Terms and Conditions These Terms and Conditions will apply to all Products and/or Services provided by Cobolt Electrical and Earthmoving to the Customer and will apply notwithstanding any other terms proposed by the Customer. 1. DEFINITIONS AND INTERPRETATION 1.1. In this Contract: Confidential Information means the confidential and commercially sensitive information of the disclosing party but does not include information which is in, or comes into, the public domain; Contract means the Quote, Job Card and these Terms and Conditions as defined in clause 2; Customer means the person or entity specified in the Quote or Job Card; Deposit means the amount of 50% of the Price or otherwise stated in the Quote or Job Card, if required; Force Majeure means any acts of God, riots, civil disturbances, strikes, orders, decisions or measures of governmental authorities of whatever nature or denomination, or any other event which is unpredictable, insurmountable and outside the control of the parties; GST has the meaning given in the GST Act; GST Act means A New Tax System (Goods and Services Tax) Act 1999 and any regulations or amendments; CEE means Cobolt Electrical and Earthmoving A.B.N 64 658 091 249 and its agents, employees or contractors; Order means the order placed the Customer for the Products and/or Services; Premises means the premises or building at the work address specified in the Quote for the Products and/or Services to be provided to; Price means the total amount due specified in the Quote; Products means any goods, materials or items supplied by CEE as specified in the Quote; Quote means the quote issued by CEE for the Products and/or Services; Quote Period means from the date of the Quote up to 30 days from the date of the Quote; Services means the services specified in the Quote; Standard Business Hours means the standard business hours of CEE, being weekdays from Monday to Friday, 7am to 5pm; Taxable Supply has the meaning given in the GST Act; Tax Invoice means the tax invoice issued by CEE for the supply of the Products and/or Services; Unit Price means the Unit Price specified in the Quote; Warranty Period means 6 months from the date that the Customer accepted the Products and/or Services; 2. QUOTATION AND AGREEMENT 2.1. CEE may provide the Quote in accordance with these Terms and Conditions at the request by the Customer. 2.2. The Quote is valid for the Quote Period and will expire after upon expiry of the Quote Period. 2.3. CEE reserves the right to withdraw, amend or revise the Quote after the expiry of the Quote Period. 2.4. The Price specified in the Quote is based upon: 2.4.1. the existing wiring at the Premises satisfies and meets current industry standards, including Residual Current Device (‘RCD’) and RCD protection, unless otherwise stated in the Quote; 2.4.2. all Products and/or Services being provided by CEE in one visit to the Premises, unless otherwise stated in the Quote; 2.4.3. the use of emergency generator by CEE in providing the Products and/or Services not being required or provided, unless otherwise stated in the Quote; 2.4.4. information provided by the Customer to CEE being accurate; 2.4.5. all Products and/or Services being provided by CEE during Standard Business Hours. 2.5. The Customer may place the Order in accordance with these Terms and Conditions and CEE may accept the Order. 2.6. A Contract is entered into between the Customer and CEE when: 2.6.1. CEE accepts the Order for the Products and/or Services; and 2.6.2. the Customer pays the Deposit to CEE, required by CEE, in accordance with the Quote, Order and these Terms and Conditions. 3. PRODUCTS AND SERVICES 3.1. All descriptions, documents and illustrations given to the Customer by CEE are a general guide of the Products and Services only and are not representations, warranties, terms or conditions of this Contract and do not form part of this Contract. 3.2. CEE reserves the right to: 3.2.1. amend the specifications of the Products and/or Services without notice to the Customer and without affecting this Contract. CEE will notify the Customer as soon as possible of the amended specifications and changes to the Price, if any; 3.2.2. amend the Price if, during CEE providing the Products and/or Services, CEE becomes aware of underground rocks or any other unforeseen issues that require substantially more time, Products and/or Services to be provided by CEE. CEE will notify the Customer as soon as possible of the changes or amendments to the Price, if any; 3.2.3. engage the services or assistance of a sub-contractor to provide the Products and/or Services; 3.3. CEE will provide the Products and/or Services: 3.3.1. in a timely, workmanlike manner with due care and skill; 3.3.2. during the Standard Business Hours, unless otherwise stated in the Quote or agreed with the Customer. 