

1. Definitions

- 1.1 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **“Olectric”** means Olectric Systems Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Olectric Systems Pty Ltd.
- 1.3 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Olectric to provide the Services as specified in any proposal, quotation, 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.
- 1.4 **“Goods”** means all Goods (Including, but not limited to any parts, fluids and lubricants consumed during the course of the Services) or Services supplied by Olectric to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 **“Vessel”** shall mean any vehicle of the Customer expressly used for water travel and/or recreation, and described in any documentation supplied by the Customer to Olectric.
- 1.6 **“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.
- 1.7 **“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 using Olectric’s 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 making enquiries via the website.**
- 1.8 **“Price”** means the Price payable (plus any GST where applicable) for the Goods as agreed between Olectric and the Customer in accordance with clause 6 below.
- 1.9 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Olectric and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods requested exceeds the Customer’s credit limit and/or the account exceeds the payment terms, Olectric reserves the right to refuse delivery.
- 2.6 The Customer acknowledges and agrees that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Olectric reserves the right to substitute comparable Goods (or components of the Goods) and vary the Price as per clause 6.2 In all such cases Olectric will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer’s order and/or Services on hold until such time as Olectric and the Customer agree to such changes.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that Olectric shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
(a) resulting from an inadvertent mistake made by Olectric in the formation and/or administration of this Contract; and/or
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Olectric in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Olectric; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Customer shall give Olectric 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 incurred by Olectric as a result of the Customer’s failure to comply with this clause.

5. On-Line Ordering

- 5.1 The Customer acknowledges and agrees that:
(a) Olectric does not guarantee the website’s performance;
(b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by Olectric;

Olectric Systems Pty Ltd – Terms & Conditions of Trade

- (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
 - (d) there are inherent hazards in electronic distribution, and as such Olectric cannot warrant against delays or errors in transmitting data between the Customer and Olectric including orders, and you agree that to the maximum extent permitted by law, Olectric will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
 - (e) when making a transaction through the website, the Customer's information will pass through a secure server using SSL (secure sockets layer) encryption technology or any other similar technology as disclosed by Olectric and/or displayed on the website. The encryption process ensures that the Customer's information cannot be read by or altered by outside influences;
 - (f) if the Customer is not the cardholder for any credit card being used to pay for the Goods, Olectric shall be entitled to reasonably assume that the Customer has received permission from the cardholder for use of the credit card for the transaction.
- 5.2 Olectric reserves the right to terminate the Customer's order if it learns that you have provided false or misleading information, interfered with other users or the administration of Olectric's business, or violated these terms and conditions.
- 6. Price and Payment**
- 6.1 At Olectric's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by Olectric to the Customer; or
 - (b) Olectric's estimated Price (subject to clause 6.2) which shall not be deemed binding upon Olectric as the actual Price can only be determined upon completion of the Services. Olectric undertakes to keep the Customer informed should the actual Price look likely to exceed the original estimate; or
 - (c) the Price as at the date of Delivery of the Goods according to Olectric's current price list; or
 - (d) Olectric's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 Olectric reserves the right to change the Price:
- (a) if during the course of the Services, the Goods cease to be available from Olectric's third party suppliers, then Olectric reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties; or
 - (b) if a variation to the Goods to be supplied or Services which are to be provided is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, further faults which are found upon disassembly and/or further inspection) which are only discovered upon commencement of the Services; or
 - (d) in the event of increases to Olectric in the cost of labour or materials (including, but not limited to, overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond Olectric's control.
- 6.3 All tow and/or salvage fees will be charged to the Customer, and will be added to the Price.
- 6.4 If (at Olectric's sole discretion) berthing is required, the Customer shall be responsible for all associated costs.
- 6.5 If Olectric has been requested by the Customer to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to the Customer irrespective of whether or not the repair goes ahead.
- 6.6 The Customer acknowledges and agrees that Olectric shall be entitled to retain any components replaced during the provision of the Services.
- 6.7 Variations will be charged for on the basis of Olectric's quotation, and will be detailed in writing, and shown as variations on Olectric's invoice. The Customer shall be required to respond to any variation submitted by Olectric within ten (10) working days. Failure to do so will entitle Olectric to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.8 At Olectric's sole discretion, a non-refundable deposit may be required.
- 6.9 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Olectric, which may be:
- (a) on or before delivery of the Goods; or
 - (b) on completion of the Services; or
 - (c) by way of instalments/progress payments in accordance with Olectric's payment schedule;
 - (d) for approved credit account holders fourteen (14) days following the date of any invoice; or
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Olectric.
- 6.10 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Olectric.
- 6.11 Olectric may in its discretion allocate any payment received from the Customer towards any invoice that Olectric determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Olectric may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Olectric, payment will be deemed to be allocated in such manner as preserves the maximum value of Olectric's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.12 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Olectric nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.13 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Olectric an amount equal to any GST Olectric must pay for any supply by Olectric under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of 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.

