TERMS AND CONDITIONS

These Terms and Conditions govern the relationship between Aquest (SA) Pty Ltd ABN 85 626 108 272 ("Aquest") and out clients for the provision of services as detailed in a written quotation and agreed upon by the Client. In the absence of a mutually agreed and signed contract between Aquest and the Client, these Terms and Conditions shall apply in full to all goods and services provided by Aquest. Where a separate written and signed contract exists, that contract shall take precedence, and these Terms and Conditions shall apply only to the extent that they are not inconsistent with the signed agreement.

1. DEFINITIONS and INTERPRETATIONS

1.1. **Aquest** means Aquest (SA) Pty Ltd Trading As: Aquest Electrical Pty Ltd

1.2. **Acceptance** means the Client's verbal or written agreement for Aquest to undertake the Services.

1.3. **Change in Law** means any change to legislation, licences, authorisations, approvals, or consents that occurs after the date appearing on the Quotation.

1.4. **Client** means the organisation, person, firm, Related Body Corporate (as defined in the Corporations Act 2011), or authority that has engaged Aquest to provide Services.

1.5. **Contract** means the agreement between the Client and Aquest for the Services.

1.6. **Contract Sum** means the agreed price as stated in the Quotation and as increased by Variation.

1.7. **Latent Conditions** means any unforeseen site condition not disclosed by the Client to Aquest prior to Quotation, or obvious to an Aquest upon reasonable inspection if Aquest attends Site at the time of Quotation.

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

1.9. **PPS Register** means the register established under the PPSA.

1.10. **Quote** or **Quotation** means any document or electronic message containing a price for Services, including but not limited to letters, emails, quotations generated by computer or tablet devices or handwritten quotations.

1.11. **Services** means the work specified in Aquest's Quotation to the Client and includes Goods and Services.

1.12. **Site** means the geographic location(s) where the Services are to be provided.

1.13. **Variation** means a change to the Contract which varies the Services and may result in a change to the Contract Sum

2. ACCEPTANCE

2.1. By placing an order with Aquest, the Client hereby accepts these Terms and Conditions. All other prior representations (written or oral) and any terms and conditions contained in the Client's enquiries, orders, confirmations, contracts, or delivery notes and any other such document unless accepted in writing by Aquest are hereby excluded.

2.2. The agreement between the Supplier and the Client is comprised of the following documents:

(a) the Quotation

(b) these Terms and Conditions,

(c) any terms and conditions of the Client accepted by Aquest in writing.

2.3. To the extent of any inconsistency or discrepancy between any or all of the documents listed in clause 2, they shall be relied upon and interpreted in descending order of precedence from clause 2.2(a) to (c).

3. PRICE

3.1. All Quotations are valid for 30 days from the date on the Quotation. All prices are quoted in Australian dollars and exclusive of GST.

3.2. GST is applicable and will be shown on Aquest Tax Invoices.

3.3. Unless otherwise provided in the Quote, the price is based on the cost of labour and materials as at the date on the Quotation and is subject to price variation in accordance with the National Electrical and Communications Association (State Chapter) Standard Price Variation Formula.

3.4. Unless expressly stated in the Quotation the Services do not include testing or upgrading the existing installation or repairing faults found in the existing installation during performance of the Services.

3.5. All rates are as per the Aquest Schedule of Rates at the time of Quotation, unless previously arranged and agreed in writing.

3.6. Travel time is calculated from Aquest's workshop to and from the Site.

3.7. Unless specifically mentioned by the Client in writing or as part of the Client's tender package, no provision has been made for any site agreement, or any other allowance outside of Aquest's Employment Contracts. Where Aquest is required to make such payments, this shall be an additional charge.

4. PAYMENT and PAYMENT TERMS

4.1. Payment terms are 30 days from the date of invoice, unless agreed in writing. The Client shall make payment according to the Quote or unless the Client has been granted a credit account. Granting of a credit account shall be at the absolute discretion of Aquest and unless otherwise demanded by Aquest the Client granted credit account shall make payment within the terms approved in the credit account.

4.2. Aquest accepts the following forms of payment: Visa, MasterCard, Cheque or Electronic Funds Transfer (EFT).

4.3. A surcharge of may apply to all credit card payments.

4.4. Cheque payments will be subject to clearance by Aquest's banking terms. The Client is responsible for the payment of any dishonour or administrative fees incurred by Aquest as a result of payment by check.

