

Our trading terms and conditions are hereby incorporated and form part of all agreements with you.

## TERMS AND CONDITIONS

### 1. DEFINITIONS

"**all monies**" means all monies of whatsoever kind now or in the future due or owing and includes monies payable on any account, interest, charges, fees and costs;

"**Force Majeure**" includes storm, flood, fire, earthquake, cyclone, industrial action, terrorism and any other event or circumstance reasonably beyond our control;

"**Goods**" unless the context requires otherwise, it refers to the goods, parts, hardware, software, accessories, materials, equipment, stock and/or supplies sold or supplied by us to you. The term "Goods" includes without limitation goods, parts, hardware, software, accessories, materials, equipment, stock and supplies;

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

"**Services**" means any service we may provide to you from time to time;

"**you**" means the person who has ordered and/or received any Works from us as specified in any agreement, invoice, document or order and includes your successors and assigns. It also includes any other entity that you control which may place an order with us from time to time;

"**We/us**" means Voltec Services Pty Ltd and includes our lawful successors and assigns;

"**Works**" means all Services, Goods and/or other works delivered, sold, provided and/or supplied by us to you from time to time; and

"**Our Terms of Trade**" means these terms and conditions as published and varied by us from time to time.

### 2. INTERPRETATION

In the interpretation of Our Terms of Trade and any agreement entered into with you:

- (a) singular includes plural and vice versa;
- (b) references to statutes includes regulations made under those statutes and statutes amending, consolidating or replacing the statutes;
- (c) covenants imposed on you includes an obligation on you to procure compliance by all other persons (including licensees, permittees and employees) under your control;
- (d) covenants on a party are joint and several. The release of one of the persons from an obligation does not release any other person who may be jointly liable;
- (e) all annexures, schedules and other attachments (if any) form part of this Agreement;
- (f) any unlawful, invalid or unenforceable term or condition of these terms and conditions will not invalidate or affect the interpretation of the balance of those terms, but will be severed from those terms;
- (g) nothing which appears after the word "include" or "including" is to be interpreted as limiting the type of thing which may be included within the ambit of that clause;

- (h) reference to "the parties" in Our Terms of Trade or in a contract or agreement with you means a reference to you and us and unless the document expressly states otherwise does not include the guarantor. The guarantor is not a party to the contract or agreement with us but has a separate contractual obligation to guarantee your obligations pursuant to the terms of the guarantee;
- (i) our contractors, sub-contractors, employees and directors are entitled to the benefit of all releases, indemnities and limits of liability contained in Our Terms of Trade; and
- (j) agreements, documents or terms and conditions will not be interpreted against us merely because they were drafted by us.

### 3. OFFER AND ACCEPTANCE

3.1 You acknowledge that:

- (a) we will provide Goods and/or Services to you on the terms and conditions set out herein; and
- (b) Our Terms of Trade apply to, and are incorporated into and form part of all contracts and dealings between you and us; and
- (c) you are bound by, and taken to have exclusively accepted, Our Terms of Trade, immediately upon placing an order or accepting delivery of any Goods or Services.

3.2 Any terms and conditions contained in your order documentation or other communication from you inconsistent with Our Terms of Trade (including a statement by you that your terms and conditions prevail) are hereby expressly excluded. Our Terms of Trade prevail and must be given utmost effect.

### 4. SUPPLY ON CREDIT

4.1 We may in our absolute discretion refuse to accept, or to proceed with, any order or to provide any order on credit.

4.2 We will determine the credit limit and we may vary the credit limit in our absolute discretion.

### 5. DEPOSIT

5.1 You acknowledge that we may impose conditions on any order including that a non-refundable deposit be paid in advance.

### 6. PRICE OF WORKS

6.1 Subject to clause 6.2, 6.3, 6.4 and 6.5, the price of the Works shall be:

- (a) the amount stated on our invoices in respect of the Works described in those invoices;
- (b) the price quoted by us provided you have unconditionally accepted our quotation in writing within thirty (30) days of the date of the quotation.

