



## TERMS AND CONDITIONS

### DEFINITIONS

- IN THIS AGREEMENT, THE FOLLOWING EXPRESSIONS SHALL HAVE THE FOLLOWING MEANING:  
 'AGREEMENT' MEANS THIS AGREEMENT AND ANY QUOTATION, ANNEXURE AND/OR ATTACHMENT.  
 'T2' means T2 Power & Control Pty. Ltd. ACN 159 509 369 and its related bodies corporate (as that term is defined in the *Corporations Act 2001*).  
 'Customer' means the person, firm, organisation, partnership, corporation, trust or other entity that is receiving the Works or Goods.  
  
 'WORKS' MEANS ANY ELECTRICAL CONTRACTING SERVICES AND ANY OTHER SERVICES SUPPLIED BY T2 FROM TIME TO TIME.  
  
 'GOODS' MEANS ANY ELECTRICAL GOODS OR ANY OTHER GOODS SUPPLIED BY T2 FROM TIME TO TIME.  
  
 'SITE' MEANS THE NOMINATED SITE(S) WHERE THE WORKS ARE TO BE PROVIDED.  
 'Parties' means T2 and the Customer, and Party means either one of them.

### Formation of contract

- QUOTATIONS SHALL REMAIN VALID FOR A PERIOD OF THIRTY (30) DAYS FROM THE DATE OF QUOTATION, UNLESS OTHERWISE SPECIFIED IN WRITING. T2, IN ITS SOLE DISCRETION, RESERVES THE RIGHT TO WITHDRAW, VARY OR EXTEND ANY QUOTATION AT ANY TIME PRIOR TO THE FORMATION OF A CONTRACT IN ACCORDANCE WITH CLAUSE 4.
- UNLESS SPECIFIED OTHERWISE, QUOTATIONS SHALL BE BASED UPON WORKS PERFORMED DURING NORMAL WORKING HOURS WITHIN A NORMAL WORKING WEEK. IF REQUESTED BY THE CUSTOMER, T2 MAY FROM TIME TO TIME AGREE TO PERFORM WORKS OUTSIDE NORMAL WORKING HOURS, IN WHICH CASE THE EXTRA COST SHALL BE PAYABLE BY THE CUSTOMER TO T2 AS A VARIATION IN ACCORDANCE WITH CLAUSES 12 TO 14.
- Quotations made by T2 will not be construed as an offer or obligation to supply in accordance with the quotation. T2 reserves the right to accept or reject, at its discretion, any offer to purchase received by it upon provision of written reasons to the Customer. Only written acceptance by T2 of the Customer's offer will complete a contract.
- Placement of an order, either verbally or in writing, will imply acceptance of T2's quotation and of these terms and conditions.
- AT T2'S SOLE DISCRETION A DEPOSIT MAY BE REQUIRED. THE DEPOSIT AMOUNT OR PERCENTAGE OF THE PRICE DUE WILL BE STIPULATED AT THE TIME OF THE ORDER OF THE GOODS AND/OR WORKS AND SHALL IMMEDIATELY BECOME DUE AND PAYABLE UPON THE FORMATION OF A CONTRACT IN ACCORDANCE WITH CLAUSE 4.

### Payment terms

- WHERE THE CUSTOMER HAS AN APPROVED CREDIT ACCOUNT, THE TERMS OF PAYMENT ARE STRICTLY FOURTEEN (14) DAYS FROM THE DATE OF INVOICE (OR SUCH OTHER PERIOD AS NOMINATED BY T2 HEREIN).
- WHERE THE CUSTOMER DOES NOT HAVE AN APPROVED CREDIT ACCOUNT WITH T2, THEN PAYMENT SHALL BE DUE AT THE TIME OR STAGE INDICATED IN ANY QUOTATION, PURCHASE ORDER OR TENDER AND IF NONE IS PROVIDED THEN AT MONTHLY INTERVALS SPECIFIED BY T2.
- THE CUSTOMER MUST CHECK ALL INVOICES AND ADVISE T2 OF ANY ERRORS OR OMISSIONS WITHIN SEVEN (7) DAYS OF RECEIPT. FAILING ADVICE FROM THE CUSTOMER THAT THE INVOICE CONTAINS ANY ERRORS OR OMISSIONS, THE INVOICE MAY BE DEEMED ACCEPTED BY T2.
- SHOULD THE CUSTOMER NOT PAY FOR THE WORKS AND/OR GOODS SUPPLIED BY T2 IN ACCORDANCE WITH THE CREDIT TERMS AS PROVIDED HEREIN, OR AS AGREED IN WRITING BY T2 AND THE CUSTOMER FROM TIME TO TIME, AFTER ISSUING A WRITTEN DEMAND TO THE CUSTOMER DEMANDING PAYMENT WITHIN FOURTEEN (14) DAYS, T2 WILL BE ENTITLED TO CHARGE AN ADMINISTRATION FEE OF TEN (10) PERCENT OF THE AMOUNT OF THE INVOICE PAYABLE.

- THE CUSTOMER ACKNOWLEDGES THAT T2 SHALL BE AT LIBERTY TO CHARGE A SURCHARGE FOR CREDIT CARD TRANSACTIONS EQUAL TO THE MERCHANT FEES INCURRED BY T2.

