer is a bailee of the Goods until such time as property in them passes to the Customer and this bailment continues in relation to all of the Goods until the Price of the Contract to which the Goods are subject to, has been paid in full.
- 16.10. Pending payment in full of the Price under a Contract, the Customer must not allow any person to have or acquire any Security Interest in the Goods.
- 16.11. Despite clause 16.10, if the Customer supplies any of the Goods to any person before all moneys payable by the Customer have been paid to the Contractor (and have not been claimed or clawed-back by any person standing in the place of or representing the Customer or a third party), the Customer agrees that:
 - (a) the Customer holds the proceeds of re-supply of the Goods on trust for and as agent for the Contractor immediately when they are receivable or received;
 - (b) the Customer must either pay the amount of the proceeds of re-supply to the Contractor immediately when they are received or pay those proceeds into an account with a bank or financial institution or deposit-taking institution as trustee for the Contractor;
 - (c) any accessory or item which accedes to any of the Goods by an act of the Customer or of any person at the Customer's direction or request becomes and remains the property of the Contractor until the Contractor is paid in accordance with clause 16.8 when the property in the Goods passes to the Customer;
 - (d) if the Customer fails to pay the Price or any part thereof, at the time or times required in a Contract or is otherwise indebted to the Contractor, the Contractor may recover possession of the Goods (including at any site owned, possessed or controlled by the Customer) and the Customer agrees that the Contractor has an irrevocable licence to enter any site owned, possessed or controlled by the Customer do so and to dispose of the Goods to recover any moneys owed to the Contractor including for costs associated with recovery.
- 16.12. Where the Contractor authorises in Writing the Customer to sell any Goods, prior to full payment being made to the Contractor, the Customer shall only sell Goods in its usual course of business on commercial sale terms, provided the Customer is not in default under this Agreement. Where the Goods are sold at cost or for less this will not be considered to be sold in the usual course of business.
- 16.13. Where the Customer has been authorised in Writing by the Contractor to lease, hire, bail, sell or give possession of the Goods, it must ensure that any special conditions provided to the Customer by the Contractor from time to time are attached to the Customer's standard terms and conditions and signed by its customer and that those special conditions prevail in the event of any conflict between them and any other document or agreement between the Customer and its customer. Further, where a Security Interest is created, and expressly allowed by the Contractor, the Customer must register its Security Interest on the PPSR in accordance with the PPSA.

17. Access and Information

- 17.1. Any Completion Date stated in a Quotation is an estimate only. The Contractor will not be liable for any delays in completion or late delivery and will not be liable for any loss, damage or delay occasioned by the Customer or any other persons arising from the late completion or delivery.
- 17.2. The Customer is responsible for providing the Contractor with all relevant information to arrange completion or delivery, as the case may be.
- 17.3. The Contractor's Quotation in respect of the Works is based on a continuous works programme, unless otherwise stated. If the Customer causes any of the Works to be delayed or delays are caused by any of the events in clause 15, then, without prejudice to the Contractor's other rights hereunder, the Customer shall pay to the Contractor such extra costs as are reasonably incurred by the Contractor by reason of the delay including compensation for loss of profit, additional overheads and administrative expenses incurred as a result.

18. Hours of Work

- 18.1. All work will be carried out during normal working hours, being 6:00am to 4:00pm, Monday to Friday, unless otherwise stated.
- 18.2. If the Customer requires the Contractor to carry out any of the Works outside the nominated hours in clause 18.1, or it otherwise be reasonably necessary to do so, then the Contractor may carry out the Works outside those hours in which event, the Price will be

increased to reflect any increased costs, such as payment of wages at a higher rate, for that part of the Works performed outside of the nominated hours and the Customer shall pay the increased Price to the Contractor in accordance with the provisions of clause 5.

19. Customer Responsibilities

The Customer and each Guarantor will not, whilst they have any continuing obligations under this Agreement, change their name, ACN, ABN or any other details required for registration of a Security Interest on the PPSR without notifying the Contractor by telephone and in Writing ten (10) business days of the exact changes before the change occurs.