6.2 Where no price has been quoted by us, Works are charged at our prices prevailing at the date of our invoice.

6.3 The price of the Works shall be subject to the addition of GST and a sum equal to any other government duty, tax or

- levy applicable to the Goods and Services comprising the Works.
- 6.4 Unless expressly stated otherwise on a quotation all prices are exclusive of third party certifying, delivery/freight, design and planning charges, costs and expenses.
- 6.5 Any quotation or estimate provided by us is based on circumstances and conditions then known to us and we may pass on, and you agree to pay us for, any increase in price, expense or cost arising from:
- (a) Force Majeure, increases in taxes, duties, awards, rates of exchange and other supply fluctuations and changes in conditions taking place prior to delivery or performance of the Works;
  - (b) any act, omission or delay by you or any other person connected with you including any change to designs or plans;
  - (c) any variation to the Works is required by necessity or arises due to some other circumstance which was not reasonably known to us at the time of providing the quotation or estimate;
  - (d) any variation made by you to your order and agreed to by us;
  - (e) the provision of any design, drafting, drawing or other analogous service by us or any other person engaged by us on your behalf which was not specifically allocated or allowed for in the initial quotation or estimate and which is necessary or desirable for the performance of the Works by us; or
  - (f) any other material fact not discoverable by, or disclosed to, us at the date of our quotation or estimate.
- 7. PAYMENT OF ACCOUNT**
- 7.1 You agree to pay:
- (a) our invoices and accounts by the due date; and
  - (b) for all Works sold and/or supplied by us to you, without deduction, counterclaim or setoff.
- 7.2 You agree that we may at any time specify the payment terms including vary the payment terms for different stages of any Works. We may impose progress payments, payments in advance or other payment conditions. In the absence of us notifying you to the contrary, the payment terms are within seven (7) days following the date of any invoice given to you by us.
- 7.3 You also agree that you are not permitted to retain any part of the monies due to us, including any contract sum or invoice value, as retention or security monies (or any analogous arrangement) ("a retention arrangement") without our prior written consent. If we consent to a retention arrangement, you agree that:
- (a) any such retention monies must be held in a separate account with a bank approved of by us and for the sole purpose of the retention arrangement. The signatories to the account must be you and us;
  - (b) we will be entitled to all interest earned on the retention monies and you agreed to guarantee us a minimum 4% per annum compounding monthly interest rate of return on the retention monies; and
  - (c) you must act in good faith and do all things necessary to ensure that the retention monies are released to us in full upon achievement of any agreed milestone.
- 8. CANCELLATION**
- 8.1 We may cancel any contract or agreement to which these terms and conditions apply or cancel delivery/supply of Works at any time before the Works are commenced by given written notice to you. On giving such notice, we will repay to you any sums paid in respect of the price, less any amounts owing by you to us for Works already performed and/or supplied. We shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 8.2 In the event that you cancel the delivery or supply of the Works you will be liable for, and indemnify us against, any and all loss and damage incurred (whether direct or indirect) by us as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 8.3 Cancellation of orders for products made to your specifications, or for non-stock list items will definitely not be accepted once production has commenced, or an order by us has been placed with our suppliers.
- 8.4 Any purchase orders cancelled will attract a 25% cancellation and restocking fee of the list price value of the Goods of the purchase order cancelled.
- 9. INTEREST AND FEES ON OUTSTANDING ACCOUNTS**
- 9.1 We have a strict policy of requiring payment of our accounts by the due date shown on the invoice. We retain the right to charge fees at our discretion based on the following.
- 9.2 You agree to pay us:-
- (a) Interest: on overdue amounts at the rate of 7.5% per annum compounding monthly.
  - (b) Late payment fee applicable monthly at \$25 and chargeable at 28 days overdue.
  - (c) Additional costs: all costs, charges and expenses legal (on a solicitor and own client basis) and otherwise, which we may incur or suffer as a result of the exercise of any rights, powers or remedies that we may have against you (including arising from enforcing our rights against you).
- 9.3 You indemnify us in respect of the interest and additional costs, charges and expenses payable under clause 9.2.
- 10. EXCHANGE OF REFERENCES**
- You agree that we may:
- (a) seek from or give to other credit providers and credit reporting agencies personal details, and information, about you including details about your credit worthiness;
  - (b) obtain a credit report containing personal information about you from a credit reporting agency; and
  - (c) conduct security checks and searches including a search of the Personal Property Securities Register.
- 11. RETENTION OF TITLE**
- 11.1 You agree that, until payment of all monies owing to us is received:
- (a) any Goods delivered or sold to you by us remains our property and are held by you as our fiduciary bailee. This includes any Goods provided or installed as part of the performance of the Works;
  - (b) you must store the Goods separately so that they are readily identifiable as our property;
  - (c) you must not sell or deal with the Goods except with our prior written consent;
  - (d) any proceeds of such resale, in so far as they relate to the Goods, must be held upon trust for us in a separate account;
  - (e) any proceeds of insurance in respect of the Goods are held on trust for our benefit and you must pay those proceeds of insurance to us in the event the Goods are damaged, lost or destroyed; and
  - (f) if the Goods are intermingled with other Goods or things, to the extent lawfully possible we retain ownership in the Goods, an equitable interest in the resulting product and any proceeds of sale resulting from the resulting product.
- 11.2 We may enter any premises owned or leased by you to inspect or remove the Goods without your prior permission. We are released from all liability for any damage caused to your, or another person's, property during the removal of the Goods. You release us from all claims including those based on trespass
- 11.3 The rights reserved to us will continue to apply even if you have caused an accession or co-mingling of the Goods to any other Goods owned by you or any other third party.
- 12. PPSA**
- 12.1 In addition to our rights under clause 11, you grant us:
- (a) a charge over all of your personal property now or in the future in existence including any proceeds