### Variations

- Where the Customer requests or directs that any additional Works and/or Goods be supplied that are not strictly in accordance with the quotation, then such additional Works and/or Goods shall constitute a variation, unless otherwise agreed between the Parties.
- The Customer understands and agrees that:
  - all variations must be agreed between the Parties in writing prior to the Works and/or Goods being supplied; and
  - all variations shall be invoiced at the rate(s) specified in the quotation or as specifically quoted.
- Notwithstanding clauses 12 and 13, and subject to any rights the Customer might have under any relevant legislation, T2 reserves the right to vary the quoted price if:
  - there is any movement in the cost of supplying the Works and/or Goods specified in the Customer's order;
  - the Works and/or Goods specified in the Customer's order are varied from the Works and/or Goods specified in T2's quotation;
  - where additional Works are required due to latent conditions with the discovery of hidden and/or unidentifiable difficulties which are only discovered on commencement of the Works; or
  - otherwise provided for in these terms and conditions.

### Purpose of credit

- THE CUSTOMER ACKNOWLEDGES AND AGREES THAT THE CREDIT TO BE PROVIDED TO THE CUSTOMER BY T2 IS TO BE APPLIED WHOLLY OR PREDOMINANTLY FOR COMMERCIAL PURPOSES.



**Cancellation of orders**

16. Unless otherwise agreed in writing between the Parties, the Customer may not cancel an order (or any part of an order) unless the Customer pays to T2 (in T2's sole discretion) any and all costs incurred by T2 in relation to the cancelled order (or cancelled part of an order) up until and including the date of cancellation.
17. Notwithstanding any other rights T2 may have under this Agreement, T2 may cancel any order or delivery of any order, or suspend the provision of Works, by providing written notice to the Customer if the Customer:
  - (a) defaults in payment of any invoice by the due date;
  - (b) enters into liquidation or, in the case the Customer is an individual, becomes bankrupt; or
  - (c) breaches an essential term of this agreement.
18. To the fullest extent permitted by law, T2 accepts no liability for any loss whatsoever incurred by the Customer or any third party as a result of T2 exercising its rights under clause 17.

**Cancellation of terms of credit**

19. T2 reserves the right to withdraw credit at any time upon provision of 48 hours' written notice.
20. Notwithstanding clause 19, if the Customer defaults in the payment of any amount due to T2 pursuant to this agreement and does not cure such default within seven (7) days after being given notice of such default, T2 may terminate this Agreement (to be effective immediately) upon notice to the Customer.
21. Upon the withdrawal of credit in accordance with clause 19, or upon termination of this agreement in accordance with clause 20, all liabilities incurred by the Customer become immediately due and payable to T2.
22. For the avoidance of doubt, termination of this agreement will not affect:
  - (a) the right of any party to whom money is owed hereunder at the time of termination to receive that money according to the provisions hereof; and
  - (b) the rights and/or obligations pursuant to this agreement which by their nature are intended to survive termination of this agreement.

**Delivery of Goods**

23. The Customer acknowledges and accepts that any estimated delivery or supply of Goods provided by T2 is an estimate only and T2 will not be liable for any loss suffered by the Customer as a result of any delay in the delivery of Goods or non-delivery of the Goods.
24. Delivery will be made within normal business hours between Monday to Friday, 8.00am to 5.00pm only (unless otherwise agreed to in writing).
25. Delivery is deemed to occur at the earlier of:
  - (a) the collection of Goods from T2 by the Customer or any third party on behalf of the Customer;
  - (b) the time of loading of Goods at T2's premises for the purpose of delivery to the Customer.
26. T2 is entitled to charge a reasonable fee for storage and/or redelivery charges in the event the Customer does not, or is unable to, accept delivery of the Goods.
27. The Customer accepts that T2 may deliver Goods by instalments and require payment for each separate instalment in accordance with these terms and conditions.
28. The Customer acknowledges and accepts that it is not relieved from any obligation arising under these terms and conditions by reason of any delay in delivery.

**Returns**

29. The Customer must inspect the Goods immediately upon delivery and must within seven (7) days after the date of inspection give written notice to T2 with particulars, of any claim that the Goods are not in accordance with this Agreement. Further, the Customer must, upon request from T2, allow T2 to enter upon any premises occupied by the Customer to inspect the Goods that are subject of the claim. If the Customer fails to give notice, or refuses to allow T2 to inspect the Goods, then to the extent permitted by law, the Goods must be treated as having been accepted by the Customer and the Customer must pay for the Goods in accordance with these terms and conditions.
30. The Customer cannot return Goods to T2 without the written agreement of T2.
31. The Customer acknowledges and agrees that any return will incur a handling and administration charge of ten (10) percent of the purchase price of the returned Goods.

32. THE CUSTOMER MUST PAY ALL COSTS ASSOCIATED WITH THE RETURN OF ANY GOODS (EITHER TO T2 OR FROM T2 TO THE CUSTOMER OR ANY THIRD PARTY) INCLUDING DELIVERY AND HANDLING CHARGES. GOODS TO BE RETURNED TO T2 MUST BE PACKED AND WRAPPED APPROPRIATELY AND MUST INCLUDE ALL ORIGINAL PACKAGING AND DOCUMENTATION (WHERE APPLICABLE). T2 ACCEPTS NO LIABILITY FOR ANY DAMAGE OR LOSS THAT OCCURS TO ANY GOODS IN RETURN TRANSIT.

