1. DEFINITIONS

For the purposes of the Quotation and these Terms and Conditions:

a) "Additional Fees" means the fees applicable to any work which is:
- Do and Charge Work;
- Required to be undertaken outside the trading hours specified in clause 6;
- Required but not listed in the Scope of Works in the Quotation; or
- Required because an assumption listed in the Quotation is incorrect.

b) "Contractor" means PRS Electrical & Communications Contractors Pty Ltd trading as Phase Electrical & Communications ABN 60 616 482 136, its successors and assigns or any person acting on behalf of and with the authority of the Contractor;

c) "Client" is the applicant named on the account with the Contractor or where no account exists then the addressee on the quotation or tender provided by the Contractor to the Client;

d) "Do and Charge Work" means Work outside the Scope of Works in the Quotation performed under direction of the Client without a formal quotation or variation;

e) "Fees" means the fees payable to the Contractor by the Client under the Contract (including the Price), as varied in accordance with clause 3.1 and includes any Additional Fees, Cancellation Fees and Reduction Fees;

f) "Goods" means electrical equipment and components supplied by the Contractor to the Client under the Contract including as described in the Quotation or in other documents issued pursuant to the Contract;

g) "Site" means the place at which the Work is to be carried out; and

h) "Works" means the performance of electrical work and associated services set out in the Scope of Works in the Quotation ("Scope of Works") plus any other work authorised under the Contract and includes any supply and/or installation of Goods.

Definitions and terms which appear in both the Quotation and the Terms & Conditions, will have the same meaning unless the context dictates otherwise.

2. WORK & FEES

2.1 The Contractor shall undertake the Work in a tradespersonlike manner, and within any timeframe nominated in the Quotation or otherwise within a reasonable time.

2.2 The Client will pay the Contractor the Fees in accordance with the Contract.

2.3 The Client acknowledges that where the Contractor's costs in connection with the Work increase because of the introduction of new, or changes to, existing government taxes or charges or because of prime cost items or provisional sums, the Client will be liable for such increases and the Fees are subject to variation reflecting such increases.

3. VARIATIONS

The Client may request the Contractor to vary the Work, by notice in writing to the Contractor. If the Contractor agrees to such variation, the Contractor will advise the Client of the Additional Fees (or estimate thereof) and additional time (or estimate thereof) applicable to such variation work ("Variation Cost & Time Advice"). The Contractor will provide the Variation Cost & Time Advice to the Client either: (a) before commencing the variation work and, in such case, the Contractor may elect not to perform the variation work until the Client agrees in writing to the Variation Cost & Time Advice; or (b) in due course.

4. CANCELLATION AND SCOPE REDUCTION

Should the Client cancel the Contract, the Client shall: (a) reimburse the Contractor for any actual costs, losses or expenses incurred by the Contractor; or (b) at the Contractor's election and discretion, pay the Contractor 10% of the Fees ("Cancellation Fees"). Should the Client reduce the Scope of Works under the Contract, the Client shall pay the Contractor 10% of the value of the Work removed from the Scope of Works ("Reduction Fees").

5. SITE ACCESS

The Client shall provide exclusive and unhindered Site access for the Contractor to complete the Work. The Client is responsible for moving any equipment, furniture, signs and wall hangings which prevent the Contractor from accessing the area of the Site at which the Work is required to be carried out. The Client must ensure that the Site complies with acceptable workplace safety standards including all requirements of the Work Health & Safety Act 2011 and its regulations. The Client must provide accessible electricity to all working areas. If the Site does not meet the requirements of this clause, the Contractor may immediately suspend Work until such time as these requirements are met. If the requirements are not met within 2 weeks of date of suspension, the Contractor may terminate the Contract.

6. CONTRACTOR'S TRADING HOURS

The Contractor's normal trading hours are 6am – 6pm Monday to Friday. Work performed (at the Client's request) outside those hours or on a public holiday will be at the Contractor's discretion and will be subject to a surcharge (rates on application).

7. SERVICES BELOW THE GROUND

Before any Work is undertaken and where appropriate, the Client shall clearly mark the exact location and identify all services above and below ground at the Site, including, but not limited to drains, pipes, sewers, mains and telephone and data cables, to enable the Contractor to avoid damage to all such services. In addition, before any Work is undertaken, the Client shall obtain and provide the Contractor with plans and any other information from the Dial Before You Dig website at www.1100.com.au or phone 1100 for the Site. Should the Client fail to comply with its obligations in the preceding paragraphs of this clause and the Contractor consequently damages services then: (a) the Client shall indemnify the Contractor in connection with any claims by any party which thereby arise (including claims for costs, expenses, damages or losses); and (b) the Contractor shall have no liability whatsoever to the Client for such damage and, to the extent necessary, the Client releases the Contractor from any claims (including claims for costs, expenses, damages or losses) in connection with such damage.

