

These Terms and Conditions of Trade (Conditions) apply to the sale and supply of all goods and services provided by Enwise Electrical Pty Ltd T/A Enwise Electrical & Refrigeration ABN 79 113 643 093 (Enwise, "us", or "we"). All goods and services provided by Enwise are subject to these Conditions, our Terms of Use and our Privacy Policy.

The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these Conditions when the Customer accepts a Quotation or places a Purchase Order for any Works, to which these Conditions are incorporated by reference.

In the event of any inconsistency between these Conditions and any other prior document or schedule that the parties have entered into, these Conditions shall prevail. Any amendment to these Conditions may only be amended in writing by the consent of both parties.

1. Definitions

"ACL" means the Australian Consumer Law which is Schedule 2 to the Competition and Consumer Act 2010 (Cth).

"Conditions" means these terms and conditions of trade.

"Contract" means these Conditions, together with any Quotation, Purchase Order, invoice or other document or amendments expressed to be supplemental to this Contract.

"Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.

"Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable**

provided on the website, prior to ordering Works via the website.

"Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Enwise to provide the Works as specified in any proposal, Quotation, Purchase Order, invoice or other documentation, and:

- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
- (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
- (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
- (d) includes the Customer's executors, administrators, successors and permitted assigns.

"Enwise" means Enwise Electrical Pty Ltd T/A Enwise Electrical & Refrigeration ABN 79 113 643 093, its successors and assigns or any person acting on behalf of and with the authority of Enwise.

"Event of Default" means any of the following on the part of the Customer:

- (a) committing any material or persistent breach of this Contract;
- (b) repudiating or, or, in the reasonable opinion of Enwise, evincing an intention to repudiate this Contract;
- (c) if the Customer is a company, undergoing a change of control without the prior written consent of Enwise; and/or
- (e) an Insolvency Event occurring in respect of the Customer.

"GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

"Insolvency Event" means, in respect of a party:

- (a) where the party is an individual, that party commits an act of bankruptcy or is declared bankrupt or insolvent or that party's estate otherwise becomes liable to be dealt with under any law relating to bankruptcy or insolvency;
- (b) where the party is a company, a resolution is passed or court order made for the winding up of that party or an administrator is appointed to that party pursuant to any relevant law;
- (c) a receiver or manager or receiver and manager is appointed to the assets or undertaking of the party or any part thereof; or
- (d) the party is otherwise unable to pay its debts as and when they fall due.

"Materials" means goods supplied by Enwise under any Contract.

"Price" means the Price payable (plus any GST where applicable) for the Works as agreed

between Enwise and the Customer in accordance with clause 3 below.

"Purchase Order" means any purchase order issued by the Customer for the supply of goods and/or services in accordance with this Contract.

"Quotation" means a quotation provided by Enwise for the Works.

"Renewable Energy Certificate" means the primary commodity in the RET scheme.

"RET scheme" means the renewable energy target scheme which designed by the Australian government to reduce emissions of greenhouse gases in the electricity sector.

"Small Embedded Generator" means generators which are connected to; and therefore export their power onto; distribution networks.

"Small-scale Technology Certificates" are a commodity used for trade which have been created under the RET scheme.

"Utilities Operator" means clients Utilities supplier.

"Works" means all Materials and services supplied by Enwise in accordance with this Contract (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).

2. Order and acceptance

Upon Enwise providing the Customer with a Quotation, or upon the Customer providing Enwise with a valid Purchase Order for the Works, Enwise will confirm the request for Works via the Customer's nominated email address or telephone number.

3. Price and Payment

3.1 Price

- (a) At Enwise's sole discretion the Price shall be either:
- (i) as indicated on any invoice provided by Enwise to the Customer in respect of Works performed or Materials supplied; or
 - (ii) the Price as at the date of delivery of the Works according to Enwise's schedule of rates and current price list; or
 - (iii) The price set out in Quotation, subject to the Customer providing written acceptance within thirty (30) days of the Quotation being provided.
- (b) Enwise reserves the right to change the Price:
- (i) if a variation to the Materials which are to be supplied is requested; or
 - (ii) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
- where:
- (iii) the value of any Renewable Energy Certificate's ("**REC**") and/or Small-scale Technology Certificates ("**STC**") upon which the Price is dependent and are

subject to change as REC's and/or STC's are traded on the open market and the price varies from time to time;

