Terms & Conditions of Trade – Chadwick Switchboards Pty Ltd

June 2012

1. Definitions

In this agreement, unless the context or subject matter otherwise require:

Seller means CHADWICK SWITCHBOARDS PTY LTD (ACN 153 221 848) and its successors and assigns.

Buyer means the Buyer or any person acting on behalf of and with the authority of the Buyer.

Goods means Goods supplied or previously supplied by the Seller to the Buyer (and where the context so permits will include any supply of Services as hereinafter defined).

Services means all services supplied by the Seller to the Buyer and includes any advice or recommendations, intellectual or intangible property under the **PPSA** (and where the context so permits includes any supply of Goods).

PPSA means the *Personal Property Securities Act 2009* (Cth) and associated Regulations as amended.

Price means the cost of the Goods as agreed between the Seller and the Buyer subject to clause 2.2 of these Terms of Trade.

2. Operative Provisions and provision of credit by Supplier

2.1 Goods/Services

(a) The Goods / Services will be as described on the invoices, quotation, work authorisation, sales order or any other work commencement forms as provided by the Seller to the Buyer.

2.2 Price and Payment

(a) At the Seller's sole discretion:

(i) The Price will be as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or

(ii) The Price will be the Seller's current price at the date of delivery of the Goods according to the Sellers current Price list; or

(iii) The Seller's quoted Price which will be binding upon the Seller provided that the Buyer will accept in writing the Seller's quotation within 30 days provided that the Seller may, by giving notice to the Buyer, at any time up to 7 days before delivery increase the Price of the Goods to reflect any increase in cost to the Seller beyond the reasonable control of the Seller.

(b) At the sole discretion of the Seller a deposit from the Buyer may be required.

(c) Time for payment for the Goods will be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment will be due on delivery of the Goods.

(d) Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or any other method as agreed to between the Buyer and the Seller.

(e) The Price will be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller.

(f) The Seller may withhold delivery of Goods until the Buyer has paid for them in full, in which event payment will be made before the delivery date.

(g) At the Seller's sole discretion, payment may be made by instalments in accordance with the Seller's delivery/payment schedule.

(h) The Buyer seeks and is hereby granted a line of credit for the supply of the Goods on the terms contained herein, in consideration of the Seller having and continuing to supply the Buyer, and the terms contained herein are adopted immediately upon the making of any further order by the Buyer.

3. Delivery of Goods/Services

3.1 Delivery of the Goods will be made to the Buyer's nominated address. The Buyer may make all arrangements necessary to take delivery of the Goods whenever they are tended for delivery.

3.2 Delivery of the Goods to a carrier, either named by the Buyer or failing such naming to a carrier at the discretion of the Seller, for the purpose of transmission to the Buyer is deemed to be delivery of the Goods to the Buyer.

3.3 The cost of carriage and any insurance which the Buyer reasonably directs the Seller to incur will be reimbursed by the Buyer (without any set off or other withholding whatsoever) and will be due on the date for the payment of the Price. The carrier will be deemed to be the Buyer's agent.

3.4 Where this is no agreement that the Seller will send the Goods to the Buyer, delivery to a carrier at limited carriers risk at the expense of the Buyer is deemed to be delivery to the Buyer.

3.5 Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement.

3.6 The failure of the Seller to deliver will not entitle either party to treat this contract as repudiated.

3.7 The Seller will not be liable for any loss or damage whatsoever due to failure by the Seller deliver the Goods (ie or any of them) promptly or at all.

4. Risk

4.1 If the Seller retains property in the Goods nonetheless all risk for the Goods passes to the Buyer on delivery.

4.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, to receive all insurance proceeds payable in respect of the Goods. The Seller will apply the insurance proceeds as follows:

(i) first, in payment of the Price of the Goods that are damaged or destroyed, if unpaid;

(ii) second, in payment of the outstanding Price of any other Goods supplied to the Buyer by the Seller whether under these terms and conditions or otherwise.

5. No Reliance

5.1 The Buyer acknowledges that no further or other term arise between the Seller and the Buyer by way of collateral or other agreement or by reason of any alleged promise, representation, warranty or undertaking given or made by either party to the other. The Buyer acknowledges that the Buyer buys the Goods relying solely upon their own skill and judgment.

6. Defects/Returns

6.1 The Buyer will inspect the Goods on delivery and will within 7 days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer will afford the Seller an opportunity to inspect the Goods within a reasonable timeframe from delivery if the Buyer believes the Goods are defective in any way. If the Buyer will fail to comply with these provisions, the Goods will be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

7. The Australian Consumer Law

7.1 Subject to the consumer guarantees provided for in consumer protection legislation (including the Australian Consumer Law), the Seller does not give any express or implied warranties and makes no representations in relation to its Goods or Services including quality, completeness, accuracy, suitability, acceptability or fitness for purpose in relation to its Goods or Services.

7.2 The Buyer should make and rely upon the Buyer's own assessments and enquires to verify the accuracy of the information provided by the Buyer.

