

1. Definitions

- 1.1 “Optilink” shall mean Scott Wells Electrical Pty Ltd T/A Optilink Electrical & Communications its successors and assigns or any person acting on behalf of and with the authority of Scott Wells Electrical Pty Ltd T/A Optilink Electrical & Communications.
- 1.2 “Client” shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by Optilink to the Client.
- 1.3 “Guarantor” means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 “Goods” shall mean Goods supplied by Optilink to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Optilink to the Client.
- 1.5 “Equipment” shall mean all Equipment including any accessories supplied on hire by Optilink to the Client (and where the context so permits shall include any supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Optilink to the Client.
- 1.6 “Services” shall mean all Services supplied by Optilink to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.7 “Price” shall mean the Price payable for the Goods as agreed between Optilink and the Client in accordance with clause 4 of this contract.

2. The Commonwealth Trade Practices Act 1974 (“TPA”) and Fair Trading Acts (“FTA”)

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

3. Acceptance

- 3.1 Any instructions received by Optilink from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by Optilink shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of Optilink.
- 3.4 The Client shall give Optilink not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by Optilink as a result of the Client's failure to comply with this clause.
- 3.5 Goods are supplied by Optilink only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

4. Price and Payment

- 4.1 At Optilink's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by Optilink to the Client in respect of Goods supplied; or
 - (b) Optilink's current price at the date of delivery of the Goods according to Optilink's current Price list; or
 - (c) Optilink's quoted Price (subject to clause 4.2) which shall be binding upon Optilink provided that the Client shall accept Optilink's quotation in writing within thirty (30) days.
- 4.2 Optilink reserves the right to change the Price in the event of a variation to Optilink's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, for overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges, additional works required due to hidden or unidentifiable difficulties beyond the control of Optilink or as a result of increases to Optilink in the cost of materials and labour) will be charged for on the basis of Optilink's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At Optilink's sole discretion a non-refundable deposit may be required.
- 4.4 At Optilink's sole discretion:
 - (a) payment shall be due on delivery of the Goods; or
 - (b) payment shall be due before delivery of the Goods; or
 - (c) payment for approved Clients shall be made by instalments in accordance with Optilink's payment schedule; or
 - (d) payment for approved Clients shall be due thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices.
- 4.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.6 Optilink may submit a detailed payment claim at intervals not less than either weekly or fortnightly for Services performed as agreed at the time of quotation between Optilink and the Client up to the end of the agreed cycle period. The value of Services so performed shall include the reasonable value of authorised variations and the value of materials delivered to the site but not yet installed.

- 4.7 If any part of an invoice is in dispute then the Client shall notify Optilink in writing within three (3) business days once in receipt of the invoice, then the Client may only withhold payment for that part of the invoice that is in dispute and shall pay the balance of the invoice when due.
- 4.8 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and Optilink.
- 4.9 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Delivery of Goods

- 5.1 At Optilink's sole discretion delivery of the Goods shall take place when the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by Optilink or Optilink's nominated carrier).
- 5.2 At Optilink's sole discretion the costs of delivery are:
(a) included in the Price; or
(b) for the Client's account.
- 5.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Optilink shall be entitled to charge a reasonable fee for redelivery.
- 5.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.5 The failure of Optilink to deliver shall not entitle either party to treat this contract as repudiated.
- 5.6 Optilink shall not be liable for any loss or damage whatsoever due to failure by Optilink to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of Optilink.

6. Equipment Hire

- 6.1 The Equipment shall at all times remain the property of Optilink and is returnable on demand by Optilink. In the event that the Equipment is not returned to Optilink in the condition in which it was delivered Optilink retains the right to charge the Price of repair or replacement of the Equipment.
- 6.2 The Client shall;
(a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.
(b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
(c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by Optilink to the Client.
- 6.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, Optilink's interest in the Equipment and agrees to indemnify Optilink against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

7. Risk

- 7.1 If Optilink retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Optilink is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Optilink is sufficient evidence of Optilink's rights to receive the insurance proceeds without the need for any person dealing with Optilink to make further enquiries.
- 7.3 The Client acknowledges that in the event asbestos or any other toxic substances are discovered at the Worksite that it is their responsibility to ensure the safe removal of the same. The Client further agrees to indemnify Optilink against any costs incurred by Optilink as a consequence of such discovery. Under no circumstances will Optilink handle removal of asbestos product.
- 7.4 The Client accepts and acknowledges that the Electrician shall not be accept any responsibility for any damage that may arise during the installation of light switches and/or power sockets in the event that any third party contractor employed by the Client has removed any or all reference to the positioning of light switches and/or power sockets by either gibbing or plastering the designated area. The Client accepts that installation of light switches and/or power sockets will then be at the sole discretion of the Electrician. If the Client believes that they have any claim in relation to Services undertaken by that third party then said claim must be made against the third party contractor in the first instance.
- 7.5 Optilink is not responsible for the removal of rubbish from or clean-up of the building/constructions site/s. This is the responsibility of the Client or the Client's agent.

8. Access

- 8.1 The Client shall ensure that Optilink has clear and free access to the work site at all times to enable them to undertake the Services. Optilink shall not be liable for any loss or damage to the site (including, without limitation,

damage to ceiling tiles and panels, face brickwork and rendered masonry services) which Optilink may have to break into or disturb in performance of the Works), unless due to the negligence of Optilink.

9. Underground Locations

- 9.1 Prior to Optilink commencing any work the Client must advise Optilink of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client 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.
- 9.2 Whilst Optilink will take all care to avoid damage to any underground services the Client agrees to indemnify Optilink 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 9.1.