8. INSPECTION OF GOODS AS INSTALLATED & DEFECTS NOTICE

The Client shall (a) inspect all Goods on installation, and (b) within forty-eight (48) hours of installation, notify the Contractor in writing ("Notice") of any alleged shortage in quantity, damage, or failure to comply with the Scope of Works ("Defects"). The Client shall afford the Contractor a reasonable opportunity to inspect the Goods within a reasonable time following the giving of the Notice. If the Client does not give the Notice to the Contractor, the Goods will be deemed to have been supplied and installed by the Contractor free from Defects.

9. PAYMENT

9.1 Fees are payable within 30 days of receipt of the Contractor's payment claim (which may in the form of or include a tax invoice) ("Payment Claim"), except Cancellation Fees which are payable 7 days after receipt of the Contractor's tax invoice.

9.2 Unless otherwise provided for in the Quotation, the Contractor may, in its absolute discretion, elect to: (a) issue a Payment Claim at or after the completion of the Work; or (b) issue a Payment Claim on the last business day of each month plus a final Payment Claim at the completion of the Work.

9.3 If the Client disagrees with the Fees claimed in the Payment Claim, it must issue a payment schedule to the Contractor within 5 days of receiving the Payment Claim stating the amount of the payment the Client proposes to make and why. If no payment schedule is provided in that time or at all, the Client must pay the full amount of the Payment Claim.

9.4 The Client agrees that it shall have no right of set off any amount in respect of any amount owing to the Contractor under this Contract.

9.5 The Contractor may at any time prior to the completion of the Work, request that the Client provide satisfactory evidence of the Client's capacity to pay the unpaid balance of the Fees or the price of any variation, and the Client must, within 5 days of the request, provide such evidence to the Contractor.

9.6 If any Fees are overdue for payment, the Contractor may, upon giving 2 days written notice, suspend Work until such time as the overdue Fees are paid.

10. DAMAGES FOR NON-PAYMENT

The Client must pay to the Contractor any costs, expenses or losses incurred by the Contractor in connection with any failure by the Client to make payment to the Contractor or to otherwise comply with the Contract (including debt collection and legal costs on a full indemnity basis and interest at 10% per month).

11. RETENTION OF TITLE

11.1 Notwithstanding the delivery of the Goods or their installation, title in any particular Goods shall remain with the Contractor regardless of whether the Goods are on-sold by the Client, until all Fees are paid. Where Goods have been on-sold by the Client, the Client will be taken to hold the proceeds of sale of such Goods upon trust for the Contractor and to account to the Contractor for those proceeds. Any payment made by or on behalf of the Client which is later avoided shall be deemed not to discharge the Contractor's title in the Goods nor the Client's indebtedness to the Contractor and, in such an event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made.

11.2 The Client acknowledges that it will be in possession of any Goods solely as Bailee until all Fees are paid and until that time: a) the Client must not encumber or otherwise charge the Goods; and b) the Client shall be fully responsible for any loss or damage to the Goods whatsoever and howsoever caused following delivery or installation of the Goods to the Client.

11.3 The Client hereby irrevocably grants to the Contractor the right, at its sole discretion, to remove or repossess any Goods from the Client and sell or dispose of them, where any Fees are not paid within the payment terms set out in clause 9 and the Contractor shall not be liable to the Client or any person claiming through the Client and the Contractor shall be entitled to retain the proceeds of any Goods sold and apply same towards the Client's indebtedness to the Contractor.

11.4 If the Client commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this Contract, then the Contractor may, without prejudice to any other remedies it may have, repossess any Goods delivered to the Client on any account which has not been paid in accordance with these Terms and Conditions and commence proceedings to recover the balance of any monies owing the Contractor by the Client.

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

12.1 In this clause, the following words have the respective meanings given to them in the PPSA: Financing Statement, Financing Change Statement, Proceeds, Register, Security Agreement, Security Interest and Verification Statement.

12.2 The Client acknowledges and agrees: (a) that these Terms & Conditions constitute a Security Agreement that creates a Security Interest in all Goods (and Proceeds) previously supplied by the Contractor to the Client and to be supplied in the future by the Contractor to the Client; (b) that the Security Interest created by these Terms & Conditions is a continuing Security Interest in all Goods (supplied now or in the future by the Contractor to the Client) and Proceeds, which will operate (despite any intervening payment or settlement of account) until the Contractor has signed a release; (c) to waive its rights in relation to the sections listed in sub-section 115(1) of the PPSA (or as otherwise amended), which will not apply (to the extent, if any, mentioned) to the Security Agreement created by these Terms & Conditions.

