TERMS AND CONDITIONS OF SALE OF PRODUCTS AND SUPPLY OF SERVICES

1. DEFINITIONS

In these Terms:

"ACL" means the Australian Consumer Law Schedule of the *Competition and Consumer Act*;

"Agreement" means any agreement for the provision of Products and services by the Company to the Client pursuant to a Quote;

"Client" means any person, jointly and severally if more than one, or any corporate entity engaging the Company or accepting a Quote from the Company and, if applicable, also acquiring Products or Services from the Company;

"Company" means Wattrix Pty Ltd ACN 151 637 526;

"**consumer**" is as defined in the ACL and in determining if the Client is a consumer, the determination is made if Client is a consumer under the Agreement;

"Intellectual Property Rights" means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, circuit layouts, business and domain names, inventions, and other results of intellectual activity in the industrial, commercial, scientific or artistic fields;

"GST" means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act* 1999 as amended;

"PPSA" means the *Personal Property Securities Act 2009* as amended;

"Price" means the price for the Products and Services to be provided by the Company to the Client pursuant to the agreed Quote or as per the charges charged by the Company for such Products or Services;

"Products" means any Products supplied by the Company to the Client as part of the provision of the Services;

"Quote" means any quote or proposal provided by the Company to the Client, whether verbal or written;

"Services" means any electrical services, including repair services, provided by a qualified electrician representing the Company (whether an employee of the Company or a contractor engaged by the Company) or any other related services provided by the Company to the Client; and

"Terms" means these Terms and Conditions of Sale of Products and Supply of Services.

2. BASIS OF AGREEMENT

2.1 Unless otherwise agreed by the Company in writing, the Terms apply exclusively to every Quote provided by the Company and any engagement of the Company by the Client with or without a Quote.

2.2 Please read these Terms carefully before accepting a Quote. By signing the Quote, the Client agrees to engage the Company on conditions provided in these Terms (and the Quote if applicable). If the Client does not agree to all of the Terms, then such Client may not purchase any Products or Services from the Company. If these Terms are considered an offer, acceptance is expressly limited to these Terms.

2.3 An agreement is accepted by the Company when the Client accepts the Quote in writing or provides any written instructions to the Company to provide the Services and/or supply the Products.

2.4 The Company has an absolute discretion to refuse to accept any offer or amendment from the Client or to supply any Products or Services.

2.5 The Client must provide the Company with its specific requirements in relation to the Products or the Services prior to the Quote being issued or the Company agreeing to take a job on requested by the Client.

2.6 The Company may vary or amend these Terms by written agreement with the Client.

3. QUOTATION, SUPPLY OF PRODUCTS AND SERVICES AND CLIENT ENGAGEMENT OF THE COMPANY AND SITE ACCESS

3.1 The Client must ensure that it has provided to the Company the correct details in relation to the Services to be provided (and Products required).

3.2 The Company can, in its absolute discretion:

(a) Refuse supply of any Products or Services; or

(b) Charge the Client for any changes that are required to be made to the Services or the Products.

3.3 All Products are supplied and all Services provided as per specifications in the Quote or as advised by the Company.

3.4 The Client should provide site access for the Company and its employees and contractors to carry out necessary works as requested in the Quote. Any interruptions due to no access to the Client's site or works undertaken by other trades or the Client causing down time for the Company will be invoiced at the Company's hourly charge out rate and paid by the Client in accordance with clause 5. The Company must comply with all reasonable site policies and procedures, which must be provided in advance to the Company.

3.5 Any changes to a signed Quote will be subject to an amendment fee at the rate current as charged by the Company at the time of the change to the Quote.

4. PRICING

4.1 Prices quoted for the supply of Products and Services include GST and any other taxes or duties imposed on or in relation to the Products and Services.

4.2 If the Client requests any variation to the Quote or Products or Services, the Company will add hourly charge to the quoted price in the Quote or in the verbal quote for any required variation and also charge an amendment fee charged at the rate current at the time of the change to the Quote.

