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TERMS AND CONDITIONS

1. Definitions

In these terms:

"Arrow" means Baode Holdings Pty Limited trading as Arrow Electrical Services or a related entity or entities.

"Goods" means Goods provided by Arrow to You as requested from time to time, and includes parts and equipment

"Services" means Services provided by Arrow to You as requested from time to time, and includes labour and workmanship

"You" means any person or entity at whose request or on whose behalf Arrow provides Goods and/or Services and includes bodies corporate.

2. Governing Terms

These terms:

- (a) govern the provision of Goods and/or Services to You by Arrow;
- (b) may be altered at any time by Arrow by providing notice to You in writing; and
- (c) apply to the exclusion of any other terms contained in any other document unless otherwise agreed in writing between Arrow and You.

3. Purchase Orders

- 3.1 You must submit to Arrow a written Purchase Order for the Goods and/or Services to be supplied.
- 3.2 Purchase Orders are to be provided to Arrow by facsimile transmission, electronic mail or in person.
- 3.3 All Purchase Orders are subject to the availability of stock.
- 3.4 Work will not commence until a Purchase Order is received.
- 3.5 On receipt of your Purchase Order You will be advised of the estimated delivery date. Any subsequent changes to the estimated delivery date will be notified to You by Arrow.

3.6 Arrow reserves the right to refuse orders whether in whole or in part at its absolute discretion.

4. Quotations

- 4.1 Quotations are valid for 30 days from the date appearing on the quotation.
- 4.2 Prices quoted for Goods and/or Services may change due to fluctuations in exchange rates, import duties, surcharges, levies, raw material and/or component costs, labour costs and finished good prices.
- 4.3 Any price differences caused by the fluctuations referred to in 4.2 will be passed on to You. As far as possible, Arrow will notify You of any price change in advance.

5. Progress Payments

- 5.1 In certain circumstances Arrow may require You to make progress payments.
- 5.2 At the time Arrow provides You with a quotation Arrow will include on the quotation (if appropriate) the defined events or times at which a progress payment will arise and the amount of such payment.
- 5.3 By submitting a Purchase Order You are deemed to be accepting the quotation in full including the obligation to make progress payments as specified.

6. Supply of Labour

- 6.1 Where Arrow supplies labour You will pay Arrow for such labour at an agreed hourly rate.
- 6.2 The agreed hourly rate applies to work performed between 7.30 am and 4.00 p m ("normal time working hours").
- 6.3 Where You require work to be undertaken outside normal time working hours You will pay Arrow an amount calculated in accordance with clause 26 of the Electrical, Electronic & Communications Contracting Award 2010.
- 6.4 You are required to provide to the labour hired all employee entitlements specified in

clause 27 of the Electrical, Electronic & Communications Contracting Award 2010.

- 6.5 Should You require labour hire such that a worker does not have at least ten consecutive hours off work between the termination of ordinary work on one day and the commencement of ordinary work on the next day then you must pay to Arrow twice the agreed hourly rate for each hour from the time ordinary work has commenced until ten hours has elapsed from the termination of ordinary work the previous day.

7. Variation and Cancellation

- 7.1 Any variation, alteration or modification required by You to the scope of work specified in a Quotation or Purchase Order must be advised in writing and signed by You or your legally authorised representative.
- 7.2 In circumstances where variations are required due to obstructions or conditions which cannot be foreseen by Arrow, including but not limited to omissions by You or your representative to confirm start date for the supply of Goods or provision of Services and/or the failure by You to provide the access required by Arrow to perform the Services, and any delays relating to the requirements of Government or other relevant statutory authorities, Arrow will be entitled to a reasonable extension of time to supply the Goods and/or provide the Services.
- 7.3 In circumstances where a variation under clause 7.1 or 7.2 causes additional costs to Arrow for any reason whatsoever, You will place an additional Purchase Order for those additional costs.
- 7.4 No order may be cancelled by You without Arrow's consent in writing and can only be cancelled on terms which indemnify Arrow against all losses that may arise from the cancellation.