20. Damages and Liability

- 20.1. To the extent permitted by law, any liability of the Contractor to the Customer under this Agreement shall be limited as follows:
- 20.2. In the case of Goods supplied, to the replacement of the Goods or the supply of equivalent Goods, the payment of the costs of replacing the Goods or of acquiring equivalent Goods or the payment of the costs of having the defective Goods rectified, at the election of the Contractor;
- 20.3. In the case of services provided, the resupply of the services or the payment of the costs of having the services supplied again, at the election of the Contractor;
- 20.4. The Contractor, notwithstanding any right the Customer may have at law or in equity or otherwise under this Agreement, shall not be liable for any loss or damages suffered by the Customer for any economic loss or consequential loss or damage including but not limited to, loss of profits, loss of opportunity or loss of use of the Site (where applicable) or of the benefit of the Works or any part thereof. Where the Customer is a consumer for the purposes of the Australian Consumer Law, consequential loss will be limited to the maximum amount permitted by law.

21. Insurance

- 21.1. Where the Work is to be carried out on a Site nominated by the Customer, the Customer shall effect and maintain during this Agreement and whilst any Works are being carried out by the Contractor under a Contract, public liability insurance covering any loss, damage, injury sustained by the Contractor or any of its servants or subcontractors including as a consequence of any defect with the Site to a value of not less than \$10,000,000 per claim and workers' compensation insurance in accordance with the requirements of the applicable law.
- 21.2. The Customer shall provide the Contractor with, if requested, evidence of the existence of such insurance policies.

22. PPSA

- 22.1. This clause applies to the extent that this Agreement provides for a Security Interest for the purposes of the PPSA.
- 22.2. The rights of the Contractor under this Agreement are in addition to and not in substitution for the Contractor's rights under other law (including PPSA) and the Contractor may choose whether to exercise rights under this Agreement, and/or under other law, as it sees fit.
- 22.3. The Grantor acknowledges that if the Contractor's interest under this Agreement and any other related document(s), is a Security Interest for the purposes of the PPSA then that Security Interest relates to the Personal Property and all Proceeds of any kind and this Agreement and any Contract is a security agreement for the purposes of the PPSA.
- 22.4. The Contractor may register its Security Interest on the PPSR (including, without limitation, as a PMSI). The Grantor must do anything (such as obtaining consents and signing documents) which the Contractor requires for the purposes of:
 - (a) ensuring that the Contractor's Security Interest is enforceable, perfected and otherwise effective under the PPSA;
 - (b) enabling the Contractor to gain first priority (or any other priority agreed to by the Contractor in Writing) for its Security Interest; and
 - (c) enabling the Contractor to exercise rights in connection with the Security Interest.
- 22.5. The Grantor must pay on demand to the Contractor the Documentation Costs.
- 22.6. If Chapter 4 of the PPSA does apply to the enforcement of a Security Interest arising under or in connection with this Agreement and to the maximum extent permitted by law, the Grantor agrees that sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132(3)(d), 132(4), 134(1); 135, 142 and 143 and Division 6 of Part 4.3 of the PPSA will not apply to the enforcement of that Security Interest.
- 22.7. Where a person is a Controller in relation to the Personal Property, the parties agree, to the maximum extent permitted by law, that Part 4.3 of the PPSA will not apply to the enforcement of any Security Interest in the Personal Property by that Controller.
- 22.8. The Grantor waives its right (including, without limitation, under s275 PPSA) to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- 22.9. The Grantor must not assign or grant a Security Interest in this Agreement any of its rights or obligations under this Agreement without the prior Written consent of the Contractor.
- 22.10. The Grantor must not create, purport to create or permit to be created any Security Interest in the Goods or lease, hire, bail, sell or give possession of the Goods to anyone else other than with the express Written consent of the Contractor.
- 22.11. Where the Customer has been authorised in Writing by the Contractor to lease, hire, bail, sell or give possession of the Goods, it must ensure that any special conditions provided to the Customer by the Contractor from time to time are attached to the Customer's standard terms and conditions and signed by its customer and that those special conditions prevail in the event of any conflict between them and any other document or agreement between the Customer and its customer. Further, where a Security Interest is created, and expressly allowed by the Contractor, the Customer must register its Security Interest on the PPSR in accordance with the PPSA.