33. WHERE IT CAN BE DEMONSTRATED, TO T2'S REASONABLE SATISFACTION, THAT THE GOODS RETURNED ARE DEFECTIVE, T2 AGREES TO REIMBURSE THE CUSTOMER FOR THE REASONABLE FREIGHT CHARGES OF RETURNING THE GOODS.

**Risk**

34. Risk of damage to or loss of the Goods passes to the Customer on delivery and the Customer must insure the Goods on or before delivery.
35. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, T2 is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by T2 is sufficient evidence of T2's rights to receive the insurance proceeds without the need for any person dealing with T2 to make further enquiries.
36. If the Customer requests that Goods are delivered either to an unattended location, left outside, or are left outside T2's premises for collection, the Customer acknowledges that T2 will deliver the Goods as requested at the Customer's risk.

**Retention of title**

37. Title in the Goods does not pass to the Customer until the Customer has made payment in full for the Goods and, further, until the Customer has made payment in full of all the other money owing by the Customer to T2 (whether in respect of money payable under a specific contract or on any other account whatsoever).
38. Whilst the Customer has not paid for the Goods supplied in full at any time, the Customer agrees that property and title in the Goods will not pass to the Customer and T2 retains the legal and equitable title in those Goods supplied and not yet sold.
39. Until payment in full has been made to T2, the Customer will hold the Goods in a fiduciary capacity for T2 and agrees to store the Goods in such a manner that they can be identified as the property of T2, and will not mix the Goods with other similar Goods.
40. The Customer will be entitled to sell the Goods in the ordinary course of its business, but until full payment for the Goods has been made to T2, the Customer will sell as agent and bailee for T2 and the proceeds of sale of the Goods will be held by the Customer on trust for T2 absolutely.
41. The Customer's indebtedness to T2, whether in full or in part, will not be discharged by the operation of clause 40 hereof unless and until the funds held on trust are remitted to T2.
42. The Customer agrees that whilst property and title in the Goods remains with T2, T2 has the right, with prior notice to the Customer, to enter upon any premises occupied by the Customer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Customer) to inspect the Goods of T2 and to repossess the goods which may be in the Customer's possession, custody or control when payment is overdue.
43. The Customer will be responsible for T2's reasonable costs and expenses in exercising its rights under clause 42. Where T2 exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against T2, its employees, servants or agents.
44. The Customer agrees that where the Goods have been retaken into the possession of T2, T2 has the absolute right to sell or deal with the Goods, and if necessary, sell the goods with the trademark or name of the Customer on those Goods, and the Customer hereby grants an irrevocable licence to T2 to do all things necessary to sell the goods bearing the name or trademark of the Customer.
45. For the avoidance of doubt, T2's interest constitutes a 'purchase money security interest' pursuant to the PPSA.

**Customer's obligations**

46. THE CUSTOMER ACKNOWLEDGES THAT IT MUST, PRIOR TO THE COMMENCEMENT OF THE WORKS, CLEARLY MARK THE LOCATION OF ALL SERVICES ABOVE AND BELOW GROUND, INCLUDING, BUT NOT LIMITED TO, DRAINS, PIPES, SEWERS, MAINS, GAS SERVICES, AND TELECOMMUNICATION AND ELECTRICAL CABLES, AND ANY OTHER SERVICES WHICH MAY BE AT THE SITE.

**Site access**



47. THE CUSTOMER SHALL AT ALL TIMES ENSURE THAT T2 HAS FREE, CLEAR AND UNIMPEDED ACCESS TO THE SITE AT ALL TIMES TO ENABLE THEM TO PERFORMS ITS OBLIGATIONS UNDER THIS AGREEMENT.

48. IN THE EVENT THAT FREE, CLEAR AND UNIMPEDED ACCESS TO THE SITE IS NOT AVAILABLE TO T2 IN ACCORDANCE WITH CLAUSE 47, T2 RESERVES THE RIGHT TO CEASE THE PROVISION OF WORKS UPON THE PROVISION OF TWENTY-FOUR (24) HOURS' NOTICE TO THE CUSTOMER.

49. THE CUSTOMER AGREES TO INDEMNIFY T2 FROM ANY AND ALL COSTS AND PENALTIES (INCLUDING CLAIMS FOR LIQUIDATED DAMAGES) IF THE COMPLETION OF THE WORKS IS DELAYED DUE TO INTERRUPTED SITE ACCESS.

**Installation**

50. THE CUSTOMER WARRANTS THAT ANY STRUCTURE TO WHICH 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.

**Unsafe conditions**

51. THE CUSTOMER ACKNOWLEDGES THAT T2 MAY SUSPEND OR CEASE PERFORMANCE OF WORKS AT ANY TIME IF, IN THE REASONABLE OPINION OF T2, OR ITS AGENTS OR EMPLOYEES, IT WOULD BE UNSAFE TO ANY PERSON OR DETRIMENTAL TO T2.