	arising from the sale of that personal property; and				
	(b) the right to register a security interest in any accounts receivable to which you may be entitled from any other person,				
	as security for your obligations to us including to pay all monies due to us from time to time.				
12.2	You agree:				
	(a) we are entitled to register on the Personal Property Securities Register any security interest that you have given us in your personal property and our Goods;	14.3			The quantity, quality and description of and any specification for the Works shall be those set out in our quotation forming part of your order (if accepted by us in accordance with Our Terms of Trade).
	(b) you will provide us with all information reasonably required to register a financing statement or financing change statement on the Personal Property Securities Register;	14.4			If the Goods are to be manufactured or any process is to be applied to the Goods by us in accordance with a specification submitted by you, you indemnify us against all loss in connection with any claim for infringement of any patent, copyright, design or trademark, or other intellectual property rights which result from the use of your specification.
	(c) where permitted by law, you waive your rights to receive a notice of verification statement;	14.5			All sampling of the Goods, the making and testing of samples and interpretation of results must be carried out in accordance with relevant laws and standards or other specification (and in the absence of any appropriate specification) in accordance with our instructions.
	(d) you will advise us in writing of any change to your name or address at least 7 days prior to that change taking effect;	14.6			Save where otherwise agreed in writing between the parties, any recommendation or suggestion relating to the use, storage or handling of the Goods made by us either in sales and technical literature or in response to a specific enquiry or otherwise, is given in good faith but it is for you to satisfy yourself of the suitability of the Goods for your own particular purposes. All drawings, descriptive matter, specifications and advertising issued by us and any descriptions or illustrations contained in our catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of any contract between you and us.
	(e) we have the authority to search the register from time to time to determine what security interests may exist in respect of you;				
	(f) to pay the costs of and incidental to the registration of a financing statement or financing change statement along with any costs incurred by us in enforcing our rights against you under the PPSA; and				
	(g) where we have rights in addition to those in chapter 4 of the PPSA, those rights will continue to apply and our rights to seize the property will not be limited by the PPSA.				
12.3	In the event that we exercise our rights under the PPSA to gain possession of personal property, you waive your rights with respect to the following:	15			<b>ACCEPTANCE, DELIVERY AND ACCESS</b>
	(a) the right to receive notice prior to us removing or seizing the personal property; and	15.1			All Goods are at your risk from the time of leaving our premises, even if we have agreed to deliver the Goods to you at another location. You must insure the Goods from the time they leave our premises. You indemnify us against any claim, loss or liability or damage or injury arising to or caused by the Goods after despatch from our premises.
	(b) to receive a statement of account, a disposal notice or a notice of retention either prior to or immediately following our retaking possession and selling personal property to a third party.	15.2			You must inspect the Works upon delivery/performance and let us know in writing at that time if there is any defect, fault, short delivery or failure in description failing which you are deemed satisfied with the condition of the Works and the performance of the Works.
12.4	The terms and expressions used within this clause have the meanings given to them in the PPSA.	15.3			You must permit us access to the site at all reasonable times to inspect the Works to determine the validity of any complaint, claim or demand received by us from you.
<b>13 SECURITY</b>		15.4			We may sell any Goods not taken or collected by you within seven (7) days from the date of attempted delivery and at our option, deem the sale repudiated or, by subsequently substituting other Goods, treat the sale as subsisting. If you fail or refuse to accept delivery, then the Goods are deemed to have been delivered and we were deemed willing to deliver them to you.
13.1	You hereby irrevocably and unconditionally grant to us an equitable mortgage over your land wherever situated (including land acquired by you in the future) and this applies to land owned by you personally and / or as trustee of any Trust (other than a superannuation trust). Further, you also grant an equitable mortgage over any land owned by any company of which you are the sole director/secretary or sole shareholder (including land acquired by that company in the future). Such equitable mortgages are granted by you to us as security for the payment of all monies payable by you to us from time to time and for the performance of all your obligations to us from time to time. In this clause "Trust" means each trust for which you hold land as trustee.	15.5			If, due to Force Majeure or other reasons beyond our control, we are prevented from or delayed in making delivery or performance of the Works (or any part of them), we may either extend the time for delivery or performance for a reasonable period or terminate the contract. You agree that you do not have any claim for damages and must pay for all Works delivered and/or performed prior to the date of such termination.
13.2	We may register a caveat to secure our interest in any such land and you irrevocably appoint us as your attorney to sign all consents to caveat on your behalf.	15.6			Any time stated in a quotation or other documentation (other than the time stated for payment of our accounts which must be strictly adhered to by you), does not make time of the essence and is only an approximation. We are not liable for any loss or damage whatsoever for failing to deliver the Works (or any part of them) promptly, by a specified date or due to Force Majeure.
13.3	We have, and can exercise, a lien over any of your Goods, documents, records, files, plans and other property left in our possession from time to time as security for the payment of all monies owing to us by you from time to time.	15.7			With respect to access:
13.4	You irrevocably appoint us and each director of us as your true and lawful attorney to perform all necessary acts to give effect to our rights under any contract or agreement with you including the rights under this heading "Security" and we may sign caveats and other land title forms on your behalf.	(a)			if Goods are to be delivered to your premises or to such other place as may be agreed between you and us, you must provide and clearly indicate to us a route which in our reasonable opinion is safe and proper and reasonable for access of the delivery vehicle. If, in our or the carrier's reasonable opinion, such access is not available or is unsuitable, we reserve the right to refuse to deliver. You indemnify us (including as agent and
<b>14 ORDERS, TESTING ETC</b>					
14.1	No order submitted by you shall be deemed to be accepted by us until the earlier of an acknowledgement of order being dispatched to you, or the Works being delivered to you.				
14.2	You are responsible for ensuring the accuracy of the terms of any order (including any applicable specification)				