23. Guarantee

- 23.1. The Guarantor hereby guarantees to the Contractor:
 - (a) the punctual payment by the Customer to the Contractor of all sums of money becoming due, owing or payable by the Customer to the Contractor or as a result of this Agreement, including without limitation, in relation to future Works, Goods ordered and any Quotation ("the Guaranteed Moneys") at the times and in the manner as set out in this Agreement or otherwise on demand; and
 - (b) the due and punctual performance and observance by the Customer of all and any of the covenants, provisions and stipulations on the part of the Customer to be performed and observed under and pursuant to this Agreement ("the Guaranteed Obligations").

- 23.2. The Guarantor further indemnifies the Contractor against and in respect of any damage, loss, claim, demand, cost, expense or obligation direct or indirect which the Contractor has or may suffer incur or sustain as a result of the Customer's failure to pay the Guaranteed Moneys when due or to perform the Guaranteed Obligations when due.
- 23.3. This guarantee and indemnity shall be a continuing guarantee and indemnity until the whole of the Guaranteed Moneys are paid and the whole of the Guaranteed Obligations performed and shall be independent of and in addition to and in no way affected by any other security instrument or document which the Contractor may hereafter obtain or hold for any indebtedness or liability whatsoever of the Customer or other Guarantor to the Contractor.
- 23.4. The liability of the Guarantor shall not be affected or discharged in any way whatsoever in the event that the Contractor grants or agrees to grant the Customer any time or any other indulgence or consideration or in the event that the Contractor compounds with or releases or assents to the winding up of the Customer or wholly or partially releases or discharges the Customer from any of the terms of this Agreement or in the event that the Contractor varies any of the terms of this Agreement.
- 23.5. The Contractor shall not be bound at any time to exercise any of its rights under this Agreement or in any collateral or other contract and any omission failure of refusal by the Contractor so to do shall not prejudice, affect, discharge or diminish any of the liabilities of the Guarantor hereunder and the liability of the Guarantor hereunder shall not be affected or discharged by any other laches or mistakes on the Contractor's part.
- 23.6. For the purposes of this guarantee, the Guarantor may be treated as the principal debtor under this Agreement and the Guarantor waives all rights either at law or under any statute that the Guarantor might otherwise be entitled to claim or enforce in respect thereof.
- 23.7. The Guarantor hereby acknowledges and permits the Customer to place Orders pursuant to this Agreement and that the guarantee herein shall include any liability or obligation owing by the Customer to the Contractor under such Orders.

24. Charge/Mortgage

- 24.1. The Grantor hereby charges all of their respective real and Personal Property wheresoever situated with the amount of moneys owed by the Customer to the Contractor under this Agreement or otherwise. As further and better security for the payment of all money from time to time owing by the Customer to the Contractor, the Grantor mortgage and charge to and in favour of the Contractor all right, title, estate and interest which the Grantor owns, holds or may hold hereafter in any real or Personal Property in Australia. The Grantor shall, at the request of the Contractor, sign execute and deliver in favour of the Contractor such mortgage, charge and/or Security Interest over the Grantor's real or Personal Property in such form as the Contractor may require, such document or documents incorporating such terms as determined by the Contractor's solicitors, to protect the interest of the Contractor herein, within 10 business days of the Contractor requesting the same of the Grantor. For the avoidance of any doubt, the Grantor confirms that the Contractor has a caveatable interest in any land of which they are the registered proprietor for the purposes of the *Land Title Act 1994* and its equivalent in another jurisdiction.
- 24.2. Clause 24.1 will not apply with respect to any interest in real property in respect to Works where any applicable legislation prohibits the granting of such security such as by way of example the *Domestic Building Contracts Act* (Qld) and its equivalent in other jurisdictions.

25. Attorney

For the purpose of giving full effect to this Agreement, and the powers hereby conferred, whilst any moneys now or from time to time are owing by the Grantor to the Contractor, the Grantor appoints the Contractor and any of its authorised officers, jointly and each of them severally, the true and lawful attorney of the Grantor, to do anything in the name of the Grantor, as the case may be, or of the Contractor, which the Grantor, should do or should have done hereunder and to do all such acts, matters and things (including the execution of any deed, mortgage, bill of sale, charge, share transfer, transfer of land, any document in relation to any financing statement or financing charge statement under the PPSA, or any document in relation to any Security Interest, or any security agreement and other documents whatsoever) as such attorney may deem expedient for carrying out, or in connection with the exercise of all or any of the rights or powers herein contained or implied, to give effect to this Agreement.