52. THE CUSTOMER AGREES TO INDEMNIFY T2 FROM ALL COSTS, LOSSES AND EXPENSES INCURRED BY T2 FOR ANY OF THE WORKS ALREADY PERFORMED.

**SITE CONTAMINATION**

53. THE CUSTOMER ACKNOWLEDGES THAT T2 MAY SUSPEND OR CEASE PERFORMANCE OF WORKS AT ANY TIME IF, T2 DISCOVERED ASBESTOS OR ANY OTHER CONTAMINANTS AT THE SITE WHICH POSE (OR MAY POSE) A HEALTH RISK TO ANY PERSON.

54. THE CUSTOMER SHALL INDEMNIFY T2 FROM ANY COSTS, LOSSES AND EXPENSES INCURRED BY T2 FOR ANY WORKS ALREADY PERFORMED.

55. SHOULD T2 SUSPEND OR CEASE PERFORMANCE OF THE WORKS IN ACCORDANCE WITH CLAUSE 53, T2 WILL NOT RE-COMMENCE WORKS UNTIL SUCH TIME AS LICENSED CONTRACTORS COMMISSIONED AND PAID FOR BY THE CUSTOMER HAVE CLEARED ALL SUCH CONTAMINANTS FROM THE SITE.

**SUB-CONTRACTING**

56. THE CUSTOMER ACKNOWLEDGES THAT T2 MAY, FROM TIME TO TIME AND IN ITS DISCRETION, SUBCONTRACT TO THIRD PARTIES ANY PART OF THE WORKS IN PERFORMANCE OF ITS OBLIGATIONS UNDER A CONTRACT.

**Security/charges**

57. THE CUSTOMER CHARGES IN FAVOUR OF T2 ALL OF ITS ESTATE AND INTEREST IN ANY REAL PROPERTY, WHETHER HELD IN ITS OWN RIGHT OR AS CAPACITY AS TRUSTEE, THE CUSTOMER OWNS AT PRESENT AND IN THE FUTURE WITH THE AMOUNT OF ITS INDEBTEDNESS HEREUNDER UNTIL DISCHARGED.

58. THE CUSTOMER CHARGES IN FAVOUR OF T2 ALL OF ITS ESTATE AND INTEREST IN ANY PERSONAL PROPERTY, WHETHER HELD IN ITS OWN RIGHT OR AS CAPACITY AS TRUSTEE, THE CUSTOMER OWNS AT PRESENT AND IN THE FUTURE WITH THE AMOUNT OF ITS INDEBTEDNESS HEREUNDER UNTIL DISCHARGED.

59. THE CUSTOMER APPOINTS AS ITS DULY CONSTITUTED ATTORNEY T2'S COMPANY SECRETARY FROM TIME TO TIME TO EXECUTE IN THE CUSTOMER'S NAME AND AS THE CUSTOMER'S ACT AND DEED ANY REAL PROPERTY MORTGAGE, BILL OF SALE OR CONSENT TO ANY CAVEAT T2 MAY CHOOSE TO LODGE AGAINST REAL PROPERTY THAT THE CUSTOMER MAY OWN IN ANY LAND TITLES OFFICE IN ANY STATE OR TERRITORY OF AUSTRALIA, EVEN THOUGH THE CUSTOMER MAY NOT HAVE DEFAULTED IN CARRYING OUT ITS OBLIGATIONS HEREUNDER UPON WRITTEN NOTICE AND DEMAND TO THE CUSTOMER (IN THE EVENT THAT THERE IS NO DEFAULT BY THE CUSTOMER IN CARRYING OUT ITS OBLIGATIONS HEREUNDER).

60. WHERE THE CUSTOMER HAS PREVIOUSLY ENTERED INTO AN AGREEMENT WITH T2 BY WHICH THE CUSTOMER HAS GRANTED A CHARGE, MORTGAGE OR OTHER SECURITY INTEREST (INCLUDING A SECURITY INTEREST AS DEFINED IN THE PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)) OVER OR IN RESPECT OF REAL OR PERSONAL PROPERTY, THOSE CHARGES, MORTGAGES OR OTHER SECURITY INTERESTS AND THE TERMS WHICH DIRECTLY OR INDIRECTLY CREATE RIGHTS, POWERS OR OBLIGATIONS IN RESPECT THERETO WILL CONTINUE AND CO-EXIST WITH THE OBLIGATIONS AND SECURITY INTERESTS CREATED IN THIS AGREEMENT AND WILL SECURE ALL INDEBTEDNESS AND OBLIGATIONS OF THE CUSTOMER UNDER THIS AGREEMENT. T2 MAY, AT ITS ELECTION AND UPON THE PROVISION OF WRITTEN NOTICE, VARY THE TERMS OF SUCH PREVIOUS CHARGES, MORTGAGES OR OTHER SECURITIES TO REFLECT THE TERMS HEREIN.

**Intellectual property and confidential information**

61. THE PRESENT AND FUTURE RIGHTS TO INTELLECTUAL PROPERTY INCLUDING INVENTIONS AND IMPROVEMENTS, TRADEMARKS, PATENTS, AND COPYRIGHT IN ALL PLANS, DESIGNS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DATA (COLLECTIVELY, DESIGNS) PREPARED OR COMPILED BY T2 SHALL REMAIN IN T2 AND THE CUSTOMER SHALL NOT HAVE THE RIGHT OR LICENSE TO USE SUCH DESIGNS WITHOUT THE EXPRESS WRITTEN CONSENT OF T2.





