**Part A - Terms & Conditions**

1. **DEFINITIONS**
   1. **Bankruptcy Act** means *Bankruptcy Act 1966* (Cth).
   2. **Business Day** means a day on which banks are open for retail banking, other than a Saturday, Sunday or public holiday, in Brisbane, Australia.
   3. **CCA** means the *Competition and Consumer Act 2010* (Cth) as amended, re enacted or replaced, and includes any subordinate legislation.
   4. **Client** means the Client (or any person acting on behalf of and with the authority of the Client) as described in Item B of the Reference Schedule.
   5. **Company** means Irrigation Group Pty Ltd (as outlined in Item B of the Reference Schedule), its successors and assigns or any person acting on behalf of and with the authority of Irrigation Group Pty Ltd.
   6. **Company’s Intellectual Property** means the Intellectual Property Rights in any and all trade marks, copyrights, patents, images, branding, logos, colours, software, business or trade names, confidential information and trade secrets owned by, licensed to or developed by the Company from time to time.
   7. **Consequential Loss** means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise.
   8. **Corporations Act** means *Corporations Act 2001* (Cth).
   9. **Deposit** meansthe deposit payable by the Client, as specified in Item E of the Reference Schedule.
   10. **Document** means the Reference Schedule, these Part A – Terms & Conditions and Part B - Guarantee and Indemnity.
   11. **Event of Default** means any of the following:
2. the Client fails to pay any monies payable under this document on the due date and the failure continues for more than five Business Days;
3. the Client or the Guarantor (if any) suffers an Insolvency Event;
4. the Client breaches the terms of this document and either the breach is incapable of being remedied, or the Client fails to remedy the relevant breach within five Business Days of the Company providing written notice of the breach to the Client; or
5. the Client or the Guarantor (if any) is in breach of any other agreement or arrangement that it has in place with the Company.
   1. **Fees** means the fees payable for the Services as agreed between the Company and the Client and as specified in Item D of the Reference Schedule.
   2. **Financing Change Statement** has the meanings given to that term by the PPSA.
   3. **Financing Statement** has the meanings given to that term by the PPSA.
   4. **GST** has the meaning given by the GST Law.
   5. **GST Law** has the meaning given to “GST law” in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
   6. **Guarantor** means that person (or persons) whose details are set out in Item C of the Reference Schedule.
   7. **Immediately Available Funds** means the electronic transfer of cleared funds, into an account nominated by the Company.
   8. **Insolvency Event** occurs where a person:
6. has an application made against it for an order that it be wound up;
7. has an order made against it that it be wound up;
8. resolves that it be wound up voluntarily;
9. has an administrator appointed or executes a deed of company arrangement;
10. enters into a compromise or arrangement with its creditors;
11. has a controller, managing controller, receiver or receiver and manager appointed in respect of any of its assets.
12. commits an act of bankruptcy under section 40 of the Bankruptcy Act*;*
13. is made bankrupt;
14. enter into or takes any step that could result in the person entering into a debt agreement under part IX of the Bankruptcy Act; or
15. enter into or takes any step that could result in the person entering into a personal insolvency agreement under part X of the Bankruptcy Act.
    1. **Intellectual Property Rights** includes all intellectual and industrial property rights and interests throughout the world, whether registered or unregistered, including trade marks, designs, patents, inventions, copyright and analogous rights, trade secrets, know how, processes, concepts, confidential information and all other rights in “intellectual property” as defined in Article 2 of the convention establishing the World Intellectual Property Organisation of 14 July 1967 as amended from time to time.
    2. **Loss** includes any loss, liability, expense, cost or damage of any kind and includes Consequential Loss and a fine or penalty imposed by a statutory or other authority.
    3. **Monies** **Owing** means any Fees, costs, interest and duties due to the Company by the Client or the Guarantor from time to time.
    4. **Other Property** means all present and after-acquired property of the Client that is not PPSA Personal Property, including any interest in real property.
    5. **PPSA** means the *Personal Property Securities Act 2009* (Cth) and where applicable includes all regulations made pursuant to it.
    6. **PPSA Personal Property** means:
16. all present and after-acquired property in which the Client and/or the Guarantor can be a grantor of a Security Interest including property in which the Client and/or the Guarantor have, or may in the future have, rights or the power to transfer rights;
17. proceeds of the sale of any PPSA Personal Property; and
18. PPSA retention of title property (as that term is defined in the Corporations Act).
    1. **PPS Register** means the Personal Property Securities Register established under the PPSA.