10. Title

- 10.1 Optilink and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Optilink all amounts owing for the particular Goods; and
 - (b) the Client has met all other obligations due by the Client to Optilink in respect of all contracts between Optilink and the Client.
- 10.2 Receipt by Optilink 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 and until then Optilink's ownership or rights in respect of the Goods shall continue.
- 10.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until Optilink shall have received payment and all other obligations of the Client are met; and
 - (b) until such time as ownership of the Goods shall pass from Optilink to the Client Optilink may give notice in writing to the Client to return the Goods or any of them to Optilink. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
 - (c) Optilink shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - (d) if the Client fails to return the Goods to Optilink then Optilink or Optilink's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
 - (e) the Client is only a bailee of the Goods and until such time as Optilink has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to Optilink for the Goods, on trust for Optilink; and
 - (f) the Client shall not deal with the money of Optilink in any way which may be adverse to Optilink; and
 - (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Optilink; and
 - (h) Optilink can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
 - (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that Optilink will be the owner of the end products.

11. Defects

- 11.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify Optilink of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Optilink an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Optilink has agreed in writing that the Client is entitled to reject, Optilink's liability is limited to either (at Optilink's discretion) replacing the Goods or repairing the Goods except where the Client has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (CWth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.

12. Returns

- 12.1 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 11.1; and
 - (b) Optilink has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Client's cost within seven (7) days of the delivery date; and
 - (d) Optilink will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 12.2 Optilink will not accept the return of Goods for credit.
- 12.3 Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.

13. Warranty

- 13.1 Subject to the conditions of warranty set out in clause 13.2 Optilink warrants that if any defect in any workmanship of Optilink becomes apparent and is reported to Optilink within twelve (12) months of the date of delivery (time being of the essence) then Optilink will either (at Optilink's sole discretion) replace or remedy the workmanship.
- 13.2 The conditions applicable to the warranty given by clause 13.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Goods; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by Optilink; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and Optilink shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Optilink's consent.
 - (c) in respect of all claims Optilink shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 13.3 For Goods not manufactured by Optilink, the warranty shall be the current warranty provided by the manufacturer of the Goods. Optilink shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

14. Intellectual Property

- 14.1 Where Optilink has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in Optilink, and shall only be used by the Client at Optilink's discretion.
- 14.2 The Client warrants that all designs or instructions to Optilink will not cause Optilink to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Optilink against any action taken by a third party against Optilink in respect of any such infringement.
- 14.3 The Client hereby authorises Optilink to utilise images of the Goods designed or drawn by Optilink in advertising, marketing, or competition material by Optilink.

15. Default and Consequences of Default

- 15.1 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 Optilink's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by Optilink.
- 15.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify Optilink from and against all costs and disbursements incurred by Optilink in pursuing the debt including legal costs on a solicitor and own client basis and Optilink's collection agency costs.
- 15.4 Without prejudice to any other remedies Optilink may have, if at any time the Client is in breach of any obligation (including those relating to payment) Optilink may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. Optilink will not be liable to the Client for any loss or damage the Client suffers because Optilink has exercised its rights under this clause.
- 15.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of one hundred and fifty dollars (\$150.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 15.6 Without prejudice to Optilink's other remedies at law Optilink shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Optilink shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Optilink becomes overdue, or in Optilink's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

16. Security and Charge

- 16.1 Despite anything to the contrary contained herein or any other rights which Optilink may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Optilink or Optilink's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that Optilink (or Optilink's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

- (b) should Optilink elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify Optilink from and against all Optilink's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Optilink or Optilink's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 16.1.

17. Compliance with Laws

- 17.1 The Client and Optilink 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.
- 17.2 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 2002. All of the cabling work will comply with the Australian and New Zealand Wiring rules AS/NZS 3008 and AS/NZS 3000:2007.
- 17.3 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the works.
- 17.4 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

18. Dispute Resolution

- 18.1 If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within 14 days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
 - (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

19. Cancellation

- 19.1 Optilink 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 Client. On giving such notice Optilink shall repay to the Client any sums paid in respect of the Price. Optilink shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by Optilink (including, but not limited to, any loss of profits) up to the time of cancellation.
- 19.3 Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will definitely not be accepted, once production has commenced.

20. Privacy Act 1988

- 20.1 The Client and/or the Guarantor/s agree for Optilink to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by Optilink.
- 20.2 The Client and/or the Guarantor/s agree that Optilink may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Client and/or Guarantor/s.
- 20.3 The Client consents to Optilink being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 20.4 The Client agrees that personal credit information provided may be used and retained by Optilink for the following purposes and for other purposes as shall be agreed between the Client and Optilink or required by law from time to time:
 - (a) provision of Goods; and/or
 - (b) marketing of Goods by Optilink, its agents or distributors in relation to the Goods; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 20.5 Optilink may give information about the Client to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Client; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

21. Building and Construction Industry Security of Payments Act 1999

- 21.1 At Optilink's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 21.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

22. General

- 22.1 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.
- 22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 22.3 Optilink shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Optilink of these terms and conditions.
- 22.4 In the event of any breach of this contract by Optilink the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 22.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Optilink nor to withhold payment of any invoice because part of that invoice is in dispute.
- 22.6 Optilink may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 22.7 The Client agrees that Optilink may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Optilink notifies the Client of such change.
- 22.8 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.
- 22.9 The failure by Optilink to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Optilink's right to subsequently enforce that provision.