62. DESIGNS SUPPLIED BY T2 SHALL REMAIN THE ABSOLUTE PROPERTY OF T2 AND NO PART OF ANY SUCH DESIGNS ARE TO BE DIVULGED TO ANY THIRD PARTY WITHOUT THE PRIOR WRITTEN CONSENT OF THE CUSTOMER.

63. WHERE ANY DESIGNS HAVE BEEN SUPPLIED BY THE CUSTOMER, THE CUSTOMER WARRANTS THAT THE USE OF THOSE DESIGNS DOES NOT INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. FURTHER, THE CUSTOMER AGREES TO INDEMNIFY T2 AGAINST ANY CLAIM ARISING FROM THE USE OF DESIGNS SUPPLIED BY THE CUSTOMER WHERE SUCH DESIGNS INFRINGE OR ARE ALLEGED TO INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

64. THE CUSTOMER CONSENTS TO T2 MAKING SUCH MODIFICATIONS, VARIATIONS OR ADAPTATIONS TO THE DESIGNS AS MAY BE NECESSARY TO ENABLE T2 TO MAKE THE SUPPLY OF GOODS OR COMPLETE THE WORKS AND ANY SUCH ACTION SHALL NOT CONSTITUTE AN INFRINGEMENT OF THE CUSTOMER'S INTELLECTUAL PROPERTY RIGHTS OR MORAL RIGHTS (WHICH ARE HEREBY EXPRESSLY WAIVED).

#### Accuracy of Customer's Designs

65. THE CUSTOMER WARRANTS THAT ANY DESIGNS PROVIDED BY THE CUSTOMER TO T2 ARE ACCURATE AND CORRECT. T2 ACCEPTS NO LIABILITY FOR ANY LOSS, DAMAGE, COSTS OR EXPENSE INCURRED BY THE CUSTOMER OR BY ANY THIRD PARTY AS A RESULT OF THE CUSTOMER'S DESIGNS BEING INACCURATE OR INCORRECT.

#### Indemnity

66. The Customer agrees to indemnify T2 and keep T2 indemnified against any claim that arises out of the Goods and Works supplied under this agreement. This indemnity includes any legal fees and expenses T2 incurs in order to enforce its rights, on an indemnity basis.

#### Provision of further information

67. The Customer undertakes to comply with any reasonable written requests by T2 to provide further information for the purpose of assessing the Customer's creditworthiness, including an updated credit application.

68. If the Customer is a corporation (with the exception of a public listed company), it must advise T2 of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders T2 may ask for new guarantors to sign a guarantee and indemnity.

#### Corporations

69. If the Customer is a corporation, the Customer warrants that all of its directors have signed this agreement and that all of its directors may be required to enter into a guarantee and indemnity with T2 in relation to the Customer's obligations to T2.

#### Trustee capacity

70. If the Customer is the trustee of a trust (whether disclosed to T2 or not), the Customer warrants to T2 that:

- the Customer enters into this agreement in both its capacity as trustee and in its personal capacity;
- the Customer has the right to be reasonably indemnified out of trust assets;
- the Customer has the power under the trust deed to sign this agreement; and
- the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising T2.

71. The Customer must give T2 a copy of the trust deed upon request.

#### Partnership

72. If the Customer enters into this agreement as partners, the Customer warrants that all of the partners have signed this agreement and that all of the partners may be required to enter into a guarantee and indemnity with T2 in relation to the Customer's obligations to T2.

73. If the Customer is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising T2. In the case of a change of partners, T2 may ask for new guarantors to sign a guarantee and indemnity.

#### Insolvency

74. If the Customer becomes insolvent, the Customer remains liable under this agreement for payment of all liabilities incurred hereunder. The Customer remains liable under this agreement even if T2 receives a dividend or payment as a result of the Customer being insolvent.

#### Waiver

75. A waiver of any provision or breach of this agreement by T2 must be made by an authorised officer of T2 in writing. A waiver of any provision or breach of this agreement by the Customer must be made by the Customer's authorised officer in writing.

76. Until ownership of the Goods passes, the Customer waives its rights it would otherwise have under the PPSA (unless otherwise agreed to in writing by T2 and the Customer):

- under section 95 to receive notice of intention to remove an accession;
- under section 118 to receive notice that T2 intends to enforce its security interest in accordance with land law;
- under section 121(4) to receive a notice of enforcement action against liquid assets;
- under section 129 to receive a notice of disposal of Goods by T2 purchasing the Goods;
- under section 130 to receive a notice to dispose of Goods;
- under section 132(1) to receive a statement of account following disposal of Goods;
- under section 132(4) to receive a statement of account if no disposal of Goods for each six (6) month period;
- under section 135 to receive notice of any proposal of T2 to retain Goods;
- under section 137(2) to object to any proposal of T2 to retain or dispose of Goods;
- under section 142 to redeem the Goods;
- under section 143 to reinstate the security agreement; and
- under section 157(1) and 157(3) to receive a notice of any verification statement.