	trustee for any carrier) against all losses, costs, proceedings, claims, demands and expenses incurred by us or by any such carrier (other than in respect of death or personal injury caused by our gross negligence) as a result of the failure to provide such convenient and safe access.		
	(b) in the performance of any Works, you must ensure that work sites are at all times clear, safe, free (no charge for access) and convenient to access. We are not liable for loss or damage to the work site unless due to our gross negligence in the performance of our Works.		
15.8	You shall be responsible for supervising completion of delivery of the Works.	16.4	It is expected that cabling, connections and electrical wiring for network equipment is labelled correctly and clearly prior to our attendance on site to start our Works. Any delays or disruptions caused by lack of identified labelling of cables/connections for us to undertake our agreed scope of Works will be charged to you accordingly as either delay costs incurred by us or additional Works falling outside of the agreed scope of Works.
15.9	Where the Works are to be delivered in instalments a failure by us to deliver any one or more of the instalments in accordance with any contract or agreement or any claim by you in respect of any one or more instalments will not entitle you to treat the contract as a whole as repudiated.	16.5	We reserve the right to invoice you for additional contractor labour and/or materials required due to unforeseen circumstances arising from issues or delays such as difficult access to building features, any third party personnel causing disruptions or delays, or any other unexpected disruptions that causes additional tools down time or additional labour time, including but not limited to delays due to weather conditions.
15.10	Our liability in respect of short weight or measures of Goods supplied is limited to the delivery of an additional supply of the Goods in accordance with Our Terms of Trade to make up the short weight or measure. We have no liability in respect of the short weight or measure if notification is given later than 24 hours after delivery of the Goods.	<b>17</b>	<b>UNDERGROUND LOCATIONS</b>
15.11	You must reimburse us (including as agent and trustee for any carrier) all costs and expenses incurred by us as a result of us or any carrier being prevented from or delayed in making any delivery resulting from the acts or omissions of you or any of your employees, agents or sub-contractors.	17.1	Prior to us commencing any work, you must advise us of the premises location of all underground services on the site and clearly mark the same. The underground mains and services you must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains and any other services that may be on site.
15.12	Without prejudice to any other rights or remedies available to us an additional charge may be made if: (a) you require delivery outside our normal working hours; or (b) you fail to take delivery or fail to give us adequate delivery instructions or we cannot effect delivery for any reason beyond our control; or (c) unloading of the delivery vehicle is delayed, more than 15 minutes after we are ready to unload; or (d) delivery cannot be effected because of unsuitable access or a unsuitable discharge point; or (e) you request that delivery be deferred.	17.2	Whilst we will take all care to avoid damage to any underground services, you agree to indemnify us in respect of all and any liability, claims, demands, expense, damage, loss, costs and fines as a result of damage to services which you failed to precisely locate and notify us of in accordance with clause 17.1.
15.13	Save where otherwise agreed in writing by us, you may not re-direct delivery, performance or any instalment of the Works.	<b>18</b>	<b>CCTV, DATA NETWORKS, ELECTRONIC SECURITY OF GOODS AND CUSTOMER EQUIPMENT</b>
15.14	You are responsible for compliance with all statutes and regulations relating to delivery locations including, without limitation, obtaining all necessary licenses and/or orders, and for all steps which need to be taken for the protection at all times of persons or property.	18.1	Our primary services in this area is installation and maintenance of the customer equipment referred to as 'Goods'. We do not provide any ongoing monitoring or security related services unless expressly stated in writing in our documentation to the contrary. Where the term "Monitoring" is used within any of the Services, it means the Goods will provide automated general information/alerts that suggest the Goods require maintenance. We do not guarantee the correct operation of such alerts.
<b>16</b>	<b>INSTALLATION</b>	18.2	If you require us to attend to the provision of the service in a security monitoring scenario, an applicable fee applies if we agree in writing to undertake such work.
16.1	You warrant that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including but not limited to, meter boxes, main switches, circuit breakers and electrical cable) are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) we or any of our employees or contractors reasonably form the opinion that the site is not safe for the installation of Goods to proceed, then we are entitled to delay installation of the Goods until we are satisfied that it is safe for the installation to proceed and you agree to pay us reasonable delay costs arising from the delay.	18.3	Our Services do not include configuring the remote viewing or attending to any IT related service unless we expressly agree in writing to carry out those Services. Our services exclude supply or configuring of modems, gateways, firewalls and telephone connections unless we expressly agree in writing to carry out those services. You must engage your own providers for those services at your sole cost, expense and risk.
16.2	We require copies of all necessary documentation relating to any equipment we may come in contact with or affect during works on site. This includes but is not limited to drawings, schematics, functional layouts, plans, wiring diagrams, wiring schedules, commissioning information and compliance certificates. Failure to produce these items may affect our ability to complete Works as per the scope. In the event that we are required to remedy a situation, or change our scope of Works, due to your failure to provide this documentation to us prior to the date of our quotation, we have the right to invoice you for all additional fees, costs and expenses arising to the performance of our Works.	18.4	You agree that where we install Goods, our services are limited to the sale and installation of the Goods.
16.3	All electrical/data cabling/outlets that are established prior to the commencement of installation Works by us, are your	18.5	We do not warrant or represent that the operation of the Goods will be uninterrupted or error free. We provide the Goods to assist you with your security requirements but we do not warrant the security of property, you or any other thing or person. You release us from all loss and risk arising from any malfunction, defect or error in the Goods.
		18.6	We are entitled to the benefit of all other releases, indemnities and limitation of liability clauses and conditions contained in Our Terms of Trade.
		18.7	We are not obliged to provide you with under any circumstance installer codes or software which is not intended for end users. In the instance where you insist that these codes be provided, you understand that this voids any liability or loss arising from malfunction of that equipment and may void any manufacturer warranty provided in respect of such Goods.
		18.8	We do not keep your passwords on file unless requested by you for a specific purpose and agreed to by us. We