8. Delivery, Receipt and Returns

- 8.1 Arrow will endeavour to provide the Goods and/or Services requested in a timely manner.
- 8.2 You must verify the quality and quantity of Goods on delivery and if any are faulty, defective or damaged You must notify Arrow in writing within 48 hours of receipt. Otherwise You will be deemed to have accepted the Goods.
- 8.3 Arrow is under no duty to accept returns of Goods and will do so at its absolute discretion and/or as agreed in writing on a case by case basis.
- 8.4 Arrow will only accept returns of Goods in their original condition and packaging, or otherwise untampered with, and accompanied by a Tax Invoice.

9. Payment

- 9.1 Tax Invoices will be issued to You for the amount quoted and/or varied from time to time or an amount calculated on the basis of the value of the Goods and/or the Services or work performed by Arrow.
- 9.2 You will make payment for the Goods and Services provided by Arrow 30 days from end of month.
- 9.3 Arrow may at its absolute discretion accept a request made by you for credit account facilities. Any application for credit will require the provision by you to Arrow of certain information and undertakings for consideration.
- 9.4 You will pay Arrow any GST payable for the provision of the Goods and Services.
- 9.5 Payment must be made by cash or cheque or direct deposit into Arrow's account.
- 9.6 Arrow reserves the right to charge interest on overdue amounts at the current interest rate for overdrafts of \$100,000.00 or more charged by the Australia & New Zealand Banking Group Limited plus 2%, calculated daily from the due date to the date of payment.
- 9.7 You are responsible for all duties, taxes and clearance charges that may be payable for the Goods ordered, supplied and delivered.
- 9.8 Arrow may, at its absolute discretion, require full payment of any and all monies outstanding prior to processing or delivering any further Purchase Orders for Goods and/or Services.

10. Title and Risk

- 10.1 Title to all Goods supplied and delivered to You shall remain with Arrow until, at Arrow's election:
- (a) payment in full for the Goods is received by Arrow from You; or
 - (b) all outstanding debts owed by You to Arrow, including part paid debts and secured debts, are paid.
- 10.2 You must:
- (a) store any Goods which have not been paid for separately;
 - (b) keep separate records in relation to the proceeds of the sale of any Goods which have not been paid for, bank the proceeds of any such sale into a separate account and immediately remit such funds to the credit of Arrow; and
 - (c) if any Goods are used in a manufacturing process or mixed with other materials, You must record the value of Goods so consumed in relation to each unit of finished product and upon sale

of any unit of finished product immediately remit that amount from the proceeds of sale to Arrow.

10.3 If You do not pay for any Goods within the due date Arrow is irrevocably authorised by You to enter your premises (or any premises under your control or as your agent if the Goods are stored at such premises) and use reasonable force to take possession of the Goods without liability for the tort of trespass, negligence or payment of any compensation to You or anyone claiming through You whatsoever.

10.4 Pending payment in full for the Goods, You:

- (a) must not supply any of the Goods to any person outside of your ordinary or usual course of business;
- (b) must not allow any person to have or acquire any security interest in the Goods;
- (c) must insure the Goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where You carry on business; and
- (d) must not remove, deface or obliterate any identifying plate, mark or number on any of the Goods.

10.5 Risk in the Goods passed to You upon the earlier of:

- (a) actual or constructive delivery of the Goods to the You; and
- (b) collection of the Goods from Arrow or any bailee or agent of Arrow by You or your Agent, carrier or courier (even in circumstances where freight or carriers are arranged or engaged by Arrow on your behalf for your convenience).

10.6 You will arrange any and all insurance required by You or by the freighter or carrier engaged for the delivery of Goods, as necessary and at Your expense.

10.7 Arrow accepts no liability for unloading.

11. Data and Intellectual Property

11.1 Arrow will notify You if it becomes aware of any errors, inaccuracies, inconsistencies or ambiguities in data provided by You for the purpose of the provision of Services, but has no liability to

verify or otherwise assess the accuracy of any of the data provided.

11.2 You will promptly notify Arrow if You become aware of any inaccuracy or error in the data created by Arrow or in the interpretation of data used in the provision of the Services by Arrow.

11.3 If Arrow is required to submit to You for your consideration or approval copies of specifications and/or drawings, one copy only will be submitted. You are required to approve any such specifications and/or drawings within a period of 14 days from the date of submission, failing which they will deem to have been approved upon expiry of such period.