- (iv) there is any change to any monies available to the Customer from the Australian Federal Government's Renewable Energy Target scheme (**RET scheme**), (if applicable) or any other Commonwealth, State or Local Government rebates or incentives;
 - (v) additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, inclement weather conditions, limitations to accessing the site, incorrect plans or other pertinent information or data, safety considerations and/or health hazards (such as the discovery of asbestos), prerequisite work by any third party not being completed, obscured building/site defects, or hidden and/or underground locations (as per clause 11) which are only discovered on commencement of the Works; or
 - (vi) the cost to Enwise for labour and/or Materials increases (including but not limited to an increase in cost as a result of foreign currency rates of exchange and/or international freight and insurance charges or additional costs enforced by external bodies (such as an energy body) etc.) which are beyond Enwise's control; or
 - (vii) if during the course of the Works, the Materials are not or cease to be available from Enwise's third party suppliers, then Enwise reserves the right to provide alternate Materials (or components of the Materials).
- (c) Variations will be charged as per Enwise's Quotation, and will be detailed in writing, and shown as variations on Enwise's invoice. The Customer must respond to any variation submitted by Enwise within ten (10) working days. Failure to do so will entitle Enwise to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of completion.
- (d) Enwise reserves the right to halt all Works until such time as Enwise and the Customer agree to such changes. Enwise shall not be liable to the Customer for any loss (including consequential loss) or damage the Customer suffers due to Enwise exercising its rights under this clause.

3.2 Payment

- (a) Enwise may request payment of a non-refundable deposit of up to 50% prior to the commencement of the Works for any

Quotation or Purchase Order exceeding \$2500.

- (b) Time of payment is of the essence of the Contract. Without prejudice to any other rights or remedies Enwise may have under the Contract, Enwise may charge interest on any overdue payments at an annual rate equal to 2% above the rate notified by National Australia Bank from time to time as being that bank's indicator lending rate (to accrue from day to day).
- (c) The Customer must pay the Price on the date/s determined by Enwise, which may be:
 - (i) on completion of the Works; or
 - (ii) for certain approved Customers, within 30 days of the date of invoice;
 - (iii) the date specified on any invoice or other form as being the date for payment; or
 - (iv) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Enwise.
- (d) Payment may be made in cash, by way of electronic funds transfer to Enwise's nominated bank account, or by Visa, Amex and Mastercard.
- (e) Enwise may in its discretion allocate any payment received from the Customer towards any invoice that Enwise determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Enwise may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Enwise, payment will be deemed to be allocated in such manner as preserves the maximum value of Enwise's Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- (f) Payments are to be made without deduction or set off of any kind. Where part of an invoice is in dispute the Customer must pay the undisputed part of the invoice.
- (g) The Customer indemnifies Enwise on demand against all costs, charges, expenses and legal costs incurred by Enwise in recovering sums owed by the Customer.

3.3 Trade Credit

- (a) The Customer acknowledges that:
 - (i) the supply of Works on credit shall not take effect until the Customer has completed Enwise's credit application form and it has been approved with a credit limit established for the account; and
 - (ii) in the event that the supply of Works requested exceeds the Customer's credit limit and/or the account exceeds the

payment terms, Enwise reserves the right to refuse delivery; and

- (iii) the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not, or cease to be available, Enwise reserves the right to vary the Price with alternative Materials, subject to prior confirmation and agreement of both parties.

4. Delivery and collection of Materials

4.1 Delivery

- (a) Select Materials that are not being installed by Enwise may be collected from our warehouse or delivered to you. We do advise that there are some regional and remote areas in which we are unable to deliver and you will be notified of this prior to completing any order for Materials.
- (b) Subject to your delivery location, Materials which are:
 - (i) 'in stock' are otherwise available for delivery. One of our customer service representatives will contact you within 24 hours of your order being placed to arrange a delivery/installation time,
 - (ii) 'available to order' may take 5-10 business days to arrive at our warehouse. Once the Materials have arrived, a customer service representative will be in contact to arrange for a delivery/installation time.
- (c) Any time specified by Enwise for delivery of the Materials is an estimate only and Enwise will not be liable for any loss or damage incurred by the Customer as a result of delivery being late.
- (d) Other than those Materials which are unable to be delivered due to the delivery location, if we notify you that we are unable to deliver your Materials due to lack of stock, you may cancel your order without charge, and we will arrange for a full refund of any payment made by you.

4.2 Delivery by Courier

- (a) The delivery address must be an address within Australia and cannot be a freight forwarding location. Deliveries cannot be made to PO Boxes.
- (b) Once we have confirmed your order and it has been processed by us, it will be dispatched to your specified delivery address generally within 10 business days of the date you placed the order. We will contact you by telephone or email to arrange a suitable time for delivery.
- (c) We will not accept responsibility for delivery failures or delays by our third party delivery contractor.

4.3 Materials for collection at our warehouse

If you select to collect your Materials from our warehouse a customer service representative will contact you by telephone or email to notify you when the Materials are available for collection.

5. Provision of the Works

- 5.1 Subject to clause 5.2 Enwise will use best efforts to commence Works as soon as it is reasonably possible.
- 5.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Enwise claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond Enwise's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify Enwise that the site is ready.
- 5.3 Any time specified by Enwise for completion of the Works is an estimate only and Enwise will not be liable for any loss or damage incurred by the Customer as a result of completion being late.
- 5.4 The parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties.