cannot be held liable for any costs incurred arising from lost passwords once you have assumed control or possession of the Goods.

- 18.9 Unless expressly included in a quote, you must provide clean, suitable UPS protected and regulated mains power and terrestrial data connection/network (if required) as well as a suitable earth point for electrical surge protection as required and/or requested by us or our agents adjacent to the installation.
- 18.10 All equipment, particularly servers are recommended to be maintained in a constant clean, cool and minimal humidity environment, to help prevent undue damage and help to increase the life-span of same. Any costs involved due to damage caused by your neglect will be charged accordingly to you to remedy the cause or replace equipment. It is your responsibility, to ensure all due diligence is provided in maintaining the hardware and equipment installed.
- 18.11 We will not be held responsible or liable, or be expected to provide support for any and all of the network components if and when you, or your licensees, permittees or employees, log into the system or network in any way and change (accidentally or directly) any part of the configurations of the network, workstations, servers or other customer equipment that have been configured by us.
- 18.12 We will not be held responsible or liable, or be expected to provide support for any and all of the network components if you appoint and allow another third party access to the network, and/or introduce new hardware or software and/or configurations. If in the event of any network, hardware, reconfiguration and/or software being added to the network or changed by you or a third party without our prior knowledge and written acceptance, any costs associated with the remedy or repercussions of such problems or issues will be borne by you.

## 19 MAINTENANCE

- 19.1 Where we expressly agree to carry out preventative maintenance services for the Goods (Services), you agree:
- the scope of our Services is limited to the express scope of Works stated in the quotation or other correspondence issued by us;
  - the Services are for a preventative maintenance programme unless expressly stated in writing to the contrary by us. You must pay for all repairs, replacement costs, parts, labour, call outs and other services and costs falling outside of the preventative maintenance programme as and when they arise;
  - unless expressly stated to the contrary in writing by us, the preventative maintenance program includes only routine scheduled visits of not more than once monthly and such visits will be on business days between 9am and 5pm.
  - we are entitled to charge you, and you agree to pay, our standard call out rates as published by us from time to time where we are required to attend to the Goods or your request outside of the scheduled preventative maintenance programme;
  - the Services contract is for the period stated by us in the quotation or other correspondence issued by us and in the absence of a period being stated it is the greater of 12 months and the Lease Period (where we have leased the Goods to you in conjunction with you also entering into a Services contract with us);
  - where we have provided a quotation for the Lease of Goods in conjunction with the ongoing preventative maintenance of those Goods, you agree that if you terminate our Services contract before the expiry of the Lease Period, that in addition to any other rights we may have, we will be entitled to increase the Rent by the loss of profit on the Services contract or recover the loss of profit from you as a debt, at our option, and you agree to pay such amount on demand;
  - you are only entitled to terminate the Services where you have first given us notice of the alleged

breach of our obligations, the particulars of the breach, what can be done to remedy the breach and allow us not less than 14 days from the date of the notice to remedy those alleged breaches; we may terminate our Services contract:

- without notice effective immediately where you are insolvent or bankrupt, have an administrator or receiver appointed, materially breach the Services contract, have accounts outstanding with us in excess of 30 days or where you have failed to remedy any other breach within 7 days of a receiving a written notice to do so;
  - without cause by giving you 30 days' written notice of our intention to do so and where we have reasonably determined the Services contract is unviable or uneconomical for us,
- and such termination may at our option be without prejudice to the Lease contract and in which case you agree the Lease Period will continue and you must continue to pay the Rent for the Lease Period; and
- if the Goods are damaged or destroyed or lost for reasons outside our control, due to misfeasance, your act or omission, or due to the act or omission of persons not within our control, or due to Force Majeure, then the cost of repairing or replacing the Goods is to be borne by you.