4.5. Where the Client fails to make payment in accordance with clause 4.1, Aquest shall be entitled to:

4.5.1. Require the payment of upon delivery and commencement of any further services;

4.5.2. Charge default interest at the rate of 10% per annum on all overdue amounts (including late payment charges and amounts other than the contract sum) calculated on a day to day basis on any monies due but unpaid, such interest to be computed from the due date for payment AND the parties agree that such default is not a penalty but is a true measure of damages incurred by Aquest. Payments received from the Client will be credited first against any default interest and all such charges shall be payable upon demand;

4.5.3. Claim from the Client all costs relating to any action taken by Aquest to recover moneys or goods due from the Client including, but not limited to, any legal costs and disbursements on a solicitor-client basis;

4.5.4. Cease any further Works for the Client and terminate any agreement in relation to services and/or products that have not been provided or delivered; and.

4.5.5. The Client shall not be entitled to set off against, or deduct from the contract sum, any sums owed or claimed to be owed to the Client by Aquest nor to withhold payment of any invoice because part of that invoice is in dispute.

4.6. Aquest is not obliged to pay any invoice that is received more than 60 days after final completion of the contracted services.

5. SUPPLY and DELIVERY

5.1. Where Goods are delivered to Site for the Client then the Client shall examine the products immediately after delivery and Aquest shall not be liable for any misdelivery, shortage, defect or damage unless Aquest is notified in writing within 7 days of the date of delivery of the Goods.

5.2. Where Aquest has been contracted to install the goods then the Client shall not open or dismantle the Goods.

5.3. Care and custody of all goods and materials delivered to Site shall be the responsibility of the Client from the time of delivery, regardless of attendance by the Client or a Client representative to acknowledge receipt of goods.

5.4. Notwithstanding delivery and/ or installation of Goods, Title for any Goods will remain with Aquest until the Goods and all Services provided in relation to the Goods are paid for in full. The Client acknowledges and authorises entry to allow Aquest to recover any Goods for which payment has not been received.

5.5. Any payment made by or on behalf of the Client which is later voided by the application of any Statutory Provision shall be deemed not to discharge the Client's indebtedness and in such

an event the parties are to be restored to rights which each respectively would have had if the payment had not been made.

5.6. The Client acknowledges that they are in possession of the products solely as a bailee for Aquest until payment in full is received by Aquest and until such payment, the Client shall be fully responsible for any loss or damage to the goods whatsoever and howsoever caused following delivery. Ownership of all supplied and invoiced goods will only pass to the Client on receipt of full invoiced amount by Aquest.

5.7. Any intellectual property created by or as a result of the supply of any goods and services is and remains the property of Aquest. Aquest grants the Client a non-exclusive, royalty-free, perpetual, and non-transferrable licence to use the created IP.

6. VARIATIONS and CHANGES TO COST OF MATERIALS

6.1. The Client shall be entitled to request Aquest perform a variation to the original service agreed upon and which the contract price has been established. Such request is to be made in writing and where possible in a timely manner so as to not delay Aquest in completing the service in the original intended timeframe.

6.2. Should a delay be incurred by Aquest due to a request for a variation, the Client will grant Aquest an extension of time and an amended contract price will be agreed upon in writing prior to any services undertaken.

6.3. Any services provided prior to the date of this contract which were not provided under a separate written contract are deemed to have been provided under this contract.

6.4. EXTENSION of TIME

6.5. Where Aquest is delayed for reasons outside of its control it will be entitled to submit a claim for an extension of time and with costs and the Client shall approve a variation to the Contract for the additional time and cost.

7. PURCHASE ORDERS

7.1. These terms and conditions are the only terms by which Aquest will be engaged to perform services. Aquest's acceptance of a purchase order does not commit to or infer acceptance of any other terms and conditions that may be presented with the Client's purchase order.

8. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")

8.1. The Client acknowledges and agrees that:

8.2. This agreement constitutes a security agreement for the purposes of the PPSA and creates a registrable security interest under the PPSA in all materials supplied or will be supplied by Aquest to the Client;

8.3. Aquest has the right to register a financing statement under the PPSA with respect to the security interest created by this agreement;

8.4. If Aquest registers a security interest under the PPSA, Aquest may exercise any or all remedies afforded to it as a secured party, without prejudice to any other rights or remedies arising out of a breach by the Client of any agreement with Aquest; and

8.5. The materials supplied or will be supplied by Aquest to the Client are collateral for the purposes of the PPSA.

8.5.1. The Client waives any right the Client has under the PPSA to receive notice in relation to registration events.

8.5.2. The Client and Aquest agree that neither party will disclose information of the kind specified under Section 275(1) of the PPSA.

8.5.3. Aquest may elect, at its absolute discretion and at any time, that any section of the PPSA specified in Section 115 will not apply to the extent permitted by Section 115.

8.6. Clause 8 shall survive the Termination of the Contract.

9. INVOICING

9.1. Aquest will issue a Tax Invoice on completion of services except where the Services extend beyond any calendar month, in which case it will issue a monthly progress claim for the value of Goods and Services supplied at the date of invoice.

