MIDDENDORP ELECTRIC CO. PTY. LTD. (A.B.N. 49 338 705 390) (the "Company")

Terms and Conditions of Sale

These Terms and Conditions of Sale ("**Terms**"), and any amendments notified to the Customer and thereafter published from time to time on the "Company's" website at http://www.middys.com.au ("**Terms**") apply whenever the "Company" supplies any products ("**Goods**") to any person (the "**Customer**"), unless expressly agreed otherwise by the "Company" in writing. By requesting, ordering, purchasing or receiving delivery of any Goods, the Customer is deemed to have accepted these Terms and to have agreed that they apply to the exclusion of all others.

1. General

1.1. A quotation made by the "Company" shall not be construed as an offer or obligation to supply in accordance with the quotation. The "Company" reserves the right to accept or reject, at its discretion, any order for Goods.

2. Quoted pricing

2.1. All cable quotes are subject to change should the LMP (London Metal Exchange) published copper and aluminium pricing increase greater than $100.00AUD per tonne from the date of quote.

2.2. Prices for Goods are those quoted by the "Company" in writing and are valid for the period of time specified on the quotation or thirty (30) days whichever is the lesser.

3. Conditions of Supply

3.1. Where the Customer is a Limited Company, the "Company" reserves the right to request an indemnity from the Directors of that company. Where the Customer is a Proprietary Limited Company, the "Company" reserves the right to request a personal guarantee from the Directors of that Company. The Customer agrees to pay the account in accordance with the "Company's" Terms.

4. Change of Ownership

4.1. In the event the ownership or legal entity of the Customer changes, the Company must be immediately notified in writing. Until such notification is received and acknowledged by the "Company", liability for any unpaid account will remain with the Customer as disclosed in the "Company's" records.

5. Payment

5.1. Payment is to be by cash unless the Company has granted the Customer a credit facility.

5.2. If Goods are sold to the Customer on credit then all invoiced amounts are payable within 30 days of the date of the invoice, unless agreed otherwise by the "Company" in writing.

5.3. The Customer hereby agrees to indemnify and / or reimburse the "Company" in relation to any costs incurred by the "Company" in attempting to recover amounts owed by the Customer to the "Company" pursuant to these Terms.

5.4. The Customer acknowledges and agrees that the "Company" is entitled to charge a payment surcharge for transactions made using a credit card, debit card or any other payment method that incurs are processing for the "Company" (which surcharge amount shall be notified to you prior to payment). The surcharge amount will be equivalent to the cost incurred by the "Company" in facilitating the payment type selected by the Customer. The "Company" ensures that the surcharge will not exceed the actual cost of processing the payment in accordance with the applicable laws and regulations. The "Company" reserves the right to review and adjust the surcharge from time to time based on any changes in the processing fees charged by financial institutions or payment processors. Any surcharge changes will be communicated to the customer and will apply to subsequent payments.

6. Delivery Terms

6.1. Orders of $750 ex GST or more will be eligible for free delivery

6.2. Orders under $750 ex GST will incur a $15 delivery charge

6.3. Where The "Company" incurs additional freight or delivery costs specifically to fulfil a customer order, these costs are to be passed on to the customer.

7. Warranties

7.1. The "Company" warrants that all Goods supplied by it to the Customer:

a. are free from any encumbrance, other than any encumbrance created under these Terms; and

b. are of merchantable quality and are fit for their intended purpose.

7.2. If any of the Goods delivered to the Customer do not meet the standards set out in clause 6.1, the Customer must notify the "Company" in writing within fourteen days of delivery and the "Company's" responsibility for any non-compliant Goods will be determined in accordance with clause 7.1.

7.3. Except for the warranties provided in clause 6.1 and subject to any warranties which may be provided by the manufacturer of specific Goods, to the extent permitted by law the "Company" excludes all warranties of whatsoever kind or nature, either express or implied in connection with the supply of Goods by the "Company" to the Customer. These Terms shall not exclude or modify the rights, entitlements, remedies and liabilities of either party by any condition or warranty implied by any Commonwealth, State or Territory Act (including but not limited to the Australian Consumer Law set out in schedule 2 of the Competition and Consumer Act 2010 (Cth) or any other law rendering void or prohibiting such exclusion or modification.

8. Limitation of Liability

8.1. In respect of the warranties in clause 6.1 and any non-excludable warranties, the "Company's" liability for breach of such conditions or warranties and the Customer's remedy in relation to such breaches shall be either:

a. replacing the Goods;

b. repairing the Goods; or

c. refunding the Price paid for the relevant Goods.

8.2. The warranties provided by the "Company" and a manufacturer of Goods are void on all Goods sold where those Goods have been installed by persons other than Registered Electrical Contractors, and/or where the Goods have been installed other than in accordance with the instruction manual for the Goods.

8.3. To the extent permitted under the Australian Consumer Law, notwithstanding any provision in these Terms, the Customer must not make a claim or demand against the "Company" or its agents for consequential, indirect, special, incidental, exemplary or economic damage or loss (including loss of use, loss of revenue, loss of profit, business interruption, costs of procurement or substitution of goods, technology or services or loss of information) arising in connection with the supply of Goods pursuant to these Terms (including any claim in negligence, equity or otherwise). The Customer agrees that this provision is necessary to protect the Company's business.

8.4. To the extent permitted under the Australian Consumer Law, the Customer indemnifies the "Company" from and against any damages that it or its related bodies corporate suffer, incur or are liable for as a direct or indirect result of any breach of these Terms, or any conduct which may be considered misleading or deceptive, by the Customer or its agents.

9. Risk and Title

9.1. Risk in the Goods passes to the Customer on delivery.

9.2. Ownership of and title to the Goods is retained by the" Company" and shall not pass to the Customer until the "Company" receives payment in full for the Goods.