## 20. SOFTWARE AND DATA

- 20.1 If we agree in writing to sell you any software licence, it is sold subject to the terms and conditions supplied by the software producer/developer/manufacture and you agree to abide by those terms and conditions as well and indemnify us from any loss or damage arising from your breach of them.
- 20.2 Unless our quotation expressly states to the contrary, we do not guarantee or include in our price and scope of Works:
- the provision of further upgrades to the Software;
  - the provision of additional licences;
  - that we will be able to obtain additional licences for you at the same price in the future, if at all; nor training or troubleshooting with the software.
- 20.3 We are not responsible for providing support for any third party software programs which you or another service provider has installed to the Goods.
- 20.4 It is your responsibility to regularly and consistently back up all your data and you release us from all liability for loss of data on your computers, server or network for whatsoever cause.
- 20.5 Other Third Party Software - Important Notice: Though we may identify and diagnose a problem caused by other third party software, it is understood that all third party software applications that you have installed, ARE NOT included for support issues and we remind you to contact the appropriate vendor for any issues or conflicts that arise from time to time. It is in your best interest to confer with the vendors regarding issues with the software. Time taken by us to confer with third party software vendors/developers will be charged accordingly, at the rate specified for extra works.
- 20.6 We reserve the right to decide if any other software can be installed on your workstations and may opt to limit any other use of the Goods in order to maximise its performance.
- 20.7 We expect and advise our customers to have in place an Acceptable Usage Agreement, or guidelines in their policy and procedures, for its employees and end-users of workstations on the network, regarding exercising duty of care when using their workstations, and/ or accessing the web. The expectation is in both the prevention and the protection against exposure to harmful data to their network and/or workstations similar guidelines as part of their policies and procedures. This can be in any or all forms such as via web, internet, intranet, emails, websites of any kind including social media sites, USB ports, CD/DVD-ROM drives, portable drives or laptops. The expectation is that our Customers also have installed and maintain

- appropriate licensed anti-virus software on all such devices with scheduled regular updates automated. We will not be held responsible for any disruptions to business, either monetary, physical or consequential to any computer or server function, data or telephony communication and network traffic that may arise, and this exclusion of liability applies to and includes all forms of origins such as, from viruses or any other malicious or intrusion executable files that have been introduced to the hardware, software and/or network, in any way, accidentally or directly, from downloads, programs, cookies from websites, executable files from websites, data sharing, opening of files from devices, or loading executable files onto any part of the network.
- 20.8 We will not be held responsible or liable, or be expected to provide support for any third party software programs that you have installed on any or all computers and servers. Support for any issues that arise from software programs is to be requested by the Customer to the appropriate Vendor of such programs. If in the event any network issues arise due to the failure of any programs or disruption or hardware and/or software conflicts, and that result in any costs or disruptions to your business associated with the remedy or repercussions of such problems, these costs and disruptions will be borne by you at your sole cost, risk and expense.
- 20.9 Whilst we may provide some guidance or help with technical difficulties that software conflicts may cause, it is understood that we may need to seek technical assistance on your behalf from the vendor/manufacturer/developer of the third party software. Time taken by us to confer with third party software vendors/manufacturer/developers to assist in remedying issues will be charged accordingly to you.
- 20.10 We are not responsible for the functionality, reliability or performance of any anti-virus software program or device. We do not warrant the performance, reliability or security or effectiveness of any anti-virus software program or device and you rely solely on your own investigations and enquiries.
- 21. RETURNS**
- 21.1 On rare occasions, Goods may be returned for credit or exchanged but only at our discretion, and only with our prior written approval. To the extent permitted by law, we disclaim all liability for any returns in transit to or from our premises. If Goods are returned to us without our prior written approval, the Goods will be returned to you at your expense.
- 21.2 All goods are return to base warranty in accordance with manufacturer's warranties, or as otherwise stated. Any Goods delivered that are deemed D.O.A. (dead on arrival), it is your responsibility to inform us within 48 hours, and make suitable arrangements for return and exchange of these Goods. Freight or other carriage costs are to be borne by you in returning the Goods. Goods must be returned in their original condition and are subject to the warranty provided by the manufacturer.
- 22. LIMITATION OF LIABILITY**
- 22.1 Subject to clause 22.2, you must advise us of any incorrect delivery within 7 days from the date of delivery and failing which you are deemed to have accepted the Goods.
- 22.2 You acknowledge that no claim for incorrect delivery can be made against us if you have used the Goods.
- 22.3 To the extent permitted by law, we will not be liable for any loss or damage whatsoever (including to a person, property or thing) arising from:
- our failure for whatever reason to deliver any Works on any specified date or at all; or
  - the delay, non delivery or other failure to supply the Works.
- 22.4 To the full extent permitted by law, we are discharged and released from:
- defect or failure arising from your improper use, maintenance or operation of the Works;
  - any damage, complaint, failure or other breakdown, error or problem with the Goods which arises from fair wear and tear;
  - your own negligence, abuse or misuse;
- the carrying out of any maintenance to the Goods by you or your other service providers;
  - any claim in respect of loss of data, files or records for whatsoever reason;
  - alteration or modification of the Works by you or your other authorised service providers including any addition of software, reconfiguration of settings and installation of new hardware;
  - any loss of profits or for any indirect or consequential loss claimed by you, or anyone else, against us for whatsoever reason;
  - a claim that the Works, or any portion of them, are not in accordance with the sale contract, unless the claim is lodged with us in writing within seven (7) days from the date of delivery of the Works you; and/or
  - any claim whatsoever unless an action is commenced in a court of competent jurisdiction within six (6) months of delivery/performance of the Works or in the case of non-performance or omission, within six (6) months of the date the performance should have occurred.
- 22.5 To the extent permitted by law all implied warranties, conditions, terms and guarantees in relation to the sale or delivery of Works, and the carrying out of Works, statutory or otherwise, are hereby excluded.
- 22.6 To the extent permitted by law, where we are not the manufacturer of the Goods, you agree that your rights are limited to those rights arising under the express warranty (if any) the manufacturer has given in respect of the Goods and where any such warranty is denied, voided, is inapplicable or unable to be enforced, you waive all rights to recover from us in respect of the Goods.
- 22.7 Where our liability cannot be excluded by law or limited by Our Terms of Trade, our liability will be limited to, in the case of Goods, the replacement of the Goods, the supply of equivalent Goods or the payment of the cost of replacing the Goods, or in the case of Services, the supply of the Services again, or the payment of the cost of having the Services supplied again. The choice of remedy will be at our discretion and you acknowledge that the limitation of liability in this clause is fair and reasonable.
- 23. RISK**
- 23.1 Where we supply Goods only, all risk for the Goods shall immediately pass to you on delivery and you must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time either:
- you or your nominated carrier takes possession of the Goods at our address; or
  - the Goods are delivered by us or our nominated carrier to the your nominated delivery address even if you are not present at the address.
- 23.2 Where the Works includes both the supply of Goods and the performance of installation Services, we will maintain a contract works insurance policy until the installation Works are completed. Upon completion of the installation Works, all risk for the Goods shall immediately pass to you.
- 23.3 Notwithstanding the provisions of clause 23.1, if you specifically request that we leave Goods outside our premises for collection or to deliver the Goods to an unattended location then such Goods shall always be left at your sole risk and it shall be your responsibility to ensure the Goods are insured adequately or at all. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at your expense.
- 23.4 Where you have supplied the Goods to complete or carry out the Works, you agree to accept all responsibility for the suitability of purpose, quality and any faults inherent in the Goods. We shall not be responsible for any defects in the Works, any loss or damage to the Goods or Works (or any part thereof), or to any other person or property howsoever arising from the use of Goods supplied by you.
- 24. ACL**
- 24.1 This clause applies only to the extent that the Australian Consumer Laws apply to a transaction or contract with you.