    2. **Reference Schedule** means reference schedule to this document.
    3. **Security Agreement** has the meaning given to that term by the PPSA.
    4. **Security Interest** has the meaning given to that term by the PPSA.
    5. **Services** means those services specified in Item F of the Reference Schedule.
    6. **Tax Invoice** has the meaning given to that term in GST Law.
19. **AGREEMENT**
    1. Unless otherwise specified in Item H of the Reference Schedule:
20. all quotations made by the Company and all orders made by the Client are accepted on the terms of this this document only (including the Reference Schedule); and
21. no further terms and conditions will be deemed to form part of the agreement between the Company and the Client for the provision of the Services unless those further terms and conditions are agreed to between the parties in writing as forming part of this document..
    1. Upon execution of this document by the Company, the document is binding on the parties.
    2. If the Client does not sign this document, any instructions or requests received by the Company from the Client for the provision of Services and/or the Client’s acceptance of Services provided by the Company shall constitute acceptance of the provisions contained in this document.
    3. Where more than one Client has entered into this document, the Clients shall be jointly and severally liable for all payments under this document (including but not limited to the Fees).
    4. All amounts provided in this document are stated in Australian dollars.
22. **DELIVERY OF SERVICES**
    1. The Company agrees to provide the Services for the Client for the Fee and otherwise on the terms of this document.
    2. The Company will endeavour to provide the Services promptly, however the Company shall not be liable for any Loss whatsoever suffered by the Client due to failure by the Company to:
23. complete the delivery of the Services on or before the Delivery Date; or
24. deliver the Services where the failure to deliver is due to circumstances beyond the control of the Company.
25. **PAYMENT OF DEPOSIT AND FEES**
    1. If a Deposit is payable by the Client under this document, it must be paid in Immediately Available Funds upon the Client executing this document.
    2. Any Deposit that is payable by the Client to the Company is non-refundable.
    3. The client must pay the Fees, or part of the Fees (as the context requires):
26. at the time specified in in Item E of the Reference Schedule and in the manner as specified in that Item; or
27. if the item fails to specify how the Fee is to be paid - in Immediately Available Funds and on any date specified in any Tax Invoice, unless otherwise agreed in writing by the parties.
    1. The Company may, by giving written notice to the Client, increase the Fees to reflect any increase in the cost to the Company to provide the Services beyond the reasonable control of the Company (including, without limitation, increases in taxes, duties, insurance premiums, labour or change to the scope of the Services).
    2. The Company reserves the right to charge the Client a fee for, or seek reimbursement for the fee charged to the Company, on any payment by the Client that attracts any transaction fee for the Company.
    3. All payments of amounts owed by the Client to the Company must be made by the Client free of any set-off or counterclaim and without deduction or withholding whatsoever.
28. **DEFAULT AND CONSEQUENCES OF DEFAULT**
    1. Where an amount that the Client owes the Company is not paid when due (including but not limited to the Fees), the Company, at its discretion, may charge interest on that overdue amount. Interest shall accrue daily on the overdue amount from the date when payment becomes due, until the date of payment, at a rate of 7% per annum (and such interest will be capitalised and added to the amount outstanding daily at such a rate) after as well as before any judgment. The payment of any interest under this clause must be paid by the Client immediately on demand by the Company to the Client.
    2. In the event that a Client’s payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Company.
    3. If the Client defaults in payment of any amount to the Company when due or the Company is forced to incur costs to enforce its rights under this document, the Client shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company’s collection agency costs.
    4. Without prejudice to any other remedies the Company may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Services to the Client and any of its other obligations under this document. The Company will not be liable to the Client for any loss or damage the Client suffers because the Company has exercised its rights under this clause 5.4.
29. **PERSONAL PROPERTY SECURITY**
    1. The Client and the Guarantor (if any) charge all present and after acquired property in favour of the Company to secure the payment of all moneys and performance of all obligations under this document.
    2. The Client and the Guarantor (if any) acknowledge and agree that this document constitutes a Security Agreement for the purposes of the PPSA.
    3. The Client and the Guarantor (if any) acknowledge and agree that this document creates:
30. a Security Interest in all PPSA Personal Property; and
31. a fixed charge over all Other Property,