6. Access and Installation

- 6.1 The Customer:
- (a) acknowledges that they shall:
 - (i) ensure that Enwise has clear and free access to the worksite at all times to enable them to undertake the Works (including carrying out site inspections, gain signatures for required documents, and for the delivery and installation of the Materials). Enwise shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Enwise;
 - (ii) be responsible for any building work, excavation work, core drilling or any other non-standard surface penetrations that need to be carried out to enable Enwise to carry out the Works;
 - (iii) provide and have erected scaffolding to enable the Works to be undertaken (where in Enwise's opinion it is deemed necessary). Any scaffolding must comply with industry safety standards and any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection, and where necessary, shall hold a current certificate of competency and/or be fully licensed; and

- (iv) remove any furniture or personal items from the vicinity of the Works, and agrees that Enwise shall not be liable for any damage caused to those items through the Customer's failure to comply with this clause;
 - (v) provide Enwise while at the worksite with all necessary services and amenities to enable Enwise to provide the Works;
 - (b) agrees to be present at the worksite when and as reasonably requested by Enwise and its employees, contractors and/or agents;
 - (c) warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials 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 Materials once installed. If, for any reason (including the discovery of asbestos, defective or unsafe wiring, or dangerous access to roofing or risk), Enwise reasonably forms the opinion that the Customer's premises is not safe for the installation of Materials to proceed then Enwise shall be entitled to delay installation of the Materials (in accordance with clause 5.2) until Enwise is satisfied that it is safe for the installation to proceed; and
 - (d) be wholly responsible:
 - (i) for any animals and/or children on the worksite; and
 - (ii) for the removal of rubbish from or clean-up of the worksite.
- 6.2 In the event asbestos or any other toxic substances are discovered at the property, that it is the Customer's responsibility to ensure the safe removal of the same. The Customer further agrees to indemnify Enwise against any costs incurred by Enwise as a consequence of such discovery. Under no circumstances will Enwise handle removal of asbestos product.
- 6.3 Enwise will use best commercial efforts to ensure that all Materials are installed in a manner that is compliant with industry standards. If, for any reason, the Customer specifically requires the Materials to be installed in any way which goes against Enwise's recommendations and/or falls below industry standards, a request detailing that request must be made in writing to Enwise. Enwise will then in their sole discretion decide whether or not to approve such a request.
- 6.4 In the event a request made under clause 6.3 is granted, Enwise disclaims all liability for any loss and/or damage suffered by the Customer as a result, and the Customer acknowledges any warranty and/or guarantees are voided.

7. Installation of Small Embedded Generator

- 7.1 Where a Small Embedded Generator (**SEG**) is supplied as part of, or in conjunction with any Works provided under this Contract these Conditions are to be read in conjunction with the terms and conditions supplied by the Utilities Operator in relation to the installation of a SEG.
- 7.2 As set out in those terms and conditions the Customer is required to regularly have the SEG inspected and maintained to ensure the SEG remains safe and functional. Whilst it is the Customer's sole responsibility to arrange inspection and/or maintenance of the SEG, Enwise's can provide such services at its usual rates if requested.
- 7.3 Enwise:
- (a) will notify the Customer's electricity distributor/retailer of the installation of a SEG. The electricity distributor/retailer may then require the replacement of the Customer's existing power meter, the cost of which shall be the Customer's sole responsibility and is not included in or form part of the Price;
 - (b) has the right to postpone or refuse to provide Works where Enwise determines (in its sole discretion):
 - (i) it is unsafe to do so, or unsanitary conditions exist; or
 - (ii) the SEG is no longer economically repairable. In this instance, Enwise will provide the Customer with a proposal to replace the SEG; or
 - (iii) access to the SEG is not accessible as a result of, but not limited to having inadequate crawl space and/or attic and roof space to provide dry access to service the SEG.
- 7.4 If Enwise has been requested by the Customer to diagnose a fault that requires investigation, disassembly and/or testing, the Customer acknowledges and agrees that they are liable for all costs incurred by Enwise in making such diagnosis notwithstanding that Enwise may determine that they repair cannot be performed.
- 8. Air Conditioning / Refrigeration Risk**
- 8.1 Whilst the final location of the condensing unit is at the discretion of the Customer, a charge will apply as a variation as per clause 3.1(c), if the Customer requests the unit to not be located adjacent to the external wall, due to the underground piping required.
- 8.2 The final location of the wall, window or floor unit must be determined on site by the Customer. In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Customer shall be responsible for any and all costs involved.
- 8.3 Enwise shall, upon installation, ensure that all installed Materials meet current industry standards applicable to noise levels, however Enwise cannot guarantee that noise levels will remain constant post installation as the Materials may be impacted by many factors such as the weather, lack of maintenance, tampering etc. Accordingly, Enwise offers no warranty regarding noise levels post installation unless it is evident that there is an inherent fault in the Materials, or that the installation process was defective.
- 8.4 The Customer acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.
- 8.5 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Customer then the Customer agrees to notify Enwise immediately upon any proposed changes.
- 8.6 The Customer agrees to indemnify Enwise against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 3.1(c).
- 9. Rebates and Incentives**
- 9.1 The Customer:
- (a) authorises Enwise to apply in the Customer's name for any grant, rebate or any other benefit (hereafter referred to as a "**Rebate**") available, (*if applicable*) from the Commonwealth, State Government, or any local state Solar Feed Tariff Schemes in relation to the installation of a solar system and to receive payment of that Rebate on the Customer's behalf;
 - (b) agrees to sign any necessary documents, provide any necessary information and take any necessary action Enwise may require, to enable Enwise to obtain payment of a Rebate;
 - (c) unconditionally assigns all REC's and/or STC's to which the Customer is entitled in respect of the Works to Enwise unless otherwise negotiated; and
 - (d) acknowledges that, in certain circumstances, the Commonwealth Government, State Government or local government council (as applicable) may require repayment of a Rebate by the Customer and in such circumstances Enwise will have no liability to the Customer.
- 9.2 If Enwise receives payment of a Rebate, Enwise will apply that payment towards satisfaction of the Price.
- 9.3 Enwise is not responsible for any failure to obtain a Rebate and the Customer shall remain liable to Enwise for the whole of the Price and any other amounts due to Enwise which are not paid in full.
- 10. Product Specifications**