24.2 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 or 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.

## 25. COMPLIANCE WITH LAWS

25.1 You and we agree that we will at times ensure that we will comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including occupational health and safety laws relating to building/construction sites, and any other relevant safety standards or legislation, particularly those in relation to Asbestos/Hazardous materials and the safe removal and disposal of same. Our scope of Works does not include attending to dealing with nor removal of construction material, Asbestos or other hazardous material and such obligations rest solely with you at your cost, risk and expense.

25.2 All our Works will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the *Electrical Safety Regulations 2002*. All of the cabling work will comply with the Australian and New Zealand Wiring Standards.

25.3 Despite anything to the contrary in any agreement or contract or Our Terms of Trade, you specifically agree that we are not required to provide you with a Form 16 QBCC Licensee Aspect Certificate as we are not covered by those regulations.

## 26. INTELLECTUAL PROPERTY

26.1 Where we have provided designed, drawn, written plans or a schedule of Works, or created any products for your use, then the copyright in all such designs, drawings, documents, plans schedules and products shall remain vested in us, and shall only be used by you at our discretion.

26.2 You warrant that all designs, specifications, plans, documents, records, Goods or instructions given to us by you will not cause us to infringe any patent, registered design or trademark in the execution of the your order and you agree to indemnify us against any action taken by a third party against us in respect of any such infringement.

26.3 You agree that we may (at no cost) and without restriction use for the purposes of marketing, Works for other clients of ours or entry into any competition, any documents, designs, drawings, plans or products which we have created for you.

## 27. DEFAULT TERMINATION AND SUSPENSION

27.1 Without prejudice to any other remedies we may have, if at any time you are in breach of any obligation (including those relating to payment) under these terms and conditions we may suspend or terminate the supply of Works to you. We will not be liable to you for any loss or damage you suffers because we have exercised our rights under this clause.

27.2 Without prejudice to our other remedies we shall be entitled to cancel all or any part of any order of yours which remains unfulfilled and all amounts owing to us shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to us becomes overdue, or in our opinion you will be unable to make a payment when it falls due;
- (b) you become insolvent or bankrupt, convene a meeting with your creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of your creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of you or any asset of yours.

27.3 Termination of any contract or agreement with you does not:

- (a) affect any claim or action that a party may have against the other or affect any other right or remedy that the party may have;
- (b) release any guarantors; or

(c) release any other party of any obligation which is expressed to continue after termination.

## 28. VARIATION

28.1 We may at any time by not less than seven (7) days' notice in writing vary or replace these terms and conditions and / or Our Terms of Trade (or any of them). You agree that the variation or replacement will apply to all contracts, dealings or orders arising after the effective date of any variation or replacement.

## 29. JURISDICTION

29.1 You agree that the jurisdiction in respect of any relief, remedy and/or enforcement of these terms and conditions will be determined by the jurisdiction of the Courts in Queensland. Each party waives any right it has to object to an action being brought in those Courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those Courts do not have jurisdiction.