11.4 Arrow will provide You with:

- (a) one copy of dimensional drawings prepared by or on behalf of Arrow in relation to the Services required by You;
- (b) one copy of dimensional drawings for all other items, for installation purposes.
- (c) one set of applicable instructions for the routine operation and maintenance of the Goods and/or Services and/or equipment;
- (d) one copy certification for each item of Goods and/or Service/s in accordance with any applicable statutory requirements;
- (e) one set of PLC or HMI Code (as appropriate) on the appropriate medium, as determined by Arrow at its absolute discretion, sufficient for the operation of the equipment or Service provided to You;

11.5 additional copies of the items referred to in 11.4(a) to (e) may be requested and will be provided to You at an agreed price subject to availability in circumstances where components are not manufactured by Arrow.

11.6 The specifications, drawings and design of Goods and/or Services (being intellectual property, including but not limited to, copyright, design right, circuit layout or other rights) remain the property of Arrow.

11.7 In no circumstances will Arrow provide You with drawings or source or object codes for software and You acknowledge Arrow holds the exclusive intellectual property rights to those drawings and/or codes.

12. Confidentiality of Designs and Specifications

12.1 All information, documents, photographs, brochures, designs, specifications and drawings prepared and developed by Arrow for You remain the property of Arrow and are confidential.

12.2 All of the information in clause 12.1 is subject to copyright protection and is provided to You for a limited purpose. It must be returned to Arrow upon request.

12.3 None of the information or items in clause 12.1 may be copied, exhibited, furnished or communicated directly or indirectly to any other person or entity in any manner without the express prior written consent of Arrow.

13. Liability and Indemnity

13.1 You indemnify Arrow against any and all claims, damages, liabilities, costs, losses and/or expenses of any kind whatsoever arising directly or indirectly arising out of or in connection with:

- (a) Arrow having acted upon or carried out Services or the provision of Goods in accordance with your instructions or those of your agents, servants or representatives;
- (b) the breakdown of any Goods manufactured and/or supplied by Arrow;
- (c) the operation of any Goods or Services provided by Arrow other than in compliance with the operating instructions supplied with the Goods by Arrow;
- (d) any breach by You of these terms; and
- (e) any injury to or death of any person, arising from the performance of your obligations or the exercise of your rights under these terms, including the use of any Goods.

13.2 This indemnity survives termination of this Agreement by either party for any reason.

14. Warranty

14.1 Arrow warrants that its Goods and/or Services are fit for purpose and are of merchantable quality.

14.2 Arrow warrants that its Goods are free from material defects for 12 months from the date of purchase.

14.3 There is a 90 day defects liability period on Services which commences from the date on which Services are completed, being the date appearing on Arrow's delivery docket, not the date of collection by you.

14.4 Warranty on third party manufactured Goods and/or Services supplied by Arrow is in accordance with the respective manufacturer's warranty on those Goods and/or Services. Any associated labour costs are your responsibility and You release Arrow from any and all liability regarding such Goods and/or Services.

14.5 You are liable to repair and/or replace any second hand parts used or placed upon any equipment or Goods provided to You

by Arrow at your request, unless otherwise agreed in writing.

15 Defective Goods or Services

15.1 Any Goods or Services supplied to you by Arrow which have you intend to reject must be brought to our attention, by written notice within 14 days of supply. Your written notice must state the date of the supply, the Goods and or Services being rejected and the reasons for the rejection (the 'Rejection Notice'), otherwise we will not be obliged to accept the notice of rejection

15.2 Any goods which have been rejected by you MUST be returned as soon as practicable to Arrow for our assessment and NOT to any THIRD PARTY without our prior written authorisation.

15.3 The cost of returning any defective Goods to us shall be borne by solely you.

15.4 Within 14 days of the Rejection Notice we will elect to do one or more of the following at our absolute discretion, which for the avoidance of doubt, will be your sole remedy in respect of such breach:

- (a) in the case of Goods, we may either replace the Goods, or supply equivalent Goods, or repair the Goods, or refund the invoiced price of the Goods to you; or
- (b) in the case of Services, we may either supply to you again of the Services or refund to you of the cost equal to the Services supplied again by us.
- (c) deny your Rejection Notice. Thereafter the matter must be mediated between the parties. The invoice issued by Arrow to you must be paid notwithstanding

15.5 All claims with respect to any breach of contract, these terms or Warranty in clause 14 or 15 must be made by you to us in writing within the warranty periods stated in clauses 14.2 and 14.3. You agree that otherwise we will not be liable for any defect, breach or non-conformance.