3.4. The Customer must: 3.4.1. allow CEE access to the Premises to provide the Products and/or Services and ensure that the Premises are secure, clean, orderly, safe and fit for the Products and/or Services to be provided; 3.4.2. provide adequate power, water and other utilities; 3.4.3. inform CEE of any specific safety procedures or regulations required and any danger at the Premises; and 3.4.4. inform CEE of the position of service pipes, wiring and plumbing. 4. PRICE 4.1. In consideration of the Products and/or Services, the Customer must pay to CEE the Price in accordance with this Contract. 4.2. All amounts payable under this Contract, including the Unit Price, are expressed as exclusive of GST. If GST is payable in relation to a Taxable Supply, the amount payable for the Taxable Supply by the Customer is the amount for that Taxable Supply specified in the Quote or this Contract plus GST. 4.3. If CEE is liable to pay any taxes, levies, duties or tariffs for the Products and/or Services, the Customer must pay CEE the amount that CEE is liable to pay. 4.4. CEE reserves the right to review and amend its pricing at any time. 4.5. The Customer authorises CEE to set-off without notice any amount received from the Customer or held by CEE on behalf of the Customer against any amount owing by the Customer to CEE. 5. PAYMENT 5.1. The Customer agrees to pay CEE the amount specified in the Tax Invoice within 7 days of the date of the Tax Invoice, without set-off or deduction. 5.2. All invoices must be paid in cash or electronically transferred to CEE’s bank account as specified on the Tax Invoice. 5.3. If the Customer fails to pay any amount to CEE when it is due: 5.3.1. CEE is entitled to: 5.3.1.1. charge interest on any amounts unpaid and overdue at a rate of 1.5% per month; 5.3.1.2. suspend delivery of the Products and/or Services; 5.3.1.3. terminate the Contract; 5.3.1.4. demand payment for Products and/or Services already provided by CEE; 5.3.2. the Customer will pay interest if CEE, in its discretion pursuant to clause 5.3.1.1, charges interest. 5.4. CEE may provide credit facilities to the Customer for payment of the Tax Invoice. The terms of the credit facilities are: 5.4.1. CEE may withdraw the credit facilities at any time prior to the delivery of the Products and/or Services; 5.4.2. the terms of the credit facilities will be advised to the Customer by CEE at the time that CEE advises that credit facilities are being provided. 6. TITLE AND RISK 6.1. Property and title to the Products will not pass to the Customer until the date that the Customer makes payment in full for the Products and/or Services. 6.2. If the Customer fails to make payment in full for the Products and/or Services, CEE may require the Customer to return the Products to it upon demand and the Customer authorises CEE to enter the premises where the Products are stored to inspect the Products or retake possession of the Products at any time. 6.3. The Customer must not damage, deface or dispose of the Products until title has passed to the Customer. 6.4. The Products are at the sole risk of the Customer as soon as they are dispatched to the Customer or delivered in accordance with this clause. 6.5. Despite clause 6.2, CEE is entitled to maintain an action against the Customer for the amount of the Tax Invoice for the Products and/or Services. 7. PERSONAL PROPERTY SECURITIES ACT 2009 (‘PPSA’) 7.1. The Customer agrees and undertakes to do anything CEE requires (such as obtaining consents and signing and producing documents) in connection with the registration of the Contract or any other documents on any register established pursuant to the PPSA. In the event the Customer neglects or fails to deliver such document(s) to CEE, the Customer appoints CEE to be its lawful attorney for the purpose of signing and registering such document(s). 7.2. The Customer agrees and acknowledges that this Contract constitutes a security agreement for the purposes of the PPSA and that a security interest exists in all Products (and their proceeds) previously supplied by CEE to the Customer (if any) and in in all future Products (and their proceeds); 7.3. The Customer irrevocably grants to CEE the right to enter upon its property or premises, without notice, and without being in any way liable to the Customer or to any third party, if CEE has cause to exercise any of CEE’s rights under section 123 and/or 128 of the PPSA, and the Customer agrees to indemnify CEE from any claims made by any third party as a result of CEE exercising such rights 8. ACCEPTANCE OF PRODUCTS AND/OR SERVICES 8.1. The Customer will be deemed to accept the Products and/or Services upon: 8.1.1. delivery of the Products to the Premises; and 8.1.2. 