#### Costs

77. The Customer must pay for its own legal, accounting and business costs and all costs incurred by T2 relating to any default by the Customer under this agreement. The Customer must also pay for all stamp duty and other taxes payable on this agreement (if any).

78. The Customer will pay T2's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis.

79. Subject to clauses 80 and 81, payments by, or on behalf of, the Customer will be applied by T2 as follows.

- Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 43 and 78.
- Secondly, in payment of any interest incurred in accordance with clause 85.
- Thirdly, in payment of the outstanding invoice(s).

80. In circumstances where T2 seeks to enforce a purchase money security interest under the PPSA over collateral or proceeds (these terms being consistent with the terms defined in the PPSA), payments received from the Customer will be allocated in a manner at T2's absolute and unfettered discretion, so as to attribute, to the greatest extent possible, the unpaid balance of the debt to the purchase money obligation in respect of the collateral and/or proceeds over which T2 seeks to enforce its purchase money security interest.

81. To the extent that payments have been allocated to invoices by T2 in its business records, T2 may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at T2's absolute discretion, including in a manner inconsistent with clause 79 herein.

82. Payments allocated (and/or reallocated) under clause 79 and/or 80 will be treated as though they were allocated (and/or reallocated) in the manner determined by T2 on the date of receipt of payment.

#### Taxes and duty

83. The Customer must pay GST on any taxable supply made by T2 to the Customer under this agreement. The payment of GST is in addition to any other consideration payable by the Customer for a taxable supply.

84. If as a result of:

- any legislation becoming applicable to the subject matter of this agreement; or
- any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;

T2 becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Customer, then the Customer must pay T2 these additional amounts on 48 hours' written demand.

#### Interest rates

85. The interest rate on any outstanding debts is a fixed rate of fifteen (15) percent per annum.





Set-off

- 86. All payments required to be made by the Customer under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding, unless agreed to otherwise by T2 and the Customer in writing.
- 87. Any amount due to T2 from time to time may be deducted from any monies which may be or may become payable to the Customer by T2.

Building Industry Fairness (Security of Payment) Act 2017

- 88. At T2's sole discretion, if there are any disputes or claims regarding Goods and/or Works, the provisions of the *Building Industry Fairness (Security of Payment) Act 2017 (Act)* may apply.

89. NOTHING IN THIS AGREEMENT IS INTENDED TO HAVE THE EFFECT OF CONTRACTING OUT OF ANY APPLICABLE PROVISIONS OF THE ACT, EXCEPT TO THE EXTENT PERMITTED BY THE ACT

Miscellaneous

- 90. T2 is not liable for any loss caused to the Customer by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, supplier shortages, plant or mechanical breakdown, acts of God or any other activity beyond T2's control.
- 91. In relation to the supply of Goods, T2's liability is limited to:
  - (a) replacing the Goods or supplying similar Goods;
  - (b) repairing the Goods;
  - (c) providing the cost for replacing the goods or for acquiring equivalent Goods; and
  - (d) providing the cost for having the Goods repaired.
- 92. In relation to the supply of Works, T2's liability is limited to:
  - (a) supplying the Works again; or
  - (b) providing for the cost of having the Works supplied again.
- 93. T2 is not liable for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Customer as a result of the goods and/or services supplied under this agreement.
- 94. The Customer will, at the request of T2, execute documents and do such further acts as may be required for T2 to register the security interest granted by the Customer under the PPSA.
- 95. The Customer agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to T2 by the Customer or the Customer's authorised representative.
- 96. The Customer further agrees that where T2 has rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
- 97. The Customer irrevocably grants to T2 the right to enter upon the Customer's property or premises, with notice, and without being in any way liable to the Customer or to any third party, if T2 has cause to exercise any of their rights under sections 123 and/or 128 of the PPSA, and the Customer shall reasonably indemnify T2 from any claims made by any third party as a result of such exercise.
- 98. Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any Goods and/or Works pursuant to this agreement of all or any of the provisions the *Competition and Consumer Act 2010* or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.

Severance

- 99. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
- 100. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

Variation of agreement

- 101. The Customer agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of T2 at any time by written notice to the Customer. The Customer will be provided with fourteen (14) days to accept the variation/s, failing which the variations may be deemed accepted by T2.
- 102. If the Customer does not agree with the variations proposed by T2, they must notify T2 in writing within fourteen (14) days from receipt of the written notice that the variations are not agreed to. T2 and/or the Customer will then be at liberty to suspend/withdraw credit facilities if no agreement can be reached between the Parties regarding the proposed variations. Absent notice from the Customer, the varied terms and conditions of trade may be deemed accepted. Clerical errors (such as spelling mistakes or grammatical errors) may be subject to correction without notification.
- 103. Any proposed variation to these terms and conditions by the Customer must be requested in writing. T2 may refuse any such request without providing reasons either orally or in writing.
- 104. Variations requested by the Customer will only be binding upon T2 if they are accepted in writing.