9.2. Monthly progress claims shall be structured to include:

9.2.1. 10% of Contract Sum for mobilisation;

9.2.2. 100% of all fixed and unfixed Goods and Materials supplied to Site; 100% of all unfixed Goods which are offsite due to no Site access or construction delays;

9.2.3. All plant and labour incurred in performing the Services up to the date of invoice;

9.2.4. All approved Variation works in progress; and

9.2.5. 80% of all unapproved Variation work in progress.

10. RETURNS and CANCELLATIONS

10.1. Where the Client cancels or returns goods, it will be responsible for all restocking and return freight charges.

11. LATENT CONDITIONS

11.1. If Aquest encounters Latent Conditions the Client shall approve a Variation for the additional time and cost incurred by Aquest.

12. LIABILITY

12.1. The Client releases Aquest from, and agrees that Aquest is not liable, to the maximum extent permitted by law, for any Claims arising from or in connection with:

12.1.1. The performance, purported performance or non-performance of the Goods or Services;

12.1.2. The performance, purported performance or non-performance of a supplier or subcontractor of Aquest; or

12.1.3. Any breach of Aquest's warranties or other terms of this Agreement.

12.1.4. Acts of negligence, omissions, or wilful misconduct of Aquest, its officers, employees, suppliers, agents and subcontractors resulting in:

12.1.4.1. Loss or damage to any property;

12.1.4.2. Injury to or death of any person;

12.1.4.3. Consequential or indirect losses; or

12.1.4.4. Any other damage or loss.

12.2. Aquest's total aggregate liability under this Contract shall be limited to the lesser of (i) the amount of any insurance payout received in relation to a claim, or (ii) ten percent (10%) of the Contract Sum.

12.3. Aquest's liability does not extend to any loss of profit, production, opportunity, or business interruption, nor to any indirect, consequential, or special loss or damage of any kind.

12.4. The client acknowledges that Aquest will not accept liability for any damage to materials or works caused by the Client or third parties and shall not be required to indemnify any party for any damage caused by others.

12.5. The Client shall indemnify, defend, and hold harmless Aquest, its directors, employees, agents, and subcontractors from and against all losses, damages, liabilities, claims, costs (including legal costs on a solicitor-client basis), and expenses arising out of or in connection with:

12.5.1. Any act, omission, negligence, or default of the Client or its personnel

12.5.2. Any breach by the Client of these Terms and Conditions; or

12.5.3. Any claim by a third party arising out of or relating to the Client's instructions, information, materials, or use of the Goods and Services.

This indemnity survives completion or termination of the contract.

13. PRODUCT and SERVICE GUARANTEE and WARRANTY

13.1. All goods and materials supplied by Aquest shall have the benefit of the original manufacturers' warranty.

13.2. Subject to the Australian Consumer Law (Competition and Consumer Act 2010, Schedule 2), Aquest will not accept liability for any damage, direct or consequential, arising out of any faults or defects including, but not limited to, those caused by:

13.2.1. External causes including natural disaster, fire, water, lightning, power surge or spike, accident, neglect, misuse, or vandalism.

13.2.2. Goods and materials being used in a manner other than intended by the original manufacturer.

13.2.3. The use of supplied good and materials with other goods and materials not approved or supplied by Aquest.

13.2.4. The performance of maintenance or attempted repair by persons other than Aquest or as authorised by Aquest.

13.2.5. Any configuration or reconfiguration by the Client.

13.3. Goods manufactured by Aquest (including custom products and/or cables) carry a twelve (12) month warranty against faults and/or defects excluding, but not limited to, the clauses outlined in 13.2 to 13.2.5.

13.4. The Client is responsible for any return freight charges for goods returned under warranty.

14. INSURANCE

14.1. All professional indemnity insurance and All Risks/Control insurances are expressly excluded unless otherwise noted in the schedule.

15. SITE and SAFETY

15.1. The Client shall be responsible for the site.

15.2. The Client shall ensure all legislative requirements are in place prior to Aquest undertaking services on a Client site, and the Client is responsible for the maintaining of all requirements for the duration of services being undertaken.

15.3. Aquest and its sub-contractors shall comply with all legislation and standards, including all Site Safe Systems of Work in the maintaining of safe work practices.

15.4. Aquest and its sub-contractors are to have clear and reasonable access to site.

15.5. Should the Client fail to provide Aquest with all relevant site information that results in damage, through no fault of Aquest, to services the Client shall indemnify and forever hold blameless Aquest for any claim for damages made against Aquest.

16. EXCAVATIONS and EXISTING UNDERGROUND SERVICES

16.1. The contract price is based on any excavation being in clean, soil or clay which is free of rock, does not require dewatering or shoring, using a machine with a capacity of $8m^3$/hr. The Client acknowledges that if the Site conditions encountered differ then the Client shall issue a variation for the additional time and cost.