7.3 The Sellers liability under any non excluded implied warranty is limited to:

(a) in the case of Services, the costs of having the Services supplied again; and

(b) the case of Goods, the lowest of the costs replacing the Goods, acquiring the equivalent of Goods or having the Goods repaired.

8. Default and Consequences of Default

8.1 Interest on overdue invoices will accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and will accrue at such a rate after as well as before any judgement.

8.2 If the Buyer defaults in payment of any invoice when due, the Buyer will indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis.

8.3 In the event that:

(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or

(b) the Buyer 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 Buyer or any asset of the Buyer, then:

(i) the Seller will be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and

(ii) all amounts owing to the Seller will, whether or not due for payment, immediately become payable.

9. Title

9.1 The Buyer agrees that all Goods or Services supplied by the Seller to the Buyer will remain the property of the Seller and title in all Goods or Services supplied will not pass to the Buyer until such time as the Seller has:

(a) been paid in full for all Goods supplied; and

(b) received payment of all other sums that are owing by the Buyer to the Seller; and

(c) the moneys owing referred to in (a) and (b) above have been collected and cleared by the Seller.

9.2 Where the Seller has not been paid in full for any Goods supplied to the Buyer and/or in full for any other amounts which are due for payment by the Buyer to the Seller, then

(a) the Buyer will hold any such Goods which it has been supplied by the Seller upon trust and as a fiduciary for the Seller and will store and identify all such Goods in a manner that clearly shows the Seller's ownership thereof;

(b) the Customer must not sell any Goods supplied without the prior written consent of the Seller or except in the ordinary course of the Buyer's business;

(c) the Buyer will have no right or claim to any right or interest in the Goods to secure any liquidated or unliquidated debt or obligation that the Seller owes or may owe to the Buyer;

(d) the Buyer may not claim any lien over the Goods;

(e) the Buyer agrees that it will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by the Seller; and

(f) without prejudice to the Seller's rights as an unpaid Seller or any of its other rights or remedies to retake possession of the Sellers Goods from the Buyer, the Buyer agrees to deliver up Goods to the Seller upon demand by the Seller and otherwise agrees that the Seller may recover possession of the Goods at any site owned, possessed or controlled by the Buyer and the Buyer agrees that the Seller has an irrevocable licence to do so.

9.3 Where:

(a) title has not passed to the Buyer in Goods supplied by the Seller to the Buyer; and

(b) those Goods are sold to a third party by the Buyer,

then the proceeds of such a sale by the Buyer, to the extent that they are deemed to equal in dollar terms to the amount owing by the Buyer to the Seller on any account at the time of receipt of such proceeds, will be held upon trust by the Buyer for the Seller in a separate account until such time as full payment is made of all amounts owing by the Buyer to the Seller.

9.4 The Buyer agrees to indemnify and hold harmless the Seller against all loss and damage incurred or sustained by the Seller as a result of or in relation to the exercise of the Seller's retention of title rights.

9.5 Clauses 9.1 to 9.4 above will apply in respect of any Goods supplied by the Seller to an inter-related account of a Buyer where the inter-related account is in default.

10. Cancellation

10.1 The Seller may cancel these Terms of Trade or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Seller will not be liable for any loss or damage whatever arising from such cancellation.

10.2 If the Buyer chooses to cancel any order it must notify the Seller in writing. The Buyer will indemnify the Seller for any loss, damage, expense or costs the Seller incurs as a result of the Buyer cancelling any order.

11. Warranty

11.1 The Buyer acknowledges that the Goods may be sold subject to a manufacturers' warranty. The Seller will be under no obligation whatsoever in relation to any manufacturers' warranty. Subject to clause 7 hereof, the Seller excludes all warranties in relation to the supply of the Goods and/or Services unless otherwise notified by the Seller to the Buyer in writing.

12. Seller's Liability

12.1 Except to the extent by law applying to these Terms of Trade that it is not lawful to exclude such liability, the Seller is not liable to the Buyer for any loss or damage arising directly or indirectly in connection with the Goods, their use or otherwise.

12.2 Notwithstanding the generality of clause 12.1, the Seller expressly excludes liability for consequential loss or damage, included but not limited to the loss or damage to any other equipment or property (whether or not the same may be in the Seller's care, custody or control), or for loss of profit, business, revenue, good will or anticipated savings.

12.3 In the event that any exclusion liability in these Terms of Trade is held to be invalid for any reason, and the Seller becomes liable for loss or damage that may limited or capable to be limited in law, such liability is limited to the Price of the Goods and/or Services supplied to the Buyer.

13. Copyrights, Patents, Trade Marks and other intellectual property rights

13.1 The Buyer acknowledges that any and all of the trade marks, copy rights, patents and other intellectual property rights used or subsisting in or in connection with the Goods in which the Seller or the respective manufacturer, developer or third party has an interest remain the sole property of the Seller or such manufacturer, developer or third party. The Buyer must not during or at any time in any way question or dispute ownership.

14. Privacy Act 1988 (as amended)

14.1 The Buyer agrees for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer in relation to credit provided by the Seller.