- 10.1 The Customer acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data dimensions, and weights stated in Enwise's fact sheets, price lists or advertising material are indicative only and that they have not relied on such information;
 - (b) while Enwise may have provided information or figures to the Customer regarding the performance of the Materials, the Customer acknowledges that Enwise has given these in good faith, and are estimates based on Clean Energy Council (CEC) or other industry prescribed estimates;
 - (c) the energy generation from solar panels may be less than estimates due to factors out of Enwise's control (including, but not limited to, hours of sunlight, cloud cover, weather patterns, the location (geographical or otherwise) of the Materials and the location of surrounding structures and flora;
 - (d) some buildings may not have the optimum orientation for the installation of the Materials or components and therefore understands and accepts that the Materials performance may be compromised in such situations. Notwithstanding the former Enwise will use its best endeavours to install and position the Materials to maximise orientation and exposure to direct sunlight.
11. **Underground Locations and Hidden Services**
- 11.1 Prior to Enwise commencing any work the Customer must advise Enwise of the precise location of all underground and/or hidden services on the site and clearly mark the same (including but not limited to any mains/services in wall cavities). The mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 11.2 Whilst Enwise will take all care to avoid damage to any underground and/or hidden services the Customer agrees to indemnify Enwise in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 11.1.
12. **Compliance with Laws**
- 12.1 The Customer and Enwise shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any Work Health and Safety (WHS) laws relating to the Works and any other relevant safety standards or legislation.
- 12.2 The Customer must obtain (at its own cost) all licenses and approvals that may be required for the Works.
- 12.3 All Works will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations 2013. All of the cabling work will comply with the AS/NZS 3000 2018 Australian and New Zealand Wiring Rules.
- 12.4 If during the course of installation when the Works are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by Enwise, then Enwise shall notify the Customer immediately. The power if isolated will not be re-energised until such time as the existing condition has been rectified and made safe in accordance with the Electrical Safety Regulations 2013 (Qld). The Customer accepts and agrees that any costs associated with the rectification Works including any Materials and labour shall be to the Customer's account.
- 12.5 Any live work or Works undertaken near live conductors where it is safe to do so shall be dealt with in accordance with AS/NZS 3000 2018 Australian and New Zealand Wiring Rules being "Safe working on Low Voltage Electrical Installations, relevant Commonwealth and Statutory Acts and Work Place Regulations". Enwise's live work procedures are designed to eliminate risk of injury to Enwise's employees, damage to the Customer's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Works for which additional charges may be applicable. This shall be invoiced in accordance with clause 3.1.
13. **Risk**
- 13.1 Risk in Materials passes to the Customer:
- (a) on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by Enwise or Enwise's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address); or
 - (b) upon completion of the Works where Enwise is to both supply Materials and Works.
- 13.2 Notwithstanding the provisions of clause 13.1, in the event the Customer specifically requests Enwise to leave Materials outside Enwise's premises for collection, or to deliver the Materials to an unattended location, then risk shall pass to the Customer when the Materials are left outside Enwise's premises or delivered to the unattended location, as they case may be. If Materials are lost, damaged or destroyed as a result of Enwise following the Customer's

instructions in accordance with this clause 13.2, then replacement of the Materials shall be at the Customer's sole expense.