7. Customer Responsibilities

- 7.1 The Customer shall provide Olectric with free and clear access to the Vessel during the scheduled time of installation. If the Customer cannot provide Olectric with free and clear access to the Vessel during the time of installation, Olectric reserves the right to charge the Customer a reasonable fee for any delay. This delay fee will be charged for at Olectric's standard hourly rate.
- 7.2 The Customer shall be solely responsible (including all costs) for the completion of all carpentry work, metal work, and transducer work.

8. Equipment Placement

- 8.1 Olectric recommends that Olectric be consulted as to equipment and antenna placement. This is to ensure that all equipment is serviceable in the future and to eliminate the possibility of interference between components.

9. Provision of the Services

- 9.1 Where Olectric is to provide any Services at the Customer's nominated address, then the Customer shall be liable for:
- (a) all costs incurred by Olectric from the time they depart from, and until they return to, their normal place of work (including, but not limited to, mileage and time calculated at Olectric's standard rates and any Goods purchased for the Services); and
 - (b) a minimum call-out fee, which shall be increased for any after-hours call-outs.
- 9.2 Where Olectric is requested by the Customer to work hours that exceed the agreed daily rate in order to meet specific vessel timetables, and the time restrictions are beyond the control of Olectric, Olectric reserves the right to charge overtime rates.
- 9.3 Travel expenses, including, but are not limited to, air travel, vehicle rental, ground transportation, hotel accommodation, and duties and customs fees will be charged to the Customer at cost. Olectric will charge the Customer for travel time on an hourly rate basis. Olectric will also charge the Customer a daily 'living away from home' and meal allowance.
- 9.4 Any time specified by Olectric for provision of the Services is an estimate only and Olectric will not be liable for any loss or damage incurred by the Customer as a result of any delay. However, both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that Olectric is unable to provide the Services as agreed solely due to any action or inaction of the Customer then Olectric shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.
- 9.5 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Olectric's address; or
 - (b) Olectric (or Olectric's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 9.6 At Olectric's sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.
- 9.7 Olectric may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 9.8 Any time specified by Olectric for Delivery of the Goods is an estimate only. The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. Olectric will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. In the event that the Customer is unable to take Delivery of the Goods as arranged then Olectric shall be entitled to charge a reasonable fee for redelivery and/or storage.

10. Risk

- 10.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 10.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, Olectric is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Olectric is sufficient evidence of Olectric's rights to receive the insurance proceeds without the need for any person dealing with Olectric to make further enquiries.
- 10.3 Olectric shall upon installation ensure that all Goods are to be installed in a manner that is fully compliant with industry standards. If, for any reason, the Customer specifically requires the Goods to be installed in any way which goes against Olectric's recommendations and/or falls below industry standards, a request detailing that requirement must be made in writing to Olectric. Accordingly, Olectric offers no warranty in regards to the aforementioned.
- 10.4 The Customer acknowledges and accepts that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in Olectric's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by Olectric; and
 - (b) while Olectric may have provided information or figures to the Customer regarding the performance of the Goods, the Customer acknowledges that Olectric has given these in good faith, and are estimates based on industry prescribed estimates; and
 - (c) Olectric is only responsible for parts that are replaced by Olectric and that in the event that other parts/materials, subsequently fail, the Customer agrees to indemnify Olectric against any loss or damage to the Goods; and
 - (d) where Olectric has performed temporary repairs:
 - (i) Olectric offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (ii) Olectric will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair.
 - (e) the Goods may fade or change colour over time, expand, contract or distort as a result of exposure, heat, and cold temperatures, mark or stain if exposed to certain substances and be damaged or disfigured by impact or scratching.