15.6 The repair of Goods on Site is at our discretion.

16 Lien

16.1 If you have delivered your any plant or equipment or Goods to us for repair, maintenance, service, refurbishment or other works, you hereby acknowledge that we have a general law lien over all property in our possession belonging to you, including any plant or equipment or your Goods and other property attached to your Goods ('Repairer's Lien').

16.2 You agree that we may, in our sole discretion, exercise the Repairer's Lien over any or all of your Property, including any plant or equipment or your Goods and other property attached to your Goods in our possession in respect of any due and

unpaid amounts outstanding by you and may retain your Goods and/or any other property attached to your Goods and serve notice on you requiring immediate payment of the amounts outstanding by you.

16.3 If Any fees or invoices, for any amounts payable by you to us have not been paid;
(i) within 60 days of us providing notice to you or
(ii) after we make reasonable attempts to contact you, we may sell your Goods and apply the proceeds in the first instance to the satisfaction of the amount outstanding by you to us and the costs of exercising the right of sale.

16.4 We shall refund any balance thereafter to you.

16.5 You hereby appoint Arrow as your irrevocable attorney and or agent for the sale and distribution of the proceeds of sale referred to in clause 16 hereof.

17 Exclusions and Limitations

17.1 Arrow Expressly excludes liability for:

- (a) any consumable Goods;
- (b) any Goods repaired or altered by You without Arrow's consent;
- (c) any Goods fitted with products or parts not manufactured or supplied by Arrow;
- (d) any Goods or Services which have been adversely affected by misuse, negligence, improper installation or operation, abnormal conditions of moisture or excessive temperature, dirt or corrosive atmosphere;
- (e) Goods damaged in transit or through improper handling or storage;
- (f) failures due to the operation of Goods supplied by Arrow outside their rated capacity or by persons not suitably trained in their operation.

17.2 Arrow will not be liable to You (whether in contract, tort or otherwise) for any consequential, special, incidental or indirect loss or damage of any kind (including loss of profit) which may arise under these terms.

17.3 Except as provided in these terms and conditions, all express and implied warranties, guarantees and conditions under statute or general law as to the merchantability, description, quality, suitability or fitness of the Goods and/or Services for any purpose including the design, assembly, installation, materials used or workmanship or otherwise are expressly excluded.

17.4 Arrow's liability for a breach of condition or warranty implied by the "*Competition and Consumer Act 2010 (Cth)*" is limited to:

- (a) In the case of Goods:
 - (i) the replacement of the Goods or the supply of equivalent Goods;
 - (ii) the repair of Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods;
 - (iv) the payment of the cost of having the Goods repaired, whichever is the lowest; or
- (b) In the case of Services:
 - (i) the supplying of the Services again; or
 - (ii) the payment of the cost of having the Services supplied again.

18 Force Majeure

Neither You nor Arrow will be liable to the other for any breach or failure to perform any obligations in circumstances where such breach or failure is caused by anything beyond that party's reasonable control, including natural disaster or emergency, act of God or Government regulation.

19. Waiver

19.1 The failure of any party to enforce the provisions of this Agreement or to exercise any rights expressed in this Agreement is not a waiver of such provisions or rights and does not affect the enforcement of this Agreement.

19.2 No waiver under 17.1 operates as an estoppel against the party who seeks to rely on 17.1.

19.3 The exercise by any party of any of its rights expressed in this Agreement does not preclude or prejudice such party from exercising the same or any other rights it may have irrespective of any previous action taken by that party.

20. Governing Law

These terms are governed by and must be construed in accordance with the laws of New South Wales and Arrow and You submit to the non-exclusive jurisdiction of the Courts of New South Wales.

21 Security Interest

21.1 The parties agree that these terms and conditions constitute a security agreement for the purposes of the *Personal Property Securities Act 2009 (Cth)* ("PPSA") and the interest of Arrow in the Goods and all proceeds from the sale of the Goods by You to a third party is a security interest.