14.2 The Buyer agrees that the Seller may exchange information about Buyer with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:

(a) To assess an application by Buyer;

(b) To notify other credit providers of a default by the Buyer;

(c) To exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and

(d) To assess the credit worthiness of Buyer.

14.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

14.4 The Buyer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as will be agreed between the Buyer and Seller or required by law from time to time:

(a) provision of Goods and/or Services;

(b) marketing of Goods and/or Services by the Seller, its agents or distributors in relation to the Goods and Services;

(c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to the provision of Goods or Services;

(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Buyer; and

(e) enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Goods and Services.

14.5 The Seller may give, information about the Buyer to a credit reporting agency for the following purposes:

(a) to obtain a consumer credit report about the Buyer; and or

(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.

15. PPSA and PMSI

15.1 You agree to do anything that the Seller reasonably requires to ensure that the Seller has at all times a continuously perfected security interest over all of your present and after-acquired property for the purposes of the PPSA.

15.2 The Seller may allocate amounts received from you in any manner it determines, but in default will apply same first to payment of any unsecured amount owing to the Seller, next as to any reasonable enforcement expenses and then as to any secured balance owing to the Seller.

15.3 You agree to reimburse the Seller for all costs and/or expenses incurred or payable by the Seller in relation to registering, maintaining or releasing any financing statement or financing change statement under this Agreement.

15.4 You will not (except with the written consent of the Seller) allow to be, or be liable to become, perfected or attached in favour of any person, a security interest or transitional security interest in any of the monies from time to payable to the Seller (if any) or otherwise, and whether to a provider of new value or otherwise).

15.5 You will not (as against any person who is a "related entity" of you for the purposes of the *Corporations Act 2001*) without the prior written consent of the Seller, before or until all money payable to the Seller in connection with the Agreement is paid in full:

(a) exercise a right of contribution or indemnity;

(b) claim the benefit of (for example, by subrogation), or seek priority ahead of, the transfer of or the benefit of a security the Seller holds in connection with this Agreement;

(c) try to reduce its liability to the Seller through set off or counterclaim; or

(d) prove in competition with the Seller if you are unable to pay your debts when due.

(e) seek to perfect or attach in favour of you or another (either jointly or severally) a security interest in any of your present or after acquired property which would rank in priority to the entitlements of Chadwick Switchboards Pty Ltd.

15.6 You waive the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interests under this Agreement.

15.7 You agree that you and the Seller contract out of and nothing in the provisions of Sections 95, 96, 117, 118, 121(4), 130, 132(3)(d), 132(4), 142 and 143 of the PPSA will apply to this Agreement.

15.8 You and the Seller acknowledge that you are the grantor and the Seller is the holder of a Purchase Money Security Interest (**PMSI**) by virtue of this Agreement and/ or the PPSA.

15.9 You and the Seller agree that the terms of this Agreement may be altered unilaterally by the Seller giving 30 days written notice to you. Clerical errors are subject to correction without notification.

15.10 You hereby consent and appoint the Seller to be an interested person and your authorized representative for the purposes of section 275(9) PPSA.

16. Claim for Payment

16.1 These Terms & Conditions of Trade and any invoices issued hereunder are also a construction contract and/ or claim for payment under the *Building and Construction Industry Security of Payment Act 1999* (NSW), the *Building and Construction Industry Security of Payment Act 2002* (Vic), the *Building and Construction Industry Payments Act 2004* (Qld), the *Building and Construction Industry Security of Payment Act 2009* (SA), the *Construction Contracts Act 2004* (WA), the *Building and Construction Industry (Security of Payment) Act 2009* (ACT), the *Building and Construction Industry Security of Payment Act 2009* (TAS), and/or the *Construction Contracts (Security of Payments) Act 2009* (NT).

17. General

17.1 If any provision of these terms and conditions will be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.

17.2 All Goods and/or Services supplied by the Seller are subject to the laws of New South Wales and the Seller takes no responsibility for changes in the law which affect the Goods supplied.

17.3 The Seller will be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.

17.4 Subject to clause 15.9, unless consented to in writing by the Seller, the Buyer and the Seller acknowledge that these terms and conditions constitute the entire agreement between them and that the only enforceable obligations and liabilities of the Buyer and the Seller in relation to its subject matter. All representations, communications and prior agreements are superseded by these terms and conditions. Where previous terms and conditions have been entered into between the Buyer and the Seller, the parties agree that this Agreement will not act as a merger of their rights but that the terms contained under such previous Agreement will be amended by the terms contained herein to the extent of any inconsistency.

17.5 You hereby agree:

(a) Any notice by one party to the other will be sufficiently served if served personally or by facsimile transmission or if posted by prepaid post to the party to be served at the registered office of such party or its last known place of business and will be deemed to have been received within 2 days of the date of posting if served by post and immediately upon transmission if served by facsimile transmission, and

(b) That in addition to any other means permitted by law, any documents, notifications or court proceedings may be given or served upon you, your successors and permitted assignees in the same manner as any notice or document may be given under Part 8.5 of the PPSA and will be deemed so given or served.

(c) The Seller may assign its security interest under the PPSA and/ or rights under this Agreement in its absolute discretion.