

**1. Definitions**

- 1.1 “Qualtech” means Qualtech Electrical Pty Ltd ATF Qualtech Trust T/A Qualtech Electrical Pty Ltd T/A Qualtech, its successors and assigns or any person acting on behalf of and with the authority of Qualtech Electrical Pty Ltd ATF Qualtech Trust T/A Qualtech Electrical Pty Ltd T/A Qualtech.
- 1.2 “Customer” means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Works” means all Works or Materials supplied by Qualtech to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Works as agreed between Qualtech and the Customer in accordance with clause 5 below.

**2. Acceptance**

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with Qualtech’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Qualtech.

**3. Change in Control**

- 3.1 The Customer shall give Qualtech not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Qualtech as a result of the Customer’s failure to comply with this clause.

**4. Electronic Transactions (Queensland) Act 2001**

- 4.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

**5. Price and Payment**

- 5.1 At Qualtech’s sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Qualtech to the Customer in respect of Works performed or Materials supplied; or
  - (b) Qualtech’s quoted Price (subject to clause 5.2) which shall be binding upon Qualtech provided that the Customer shall accept Qualtech’s quotation in writing within thirty (30) days.
- 5.2 Qualtech reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
  - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, change of design, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Works; or
  - (d) in the event of increases to Qualtech in the cost of labour or materials which are beyond Qualtech’s control.
- 5.3 At Qualtech’s sole discretion a deposit may be required.
- 5.4 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by Qualtech, which may be:
- (a) on completion of the Works; or
  - (b) by way of progress payments in accordance with Qualtech’s specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or
  - (c) twenty (20) days following the end of the month in which a statement is posted to the Customer’s address or address for notices; or
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Qualtech.
- 5.5 Payment may be made by cash, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and Qualtech.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Qualtech an amount equal to any GST Qualtech must pay for any supply by Qualtech under this or any other agreement for the sale of the Materials. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

**6. Delivery of the Works**

- 6.1 Subject to clause 6.2 it is Qualtech’s responsibility to ensure that the Works start as soon as it is reasonably possible.

- 6.2 The Works commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Qualtech claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond Qualtech's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
  - (b) have the site ready for the Works; or
  - (c) notify Qualtech that the site is ready.
- 6.3 Qualtech may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.4 Any time or date given by Qualtech to the Customer is an estimate only. Qualtech shall not be liable for any loss or damage whatsoever due to failure by Qualtech to deliver the Works (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of Qualtech.

## **7. Risk**

- 7.1 If Qualtech retains ownership of the Materials under clause 10 then;
- (a) where Qualtech is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by Qualtech or Qualtech's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
  - (b) where Qualtech is to both supply and install Materials then Qualtech shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Customer.
- 7.2 The Customer warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) that Qualtech, its employees or Qualtech's reasonably form the opinion that the Customer's premises is not safe for the installation of Materials to proceed then Qualtech shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 6.2 above) until Qualtech is satisfied that it is safe for the installation to proceed.
- 7.3 Where the Customer has supplied materials for Qualtech to complete the Works, the Customer acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. Qualtech shall not be responsible for any defects in the Works, any loss or damage to the Materials (or any part thereof), howsoever arising from the use of materials supplied by the Customer.
- 7.4 The Customer acknowledges that Qualtech is only responsible for parts that are replaced by Qualtech and that in the event that other parts/Materials, subsequently fail, the Customer agrees to indemnify Qualtech against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.
- 7.5 If during the course of installation when the Works are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by Qualtech, then Qualtech shall notify the Customer immediately. The power if isolated will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations 2002. The Customer accepts and agrees that any costs associated with the rectification Works including any Materials and labour shall be to the Customer's account.

## **8. Access**

- 8.1 The Customer shall ensure that Qualtech has clear and free access to the work site at all times to enable them to undertake the Works. Qualtech shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Qualtech.