14. Title

- 14.1 Enwise and the Customer agree that until the Customer has effected full payment for the Materials, title and property in the Materials and their proceeds will remain with Enwise.
- 14.2 Receipt by Enwise of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 14.3 It is further agreed that until title in the Materials passes to the Customer in accordance with clause 14.1:
- (a) the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Enwise on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for Enwise and must pay to Enwise the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
 - (c) the production of these Conditions by Enwise shall be sufficient evidence of Enwise's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Enwise to make further enquiries;
 - (d) the Customer must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for Enwise and must pay or deliver the proceeds to Enwise on demand;
 - (e) the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Enwise and must sell, dispose of or return the resulting product to Enwise as it so directs;
 - (f) unless the Materials have become fixtures the Customer irrevocably authorises Enwise to enter any premises where Enwise believes the Materials are kept and recover possession of the Materials;
 - (g) Enwise may recover possession of any Materials in transit whether or not delivery has occurred;
 - (h) the Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of Enwise;

- (i) Enwise may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

15. Personal Property Securities Act 2009 (Cth) ("PPSA")

- 15.1 In this clause "financing statement", "financing change statement", "security agreement", and "security interest" has the meaning given to it by the PPSA.
- 15.2 The Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials and/or collateral (account) – being a monetary obligation of the Customer to Enwise for Works – that have previously been supplied and that will be supplied in the future by Enwise to the Customer.
- 15.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which Enwise may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register (PPSR);
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 15.3(a)(i) or 15.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Enwise for all expenses incurred in registering a financing statement or financing change statement on the PPSR established by the PPSA or releasing any Materials charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Enwise;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of Enwise;
 - (e) immediately advise Enwise of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- 15.4 Enwise and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 15.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 123(2),

- 125, 129(2), 130, 132(3)(d), 132(4) and 135 of the PPSA.
- 15.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7 Unless otherwise agreed to in writing by Enwise, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Customer shall unconditionally ratify any actions taken by Enwise under clauses 15.3 to 15.5.
- 15.9 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these Conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 16. GST**
- 16.1 Unless otherwise stated, the Price does not include GST. In addition to the Price, the Customer must pay to Enwise an amount equal to any GST Enwise must pay for any supply by Enwise under this or any other contract for the sale of the Materials. The Customer must pay GST, without deduction or set off any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
17. When GST is payable by Enwise in respect of a taxable supply made by Enwise to the Customer, the Customer must pay Enwise, in addition to the GST-exclusive price, the amount on account of GST shown in the tax invoice issued by Enwise.
18. The terms **GST**, **supply** and **tax invoice** have the same meaning as under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 19. Security and Charge**
- 19.1 In consideration of Enwise agreeing to supply the Materials, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these Conditions (including, but not limited to, the payment of any money).
- 19.2 The Customer indemnifies Enwise from and against all Enwise's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Enwise's rights under this clause.
- 19.3 The Customer irrevocably appoints Enwise and each director of Enwise as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16

including, but not limited to, signing any document on the Customer's behalf.

20. Defects, Warranties and Returns, Competition and Consumer Act 2010 (Cth) (CCA)

- 20.1 The Customer must inspect all Materials on delivery (or the Works on completion) and must within fourteen (14) days of delivery or completion, notify Enwise in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description set out in any Quotation or Purchase Order.
- 20.2 The Customer must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Enwise to inspect the Materials or to review the Works provided.
- 20.3 Enwise:
- (a) shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event any of the information provided by the Customer is inaccurate, Enwise accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information; and
 - (b) accepts no responsibility for:
 - (i) any damage or performance related problems with any Materials where they have not been used and/or maintained in accordance with Enwise's and/or the manufacturers' recommendations;
 - (ii) any damage or defects in any Materials caused by movement and/or interference of the Materials;
 - (iii) painting, re-decorating, re-sealing, carpentry or any other Works required for the restoration or making good of any surface/area where any Works have been carried out.
- 20.4 The Customer acknowledges:
- (a) that Enwise is only responsible for components that are replaced by Enwise and does not at any stage accept any liability in respect of previous goods and/or services supplied by any other third party that subsequently fail and found to be the source of the failure; and
 - (b) where the Customer has supplied goods for Enwise to complete the Works, the Customer acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those goods; and
 - (c) Enwise shall not be liable for any loss or damage to the Works (or any part thereof) howsoever arising where sub-clauses 20.4(a) and 20.4(b) applies; and