to secure payment of all monies (including but not limited to the Fees and any interest) owing by the Client and/or the Guarantor to the Company from time to time under this document and under any other agreement or arrangement between the Client and the Company.

* 1. The Client and the Guarantor (if any) undertake to:

1. 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 Company may reasonably require to:
2. promptly register a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPS Register and to otherwise do all things necessary and required by the Company to ensure that any Security Interest registered by the Company is a perfected Security Interest under the PPSA;
3. promptly register any document on any register reasonably necessary to secure the Company’s interest under this document;
4. promptly register any other document required to be registered under the PPSA;
5. promptly correct a defect in previously registered documents; or
6. indemnify and reimburse, the Company for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPS Register or releasing any PPSR Personal Property that is the subject of a Security Interest;
7. not make an amendment demand in respect of a Security Interest, apply to the Registrar to register a Financing Change Statement in respect of a Security Interest, without the prior written consent of the Company;
8. not to register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the PPSR Personal Property of the Client and/or the Guarantor in favour of a third party without the prior written consent of the Company; and
9. immediately advise the Company of any material change in its business practices which may result in a change in the use of the personal property owned by the Client and/or the Guarantor.
   1. The Company, the Client and the Guarantor (if any) agree that sections 96 and 125 of the PPSA do not apply to the Security Interest created by this document.
   2. The Client and the Guarantor (if any) hereby waive all rights to receive notices, information or statements (as the case may be) under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
   3. The Client and the Guarantor (if any) waive all rights as a grantor and/or a chargor under sections 142 and 143 of the PPSA.
   4. The Client and the Guarantor (if any) waive all rights to receive a verification statement in accordance with section 157 of the PPSA.
   5. The Client and the Guarantor (if any) irrevocably appoint the Company, or the Company’s nominee, to be either party’s attorney to do such acts and execute such documents as the Client and/or the Guarantor could personally do or execute (including the appointment of a substitute attorney) which in the opinion of the Company (acting reasonably) is necessary or expedient to give effect to any right, power or remedy conferred on the Company by this document or the PPSA and to give effect to the matters contemplated by this document.
   6. The provisions of this clause 6 will survive the termination or expiry of this document.
10. **INTELLECTUAL PROPERTY** 
    1. Notwithstanding anything in this document, the Client acknowledges and agrees that:
11. the Company utilises the Company’s Intellectual Property to deliver the Services;
12. the Company is the legal and beneficial owner of the Company’s Intellectual Property;
13. the Client has no interest, whether proprietary or otherwise in the Company’s Intellectual Property.
    1. Notwithstanding anything in this document, the Client acknowledges and agrees that the Company is the legal and beneficial owner of all Intellectual Property Rights in all documents, materials, documents, software, system, knowhow or thing of any kind developed by the Company during the course of the Company providing the Services to the Client.
14. **CONFIDENTIAL INFORMATION**
    1. Neither the Client nor the Company shall disclose to third parties or use for any purpose (other than providing or benefiting from the Services) any information provided by the other unless:
15. required by law;
16. it is disclosed on a confidential basis to advisers;
17. the information is already publically known; or
18. the other consents in writing to its disclosure.
    1. All documentation and materials containing confidential information provided by one party to the other shall be returned at the expiry or termination or this document, and otherwise upon request.
    2. Each party confirms that the other may keep such information provided by that party after the termination of this document, as may be necessary for a party’s quality assurance or risk management procedures and policies, provided that any such information shall continue to be held confidential in accordance with clause 8.1.
19. **PRIVACY**
    1. The Client authorises the Company to obtain a credit report from any credit-reporting agency containing credit information about the Client.
    2. To the maximum extent permitted by law, the Client authorises the Company to exchange information about the Client with credit providers that may be named in a consumer credit report issued by a reporting agency for the following purposes:
20. to assess the creditworthiness of the Client;
21. to notify other credit providers of a default by the Client; or
22. to exchange information with other credit providers as to the status of the Client’s account.
    1. To the maximum extent permitted by law, the Client authorises the Company to give personal or commercial information about the Client to credit reporting agency for the following purpose:
23. to obtain a consumer credit report about the Client; and/or
24. to allow the credit reporting agency to create or maintain a credit information file containing information file containing information about the Client.
25. **TERMINATION**
    1. A party may terminate this document by giving seven days’ notice in writing to the other party.
    2. The Company may immediately terminate this document without any notice to the Client upon the occurrence of an Event of Default.
    3. If:
26. the Client terminates this document in accordance with clause 10.1; or
27. the Company terminates this document in accordance with clause 10.2,