Consent to register

- 105. The Customer hereby consents to T2 recording the details of this agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by T2 to effect such registration.
- 106. The Customer waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

Jurisdiction

107. THE CUSTOMER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF QUEENSLAND, AND THE LAWS OF THE COMMONWEALTH OF AUSTRALIA WHICH ARE IN FORCE IN QUEENSLAND.

108. THE CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY CONTRACT FOR THE SUPPLY OF GOODS OR SERVICES BETWEEN T2 AND THE CUSTOMER IS FORMED AT THE ADDRESS OF T2.

109. THE PARTIES TO THIS AGREEMENT SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF QUEENSLAND AND THE RELEVANT FEDERAL COURTS AND COURTS COMPETENT TO HEAR APPEALS FROM THOSE COURTS.

Entire agreement

- 110. This agreement constitutes the entire agreement between the Parties relating in any way to its subject matter, unless agreed to otherwise by T2 and the Customer in writing. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.
- 111. Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (**Original Agreement**) between the Customer and T2, these terms and this agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.
- 112. For the avoidance of doubt, the Customer understands and agrees that these terms will prevail over, and T2 will not be bound by, any conditions (express or implied) added or provided by the Customer, whether in an order or otherwise, unless otherwise agreed in writing by T2.

Privacy Act

- 113. The Customer agrees to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*) contained in this document.





PRIVACY STATEMENT

1. THIS PRIVACY STATEMENT ENCOMPASSES CONSENTS, NOTIFICATIONS AND DISCLOSURES UNDER OR IN RELATION TO THE *PRIVACY ACT 1988* (AS AMENDED BY THE *PRIVACY AMENDMENT (ENHANCING PRIVACY PROTECTION) ACT 2012*) (ACT).
2. THE TERMS OF THIS STATEMENT OPERATE CONCURRENTLY WITH ANY PRE-EXISTING PRIVACY STATEMENT, AUTHORISATION OR NOTIFICATION, WHETHER CONTAINED IN OUR CREDIT APPLICATION, TERMS AND CONDITIONS OF TRADE OR OTHERWISE, SAVE TO THE EXTENT OF ANY INCONSISTENCY IN WHICH CASE THE TERMS OF THIS PRIVACY STATEMENT SHALL PREVAIL.
3. FOR THE PURPOSE OF THIS STATEMENT, THE TERMS "PERSONAL INFORMATION", "SENSITIVE INFORMATION", "CREDIT ELIGIBILITY INFORMATION", "CREDIT INFORMATION", "COMMERCIAL CREDIT PURPOSE", "CREDIT GUARANTEE PURPOSE", "CONSUMER CREDIT PURPOSE", "CREDIT REPORTING BODY", "CREDIT PROVIDER", "CREDIT REPORTING INFORMATION", "CREDIT REPORTING CODE" CARRY THE SAME MEANING AS UNDER THE ACT AND THE TERM "INFORMATION" MEANS PERSONAL INFORMATION, SENSITIVE INFORMATION, CREDIT ELIGIBILITY INFORMATION, CREDIT REPORTING INFORMATION AND CREDIT INFORMATION, BOTH SEVERALLY AND COLLECTIVELY.
4. T2 MAY COLLECT PERSONAL INFORMATION ABOUT THE CUSTOMER AND/OR GUARANTOR(S) FOR T2'S PRIMARY PURPOSES WHICH INCLUDE THE ASSESSMENT OF A CREDIT APPLICATION, REVIEWING EXISTING CREDIT TERMS, ASSESSING CREDIT WORTHINESS, COLLECTING OVERDUE PAYMENTS, ASSESSING CREDIT GUARANTEES (CURRENT AND PROSPECTIVE), INTERNAL MANAGEMENT PURPOSES, MARKETING, SALES AND BUSINESS DEVELOPMENT PURPOSES AND DIRECT MARKETING.
5. THE CUSTOMER AND/OR GUARANTOR(S) CONSENT TO T2 COLLECTING, USING AND DISCLOSING PERSONAL INFORMATION (INCLUDING SENSITIVE INFORMATION) FOR BOTH THEIR PRIMARY PURPOSES SPECIFIED HEREIN AND PURPOSES OTHER THAN THE PRIMARY PURPOSES, INCLUDING THE PURPOSE OF DIRECT MARKETING.
6. T2 MAY COLLECT, AND MAY ALREADY HAVE COLLECTED, INFORMATION FROM THE CUSTOMER AND/OR GUARANTOR(S), OTHER CREDIT PROVIDERS, CREDIT REPORTING BODIES AND OTHER THIRD PARTIES FOR THE PURPOSES OF ITS FUNCTIONS AND ACTIVITIES INCLUDING, BUT NOT LIMITED TO, CREDIT, SALES, MARKETING AND ADMINISTRATION. IF THE INFORMATION WAS NOT COLLECTED BY T2 IT MAY RESTRICT OR IMPEDE UPON T2 TRADING WITH, EXTENDING CREDIT TO, CONTINUING TO EXTEND CREDIT TO OR EXTENDING FURTHER CREDIT TO THE CUSTOMER AND/OR GUARANTOR(S) OR THEIR RELATED BODIES CORPORATE.
7. THE CUSTOMER AND/OR GUARANTOR(S) CONSENT TO T2 OBTAINING AND MAKING DISCLOSURE OF INFORMATION ABOUT THE CUSTOMER AND/OR GUARANTOR(S) FROM AND TO A CREDIT REPORTING BODY AND/OR ANOTHER CREDIT PROVIDER FOR A COMMERCIAL CREDIT RELATED PURPOSE AND/OR A CREDIT GUARANTEE PURPOSE AND/OR A CONSUMER CREDIT PURPOSE AND/OR ANOTHER RELATED PURPOSE. T2 NOTIFIES THE CUSTOMER AND/OR GUARANTOR(S) THAT IT MAY USE AND/OR DISCLOSE CREDIT ELIGIBILITY INFORMATION UNDER SECTION 21G OF THE ACT.
8. T2 MAY PROVIDE PERSONAL INFORMATION ABOUT THE CUSTOMER AND/OR GUARANTOR(S) TO ANY OR ALL OF THE CREDIT REPORTING BODIES NOMINATED BELOW. T2 INTENDS TO DISCLOSE DEFAULT INFORMATION TO ANY OR ALL OF THE CREDIT REPORTING BODIES LISTED BELOW. THE CUSTOMER AND/OR GUARANTOR(S) CONSENT TO SUCH DISCLOSURE. T2'S CREDIT REPORTING POLICY CONTAINS A STATEMENT OF NOTIFIABLE MATTERS IN ACCORDANCE WITH S21C OF THE ACT AND ITEMS 4.1 AND 4.2 OF THE CREDIT REPORTING CODE IN RESPECT OF DISCLOSURE TO CREDIT REPORTING BODIES INCLUDING WHAT THE INFORMATION MAY BE USED FOR, WHAT T2 MAY DISCLOSE AND THE CUSTOMER'S AND/OR GUARANTOR(S)' RIGHT TO REQUEST LIMITATIONS TO THE USE OF THEIR INFORMATION.