26. Confidentiality

- 26.1. The attached Quotation and any documents attached thereto contain Confidential Information for the use of the Customer only.
- 26.2. The Customer shall not disclose the Confidential Information or suffer or permit it to be disclosed to any person or company whatsoever except with the prior Written consent of the Contractor and then only on the basis that it is respected in the same manner as herein provided.
- 26.3. Without limiting the generality of clause 26.2 the Customer shall not:
 - (a) take any action or use any process based on the Confidential Information without the consent in Writing of the Contractor; or
 - (b) use or disclose to a third party any aspect of the Confidential Information for any purpose whatsoever.
- 26.4. The Customer's obligations under this clause 26 shall survive the finalisation or discontinuance by the Contractor of its negotiations with the Customer in respect to a Quotation and shall continue for so long as a Quotation shall remain Confidential Information.

27. Intellectual Property

The Contractor owns all copyright throughout the world in a Quotation and any documents attached thereto, any Contract Documents and any documents which have been prepared by the Contractor for the purposes of a Quotation or Contract including but not limited to any drawings, plans, designs or pricings.

28. Privacy Laws

- 28.1. The personal information provided by the Customer or any Guarantor will be held by the Contractor.
- 28.2. The Contractor may use the personal information provided by the Customer or any Guarantor for the purposes of completing the Works and for direct marketing of Goods and other services offered by the Contractor or an organisation it is affiliated with or represents. The Customer and each Guarantor has the right to request not to receive direct marketing material.
- 28.3. The Customer and each Guarantor consent to the Contractor collecting and using its personal information as specified above.

29. Credit reporting agency

- 29.1. By the Customer accepting this Agreement, the Customer agrees that the Contractor may give information about the Customer to a credit reporting agency (such as Veda Advantage) in order to obtain a consumer credit report about the Customer, and/or allow the credit reporting agency to create or maintain a credit information file containing information about the Customer. The information however is limited to:

- (a) Identity particulars – the Customer's name, sex, address (and the previous two addresses), date of birth, name of employer, and driver's licence number;
- (b) The fact that the Customer has applied for credit and the amount (if applicable) (which will be our estimate of the likely Price);
- (c) The fact that the Contractor is a current credit provider to the Customer (if applicable);
- (d) Details of any accounts which are overdue by more than sixty (60) days, and for which debt collection action has started;
- (e) Advice that an account is no longer overdue in respect of any default that has been listed;
- (f) Dishonoured cheques – cheques drawn by you for \$100.00 or more that have been dishonoured more than once.

30. Credit Card Surcharge (where credit card facilities available)

The Contractor will charge a fee for accepting payment of moneys due and owing under this Agreement by way of credit card (where credit card facilities are available for use). The amount of the fee will be equivalent to two percent (2%) of the amount of any such payment(s).

31. Notices

- 31.1. Except otherwise provided herein, any notice under this Agreement shall be given in Writing in the manner provided for in clause 1.1(a)(xxxix).
- 31.2. If the notice is delivered by prepaid post to the address stated in this Agreement or to such other address the party to whom the notice is given may thereafter have notified, such notice shall be deemed to have been received two (2) business days after the date of posting.
- 31.3. If the notice is delivered by facsimile to the facsimile number stated in this Agreement or to such other facsimile number the party to whom the notice is given may thereafter have notified, such notice shall be deemed to have been received upon the party sending the notice receiving a facsimile transmission report showing the facsimile has been sent.

32. Set-off

The Contractor may set-off against any moneys owing by it to the Customer or any Guarantor any moneys owing by the Customer or any Guarantors to the Contractor.

33. Unenforceable Provisions and Severance

If a provision of this Agreement is void, voidable, unenforceable or illegal but would not be if it was read down, it shall be read down and if it would not be void, voidable, unenforceable or illegal if a word or words were omitted, that word or those words are severed, but should the provision nevertheless be void, voidable, unenforceable or illegal, it shall be severed yet the remainder of this Agreement will remain in full force and effect.