- (d) agrees that:
- (i) where Enwise has performed temporary repairs that:
 - (A) Enwise offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (B) Enwise will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair required.
 - (ii) Enwise does not guarantee the performance or transmission speed or quality of any data; and
 - (iii) transmission of data may be unavailable from time to time due to scheduled maintenance and/or upgrades to websites, servers or networks by third parties; and
 - (iv) there are inherent hazards in electronic distribution (including, but not limited to electrical interference, surges or spikes, high traffic volume affecting speed, etc) and as such Enwise cannot warrant against delays or errors in transmitting data between the Client and any person or entity the Client conducts communications with including orders, and you agree that Enwise will not be liable for any losses which the Client suffers as a result of delays or errors in transmitting orders or other communications and/or documents; and
 - (v) they are (for all purposes) solely responsible for the migration of all files and data (regardless of their format). Enwise shall not be held responsible or liable for any loss, corruption, or deletion of files or data (including, but not limited to the software) resulting from illegal hacking or mislabelling or misfiling, that they shall:
 - (vi) not be entitled to withhold any payment due under this Contract because of any delay in the connection of, or the supply of electricity to the Materials by an electrical distributor or any other third party;
 - (vii) ensure that all Materials, plant or equipment which Enwise is to supply (or are to connect any of its Materials to) are of the correct type, size, rating, standard, quality, colour and finish, conform with all relevant Australian standards and local statutory requirements, and are as specified in the specifications, drawings and plans upon which Enwise based the Quotation and/or Purchase Order on and therefore, the Customer agrees to indemnify Enwise against any costs incurred by Enwise in rectifying such errors if required.
- 20.5 The Customer warrants that no other tradesmen interfere with any Works and/or Materials supplied under this Contract. Enwise shall not be liable for any costs, damages or loss however arising from the Customer's failure to comply with this clause.
- 20.6 Subject to clause 20.1, customised, or non-stocklist items or Materials made or ordered to the Customer's specifications are not acceptable for credit or return.
- 21. Limitation of Liability and Indemnity**
- 21.1 To the extent permitted by law and subject to clauses 21.2, 21.5(b) and 21.6, all conditions or warranties (whether express or implied by statute or common law or arising from conduct or by previous course of dealing or trade custom or trade usage or otherwise) as to the quality of the Materials or their fitness for any particular purpose (even if that purpose is made known expressly or by implication to Enwise) are hereby expressly excluded.
- 21.2 Any advice, recommendation, information, assistance or service provided by Enwise in relation to the Works and/or Materials supplied is given in good faith, is based on Enwise's own knowledge and experience and shall be accepted without liability on the part of Enwise, and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Works and/or Materials.
- 21.3 Without limitation to the foregoing, Enwise makes no representation, and provides no warranty or guarantee, that:
- (a) the Customer will achieve any particular results from the provision of the Materials or Works;
 - (b) any particular individuals will perform the Works on behalf of Enwise; or
 - (c) the Works will be:
 - (i) error-free or that errors or defects will be corrected; or
 - (ii) meet the Customer's requirements or expectations.
- 21.4 Nothing in these Conditions excludes, restricts or modifies the application of the ACL and any rights which the Customer may have thereunder or pursuant to sections 23.3(b) or 23.4.
- 21.5 To the fullest extent permitted by law, Enwise's liability for any breach of a consumer guarantee implied by the ACL (and which cannot be excluded) shall be limited to any one or more of the following (as determined by Enwise in its absolute discretion):
- (a) in the case of Materials, the replacement repair or payment of the cost of replacement or repair of the Materials; and

- (b) in the case of services, supplying the services again or payment of the cost of having the services supplied again.
- 21.6 Subject to any rights which the Customer may have under the ACL, Enwise accepts no liability for any loss, damage, cost, loss of profits, anticipated savings, wasted expenditure, loss of contracts with third parties, goodwill or any type of loss, suffered by the Customer and whether or not Enwise was aware that such loss was possible or such loss was otherwise foreseeable, whether such loss arises from any representation, recommendation or advice made or given in relation to the Materials, the use of the Materials, or the failure by Enwise to observe and fulfil its obligations under these Conditions or otherwise. Notwithstanding this, should Enwise be held liable for any loss by a court of competent jurisdiction, such liability is limited to that of the Price paid for the Works and/or Materials.
- 21.7 The Customer shall indemnify Enwise for and in respect of claims by any third party under the ACL in relation to the Materials which arise from, or can be attributed to, a breach by the Customer of these Conditions, or a negligent, fraudulent or unlawful act or omission of the Customer, its employees, agents or contractors.
- 21.8 Enwise will defend, indemnify and hold the Customer harmless against all liability and expenses arising from any claims brought by third parties (including Enwise's employees, representatives and other agents) against the Customer which relate to failures in the Materials due to the negligence, omission, misrepresentation or wilful acts of Enwise, its employees, representatives and other agents, in connection with this Contract.
- 22. Consequential Loss**
- 22.1 To the extent permitted by law and subject only to any express exceptions contained in these Conditions, Enwise will not be liable for any form of loss, damage or expense sustained or incurred by the Customer or any other party in consequence of or resulting directly or indirectly out of the supply of Materials or Works by Enwise, the use or receipt of Materials or Works, any breach by Enwise of any Contract incorporating these Conditions, or the negligence of Enwise. Without limiting the generality of the foregoing, Enwise is not liable in any circumstances whatsoever (including any fault or default of Enwise) for any indirect or consequential losses (including loss of goodwill, business or anticipated savings), loss of profits or use, any rectification costs or any third party claims in connection with Materials, Works or a Contract.