Equifax Australia Level 15, 100 Arthur Street NORTH SYDNEY NSW 2060 Tel: 1300 921 621	Creditor Watch Level 13, 109 Pitt Street SYDNEY NSW 2000 Tel: 1300 501 312	NCI Level 2, 165 Grenfell St ADELAIDE SA 5000 Tel: 1800 882 820
Illion Level 2, 143 Coronation Drive MILTON QLD 4064 Tel: 07 3360 0600	Experian Level 6, 549 St Kilda Road MELBOURNE VIC 3004 Tel: 03 9699 0100	





9. T2 MAY DISCLOSE INFORMATION TO, AND ABOUT THEM AND THE CUSTOMER AND/OR GUARANTOR(S) HEREBY ACKNOWLEDGE THAT THEY CONSENT TO THE DISCLOSURE OF SUCH INFORMATION TO T2'S EMPLOYEES, SUBSIDIARIES, EMPLOYEES, AGENTS AND RELATED BODIES CORPORATE, PAST, PRESENT OR PROSPECTIVE CREDIT PROVIDERS OF THE CUSTOMER AND/OR GUARANTOR(S) OR THEIR RELATED BODIES CORPORATE, INCLUDING FOR THE PURPOSE OF THAT PERSON CONSIDERING WHETHER TO OFFER TO ACT AS GUARANTOR OR OFFER SECURITY FOR THAT CREDIT.
10. BY REASON OF THE CUSTOMER'S AND/OR GUARANTOR(S)' CONSENT TO THE DISCLOSURE TO OVERSEAS RECIPIENTS HEREUNDER, APP 8.1 WILL NOT APPLY TO T2'S DEALING WITH THE CUSTOMER'S AND/OR GUARANTOR(S)' INFORMATION.
11. A FULL COPY OF T2'S PRIVACY POLICY AND CREDIT REPORTING POLICY CAN BE OBTAINED FROM T2'S WEBSITE (DETAILS ABOVE) OR BY MAKING A REQUEST IN WRITING DIRECTED TO T2'S PRIVACY OFFICER. T2'S PRIVACY POLICY AND CREDIT REPORTING POLICY CONTAIN INFORMATION ABOUT HOW TO ACCESS AND SEEK CORRECTION OF INFORMATION, OR HOW TO COMPLAIN ABOUT A BREACH OF THE ACT, APP, CODE(S) AND HOW T2 WILL DEAL WITH ANY SUCH COMPLAINT.
12. THE CUSTOMER AND/OR GUARANTOR(S) WILL BE DEEMED TO HAVE ACKNOWLEDGED AND ACCEPTED THE TERMS OF THIS PRIVACY STATEMENT BY EITHER SIGNING AND RETURNING THIS STATEMENT, FAILING TO PROVIDE WRITTEN NOTIFICATION TO T2 WITHIN FOURTEEN (14) DAYS OF RECEIPT OF THIS STATEMENT THAT ITS TERMS ARE NOT ACCEPTED, CONTINUING TO TRADE WITH T2 AFTER RECEIPT OF THIS STATEMENT OR, IF THE CUSTOMER AND/OR GUARANTOR(S) ARE DIRECTORS OR GUARANTORS OF A CUSTOMER, BY NOT TAKING STEPS TO PREVENT THE CUSTOMER FROM CONTINUING TO TRADE WITH T2 AFTER RECEIPT OF THIS STATEMENT.