29.2 Further, you agree that we may commence any claim or seek any relief in the Supreme Court and/or in the District Court and/or the Magistrates Court sitting at Townsville in the State of Queensland and any such Court will not be required to make any determination as to whether it has local jurisdiction in respect of the matter.

## 30. BUILDING AND CONSTRUCTION INDUSTRY PAYMENTS ACT 2004

30.1 We may at our sole discretion, if there are any disputes or claims for unpaid Works and/or Goods then the provisions of the *Building and Construction Industry Payments Act 2004* may apply.

30.2 Nothing in an agreement or contract is intended to have the effect of contracting out of any applicable provision of the *Building and Construction Industry Payments Act 2004* of Queensland, except to the extent permitted by the Act where applicable.

## 31. GENERAL TERMS

31.1 You cannot assign any agreement with us without our written consent.

31.2 We may assign our rights and obligations with you without your consent. We may also sub contract or license the performance of any part of the Works without your prior written consent.

31.3 This agreement is enforceable against you and the Guarantor by any successor or assign of ours.

31.4 You warrant and declare that:

- (a) you agree to, and are authorised to accept, Our Terms of Trade;
- (b) you understand and agree to Our Terms of Trade;
- (c) the information provided by you is true and correct; and
- (d) the credit provided to you by us is to be used wholly, or predominantly for business or investment purposes (or for both purposes).

## SCHEDULE 1 – DEED OF GUARANTEE AND INDEMNITY

This applies where we insist on the provision of a personal guarantee. We encourage the Guarantor to obtain independent legal advice.

1. In consideration of us agreeing to supply you with Goods and/or Services on credit at the request of the Guarantor, the Guarantor:
  - (a) unconditionally and irrevocably guarantees you will:
    - i. pay all monies now or in the future payable by you to us;
    - ii. observe and perform all your obligations to us;
  - (b) will be jointly and severally liable for the payment of all monies payable by you to us and indemnifies us for any loss or damage suffered by us as a result of your failure to observe and perform your obligations under Our Terms of Trade or any contract or agreement with us.
2. If the terms of any contract or agreement are not enforceable against you, or are invalid or void, for any

- reason the Guarantor indemnifies us against any loss or damage we may suffer as a result. That loss will include all monies that would have been payable by you had the contract or agreement been fully enforceable by us against you.
3. This is a continuing, unconditional and unlimited guarantee and indemnity. The Guarantor waives all rights to be released or discharged from the guarantee and indemnity including due to us:
    - (a) terminating any contract or agreement with you;
    - (b) granting any time concession or indulgence to you;
    - (c) entering into any composition or scheme of arrangement with you;
    - (d) waiving any breach or default by you;
    - (e) failing to enforce the terms of any contract or agreement against you;
    - (f) releasing any other guarantor; or
    - (g) changing, varying or amending Our Terms of Trade, any contract, agreement or the supply of Goods and/or Services to you.
  4. The Guarantor acknowledges and agrees that this guarantee applies to and continues to all successors and assigns of you and is not released if you cease to exist, change shareholders, sell your business or otherwise enter into any other reorganisation or change in structure or ownership.
  5. The Guarantor irrevocably grants to us an equitable mortgage over any real property wherever situated (including land acquired in the future) owned by the Guarantor personally and / or as Trustee of any Trust and/or by any company of which the Guarantor is the sole director/secretary or sole shareholder as security for the payment of all monies now or in the future owed to us by you or the Guarantor. In this clause "Trust" means each trust for which the Guarantor holds land as trustee.
  6. We may register a caveat and/or mortgage to secure our interest in any such land and the Guarantor irrevocably appoints us as the Guarantor's attorney to sign all consents to caveat and mortgages on the Guarantor's behalf.
  7. Reference to:
    - (a) "all monies" means all monies of whatsoever kind now or in the future due and/or owing to us or potentially recoverable by us. It includes monies payable on any account, interest, charges, fees, costs, enforcement costs and other amounts owing, due and/or recoverable howsoever and whenever arising including on any account, invoice, court order, pursuant to an indemnity given to us, breach of contract or other rights or remedies enforceable by us.
    - (b) "you" means the person who has entered into any agreement, contract or transaction with us and who the Guarantor has some association with either by directorship or otherwise or who the Guarantor has agreed in writing to be the guarantor for;
    - (c) "we/us" means Voltec Services Pty Ltd and includes our successors and assigns;
    - (d) any other term in this guarantee and indemnity which has a defined meaning in Our Terms of Trade will also have the same meaning in this guarantee as if such definition was hereby incorporated by reference.
  8. In the interpretation of this guarantee and indemnity:
    - (a) singular includes plural and vice versa;
    - (b) any unlawful, invalid or unenforceable term or condition will not invalidate or affect the interpretation of the balance of the conditions, but will be severed;
    - (c) nothing which appears after the word "include" or "including" is to be interpreted as limiting the type of thing which may be included within the ambit of that clause;
    - (d) terms and conditions will not be interpreted against us merely because they were drafted by us.
  9. Each guarantor is liable under this guarantee and indemnity:
    - (a) even if any other guarantor does not execute the guarantee. This guarantee is not conditional upon all guarantors signing.
    - (b) when he or she executes this guarantee.
    - (c) jointly and severally with the other guarantors.