23. Intellectual Property

- 23.1 The Customer acknowledges the Enwise's exclusive right, title and interest in any and all of the technical information and know-how including existing and future inventions, modifications, extensions, enhancements, improvements and discoveries, technology, documented ideas, trade secrets, copyrightable works and mask works (whether or not registered), the marks, processes, procedures, designs, software, systems, specifications, recipes, formulas, preparation methods, designs, drawings, written plans, schedule of Works, developments, devices or methods (whether patented or able to be patented and whether or not reduced to practice) and all patents, copyright, trademarks, service marks, database rights (whether registered or unregistered) and all registrations and applications for registration related thereto and all other intellectual or industrial property rights, now existing or subsisting or hereafter developed or arising anywhere in the world regarding the Materials and/or Enwise (collectively, the **Intellectual Property**).
- 23.2 The Customer acknowledges that it has no rights, title or interest to Intellectual Property, apart from the right to use such Intellectual Property as is provided by Enwise to the Customer as set forth explicitly in this Contract.
- 23.3 Enwise warrants, undertakes and agrees with the Customer that:
- (a) the Materials do not and will not infringe on any intellectual property rights of any third party; and
- (b) Enwise has full title and ownership of all Intellectual Property in respect of and that relate to the Materials.
- 23.4 The Customer will do all things necessary to protect Enwise's rights as set forth in this clause 23.1, and upon Enwise's request, shall, amongst others, execute any documents confirming Enwise's ownership of such rights and otherwise required to protect Enwise's ownership of such rights at Enwise's cost.
- 23.5 The Customer will promptly notify Enwise, in writing, of any and all infringement of the Intellectual Property known to the Customer regarding the Materials, and shall assist Enwise in any action deemed necessary by Enwise to protect such Intellectual Property.
- 23.6 In respect of any action to protect the Intellectual Property from any infringement by a third party, the cost of any such assistance or defending any claim by the Customer under this clause must be at Enwise's expense. Enwise agrees to reimburse the Customer all verified expenses within thirty (30) days of written demand.
- 23.7 The Customer agrees that all goodwill in the Intellectual Property generated by the use of the Intellectual Property by the Customer will be to the benefit of Enwise.

- 23.8 The Customer agrees that it will not attempt to register the Intellectual Property in any country.
- 23.9 The Customer agrees not to do business or cooperate with any third party that infringes on Enwise's Intellectual Property Rights (as advised by Enwise).
- 23.10 Enwise indemnifies the Customer against any liability under any third party claim against the Customer alleging that the Intellectual Property, or Material infringes on the intellectual property rights.

24. Default and Consequences of Default

- 24.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Enwise's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 24.2 If the Customer owes Enwise any money the Customer shall indemnify Enwise from and against all costs and disbursements incurred by Enwise in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Enwise's contract default fee, and bank dishonour fees).
- 24.3 Further to any other rights or remedies Enwise may have under this Contract, if a Customer has made payment to Enwise, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Enwise under this clause 24 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 24.4 Without prejudice to Enwise's other remedies at law Enwise shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Enwise shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Enwise becomes overdue, or in Enwise's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by Enwise;
 - (c) the Customer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

25. Cancellation and Termination

- 25.1 Termination for breach
- (a) Enwise may terminate this Contract immediately by notice to the Customer if an Event of Default occurs in respect of the Customer.
 - (b) The Customer may terminate their obligations under this Contract in the event of a substantial breach by Enwise of their obligations hereunder, which breach has not been remedied within 30 days of written notice from the Customer requiring the breach to be remedied.
- 25.2 Enwise will not be liable to the Customer for any loss (including consequential loss) or damage the Customer suffers because Enwise has exercised its rights under clause 25.1(a).
- 25.3 Termination with notice
- (a) Enwise may cancel any Contract to which these Conditions apply or cancel delivery of Works at any time before the Works are commenced by giving 7 days written notice to the Customer. On giving such notice Enwise shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to Enwise for Works already performed. Enwise shall not be liable for any loss (including consequential loss) or damage whatsoever arising from such cancellation.
- 25.4 In the event that the Customer cancels the delivery of Works other than in accordance with clause 25.1(b), the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Enwise as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 25.5 Cancellation of orders for products made to the Customer's specifications, or for non-stocklist items, will in no circumstances be accepted once production has commenced, or an order has been placed.