34. Non Wavier

The failure by the Contractor to insist upon strict performance of any of the terms in this Agreement or any delay by the Contractor in exercising any of its remedies or rights shall not constitute or be deemed a waiver or variation by the Contractor of any of the terms or a waiver of any default or remedy and no waiver by the Contractor of any breach shall constitute waiver of further or subsequent breaches by the Customer.

35. Entire Agreement

This Agreement contains the entire agreement between the parties and both parties agree that there are no other terms, representations or understandings except those set out in this Agreement.

36. Force Majeure

Where a party is unable, wholly or in part, by reason of an act of God, strike, lockout or other interference with work, war declared or undeclared, blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, governmental or quasi-governmental restraint, expropriation prohibition intervention direct or embargo, unavailability or delay in availability of equipment or transport, inability or delay in obtaining governmental or quasi-governmental approvals consents permits licences authorities or allocations, and any other cause whether of the kind specifically enumerated above or otherwise which is not reasonably within the control of the party affect ('force majeure'), to carry out any obligation under this Agreement and that party:

- 36.1. gives the other party prompt notice of that force majeure with reasonably full particulars thereof, and, insofar as known, the probable extent to which it will be unable to perform or be delayed in performing that obligation; and

- 36.2. uses all possible diligence to remove that force majeure as quickly as possible;

that obligation is suspended so far as it is affected by force majeure during the continuance thereof provided that;

- 36.3. an obligation to pay money is never excused by force majeure;
- 36.4. the requirement that any force majeure shall be removed with all possible diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of the party affected.

37. Dispute Resolution

- 37.1. Should a matter be referred to Dispute Resolution in terms of this Agreement, the following provisions shall apply:-

- (a) The parties shall appoint a person who is a registered adjudicator in terms of the *Building and Construction Industry Payments Act* (Qld) to resolve the dispute and who shall act as an expert and not an arbitrator ("the Expert"). All adjudication Applications under the *Building and Construction Industry Payments Act* (Qld) shall be made to the Queensland Law Society or such other authorised nominating authority as nominated by the Queensland Law Society.
- (b) If the parties cannot agree as to who shall be the Expert, the President or the President's delegate, for the time being, of the Queensland Law Society shall nominate the Expert;
- (c) The Expert shall determine the rules upon which the dispute will be resolved including as to what submissions may be made by the parties, the manner in which the dispute is to be resolved, including as to payment of any moneys, the carrying out of any work, the rights of a party under this Agreement and payment of the Expert's costs, including security therefore. All decisions of the Expert shall be final and binding on the parties and the Expert must give reasons for its decision.

38. Termination of Agreement

38.1. Termination by Notice

- (a) The Contractor may by notice in Writing to the Client suspend the provision of services and/or the supply of Goods or terminate a Contract to which this Agreement applies or terminate this Agreement if:
- (i) The Customer is in breach of its obligations to make payments in accordance with clause 5 of this Agreement; or
 - (ii) The Customer is in breach of any obligations under the Agreement and that breach has not been remedied within 14 days (or such other longer period as the Contractor may allow) of the service by the Contractor on the Customer of the notice requiring the breach to be remedied; or
 - (iii) The Contractor is delayed or otherwise unable to perform some or all of its obligations under this Agreement for one of the reasons set out in clause 15.1 of this Agreement.

38.2. Implication of the Termination

- (a) If the Contractor suspends the Works and/or provision of the Goods in accordance with this clause, then the Contractor may at its sole discretion at any time either terminate the relevant Contract and/or this Agreement or recommence the services by notice in Writing to the Customer. All loss, damage, cost, expense or loss of profit incurred by the Contractor as a result of this suspension or termination under this clause shall be borne by the Customer. Termination shall be without prejudice to any claim that either party may have against the other in respect of any breach of the terms of the Contract and/or Agreement which occurred prior to the date of termination. If a Contract and/or the Agreement is terminated for any other reason other than a breach of the Contract and/or Agreement, as the case may be, by the Contractor, then the Customer shall pay the Contractor for the services carried out prior to the date of termination and all other costs and expenses incurred by the Contractor, as a result of the termination (including without limitation, cancellation charges of external consultants).