11. System Drawings

- 11.1 If the Customer requires any system drawings or electrical/electronic drafting (including installation diagrams) in addition to the standard manufacturers drawings supplied in the manufacturers manuals, these can be supplied by Olectric after commissioning and will be charged for on an hourly rate basis.

12. Compliance with Laws

- 12.1 The Customer and Olectric shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any work health and safety laws (WHS) relating or any other relevant safety standards or legislation pertaining to the Services.
- 12.2 Where the Customer has supplied products for Olectric to complete the Services, the Customer acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the intended use and any faults inherent in those products. However, if in Olectric's opinion, it is believed that the materials supplied are non-conforming products and will not conform with state and/or territory regulations, then Olectric shall be entitled, without prejudice, to halt the Services until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 6.2.
- 12.3 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 12.4 All work 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. All of the cabling work will comply with the Australian and New Zealand Wiring standards.

13. Title

- 13.1 Olectric and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Olectric all amounts owing to Olectric; and
 - (b) the Customer has met all of its other obligations to Olectric.
- 13.2 Receipt by Olectric 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.
- 13.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 13.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to Olectric on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Olectric and must pay to Olectric the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Olectric and must pay or deliver the proceeds to Olectric on demand;
 - (d) the Customer should not convert or process the Goods 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 Olectric and must sell, dispose of or return the resulting product to Olectric as it so directs;
 - (e) the Customer irrevocably authorises Olectric to enter any premises where Olectric believes the Goods are kept and recover possession of the Goods;
 - (f) Olectric may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Olectric;
 - (h) Olectric may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

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

- 14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 14.2 Upon assenting to these terms and conditions in writing 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 Goods and/or collateral (account) – being a monetary obligation of the Customer to Olectric for Services – that have previously been supplied and that will be supplied in the future by Olectric to the Customer.
- 14.3 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 Olectric 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;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 14.3(a)(i) or 14.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Olectric for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Olectric;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Olectric;
 - (e) immediately advise Olectric of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 14.4 Olectric 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.
- 14.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 14.7 Unless otherwise agreed to in writing by Olectric, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 14.8 The Customer must unconditionally ratify any actions taken by Olectric under clauses 14.3 to 14.5.

Olectric Systems Pty Ltd – Terms & Conditions of Trade

- 14.9 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 15. Security and Charge**
- 15.1 In consideration of Olectric agreeing to supply the Goods, 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 terms and conditions (including, but not limited to, the payment of any money).
- 15.2 The Customer indemnifies Olectric from and against all Olectric's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Olectric's rights under this clause.
- 15.3 The Customer irrevocably appoints Olectric and each director of Olectric as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer's behalf.
- 16. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 16.1 The Customer must inspect all Goods on delivery (or the Services on completion) and must within seven (7) days of delivery notify Olectric in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods/Services as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Olectric to inspect the Good or to review the Services provided.
- 16.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 16.3 Olectric acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 16.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Olectric makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Olectric's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.5 If the Customer is a consumer within the meaning of the CCA, Olectric's liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.6 If Olectric is required to replace the Goods under this clause or the CCA, but is unable to do so, Olectric may refund any money the Customer has paid for the Goods.
- 16.7 If the Customer is not a consumer within the meaning of the CCA, Olectric's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by Olectric at Olectric's sole discretion;
 - (b) limited to any warranty to which Olectric is entitled, if Olectric did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 16.8 Subject to this clause 16, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 16.1; and
 - (b) Olectric has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 16.9 Notwithstanding clauses 16.1 to 16.8 but subject to the CCA, Olectric shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by Olectric;
 - (e) fair wear and tear, any accident, or act of God.
- 16.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to Delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Olectric as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that Olectric has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 16.10.
- 16.11 Olectric may in its absolute discretion accept non-defective Goods for return in which case Olectric may require the Customer to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.
- 16.12 Notwithstanding anything contained in this clause if Olectric is required by a law to accept a return then Olectric will only accept a return on the conditions imposed by that law.
- 16.13 Subject to clause 16.1, customised, or non-stocklist items or Goods made or ordered to the Customer's specifications are not acceptable for credit or return.