16.2. Aquest will contact '*Dial Before You Dig*' prior to any excavation.

16.3. If the Client requires Aquest to excavate by hand, then Aquest will provide, and the Client shall approve, a variation to the Contract for the additional time and cost.

17. ASBESTOS and CONTAMINATION

17.1. Aquest's Quote excludes all cost and time associated with Asbestos, hazardous or contaminated materials, and if encountered the Client shall approve a variation to the Contract for all additional time and cost.

18. INDUSTRIAL RELATIONS

18.1. Aquest will comply with all applicable industrial instruments, agreements, and legislation.

18.2. Aquest shall be entitled to a variation to the contract price, including an extension of time for any lost time and incurred cost due to any form of industrial action taken after submission of the original contract price.

19. SUPPLY AUTHORITY, LEGISLATIVE and STATUTORY CHARGES

19.1. If there is a Change in Law that results in Aquest incurring additional time or cost, then the Client shall issue a variation to the Contract for such additional time and cost.

20. CONFIDENTIALITY

20.1. The parties, except for legal and statutory requirements, will keep all correspondence and information concerning each party and the Contract confidential.

21. MARKETING AND PROMOTIONAL USE OF IMAGES

21.1. The Client grants Aquest permission to capture and use photographs, videos, and other visual media of works undertaken on Client sites for marketing, promotional, and educational purposes. This may include use in printed materials, proposals, social media, websites, and other digital or public platforms. Aquest agrees that such use will not disclose any confidential information, commercially sensitive details, or identifiable images of individuals without prior consent, and will represent the Client and the works in a professional manner consistent with Aquest's brand values.

22. DISPUTES

22.1. Subject to clauses 21.3 and 21.4 any dispute arising out of this contract shall be resolved by the parties first attempting to resolve the dispute by mediation. If the parties are unable to resolve the dispute by mediation, then either party shall be at liberty to litigate the matter or by agreement arbitrate the dispute.

22.2. If the parties elect to arbitrate the dispute, then they shall agree an arbitrator. Failing such agreement, the President of the South Australian Chapter of the Institute of Arbitrators of Australia shall appoint an arbitrator.

22.3. In the event of there being any dispute as to payment or non-payment of monies then such case the provisions of the relevant *Security for Payments* legislation shall apply.

22.4. Nothing in this agreement shall prevent either party from taking any action whatsoever seeking summary of urgent relief.

23. CONSTRUCTION INDUSTRY TRAINING ACT LEVY (South Australia Only)

23.1. The Construction Industry Training Act Levy of 0.25%, applicable in South Australia (Levy), has not been included in the Contract Sum on the assumption that the project owner, builder, or another agent will make, or has made, such payment on behalf of all subcontractors on the total estimated contract value. Should Aquest not receive a statement from the Client that the Levy has been or will be paid, the Contract Sum will be increased by a sum equal to 0.3% of the Contract Sum to compensate Aquest for paying the Levy in relation to Goods and Services provided to the Client.

24. FORCE MAJEURE

24.1. Neither party shall be liable for any failure or delay in the performance of its obligations (other than payment obligations) under this Contract if such failure or delay is caused by or arises from events beyond its reasonable control, including but not limited to: acts of God, natural disasters, fire, flood, pandemic, epidemic, war, civil unrest, government restrictions, supply chain interruptions, strikes, lockouts, or equipment or transport failures**.** The affected party must promptly notify the other in writing of the circumstances and the expected duration of the delay. The performance of the Contract shall be suspended for the period during which the Force Majeure event continues, and the time for performance extended accordingly. If the delay exceeds sixty (60) days, either party may terminate the Contract without liability (other than for payment for Goods or Services already provided).

25. GOVERNING LAW

25.1. These Terms and Conditions shall be deemed to have been made in the State where the Goods and Services are provided and shall be subject to the laws of that State. The parties shall be subject to the non-exclusive jurisdiction of that State and any courts that may hear appeals from those courts in relation to any proceedings concerning these Terms and Conditions.

26. WAIVER

26.1. A party's failure or delay to exercise a power or right is not a waiver of that right. A waiver by the Supplier is only effective if it is in writing and then only in relation to the particular obligation or breach in respect of which it was given and not in respect of any other breach or of any other provision.

27. AMENDMENT

27.1. No amendment or variation of this Agreement is valid or binding on Aquest unless accepted in writing by Aquest.

28. ASSIGNMENT

28.1. The Client may not assign this Agreement in part or in whole without Aquest's prior written consent, which may be granted at Aquest's sole discretion.

29. RELATIONSHIP

29.1. Aquest provides all Goods and Services under these Terms and Conditions as an independent contractor. Aquest and the Client are not principal and agent, partners, trustee and beneficiary, or employer and employee.

30. SEVERABILITY

30.1. Any provision in these Terms and Conditions which is or becomes invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of these Terms and Conditions in any other jurisdiction.