

Client Details

Date: _____ Ref No. (Office Use Only): _____

Client's Trade Name: _____

Client's Full or Legal Name: _____

Billing Address: _____ Email: _____

_____ Business Phone: _____

Physical Address: _____ ABN Number: _____

_____ ACN Number: _____

Requested Credit Limit: _____ Date Established: _____

Contact 1

Contact 1 Name: _____

Position: _____ Phone: _____

Email: _____

Contact 2

Contact 2 Name: _____

Position: _____ Phone: _____

Email: _____

Details of Owner (If Sole Trader), Partners (If Partnership), or Director (If Company)

Partner/Director 1 Name: _____ Partner/Director 2 Name: _____

Address: _____ Address: _____

_____ Address: _____

Phone: _____ Phone: _____

Email: _____ Email: _____

Trade References

Business Name 1: _____ Business Name 2: _____

Acc. No (If Applicable): _____ Acc. No (If Applicable): _____

Address: _____ Address: _____

_____ Address: _____

Business Phone: _____ Business Phone: _____

Declaration

I certify that the information given is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Evolution Water & Lighting P/L T/A Evolution Water & Lighting Solutions which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. I agree that if I am a director or a shareholder (*owning at least 15% of the shares*) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.

Signed (Seller): _____

Name: _____

Position: _____

Signed (Client): _____

Name: _____

Position: _____

Date: _____ DOB: _____

Signed (Witness): _____

Name: _____

1. Definitions
1.1 "Seller" shall mean Evolution Water & Lighting P/TIA Evolution Water & Lighting Solutions, its successors and assigns OT any person acting on behalf of and with the authority of Evolution Water & Lighting P/L TIA Evolution Water & Lighting Solutions. "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 the Seller to the Client.
1.3 "Guarantor" means that person (or persons) who agrees to be liable for the debts of the Client on a principal debtor basis.
1.4 "Goods" shall mean all Goods supplied by the Seller to the Client (and where the context so permits shall include any supply of Services as herein after defined) and are as described on the Invoices, quotation, work authorisation or any other forms as provided by the Seller to the Client.
1.5 "Services" shall mean all Services supplied by the Seller to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
1.6 "Price" shall mean the Price payable for the Goods as agreed between the Seller and the Client in accordance with clause 4 of this contract.

2. The Competition and Consumer Act 2010 ("CCA") and Fair Trading Acts

2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof).
2.2 except to the extent permitted by those Acts where applicable Where the Client buys Goods as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall consumer's statutory rights.

3. Acceptance

3.1 Any instructions received by the Seller from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Seller 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 the Seller.
3.4 The Client shall give the Seller 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 the Seller as a result of the Client's failure to comply with this clause.
3.5 Goods are supplied by the Seller 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 the terms and conditions of trade.

4. Price and Payment

4.1 At the Seller's sole discretion the Price shall be either:
(a) as indicated on invoices provided by the Seller to the Client in respect of Goods supplied; or
(b) Seller's quoted Price (subject to clause 4.2) which shall be binding upon the Seller provided that the Client shall accept the Seller's quotation in writing within thirty (30) days.
4.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation. Any variation from the plan of scheduled Services or specifications of the Goods (including but not limited to, any variations as a result of additional work required due to hidden or identifiable difficulties fluctuations in currency exchange rates, or as a result of increases to the seller in the cost of materials and labour) will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice.
4.3 At the Seller's sole discretion:
(a) payment shall be due on, or before, delivery of the Goods; or
(b) detailed progress payment claims may be submitted in accordance with the Seller's specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any Goods delivered to the site but not yet installed; or
(c) 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.
4.4 Time for payment 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.
4.5 Payment will be made by cash, cheque bank cheque, direct credit, or by any other method as agreed to between the Client and the Seller.
4.6 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 the Goods

5.1 At the Seller's sole discretion delivery of the Goods shall take place when:
(a) the Client takes possession of the Goods at the Seller's address; or
(b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by the Seller or the Seller's nominated carrier); or
(c) the Client's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Client's agent.
5.2 At the Seller's sole discretion the costs of delivery are:
(a) included in the Price; or
(b) in addition to the Price and, where applicable, charged to the Client's account.
5.3 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.
5.4 The Seller may deliver the Goods by separate instalments. Each separate Instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
5.5 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
5.6 The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of the Seller.

6. Risk

6.1 If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
6.3 Where the Client expressly requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all.