21.2 Until such time as title in the Goods has passed to You as contemplated by clause 10, You agree not to in any way assign, charge, lease or otherwise deal with the Goods

in such as a manner as to create a security interest over the Goods in favour of You or any third from selling the Goods in the ordinary course of business.

21.3 You waive your rights to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by that Act and cannot be excluded.

21.4 To the extent permitted by the PPSA, the parties agree each of the following requirements or rights under the PPSA do not apply to the enforcement of Arrow's security interest in the Goods or of these terms and conditions:

- (a) any requirement for Arrow seller to give You a notice of removal of accession;
- (b) any requirement for Arrow to give You a notice of the Arrow's proposed disposal of the Goods;
- (c) any requirement for Arrow to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties;
- (d) any requirement for Arrow to give to You a statement of account if Arrow does not dispose of the Goods;
- (e) any right You have to redeem the Goods before Arrow exercises a right of disposal;
- (f) any right You have to reinstate these terms and conditions before Arrow exercises a right of disposal of the Goods.

21.5 You shall pay and/or reimburse Arrow all costs and expenses incurred by Arrow in connection with the enforcement or attempted enforcement or removal of any security interest created under these terms and conditions.

21.6 Expressions defined in the PPSA have the same meaning when used in these terms and conditions.

22. Guarantee & Indemnity

22.1 This clause applies if You are a proprietary limited company registered in accordance with the *Corporations Act 2001* (Cth).

22.2 In consideration of Arrow agreeing to supply You with Goods and/or Services from time to time, at your director's request, your director (herein referred to as "Guarantor") unconditionally guarantees the due and punctual observance and performance by You of all your liabilities, obligations and

agreements (whether monetary or non-monetary, present or future, actual or contingent) to Arrow arising under or in connection with these terms and conditions ("Your Obligations").

22.3 This guarantee:

- (a) is a principal obligation and is not ancillary or collateral to any other right or obligation however created or arising;
- (b) may be enforced against the Guarantor without Arrow first being required to exhaust any remedy it may have against You or to enforce any security it may hold relating to Your Obligations;
- (c) is a continuing Guarantee and indemnity for the whole of Your Obligations; and
- (d) is absolute, unconditional and irrevocable, and remains in full force and effect until the Your Obligations have been irrevocably discharged in full despite any transaction or other thing (including a settlement of account or intervening payment).

22.4 If the whole or any part of Your Obligations are not enforceable against You by Arrow for any reason whatsoever, and Your Obligations are not enforceable against the Guarantor as a surety, then:

- (a) the Guarantor as a separate and severable liability under this guarantee unconditionally and irrevocably indemnifies Arrow in respect of Your Obligations;
- (b) as a principal debtor, the Guarantor agrees to pay Arrow, when demanded in writing, a sum equal to the amount of the moneys due and payable under Your Obligations, or the losses and expenses of Arrow resulting from the failure to perform Your Obligations; and
- (c) for the purposes of this indemnity, this clause must be construed as if the moneys payable under Your Obligations were recoverable and the terms of this guarantee apply as far as possible to this indemnity.

22.5 Where this guarantee is given by more than one person in the case of You having two or more directors, the obligations on the part of the Guarantor contained in this guarantee take effect as joint and several obligations and references to the Guarantor take effect as references to those persons or any of them. A release by Arrow of any Guarantor from this Guarantee will not affect the liability of the other Guarantors.

22.6 A statement by Arrow as to the amount for the time being owing by You or the Guarantor to Arrow or as to the interest from time to time payable is conclusive unless clearly wrong on its face.

23. Building and Construction – Security of Payment

23.1 If Arrow supplies You with related goods and services in relation to construction work within the meaning of the *Building & Construction Industry Security of Payment Act 1999* (NSW) ("BCISPA"), You acknowledge Arrow may, in accordance with the BCISPA:

- (a) be entitled to a progress payment and may serve a payment claim

upon You or any other person liable to make the payment;

- (b) apply for adjudication of a payment claim;
- (c) suspend the supply of related goods and services to You;
- (d) serve a payment withholding request requiring a principal contractor for the claim to retain sufficient money to cover the claim out of money that is or become payable by a principal contractor to You.

23.2 Expressions defined in the BCISPA have the same meaning when used in these terms and conditions.