4.3 Any delay in the start of the provision of the Services or the supply of the Products caused by the Client, including but not limited to any delay, default, act or omission on the part of Client, may change the Price at reasonable discretion of the Company to take into account either of any increase in cost to Company or changes as a result of any variation in the terms of the Quote.

5. PAYMENT

5.1 When the Client request a Quote from the Company, the Company will provide the Quote for the total costs of Products and Services and once the Quote has been accepted by the Client, these Terms will apply. Furthermore, any provision of Services and supply of Products requested by the Client from the Company without a Quote will also be subject to these Terms.

5.2 In circumstances that the Company is engaged without a Quote, the Client is still liable for the total amount payable for the Services provided and the Products supplied by the Company

5.3 The Client must make payment on the terms and conditions, including due date, listed in each invoice issued by the Company to the Client for the provision of the Services and supply of the Products.

5.4 Unless otherwise agreed in writing, any payments can be made as listed in the invoice issued by the Company.

5.5 The time for payment is of the essence and all invoices should be paid on or before the due date.

6. PAYMENT DEFAULT

6.1 If any Services or Products are to be paid for on the invoice issued by the Company, and the Client defaults in payment by 30 days following the date of invoice (the due date), then all money properly invoiced becomes immediately due and payable, and then upon providing 14 day's prior written notice to the Client, the Company may, without prejudice to any of its other accrued or contingent right:

(a) For any sum still outstanding at a time in excess of 30 days following the due date, charge the Client interest at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 (Vic) plus 4 per cent for the period from the due date until the date of payment in full;

(b) charge the Client for, and the Client must indemnify the Company from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Terms or to recover any Products;

(c) cease or suspend supply of any further Products or Services to the Client; and

(d) terminate any uncompleted contract with the Client.

6.2 Clauses 6.1(c) and (d) may also be relied upon, at the Company's option, where the Client is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally or where the Client is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Client.

7. PASSING OF PROPERTY

7.1 Until the Company receives full payment in cleared funds for all Products or Services (to be) supplied by it to the Client, as well as all other amounts owing to the Company by the Client:

(a) title and property in all Products remain vested in the Company and do not pass to the Client;

(b) title to all Products sold by the Company remain vested in the Company and do not pass to the Client until full payment of the funds owed for the Products to the Company are paid in full. Until such time, the Client hereby grants the Company a security interest in such Products and agrees that it shall not sell, charge or otherwise dispose of the Products and shall not allow any distress or other form of execution to be executed on the Products;

(c) the Client must hold the Products as fiduciary bailee and agent for the Company, and must keep the Products separate from its Products and maintain the Company's labelling and packaging; and

(d) in addition to the rights under the PPSA, until full payment is received by the Company for the Products, the Company may, with 24 hours' notice to the Client, and on condition it complies with all reasonable policies and procedures of the site of the Client, enter any site/premises where it suspects the Products are located and remove them, notwithstanding that they may have been attached to other Products not the property of the Company, and for this purpose the Client irrevocably licences the Company to enter such premises and agrees to pay the direct costs incurred by the Company in retrieving the Products.

8. PERSONAL PROPERTY SECURITIES ACT

8.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.

8.2 For the purposes of the PPSA:

(a) terms used in clause 8 that are defined in the PPSA have the same meaning as in the PPSA;

(b) these Terms are a security agreement and the Company has a Purchase Money Security Interest in all present and future Products supplied by the Company to the Client and the proceeds of the Products;

(c) The security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Client at any particular time; and

(d) the Client must do whatever is necessary in order to give a valid security interest over the Products which is able to be registered by the Company on the Personal Property Securities Register.

8.3 The security interest arising under this clause 8 attaches to the Products when the Products provided to the Client and not at any later time.