7. Title

7.1 The Seller and the Client agree that ownership of the Goods shall not pass until:
(a) the Client has paid the Seller all amounts owing for the particular Goods; and
(b) the Client has met all other obligations due by the Client to the Seller in respect of all contracts between the Seller and the Client...
7.2 Receipt by the Seller 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 the Seller's ownership or rights in respect of the Goods shall continue.
7.3 It is further agreed that:
(a) where practicable the Goods shall be kept separate and identifiable until the Seller 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 the Seller to the Client the Seller may give notice in writing to the Client to return the Goods or any of them to the Seller. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
(c) the Seller 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 the Seller then the Seller or the Seller's agent may (as the invitee of the Client) enter upon and into land and
(e) The Client, is only a Bailee of the Goods and until such time as the Seller 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 the Seller for the Goods, on trust for the Seller, and

(f) the Client shall not deal with the money of the Seller in any way which may be adverse to the Seller, 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 the Seller, and
(h) the Seller 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 the Seller will be the owner of the end products.

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

8.1 In this clause:
8.2 (a) financing statement has the meaning given to it by the PPSA;
(b) financing change statement has the meaning given to it by the PPSA;
(c) security agreement means the security agreement under the PPSA created between the Client and the Seller by these terms and conditions; and
(d) security interest has the meaning given to it by the PPSA.
8.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions:
(a) constitute a security agreement for the purposes of the PPSA;
(b) create a security interest in:
(i) all Goods previously supplied by the Seller to the Client (if any);
(ii) all Goods that will be supplied in the future by the Seller to the Client.
8.3 The Client 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 the Seller 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 8.3(a) (i) or 8.3(a) (b);
(b) indemnify, and upon demand reimburse, the Seller 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 the Seller,
(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Seller; and
(e) immediately advise the Seller 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.
8.4 The Seller and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement supplied by these terms and conditions.
8.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132 (3) (d) and 132(4) of the PPSA.
8.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
8.7 Unless otherwise agreed to in writing by the Seller, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
8.8 The Client shall unconditionally ratify any actions taken by the Seller under 16.2 of additional work required due to hidden or unidentifiable difficulties, clauses 8.3 to 8.5.

9. Security and Charge

9.1 Despite anything to the contrary contained herein or any other rights which the Seller may have however:
(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 the Seller or the Seller'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 the Seller (or the Seller's nominee) shall be entitled to lodge with the appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met
(b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Seller from and against all the Seller'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 the Seller or the Seller'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 9.1.

10. Defects

10.1 The Client shall inspect the Goods on delivery and shall within thirty (30) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote.
The Client shall afford the Seller 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 the Seller has agreed in writing that the Client is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods except where the Client has acquired Goods as a consumer within the meaning of the Competition and Consumer Act 2010 (Cwlth) 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.

11. Returns

11.1 Returns will only be accepted provided that:
(a) the Client has complied with the provisions of clause 10.1; and
(b) the Seller has agreed in writing to accept the return of the Goods; and
(c) the Goods are returned at the Client's cost within sixty (60) days of the delivery date; and
(d) the Seller 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 with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
The Seller will not accept the return of Goods for credit.
Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.
12. Warranty
12.1 Subject to the conditions of warranty set out in clause 12.2 the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within six (6) months of the date of delivery (time being of the essence) then the Seller will either (at the Seller's sole discretion) replace or remedy the workmanship.
The condition as applicable to the warranty given by clause 12.1 are:
(a) the warranty shall not cover any defect or damage which may be caused or 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 the Seller; 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 reasonably prudent operator or user; or
(v) fair wear and tear, any accident or act of God
(b) the warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, or overhauled without the Seller's consent
(c) in respect of all claims the Seller 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.
For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller 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.

13. Intellectual Property

13.1 Where the Seller has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in the Seller, and shall only be used by the Client at the Seller's discretion.