14 days after completion of the Services by CEE, unless otherwise agreed. 8.2. If the Customer finds any of the Products and/or Services to be defective, the Customer may, within 14 days after delivery of the Products or 14 days after completion of the Services, and acting reasonably: 8.2.1. reject the defective Products and/or Services by notifying CEE in writing and setting out the reasons for rejection; and/or 8.2.2. request CEE to make good the defective Products and/or Services at no additional charge to the Customer. 9. WARRANTIES 9.1. The Customer acknowledges that: 9.1.1. it has satisfied itself that the Products and/or Services are suitable for the Customer’s purpose; 9.1.2. it has not relied upon any warranty or representation from CEE in relation to clause 9.1.1. 9.2. In entering into this Contract, the Customer warrants: 9.2.1. It has obtained all necessary approvals for the acceptance of the Products and/or Services; 9.2.2. It has complied with every applicable legal and regulatory requirement of any government or other relevant authority in the Premises; and 9.2.3. that all necessary licences or permits required in connection with this Contract have been lawfully obtained. 9.3. Except as set out expressly in this Contract and to the extent permitted by law, CEE does not give and is not bound by or subject to any condition, term, warrant, representation or obligation in connection with this Contract whether such condition, term, warranty, representation or obligation is implied by any statute, law, custom, trade usage or otherwise. 9.4. CEE will perform the Services with due care and skill. 9.5. The warranties provided under this clause will not be honoured where: 9.5.1. the Customer fails to notify CEE in accordance with clause 8.2; 9.5.2. the defect in material or fault in the manufacture of the Products is not notified to CEE in writing within the Warranty Period; 9.5.3. the Products are used, other than for the purpose stated in this Contract; 9.5.4. the Products are altered or modified without CEE’s prior approval; 9.5.5. the Products are serviced by persons other than CEE; 9.5.6. the claim relates to consumable items, such as batteries, fuel, seals, screws and other like natured items. 9.6. These warranties are in addition to other rights and remedies available to the Customer at law, including the Australian Consumer Law. 10. REPAIRS 10.1. The Customer must notify CEE in writing of all Product returns. 10.2. For claims made by the Customer within the Warranty Period, CEE will, at CEE’s discretion: 10.2.1. replace, repair or resupply the Product; or 10.2.2. pay the cost of replacing, repairing or resupplying the Product; or 10.2.3. resupply the Services. 10.3. For claims made by the Customer after the Warranty Period has expired, CEE will provide a Quote to the Customer to repair or replace the Product and/or Services. 10.4. All costs associated with the delivery of Products and/or Services under this clause will be the responsibility of: 10.4.1. CEE if the Product is returned during the Warranty Period; 10.4.2. Customer if the Product and/or Services are returned after the Warranty Period has expired. 11. LIABILITY AND INDEMNITY 11.1. Notwithstanding any other clause of this Contract, to the extent permitted by law, CEE’s liability: 11.1.1. is limited at CEE’s option to one of the following: 11.1.1.1. replacement, repair or resupply of the Products and/or Services; 11.1.1.2. cost of replacing, repairing or resupplying the Products and/or Services; 11.1.2. will not exceed the Price and the Customer shall to the fullest extent permitted by law, save, indemnify, defence and hold harmless CEE from any claim or liability exceeding the Price, regardless of the cause. 11.2. CEE is not responsible to the Customer or any other party for any loss of revenue, profit, anticipated revenue, anticipated profit, business opportunity, reputation, goodwill, whether direct or indirect, consequential or inconsequential injury, loss or damage whatsoever by reason of any delay in delivery, deterioration, deficiency or other fault or harm in the Products and/or Services and whether or not due to the negligence of CEE. 11.3. The Customer saves, indemnifies, defends and holds harmless CEE against all claims, losses, liabilities, legal costs (on a full indemnity basis) and other costs and expenses incurred by CEE arising directly or indirectly as a result of or in connection with: 11.3.1. a breach or non-performance of any of the obligations or warranties of the Customer under this Contract, whether express or implied; 11.3.2. any personal injury or death to any person or damage to property caused or contributed to by the performance of this Contract by CEE and/or the entry onto and the Services undertaken on the Premises. 