## **9. Underground Locations**

- 9.1 Prior to Qualtech commencing any work the Customer must advise Qualtech of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 9.2 Whilst Qualtech will take all care to avoid damage to any underground services the Customer agrees to indemnify Qualtech in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 9.1.

## **10. Title**

- 10.1 Qualtech and the Customer agree that ownership of the Materials shall not pass until:
- (a) the Customer has paid Qualtech all amounts owing to Qualtech; and
  - (b) the Customer has met all of its other obligations to Qualtech.
- 10.2 Receipt by Qualtech 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.
- 10.3 It is further agreed that:

- (a) until ownership of the Materials passes to the Customer in accordance with clause 10.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Qualtech on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for Qualtech and must pay to Qualtech the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
- (c) the production of these terms and conditions by Qualtech shall be sufficient evidence of Qualtech's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Qualtech to make further enquiries.
- (d) the Customer must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for Qualtech and must pay or deliver the proceeds to Qualtech on demand.
- (e) the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Qualtech and must sell, dispose of or return the resulting product to Qualtech as it so directs.
- (f) unless the Materials have become fixtures the Customer irrevocably authorises Qualtech to enter any premises where Qualtech believes the Materials are kept and recover possession of the Materials.
- (g) Qualtech may recover possession of any Materials in transit whether or not delivery has occurred.
- (h) the Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of Qualtech.
- (i) Qualtech may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

## **11. Personal Property Securities Act 2009 ("PPSA")**

- 11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Works and/or collateral (account) – being a monetary obligation of the Customer to Qualtech for Services – that have previously been supplied and that will be supplied in the future by Qualtech to the Customer.
- 11.3 The Customer 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 Qualtech 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 11.3(a)(i) or 11.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, Qualtech 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 Works charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of Qualtech;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Works and/or collateral (account) in favour of a third party without the prior written consent of Qualtech;
  - (e) immediately advise Qualtech of any material change in its business practices of selling the Works which would result in a change in the nature of proceeds derived from such sales.
- 11.4 Qualtech and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 11.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by Qualtech, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Customer must unconditionally ratify any actions taken by Qualtech under clauses 11.3 to 11.5.
- 11.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

## **12. Security and Charge**

- 12.1 In consideration of Qualtech agreeing to supply the Materials, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Customer indemnifies Qualtech from and against all Qualtech's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Qualtech's rights under this clause.
- 12.3 The Customer irrevocably appoints Qualtech and each director of Qualtech as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Customer's behalf.

**13. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**

- 13.1 The Customer must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify Qualtech in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Qualtech to inspect the Materials or to review the Works provided.
- 13.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 13.3 Qualtech acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Qualtech makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. Qualtech's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.5 If the Customer is a consumer within the meaning of the CCA, Qualtech's liability is limited to the extent permitted by section 64A of Schedule 2.
- 13.6 If Qualtech is required to replace any Materials under this clause or the CCA, but is unable to do so, Qualtech may refund any money the Customer has paid for the Materials.
- 13.7 If Qualtech is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then Qualtech may refund any money the Customer has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Customer which were not defective.
- 13.8 If the Customer is not a consumer within the meaning of the CCA, Qualtech's liability for any defect or damage in the Materials is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by Qualtech at Qualtech's sole discretion;
  - (b) limited to any warranty to which Qualtech is entitled, if Qualtech did not manufacture the Materials;
  - (c) otherwise negated absolutely.
- 13.9 Subject to this clause 13, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 13.1; and
  - (b) Qualtech has agreed that the Materials are defective; and
  - (c) the Materials are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 13.10 Notwithstanding clauses 13.1 to 13.9 but subject to the CCA, Qualtech shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Materials;
  - (b) the Customer using the Materials for any purpose other than that for which they were designed;
  - (c) the Customer continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) interference with the Works by the Customer or any third party without Qualtech's prior approval;
  - (e) the Customer failing to follow any instructions or guidelines provided by Qualtech;
  - (f) fair wear and tear, any accident, or act of God.
- 13.11 Notwithstanding anything contained in this clause if Qualtech is required by a law to accept a return then Qualtech will only accept a return on the conditions imposed by that law.