13.2 The Client warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement

14. Default and Consequences of Default

14.1 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 the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
14.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Seller.
14.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
14.4 Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment) the Seller may suspend or terminate the supply of goods to the Client and any of its other obligations under the terms and conditions. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.
14.5 If the Client 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 four hundred dollars (\$400.00)) shall be levied for administration fees which sum shall become immediately due and payable.
14.6 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
(a) any money payable to the Seller becomes overdue, or in the Seller'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

15. Cancellation

15.1 The Seller 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 the Seller shall repay to the Client any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
15.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.
15.3 Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will definitely not be accepted, once the order has been processed

16. Privacy Act 1988

The Client and/or the Guarantor's (herein referred to as the Client) agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the Seller.
The Client agrees that the Seller may exchange information about the Client 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 the 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 creditworthiness of the Client.
The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
16.3 The Client consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K (1) (h) Privacy Act 1988).
16.4 The Client agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other purposes as shall be agreed between the Client and Seller or required by law from time to time):
(a) the provision of Goods; and/or
(b) the marketing of Goods by the Seller, its agents or distributors; and/or
(c) analysing, verifying and/or choosing the Client's credit, payment and/or status in relation to the provision of Goods; and/or
(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the 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.
The Seller 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;
(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
The information given to the credit reporting agency may include:
(a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
(b) details concerning the Client's application for credit or commercial credit; and/or
(c) advice that the Seller is a current credit provider to the Client;
(d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
(e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
(f) information that, in the opinion of the Seller, the Client base committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
(g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
(h) that credit provided to the Client by the Seller has been paid or otherwise discharged.

17. General

17.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining circumstances acceptable for credit or return.
17.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
17.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the Jurisdiction of the courts of Queensland.
17.4 The Seller 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 the Seller of these terms and conditions.
17.5 In the event of any breach of this contract by the Seller the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price.
17.6 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 the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
17.7 The Seller may license or sub-contract all or any part of its rights and obligations without the Client's consent.
17.8 The Client agrees that the Seller 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 the Seller notifies the Client of such change. The Client shall be under no obligation accept such changes except where the Seller supplies further Goods to the Client and the Client accepts such Goods.
17.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
17.10 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision

Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of Evolution Water & Lighting P/L T/A Evolution Water & Lighting Solutions and its successors and assigns ("the Seller") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply Goods and/or Services to

Company Name ("the Client"): _____

I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

1. GUARANTEE the due and punctual payment to the Seller of all moneys which are now owing to the Seller by the Client and all further sums of money from time to time owing to the Seller by the Client in respect of Goods and/or Services supplied or to be supplied by the Seller to the Client or any other liability of the Client to the Seller, and the due observance and performance by the Client of all its obligations contained or implied in any contract with the Seller. If for any reason the Client does not pay any amount owing to the Seller the Guarantor will immediately on demand pay the relevant amount to the Seller.
2. HOLD HARMLESS AND INDEMNIFY the Seller on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees (as defined hereunder in paragraph (b) hereof)) incurred by, or assessed against, the Seller in connection with:
 - (a) the supply of Goods and/or Services to the Client; or
 - (b) the recovery of moneys owing to the Seller by the Client including the enforcement of this Guarantee and Indemnity, and including but not limited to the Seller's nominees costs of collection and legal costs calculated on a solicitor and own client basis; or
 - (c) moneys paid by the Seller with the Client's consent in settlement of a dispute that arises or results from a dispute between, the Seller, the Client, and a third party or any combination thereof, over the supply of Goods and/or Services by the Seller to the Client.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

3. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of moneys owing to the Seller by the Client and all obligations herein have been fully paid satisfied and performed;
4. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on the Seller's part (whether in respect of the Client or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Client's obligations to the Seller, each Guarantor shall be a principal debtor and liable to the Seller accordingly.
5. If any payment received or recovered by the Seller is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Seller shall each be restored to the position in which they would have been had no such payment been made.
6. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
7. I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Client to the Seller.
8. I/we irrevocably authorise the Seller to obtain from any person or company any information which the Seller may require for credit reference purposes. I/We further irrevocably authorise the Seller to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with the Seller as a result of this Guarantee and Indemnity being actioned by the Seller.
9. The above information is to be used by the Seller for all purposes in connection with the Seller considering this Guarantee and Indemnity and the subsequent enforcement of the same.

Guarantor 1

Signed (Guarantor 1): _____

Name: _____

Address: _____

Signed (Witness): _____

Name: _____

Address: _____

Occupation: _____

Guarantor 2

Signed (Guarantor 2): _____

Name: _____

Address: _____

Signed (Witness): _____

Name: _____

Address: _____

Occupation: _____

Note:

1. If the Client is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).
2. If the Client is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member.