17. Intellectual Property

- 17.1 Where Olectric has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Olectric. Under no circumstances may such designs, drawings and documents be used without the express written approval of Olectric.
- 17.2 The Customer warrants that all designs, specifications or instructions given to Olectric will not cause Olectric to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Olectric against any action taken by a third party against Olectric in respect of any such infringement.
- 17.3 The Customer agrees that Olectric may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Olectric has created for the Customer.

18. Default and Consequences of Default

- 18.1 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 Olectric's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Customer owes Olectric any money the Customer shall indemnify Olectric from and against all costs and disbursements incurred by Olectric in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Olectric's contract default fee, and bank dishonour fees).
- 18.3 Further to any other rights or remedies Olectric may have under this Contract, if a Customer has made payment to Olectric, 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 Olectric under this clause 18 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.
- 18.4 Without prejudice to Olectric's other remedies at law Olectric shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Olectric shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Olectric becomes overdue, or in Olectric'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 Olectric;
 - (c) the Customer becomes insolvent, 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.

19. Cancellation

- 19.1 Without prejudice to any other remedies Olectric may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Olectric may suspend or terminate the supply of Goods to the Customer. Olectric will not be liable to the Customer for any loss or damage the Customer suffers because Olectric has exercised its rights under this clause.
- 19.2 Olectric may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Olectric shall repay to the Customer any money paid by the Customer for the Goods. Olectric shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 In the event that the Customer cancels Delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Olectric as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

20. Privacy Policy

- 20.1 All emails, documents, images or other recorded information held or used by Olectric is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. Olectric acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the 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"). Olectric acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Olectric that may result in serious harm to the Customer, Olectric 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.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to Olectric in respect of Cookies where the Customer utilises Olectric's website to make enquiries. Olectric 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 Olectric when Olectric sends an email to the Customer, so Olectric may collect and review that information ("collectively Personal Information")
- If the Customer consents to Olectric's use of Cookies on Olectric's website and later wishes to withdraw that consent, the Customer may manage and control Olectric's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 20.3 The Customer agrees that Olectric 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.
- 20.4 The Customer consents to Olectric being given a consumer credit report to collect overdue payment on commercial credit.
- 20.5 The Customer agrees that personal credit information provided may be used and retained by Olectric for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; 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 Goods.
- 20.6 Olectric 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.
- 20.7 The information given to the CRB may include:
 - (a) Personal Information as outlined in 20.3 above;
 - (b) name of the credit provider and that Olectric 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 (provided Olectric is a member of an approved QAIC External Disputes Resolution Scheme), 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 Olectric has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of Olectric, 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).
- 20.8 The Customer shall have the right to request (by e-mail) from Olectric:
 - (a) a copy of the Personal Information about the Customer retained by Olectric and the right to request that Olectric correct any incorrect Personal Information; and
 - (b) that Olectric does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 20.9 Olectric 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.
- 20.10 The Customer can make a privacy complaint by contacting Olectric via e-mail. Olectric 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.

21. Unpaid Seller's Rights

- 21.1 Where the Customer has left any item with Olectric for repair, modification, exchange or for Olectric to perform any other service in relation to the item and Olectric has not received or been tendered the whole of any monies owing to it by the Customer, Olectric shall have, until all monies owing to Olectric are paid:
 - (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 21.2 The lien of Olectric shall continue despite the commencement of proceedings, or judgment for any monies owing to Olectric having been obtained against the Customer.

22. Service of Notices

- 22.1 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.
- 22.2 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.

23. Trusts

- 23.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Olectric may have notice of the Trust, the Customer covenants with Olectric as follows:
 - (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Customer will not without consent in writing of Olectric (Olectric will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

24. General

- 24.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, arbitration in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 24.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.3 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in New South Wales, which Olectric has its principal place of business, and are subject to the jurisdiction of the courts in Sydney, New South Wales.
- 24.4 Subject to clause 16, Olectric shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Olectric of these terms and conditions (alternatively Olectric's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 24.5 Olectric may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 24.6 The Customer cannot licence or assign without the written approval of Olectric.
- 24.7 Olectric may elect to subcontract out any part of the Services 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 Olectric's sub-contractors without the authority of Olectric.
- 24.8 The Customer agrees that Olectric 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 Olectric to provide Goods to the Customer.
- 24.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc., ("Force Majeure") or other event beyond the reasonable control of either party.
- 24.10 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.