**14. Intellectual Property**

- 14.1 Where Qualtech has designed, drawn, written plans or a schedule of Works, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in Qualtech, and shall only be used by the Customer at Qualtech's discretion.
- 14.2 The Customer warrants that all designs, specifications or instructions given to Qualtech will not cause Qualtech to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Qualtech against any action taken by a third party against Qualtech in respect of any such infringement.
- 14.3 The Customer agrees that Qualtech may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which Qualtech has created for the Customer.

**15. Default and Consequences of Default**

- 15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Qualtech's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Customer owes Qualtech any money the Customer shall indemnify Qualtech from and against all costs and disbursements incurred by Qualtech in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Qualtech's contract default fee, and bank dishonour fees).
- 15.3 Further to any other rights or remedies Qualtech may have under this contract, if a Customer has made payment to Qualtech by credit card, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Qualtech under this clause 15 where it can

be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.

- 15.4 Without prejudice to any other remedies Qualtech may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Qualtech may suspend or terminate the supply of Works to the Customer. Qualtech will not be liable to the Customer for any loss or damage the Customer suffers because Qualtech has exercised its rights under this clause.
- 15.5 Without prejudice to Qualtech's other remedies at law Qualtech shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Qualtech shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Qualtech becomes overdue, or in Qualtech's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer 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 Customer or any asset of the Customer.

## **16. Compliance with Laws**

- 16.1 The Customer and Qualtech shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
- 16.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.
- 16.3 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations 2002. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
- 16.4 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

## **17. Cancellation**

- 17.1 Qualtech may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Customer. On giving such notice Qualtech shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to Qualtech for Works already performed. Qualtech shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.2 In the event that the Customer cancels the delivery of Works the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Qualtech as a direct result of the cancellation (including, but not limited to, any loss of profits).

## **18. Dispute Resolution**

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

## **19. Privacy Act 1988**

- 19.1 The Customer agrees for Qualtech to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by Qualtech.
- 19.2 The Customer agrees that Qualtech may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 19.3 The Customer consents to Qualtech being given a consumer credit report to collect overdue payment on commercial credit.
- 19.4 The Customer agrees that personal credit information provided may be used and retained by Qualtech for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works; and/or
  - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Works; and/or

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**Qualtech Electrical Pty Ltd T/A Qualtech– Terms & Conditions of Trade**

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- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Works.
- 19.5 Qualtech may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 19.6 The information given to the CRB may include:
- (a) personal information as outlined in 19.1 above;
  - (b) name of the credit provider and that Qualtech is a current credit provider to the Customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Qualtech has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of Qualtech, the Customer has committed a serious credit infringement;
  - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.7 The Customer shall have the right to request (by e-mail) from Qualtech:
- (a) a copy of the information about the Customer retained by Qualtech and the right to request that Qualtech correct any incorrect information; and
  - (b) that Qualtech does not disclose any personal information about the Customer for the purpose of direct marketing.
- 19.8 Qualtech will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 19.9 The Customer can make a privacy complaint by contacting Qualtech via e-mail. Qualtech will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 20. Building and Construction Industry Payments Act 2004**
- 20.1 At Qualtech's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Payments Act 2004 may apply.
- 20.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.
- 21. General**
- 21.1 The failure by Qualtech to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Qualtech's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of Queensland in which Qualtech has its principal place of business, and are subject to the jurisdiction of the Cleveland Courts in that state.
- 21.3 Subject to clause 13 Qualtech shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Qualtech of these terms and conditions (alternatively Qualtech's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 21.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Qualtech nor to withhold payment of any invoice because part of that invoice is in dispute.
- 21.5 Qualtech may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 21.6 The Customer agrees that Qualtech may amend these terms and conditions at any time. If Qualtech makes a change to these terms and conditions, then that change will take effect from the date on which Qualtech notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for Qualtech to provide any Works to the Customer.
- 21.7 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.
- 21.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.