12.3 The Client undertakes to: (a) keep all Goods free of any charge, lien or Security Interest except as created under these Terms & Conditions and not otherwise deal with the Goods in a way that may prejudice any rights of the Contractor under these Terms & Conditions or the PPSA; (b) sign any further documents and provide any further information (which must be complete, accurate and up to date in all respects) that the Contractor may require to register a Financing Statement or Financing Change Statement in relation to a Security Interest on the Register, register any other document required to be registered by the PPSA, or correct a defect in a statement referred to in clause 12.3(b); (c) indemnify, and upon demand reimburse, the Contractor for all fees (including actual legal fees on a full indemnity basis), costs, disbursements and expenses in registering and maintaining a Financing Statement or Financing Change Statement on the Register or releasing any Goods charged thereby and enforcing or attempting to enforce the Security any Interest created by these Terms & Conditions. (d) not register, or allow to be registered, a Financing Statement or a Financing Change Statement in respect of the Goods or Proceeds in favour of a third party, without the prior written consent of the Contractor; and immediately advise the Contractor of any material change in its business details (including, but not limited to, its trading name, address, facsimile number) or business practices.

13. WARRANTY

13.1 Where the Contractor supplies Goods under the Contract, the Client's rights in respect of those Goods shall be limited to the rights which the Client has against the manufacturer of the Goods including under any warranty provided by the manufacturer for the Goods ("Client's Manufacturer Rights"). If the Client requests the Contractor to undertake any work in connection with the Client's Manufacturer Rights including to remove the Goods from Site, transport the Goods to and from the manufacturer, re-install the Goods ("Goods Assistance Work"), then the Contractor will notify the Client whether it will undertake that Goods Assistance Work and such will be treated as a variation and clause 3 will apply to it.

13.2 The Contractor warrants that the Work will be carried out in accordance with all relevant laws and in a tradespersonlike manner in accordance with the Contract including any applicable plans and specifications using suitable and appropriate materials.

13.3 The Contractor reserves the right to render void any warranty in respect of the Goods, should the Goods be modified, altered, damaged or used other than for their intended purpose.

13.4 The Contractor shall not be liable to compensate the Client for any delay in connection with the replacement or repair of the Goods or the Goods Assistance Work or in assessing any claim by the Client as regards defects in the Work or in completing the Work.

13.5 Despite anything else and to the maximum extent permitted by law, the Contractor provides no warranty in relation to the merchantability, suitability or fitness for a particular purpose of the Work except as expressly set out in this Contract.

14. LIABILITY

14.1 Non-excludable Rights

The parties acknowledge that, under applicable State and Commonwealth law, certain conditions and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the Client in relation to the provision of the Work which cannot be excluded, restricted or modified by the contract ("Non-excludable Rights").

14.2 Disclaimer of Liability

The Contractor disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Client, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights. To the extent permitted by law, the liability of the Contractor for a breach of a Non-Excludable Right is limited, at the Contractor's option, to the supplying of the Work again or payment of the cost of having the Work supplied again.

14.3 Indirect Losses

Notwithstanding any other provision of these Terms and Conditions, the Contractor is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Client for:

(a) any increased costs or expenses including financial costs; (b) any loss of profit, revenue, business, production, sales, contracts or anticipated savings; (c) any loss or expense resulting from a claim by a third party against the Client; or (d) any special, indirect or consequential loss or damage of any nature whatsoever (including as caused by the Contractor's failure to complete or delay in completing the Work at all) or in accordance with the Contract or by delay in completing Work or delivering the Goods.

14.4 Force Majeure

The Contractor will have no liability to the Client in relation to any loss, damage or expense caused by the Contractor's failure to complete the Work or to deliver the Goods as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of the Contractor's normal suppliers to supply necessary Goods or labour or any other matter beyond the Contractor's control.

15. OVERALL LIMITATION

Except to the extent that a liability cannot at law be contracted out of, the total maximum liability of the Contractor to the Client arising in connection with the subject matter of the Contract, including a claim: (a) for breach of contract; (b) in tort; (c) under statute; or (d) rectification or frustration, is limited to an amount equal to 10% of the Fees.