1.	Definitions		
	1.1	"Seller" shall mean Evolution Water & Lighting P/TIA Evolution Water & Lighting Solutions, its successors and assigns OT any person acting on behalf of and with the authority of Evolution Water & Lighting P/L TIA Evolution Water & Lighting Solutions. "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 the Seller to the Client.	
	1.3	"Guarantor" means that person (or persons) who agrees to be liable for the debts of the Client on a principal debtor basis.	
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1.6		"Price" shall mean the Price payable for the Goods as agreed between the Seller and the Client in accordance with clause 4 of this contract.	
2.	The Competition and Consumer Act 2010 ("CCA") and Fair Trading Acts		
2.1		Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof).	
2.2		except to the extent permitted by those Acts where applicable Where the Client buys Goods as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall consumer's statutory rights.	
3.	Acceptance		
3.1		Any instructions received by the Seller from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Seller 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 the Seller.	
3.4		The Client shall give the Seller 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 the Seller as a result of the Client's failure to comply with this clause.	
3.5		Goods are supplied by the Seller 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 the terms and conditions of trade.	
4.	Price and Payment		
4.1		At the Seller's sole discretion the Price shall be either: (a) as indicated on invoices provided by the Seller to the Client in respect of Goods supplied; or (b) Seller's quoted Price (subject to clause 4.2) which shall be binding upon the Seller provided that the Client shall accept the Seller's quotation in writing within thirty (30) days.	
4.2		The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variations as a result of additional work required due to hidden or identifiable difficulties fluctuations in currency exchange rates, or as a result of increases to the seller in the cost of materials and labour) will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice.	
4.3		At the Seller's sole discretion: (a) payment shall be due on, or before, delivery of the Goods; or (b) detailed progress payment claims may be submitted in accordance with the Seller's specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any Goods delivered to the site but not yet installed; or (c) 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.	
4.4		Time for payment 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.	
4.5		Payment will be made by cash, cheque bank cheque, direct credit, or by any other method as agreed to between the Client and the Seller.	
4.6		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 the Goods		
5.1		At the Seller's sole discretion delivery of the Goods shall take place when: (a) the Client takes possession of the Goods at the Seller's address; or (b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by the Seller or the Seller's nominated carrier); or (c) the Client's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Client's agent.	
5.2		At the Seller's sole discretion the costs of delivery are: (a) included in the Price; or (b) in addition to the Price and, where applicable, charged to the Client's account.	
5.3		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.	
5.4		The Seller may deliver the Goods by separate instalments. Each separate Instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.	
5.5		The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.	
5.6		The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of the Seller.	
6.	Risk		
6.1		If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.	
6.2		If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.	
6.3		Where the Client expressly requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all.	
7.	Title		
7.1		The Seller and the Client agree that ownership of the Goods shall not pass until: (a) the Client has paid the Seller all amounts owing for the particular Goods; and (b) the Client has met all other obligations due by the Client to the Seller in respect of all contracts between the Seller and the Client... Receipt by the Seller 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 the Seller's ownership or rights in respect of the Goods shall continue.	
7.2		It is further agreed that: (a) where practicable the Goods shall be kept separate and identifiable until the Seller 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 the Seller to the Client the Seller may give notice in writing to the Client to return the Goods or any of them to the Seller. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and (c) the Seller 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 the Seller then the Seller or the Seller's agent may (as the invitee of the Client) enter upon and into land and (e) The Client, is only a Bailee of the Goods and until such time as the Seller 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 the Seller for the Goods, on trust for the Seller, and	
		(f) the Client shall not deal with the money of the Seller in any way which may be adverse to the Seller, 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 the Seller, and (h) the Seller 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 the Seller will be the owner of the end products.	13.2
8.	Personal Property Securities Act 2009 ("PPSA")		
8.1		In this clause:	
8.2		(a) financing statement has the meaning given to it by the PPSA; (b) financing change statement has the meaning given to it by the PPSA; (c) security agreement means the security agreement under the PPSA created between the Client and the Seller by these terms and conditions; and (d) security interest has the meaning given to it by the PPSA.	
8.2		Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions: (a) constitute a security agreement for the purposes of the PPSA; (b) create a security interest in: (i) all Goods previously supplied by the Seller to the Client (if any); (ii) all Goods that will be supplied in the future by the Seller to the Client.	
8.3		The Client 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 the Seller 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 8.3(a) (i) or 8.3(a) (b); (b) indemnify, and upon demand reimburse, the Seller 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 the Seller, (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Seller; and (e) immediately advise the Seller 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.	14.5
8.4		The Seller and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.	
8.5		The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132 (3) (d) and 132(4) of the PPSA.	
8.6		The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.	
8.7		Unless otherwise agreed to in writing by the Seller, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.	
8.8		The Client shall unconditionally ratify any actions taken by the Seller under 16.2 of additional work required due to hidden or unidentifiable difficulties, clauses 8.3 to 8.5.	
9.	Security and Charge		