8.4 Where permitted by the PPSA, the Client waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

8.5 To the extent permitted by the PPSA, the Client agrees that:

(a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Client or which place obligations on the Company will apply only to the extent that they are mandatory, or the Company agrees to their application in writing; and

(b) where the Company has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

8.6 The Client must immediately upon the Company's request:

(a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and

(b) procure from any person considered by the Company to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Company may at any time require.

8.7 The Company may allocate amounts received from the Client in any manner the Company determines, including in any manner required to preserve any Purchase Money Security Interest it has in Products supplied by the Company.

9. RISK

9.1 Except to the extent caused or contributed to by the negligence of the Company, the Client assumes all risk and liability for loss, damage or injury to persons or to Client's property or property of third parties arising out of the use, installation or possession of any of the Products sold and Services provided by the Company, unless recoverable from the Company on the failure of any statutory guarantee under the ACL.

10. PERFORMANCE OF AGREEMENT

10.1 Any period or date for delivery of Products and Services stated by the Company is an estimate only and not a contractual commitment.

10.2 The Company will use reasonable endeavours to meet any estimated dates for delivery of the Products and Services but will not be liable for any loss or damage suffered by the Client or any third party for failure to meet any estimated date.

10.3 The Company's delivery records (e.g. sent email) will be prima facie proof of delivery of the Products to the Client.

11. LIABILITY

11.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the Products, the Terms do not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Products or any contractual remedy for their failure.

11.2 If the Client is a consumer, nothing in these Terms restricts, limits or modifies the Client's rights or remedies against the Company for failure of a statutory guarantee under the ACL.

11.3 If the Client on-supplies the Products to consumer (whether or not they are used up by the Client in the course of manufacture):

(a) if the Products are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of the Company's liability to the Client;

(b) otherwise, payment of any amount required under section 274 of the ACL is the absolute limit of the Company's liability to the Client;

howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the Products by the Client or any third party.

11.4 If clause 11.2 or 11.3 do not apply, then other than as stated in the Terms or any written warranty statement, the Company is not liable to the Client in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the Products by the Client or any third party.

11.5 The Company is not liable for any indirect or consequential losses or expenses suffered by the Client or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.

11.6 The Company is not liable for any indirect or consequential losses, liquidated damages or expenses suffered by the Client as a result of variations, delays or site closures that are requested or caused by the Client.

11.7 Subject to the warranties provided by the Company under these Terms, the Client acknowledges that it has not relied on any advice, recommendation, information or assistance provided by the Company in relation to the Products or their use or application or the Services and it has not made known, either expressly or by implication, to the Company, if applicable, any purpose for which it requires the Products and Services and it has the sole responsibility of satisfying itself that the Products and Services are suitable for the use of the Client.

11.8 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Products or supply of Services which cannot be excluded, restricted or modified.

11.9 The Company warrants that all Products supplied under this Agreement:

(a) are new (unless otherwise agreed in writing), of acceptable quality and free from defects in materials and workmanship;

(b) comply with any specifications, drawings and descriptions set out in these Terms and the Quote;
(c) comply with all applicable laws, regulations and standards; and
(d) at the time the property passes in accordance with clause 7.1, will be free from any security interest, lien or encumbrance.

11.10 The Company warrants that all Services:
(a) will be performed with due care, skill and diligence;
(b) will comply with all applicable laws and professional standards; and
(c) will be performed by suitably qualified and experienced personnel.

11.11 Rectification
If any Products or Services do not comply with this clause, the Client may require the Company (at the Client's election) to promptly:
(a) re-perform the Services;
(b) repair or replace the Products; or
(c) refund any amounts paid for the non-conforming Products or Services,
at no additional cost to the Client.

11.12 The warranties in this clause are continuing and survive delivery, completion, inspection, acceptance and payment.

12. CANCELLATION

12.1 If the Company is unable to deliver or provide the Products or the Services, then the Company may cancel the Client's order pursuant to any Quote (even if it has been accepted) or any verbal agreement by notice to the Client (written or verbal).