16. NECESSARY DAMAGE

Where, in order to undertake the Work, the Contractor must damage the existing buildings, facilities, equipment or structures on Site, the Contractor is not responsible or liable to reinstate and rectify that damage.

17. PRIVACY

17.1 The Client hereby authorises the Contractor to collect, retain, record, use and disclose commercial and/or consumer information about the Client and to record or take photos of the Work or events or matters on Site relevant to its work, in accordance with the Privacy Act 1988, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by the Contractor, a debt collector, credit reporting agency and/or any other individual or organisation which maintains credit references and/or default listings.

17.2 The Contractor may give information about the Client to a credit reporting agency for the purposes of obtaining consumer and commercial credit reports and/or lodging consumer and commercial defaults on the Client's credit file. This information may be given before, during or after the provision of credit to the Client and will be in accordance with the Privacy Act 1988 and subsequent amendments.

18. SECURITY AND CHARGE

The Client hereby charges all property, both equitable and legal, present or future of the Client in respect of any monies that may become due and owing by the Client to the Contractor under the Contract or otherwise and hereby authorises the Contractor or its solicitors to execute (a) any consent form as its attorney for the purpose of registering a caveat over any real property owned by the Client at any time ("Real Property"); or (b) any mortgage document as its attorney for the purpose of registering a mortgage over the Real Property. The Client must, if required by the Contractor, do all things and sign all documents necessary to enable the Contractor to register the caveat or mortgage referenced in this clause.

19. GENERAL MATTERS

19.1 Severability

Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

19.2 Governing Law and Jurisdiction

These Terms and Conditions are governed by the laws of the State of Queensland and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland.

20. LATENT CONDITIONS

20.1 Latent conditions are physical conditions on the Site and its near surrounds, including artificial things, which differ materially from the physical conditions which should reasonably have been anticipated by the Contractor.

20.2 The Contractor, within a reasonable time of becoming aware of a latent condition while carrying out Work, shall give the Client written notice of the general nature thereof.

20.3 The effect of the latent condition and any additional work undertaken by the Contractor to address it shall be deemed to be a variation payable by the Client.

21. WORK ON ADJOINING LAND

21.1 Where the Contractor is required to carry out part or the whole of the Work on, in or over any property adjoining or in the vicinity of the Site, the Client shall be responsible for all matters relating to the carrying out of the work outside the boundaries of the Site (Work Outside Site) including coordinating any access with adjoining property owners and any cost, expense, loss, damage or other liability to the extent it arises from the carrying out of the Work Outside Site.

21.2 The Client shall indemnify the Contractor against any cost, expense, loss, damage or other liability suffered or incurred by the Contractor in connection with carrying out of the Work Outside Site.

22. NO ASSIGNMENT

22.1 The Client must not, without the Contractor's prior written approval, assign, transfer, or novate ["Assign"] the Contract or any right or interest thereunder. The Contractor may, for any reason/s it considers reasonable, (a) refuse approval, (b) give approval, or (c) give approval with conditions.

22.2 Should the Client purport to Assign without the Contractor's written approval, the Client agrees that such purported assignment shall be invalid and ineffective at law.

23. TERMS & CONDITIONS HAVE PRECEDENCE

23.1 The Client agrees and unconditionally accepts that the provision of the Work by the Contractor is subject only to the conditions of this Contract and any terms and conditions proposed by the Client are expressly excluded.

23.2 To the extent that terms and conditions proposed by the Client are found to the applicable to the provision of the Work, the Client hereby agrees to release the application of those terms and conditions and accepts that only the conditions of this Contract shall apply.

24. APPLICATION OF CONTRACT

The Contract applies to Works carried out by the Contractor, whether performed before or after the date of the Contract.

25. DISPUTE RESOLUTION

25.1 If a dispute or difference ("**a dispute**") between the Client and the Contractor arises in connection with the Contract, then either party shall give to the other party a notice of dispute in writing adequately identifying and providing details of the dispute.

25.2 Any dispute or difference arising in connection with the Contract shall be submitted to mediation in accordance with, and subject to, The Resolution Institute's Mediation and Conciliation Rules.

25.3 If the dispute or difference is not settled within 21 days of the submission to mediation (unless such period is extended by agreement of the parties), then: (a) if the dispute or difference is for a quantum of less than less than $30,000, it shall be and is hereby submitted to an expert in accordance with the Rules for Expert Determination published by the Resolution Institute; (b) if the dispute or difference is for a quantum of $30,000 or more, it shall be submitted to litigation; (c) during the existence of a dispute or difference, the Contractor may at its option, elect to suspend performance of the Contract until resolution of the dispute.