9.3. Until title in the Goods passes to the Customer:

a. the Customer must: (i) hold the Goods as bailee of the "Company"; and (ii) insure the Goods against all risks for their full price from the date of delivery.

b. the "Company" authorises the Customer, in the ordinary course of the Customer's business, to use the Goods or sell them for full consideration, provided that the proceeds of such sale or use (in whatever form) shall be the property of the "Company" and the Customer must hold such proceeds on trust for the "Company" and deal with them as the "Company" directs. This authority to use and sell the Goods automatically terminates if the Customer breaches these Terms, the Customer becomes insolvent or the "Company" decides, in its absolute discretion, to revoke such authority;

c. upon termination of the authority granted under sub-clause (b) above, the "Company" may take possession of any Goods for which it has not yet received payment and enter any premises where such Goods may be located;

d. the Goods are inventory for the purposes of the PPSA; and

e. the Company retains a security interest in all Goods supplied by the Company to the Customer.

10. Personal Property Securities Act 2009 ("PPSA")

10.1. The Customer acknowledges that these Terms constitute a security agreement for the purposes of the PPSA and creates a security interest in all of the Customer's present and after-acquired Goods supplied by the Company.

10.2. The "Company" and the Customer agree that nothing in sections 130(1)(a) and 143 of the PPSA will apply to these Terms.

10.3. The Customer waives its rights as a debtor under sections 92, 93, 94, 95, 97, 118, 121, 132, 135, 137, 140 and 142 of the PPSA.

10.4. The Customer further agrees that where the "Company" has rights in addition to those under Chapter 4 of the PPSA, those rights will continue to apply.

10.5. In this clause:

a. "security agreement" means the security agreement under the PPSA created between the Customer and the Company; and

b. "security interest" has the meaning given to it by the PPSA.

11. Charging Clause

11.1. The Customer charges as beneficial owner and as trustee of every trust all the Customers land (including land acquired in the future) in favour of the "Company" to secure the payment of any amounts owed by the Customer to the "Company" and the performance and observance of the Customers covenants under these Terms. In this clause 'trust' means each trust for which the Customer holds land as trustee.

12. Force Majeure

12.1. The "Company" shall not be liable for any delay or failure to perform its obligations pursuant to these Terms if such delay is directly or indirectly caused by any event or circumstance beyond the "Company's" reasonable control, including fire, flood, crime, war, blockade, civil commotion, strike, lockout or labour dispute, inability to procure stock or transport, or acts or omissions by regulatory authorities ("Force Majeure Event").

12.2. If a delay or failure by the "Company" to perform its obligations due to Force Majeure Event exceeds 60 days, either party may terminate these Terms by providing written notice to the other party.

13. Miscellaneous

13.1. These Terms are a payment claim under the *Building and Construction Industry Security of Payment Act 2002 (Vic).*

13.2. Unless specified otherwise, if GST is payable by a supplier (or by the representative member for a GST group of which the supplier is a member) on any supply made under or in relation to these Terms, the recipient must pay to the supplier an amount (GST Amount) equal to the GST payable on the supply. The GST Amount is payable by the recipient in addition to and at the same time as the consideration payable for the supply excluding GST.

13.3. If at any time any monies payable by the Customer under these Terms are not paid on the due date, the Customer shall pay interest at the rate prescribed from time to time under the Penalty Interest Rates Act (Vic) plus 2% on any amount overdue from the due date for payment until the date payment is made.

13.4. The "Company" may transfer any right or liability under these Terms at its absolute discretion. The Customer may not transfer any right or liability under these Terms without the prior written consent of the "Company" which consent will not be unreasonably withheld.

13.5. These Terms are governed by and construed under the law in the State of Victoria. Any legal action in relation to these terms against any party or its property may be brought in any court of competent jurisdiction in the State of Victoria.

13.6. The "Company" may vary these Terms from time to time. Any such variation will be effective from the date specified by the "Company" in any written notice provided to the Customer. By requesting, or continuing to request, any Goods after such effective date, the Customer accepts and agrees to be bound by such variation.

13.7. The Customer confirms that it has checked all specifications in respect of goods purchased at or before the time of purchase from the Company and has not relied on any representations made by the Company as to whether the goods are fit for a purpose other than the purpose as set out in the specifications.

13.8. Any amendment to these Terms has no force or effect, unless effected by a document executed by the "Company".

13.9. Any failure by any party to exercise any right under these Terms does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

13.10. If a party enters into these Terms as trustee of a trust, that party and its successors as trustee of the trust will be liable under these Terms in its own right and as trustee of the trust. Nothing releases the party from any liability in its own capacity.

14. Competition and Consumer Act 2010

14.1. Where these Terms would otherwise be subject to the Competition and Consumer Act 2010 ("Act"), the Customer agrees that the Customer is acquiring the Goods for business purposes and that the Act does not apply to the supply of the Goods to the Customer.

14.2. If the Customer is a consumer as defined in section 4B of the Act, and the Customer has not contracted out of the Act under clause 13.1 of these Terms, nothing in these Terms will limit any rights the Customer may have under this Act.

15. Privacy

15.1. The Company will adhere to its Privacy Collection Statement and the Customer agrees to the collection of personal information by the Company for the purposes set out in the Privacy Collection Statement and in accordance with the Privacy Act 1988 (Cth).

16. Severance

16.1. Should any part of these Terms be held to be void or unlawful, these Terms will be read and enforced as if the void or unlawful provisions have been deleted.

17. Special Buy-in Policy

17.1. The Company's Special Buy-in Terms and Conditions are to be read in conjunction with these Terms.