11.4. To the extent permitted by law, the rights and remedies in this Contract are the sole and exclusive rights and remedies available to the Customer in connection with this Contract and the supply or failure to supply the Products and/or Services. 12. PRIVACY AND CONFIDENTIALITY 12.1. Subject to any applicable privacy legislation, CEE may give a credit reporting agency personal information of the Customer. 12.2. The Customer consents to and authorises CEE to: 12.2.1. obtain information about the Customer’s credit worthiness from its bank or any trade reference and/or any other credit provider and or credit reporting agency; and 12.2.2. give a credit reporting agency information about the Customer’s credit. 12.3. Each party will otherwise keep Confidential Information it receives under this Contract confidential. 13. TERMINATION OF CONTRACT 13.1. CEE may terminate this Contract: 13.1.1. immediately on written notice if the Customer is in default of this Contract and the default is not remedied within 14 days of receiving written notice to remedy the default; 13.1.2. immediately on written notice if the Customer becomes bankrupt, is ordered to wind up, passes into liquidation or administration or has a receiver, manager or administrator appointed; or 13.1.3. for any reason in its absolute discretion upon giving 14 days written notice to the Customer. 13.2. If this Contract is terminated, the Customer must pay to CEE all amounts owing to CEE up to the date of termination of this Contract, including reasonable costs incurred by CEE as a result of the termination of this Contract (including third party cancellation fees and administrative costs). 13.3. The Customer may terminate this Contract or cancel all or part of the Order before the Products and/or Services have been provided by CEE and with the written consent of CEE. 13.4. If this Contract is terminated or the Order is cancelled before the Products and/or Services have been provided by CEE, the Customer must pay to the CEE all costs incurred by CEE as a result of the termination of this Contract or cancellation of the Order, including any third party costs incurred by CEE in relation to this Contract. 13.5. If this Contract is terminated or the Order is cancelled after the Products and/or Services have been provided by CEE, the Customer must pay to CEE the Price unless otherwise agreed by CEE in writing. 14. FORCE MAJEURE 14.1. If CEE is prevented, hindered or delayed in providing the Products and/or Services under this Contract as a direct result of a Force Majeure, CEE will not be in breach or default of this Contract for the duration of the Force Majeure. 14.2. If a Force Majeure takes effect, CEE and the Customer will use their best efforts to remedy the situation to the extent possible. 14.3. CEE will be entitled to deliver, and the Customer must take and pay for the part of the Products and/or Services as can be delivered, while the Force Majeure event exists. 15. GOVERNING LAW AND JURISDICTION 15.1. This Contract is governed by and construed by the laws of Queensland, Australia. 15.2. The parties submit to the non-exclusive jurisdiction of the courts of Queensland, Australia. 16. GENERAL 16.1. The Customer must not assign its rights, duties and obligations under this Contract without CEE’s written consent. 16.2. CEE may sub-contract the Services, assign this Contract or assign any of CEE’s rights or obligations under this Contract to a third party. 16.3. This Contract contains the entire understanding between the parties concerning the subject matter of this Contract and supersedes all prior communications. 16.4. The failure of either party to enforce any provisions of this Contract will not waive the right of that party thereafter to enforce any such provisions. 16.5. All notices and consents relating to this Contract must be in writing. 16.6. All amendments or variations to this Contract, the Order or the Quote must be in writing and signed by CEE and the Customer, except as specified above. 16.7. If any term of the Contract is held by a court to be illegal, invalid or unenforceable for any reason, that term will be severed from this Contract and the remaining terms and conditions will continue to remain in force and be unaffected