9.1		Despite anything to the contrary contained herein or any other rights which the Seller may have however: (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 the Seller or the Seller'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 the Seller (or the Seller's nominee) shall be entitled to lodge with the appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met (b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Seller from and against all the Seller'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 the Seller or the Seller'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 9.1.	
10.	Defects		
10.1		The Client shall inspect the Goods on delivery and shall within thirty (30) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Seller 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 the Seller has agreed in writing that the Client is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods except where the Client has acquired Goods as a consumer within the meaning of the Competition and Consumer Act 2010 (Cwlth) 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.	16.5
11.	Returns		
11.1		Returns will only be accepted provided that: (a) the Client has complied with the provisions of clause 10.1; and (b) the Seller has agreed in writing to accept the return of the Goods; and (c) the Goods are returned at the Client's cost within sixty (60) days of the delivery date; and (d) the Seller 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 with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances. The Seller will not accept the return of Goods for credit. Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.	
12.	Warranty		
12.1		Subject to the conditions of warranty set out in clause 12.2 the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within six (6) months of the date of delivery (time being of the essence) then the Seller will either (at the Seller's sole discretion) replace or remedy the workmanship. The condition as applicable to the warranty given by clause 12.1 are: (a) the warranty shall not cover any defect or damage which may be caused or 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 the Seller; 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 reasonably prudent operator or user; or (v) fair wear and tear, any accident or act of God (b) the warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, or overhauled without the Seller's consent (c) in respect of all claims the Seller 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. For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller 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.	12.3
13.	Intellectual Property		
13.1		Where the Seller has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in the Seller, and shall only be used by the Client at the Seller's discretion.	
		The Client warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement	
14.	Default and Consequences of Default		
14.1		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 the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.	
14.2		In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Seller.	
14.3		If the Client defaults in payment of any invoice when due, the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.	
14.4		Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment) the Seller may suspend or terminate the supply of goods to the Client and any of its other obligations under the terms and conditions. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.	
14.5		If the Client remains in breach of its obligations under this clause for the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of four hundred dollars (\$400.00)) shall be levied for administration fees which sum shall become immediately due and payable.	
14.6		Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that: (a) any money payable to the Seller becomes overdue, or in the Seller'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	
15.	Cancellation		
15.1		The Seller 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 the Seller shall repay to the Client any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.	
15.2		In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.	
15.3		Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will definitely not be accepted, once the order has been processed.	
16.	Privacy Act 1988		
16.1		The Client and/or the Guarantor's (herein referred to as the Client) agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the Seller. The Client agrees that the Seller may exchange information about the Client 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 the 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 creditworthiness of the Client. The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988. The Client consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K (1) (h) Privacy Act 1988).	
16.4		The Client agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other purposes as shall be agreed between the Client and Seller or required by law from time to time): (a) the provision of Goods; and/or (b) the marketing of Goods by the Seller, its agents or distributors; and/or (c) analysing, verifying and/or choosing the Client's credit, payment and/or status in relation to the provision of Goods; and/or (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the 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. The Seller 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; (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client. The information given to the credit reporting agency may include: (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number); (b) details concerning the Client's application for credit or commercial credit; and/or (c) advice that the Seller is a current credit provider to the Client; (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started; (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed; (f) information that, in the opinion of the Seller, the Client base committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations); (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once; (h) that credit provided to the Client by the Seller has been paid or otherwise discharged.	
17.	General		
17.1		If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining circumstances acceptable for credit or return. If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency. These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the Jurisdiction of the courts of Queensland. The Seller 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 the Seller of these terms and conditions. In the event of any breach of this contract by the Seller the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price. 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 the Seller nor to withhold payment of any invoice because part of that invoice is in dispute. The Seller may license or sub-contract all or any part of its rights and obligations without the Client's consent. The Client agrees that the Seller 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 the Seller notifies the Client of such change. The Client shall be under no obligation accept such changes except where the Seller supplies further Goods to the Client and the Client accepts such Goods. 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. The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision	
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