26. Privacy Policy

- 26.1 All emails, documents, images or other recorded information held or used by Enwise is "Personal Information", as defined and referred to in clause 26.3, and therefore considered Confidential Information. Enwise acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the *Privacy Act 1988* ("the **Privacy Act**") including the Part IIIC of the Privacy Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "**EU Data Privacy Laws**"). Enwise acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the

- Customers Personal Information, held by Enwise that may result in serious harm to the Customer, Enwise will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 26.2 Notwithstanding clause 26.1, privacy limitations will extend to Enwise in respect of Cookies where transactions for purchases/orders transpire directly from Enwise's website. Enwise agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Enwise when Enwise sends an email to the Customer, so Enwise may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Enwise's website.
- 26.3 The Customer agrees for Enwise to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by Enwise .
- 26.4 The Customer agrees that Enwise may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 26.5 The Customer consents to Enwise being given a consumer credit report to collect overdue payment on commercial credit.
- 26.6 The Customer agrees that personal credit information provided may be used and retained by Enwise for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Works; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Works.
- 26.7 Enwise may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 26.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 26.3 above;
 - (b) name of the credit provider and that Enwise is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Enwise has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of Enwise, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 26.9 The Customer shall have the right to request (by e-mail) from Enwise:
- (a) a copy of the Personal Information about the Customer retained by Enwise and the right to request that Enwise correct any incorrect Personal Information; and
 - (b) that Enwise does not disclose any Personal Information about the Customer for the purpose of direct marketing.

- 26.10 Enwise will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 26.11 The Customer can make a privacy complaint by contacting Enwise via e-mail. Enwise will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 27. Building Industry Fairness (Security of Payment) Act 2017**
- 27.1 At Enwise's sole discretion, if there are any disputes or claims for unpaid Works and/or Materials then the provisions of the *Building Industry Fairness (Security of Payment) Act 2017* (QLD) may apply.
- 27.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the *Building Industry Fairness (Security of Payment) Act 2017*, except to the extent permitted by the Privacy Act where applicable.
- 28. Service of Notices**
- 28.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 28.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 29. Change in Control**
- 29.1 The Customer shall give Enwise not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any

loss, including consequential loss, incurred by Enwise as a result of the Customer's failure to comply with this clause.

30. Trusts

30.1 If the Customer enters into this Contract as a trustee of a trust, it warrants in its own capacity and as trustee of that trust that:

- (a) in respect of the trust:
 - (i) the trust is duly constituted and has not terminated, nor has the date or any event occurred for the vesting of the trust fund of the trust;
 - (ii) no action has been taken or is proposed to be taken to terminate or dissolve the trust;
 - (iii) there is no material fact or circumstance relating to the assets, matters or affairs of the trust that might, if disclosed, be expected to affect the decision of Enwise to enter into this Contract;
 - (iv) the date for vesting of that trust has not occurred and the whole of the funds constituting the trust fund of that trust has not been vested in a manner that puts them beyond the recourse of that party under its right of indemnity; and
- (b) in respect of the trustee:
 - (i) it has full legal capacity, valid power and authority under the terms of the trust and, in the case of a corporation, under its constitution or memorandum of association (if applicable) to:
 - (ii) it has in full force and effect the authorisations necessary for it to enter into this Contract and perform its obligations under it and allow them to be enforced (including under the trust deed and its constitution (if any));
 - (iii) it enters into this Contract and the transactions contemplated by this Contract for the proper administration of the trust and for the benefit of all the beneficiaries of the trust;
 - (iv) it is the sole trustee of the trust, it has not given any notice of resignation and no action has been taken or is now proposed to be taken to remove it as trustee of the trust;
 - (v) it has a right including after any set-off, to be fully indemnified out of assets of the trust in respect of obligations incurred by it under this Contract and the property of the trust is sufficient to satisfy that right of indemnity;
 - (vi) it has not done anything which effects or facilitates the variation of the terms of the trust or the resettlement of the trust funds or property;

- (vii) it is not in breach of any of its obligations as trustee of the trust, whether under the trust deed or otherwise; and
- (viii) it is not in default under the terms of the trust.

31. General

- 31.1 These Conditions and any Contract may not be varied, unless agreed upon by both parties and documented in writing.
- 31.2 No failure, delay, relaxation or indulgence by a party in exercising any power or right conferred upon it under this Contract will operate as a waiver of that power or right. No single or partial exercise of any power or right precludes any other or future exercise of it, or the exercise of any other power or right under this Contract.
- 31.3 This Contract and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by, and shall be construed in accordance with, the laws of Queensland, Australia.
- 31.4 Enwise may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent. The Customer cannot licence or assign without the written consent of Enwise.
- 31.5 This Contract contains the entire understanding between the parties in relation to its subject matter and supersedes any previous arrangement, understanding or agreement relating to its subject matter. There are no express or implied conditions, warranties, promises, representations or obligations, written or oral, in relation to this Contract other than those expressly stated in it or necessarily implied by statute.
- 31.6 Enwise may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Enwise's sub-contractors without the authority of Enwise.
- 31.7 The Customer agrees that Enwise may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Enwise to provide Works to the Customer.
- 31.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 31.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so,

they are not insolvent and that this Contract creates binding and valid legal obligations on them.

- 31.10 If a provision of this Contract is invalid or unenforceable in a jurisdiction:
 - (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
 - (b) that fact does not affect the validity or enforceability of that provision in another jurisdiction, or the remaining provisions.