12.2 No purported cancellation or suspension of an order or any part of it by the Client is binding on the Company once the Quote has been accepted.

12.3 If the Client cancels a Quote which has been accepted by the Company, the Client will be liable for all costs, losses and expenses incurred including but not limited to purchase of raw materials.

13. CREDIT INFORMATION AND PRIVACY

13.1 The Client acknowledges that certain items of information are provided to the Company may be disclosed to a credit reporting agency.

13.2 By creating the account with the Company, the Client authorises the Company to obtain consumer and/or commercial information permitted by the Privacy Act from a credit reporting agency and to use such information for the purpose of collecting overdue payments relating to commercial credit owed by the Client. This authority remains in force for the duration of the Client's dealings with the Company and until all moneys owed have been repaid.

13.3 The Company may collect, use, store, record and transmit the Client's personal information provided by the Client to the Company. For further details, please refer to the Company's Privacy Policy.

14. CUSTOMER OBLIGATIONS, WARRANTY AND ACKNOWLEDGEMENTS

14.1 The Client warrants all the information provided to the Company is complete and accurate. The Client acknowledges that the Company will rely on the information when making a decision whether to agree to quote and enter into an agreement with the Client.

14.2 Any changes to the control of the Client must be communicated to the Company and the Company will have the option to terminate this Agreement or any other Agreement on foot with the Client in its own discretion by providing a 7 days' written notice. If the Company chooses not to terminate this or any other agreement with the Client as a result of change of control of the Client, the Client will be liable for any costs incurred by the Company as a result of the change of control of the Client.

14.3 The Client acknowledges and agrees that:
(a) the Company shall not be liable for any problems occurring at their site due to another company's or contractor's prior work or latent conditions which are only revealed when installing the Products and providing the Services; and
(b) the Company will carry out any works needed to fix and repair such problems if it is considered necessary by the Company for the Satisfactory installation and compliance of those Products and provision of the Services.

15. FORCE MAJEURE

15.1 The Company is not liable in any way howsoever arising under the Terms to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war or pandemic. If an event of force majeure occurs, the Company may suspend any orders with the Client and terminate the Terms by written notice to the Client.

16. TITLE, INTELLECTUAL PROPERTY RIGHTS AND COPYRIGHT

16.1 The Client acknowledges and agrees that the Company owns all the Intellectual Property and copyright in the Services provided to the Client.

16.2 The Client further acknowledges that the use or duplication of the Intellectual Property in any other way other than as approved and agreed to by the Company would constitute a breach of the Company's Intellectual Property rights and would be a fundamental breach of these Terms. However, the Client may download and print these Terms and the Privacy Policy for its personal non-commercial use.

16.3 © Wattrix Pty Ltd. All rights reserved.

16.4 All trade marks and trade names of the Company are proprietary to the Company and/or its affiliates. Use of these trade marks without the owner's consent will infringe the owner's intellectual property rights.

16.5 If the Client is a competitor of the Company and the Client creates documents, products or services similar to those of the Company for the purpose of providing them to third parties, whether these third parties are business users or domestic users, the Company expressly excludes and does not permit the Client to use any of the Products even if they have been paid for in full for the purposes of resale or reproduction. If the Client breaches the Company's Intellectual Property rights by using its documents, Products or Services, the Client will be liable for any loss that the Company may incur. The Company will hold the Client accountable for all profits that it might make from using the Company's Intellectual Property.

16.6 The Company reserves the right to deny access to the Products or the Services to any person or business.

17. MISCELLANEOUS

17.1 The law of Victoria from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.

17.2 The Company's failure to enforce any of these Terms shall not be construed as a waiver of any of the Company's rights.

17.3 If a clause is unenforceable, it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Terms, without affecting the enforceability of the remaining terms.

17.4 A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.