38.3. Termination on Happening of Certain Events

- (a) The Contractor and/or Customer may terminate this Agreement and any Contract immediately upon the happening of any of the following events to the other party, namely:
- (i) the Contractor and/or Customer suffer an Insolvency Event;
 - (ii) an Irremediable breach of the Agreement occurs;
 - (iii) Industrial Action.

Executed as a Deed

Signed on behalf of the **Contractor** by its authorised representatives this _____ day of _____, 20____

Signature

Signature

Print Full Name

Print Full Name

Capacity

Capacity

Signed by the **Customer** this _____ day of _____, 20____

Signature

Witness Signature

Print Full Name

Witness Print Full Name

Capacity

The Guarantor acknowledges that it has had the opportunity to seek independent legal advice regarding its obligations under this Agreement before signing this Agreement. The Guarantor must execute this Agreement.

Signed by the **Guarantor** this _____ day of _____, 20____

Signature

Witness Signature

Print Full Name

Witness Print Full Name

WARRANTY ON GOODS AND SERVICES**1. Entity giving warranty**

- 1.1. This warranty is given Poly Electrical Pty Ltd (ACN: 612 078 636) t/a POLYLEC A.B.N: 71 612 078 636 ("the Contractor")
 Address: 92-94 Old Coach Road, Tamborine, QLD, 4270
 Phone (07) 3290 6190 Email admin@polylec.net

2. Australian Consumer Law Statement (where Customer is a consumer as defined in the Australian Consumer Law)

- 2.1. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

3. Warranty

- 3.1. The Contractor grants to the Customer a 12 month warranty from the date of Practical Completion on all Goods and Works (as defined in the Master Agreement of Terms) supplied by the Contractor ("the warranty period") in accordance with this warranty.
- 3.2. In the event of any of the Goods or Works supplied by the Contractor suffering an electrical or mechanical failure or fault within the warranty period the Contractor will at its choice either repair the fault, supply the Works and Goods again or pay for all parts, labour and service call out fees required for the Works and Goods to be repaired to normal working order subject to the following terms and conditions.
- 3.3. Where the Customer is a consumer as defined in the Australian Consumer Law, the benefits to the Customer given by this warranty are in addition to other rights and remedies the Customer may have under a law in relation to the Goods and Works to which this warranty relates.

4. Limitations

- 4.1. The maximum amount payable by the Contractor under this warranty is limited to the Price paid by the Customer for the Works and Goods inclusive of GST.
- 4.2. This warranty does not extend to Goods used in the Works which are not manufactured by the Contractor. Such Goods are covered only by the manufacturer's warranty and any guarantee express or implied by mandatory provisions of law.
- 4.3. This warranty as far as may be permitted by law excludes liability for any consequential loss or claims for damage to persons or property resulting either directly or indirectly from any failure or fault of the Goods and Works.
- 4.4. This warranty shall not apply unless the Goods and Works have been paid for in full.

5. What is not covered by this warranty

- 5.1. This warranty does not cover the following:
- (a) Consumables including light globes, fluorescent tubes, batteries, fuses or filters;
 - (b) Normal maintenance costs;
 - (c) Goods recalls;
 - (d) Damage caused by:
 - (i) Negligent, accidental or deliberate misuse;
 - (ii) Unauthorised repairs or modifications;
 - (iii) Liquid penetration;
 - (iv) Electrical interferences, power surges, voltage fluctuations or lightening;
 - (v) Vermin, pests or insects;
 - (vi) Rust or corrosion;
 - (vii) Abnormal or excessive usage.

6. Making a claim

- 6.1. The Customer must notify the Contractor in Writing of any claim it has under this warranty within 12 months from the date of Practical Completion of the Works.
- 6.2. The Customer's notification of the claim must be forwarded to the Contractor at the address contained in clause 1.1 of this warranty.
- 6.3. The Customer must bear its own expenses incurred by it in making a claim under this warranty.
- 6.4. No claims under this warranty will be accepted after 12 months from the date of Practical Completion of the Works.