the Client must immediately pay to the Company any and all unpaid Fees and all other moneys due and payable to the Company up to the date of termination.

* 1. Upon termination of this document in accordance with clause 10.2, the Company, at its discretion, may enforce its rights under the security granted to the Company under clause 6.
  2. All costs and expenses incurred by the Company in recovering Monies Owing to it from the Client, including (but not limited to) legal, administrative or other collection costs will be payable by the Client upon demand.

1. **GST**
   1. All amounts payable under or in connection with this document are exclusive of GST.
   2. A recipient of a taxable supply under or in connection with this document must pay to the supplier, in addition to the GST exclusive consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply (**GST Amount**).
   3. The recipient must pay the GST Amount to the supplier when the GST exclusive consideration or part of it is provided, except that the recipient need not pay the GST Amount unless the recipient has received a Tax Invoice (or an adjustment note) for that taxable supply.
   4. Where a supplier incurs a cost or expense for which it may claim payment, reimbursement or indemnity from another party under or in connection with this document, the amount to be paid or credited to the supplier is the cost or expense (reduced by the input tax credit that the supplier is entitled to claim in respect of that cost or expense) plus the amount in respect of GST payable by the recipient as calculated under clauses 11.2 and 11.3.
2. **LIMITATION OF LIABILITY**
   1. To the maximum extent permitted by law, the Company’s total liability arising out of or in connection with its performance of its obligations under this document or arising out of or in connection with the supply of the Services is limited as follows:
3. the Company shall have no liability to the Client for any Consequential Loss; and
4. the Client’s total aggregate liability for loss, however arising, shall not exceed the GST exclusive aggregate price paid by the Client to the Company for the Services that gave rise to the loss in question.
   1. To the extent permitted by law, the Company and the Client agree that:
5. the Company has made no warranty or representations to the Client regarding the provision, delivery, quality, fitness for purpose or otherwise in respect of the Services; and
6. all statutory and common law warranties or representations regarding the provision, delivery, quality, fitness for purpose or otherwise in respect of the Services, including those made under the CCA, are excluded.
7. **APPOINTMENT OF SUBCONTRACTORS**
   1. If the Company considers it appropriate to do so, it may engage other consultants or subcontractors to assist the Company in carrying out the Services.
8. **GENERAL**
   1. If any provision of this document shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
   2. This document shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.
   3. The Company 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 Company of this document.
   4. In the event of any breach of this contract by the Company the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Fees.
   5. The Client shall not be entitled to set off against, or deduct from the Fees, any sums owed or claimed to be owed to the Client by the Company nor to withhold payment of any Tax Invoice because part of that Tax Invoice is in dispute.
   6. The Company reserves the right to review and amend this document from time to time and must give notice to the Client of any changes to this document.
   7. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, pandemic, epidemic, fire, flood, storm or other event beyond the reasonable control of either party.
   8. The failure by the Company to enforce any provision of this document shall not be treated as a waiver of that provision, nor shall it affect the Company’s right to subsequently enforce that provision.
   9. A written notice to be provided under this document may be provided by:
9. handing the notice to the person, or an employee or officer of that person;
10. by leaving it at the address stated in the Reference Schedule;
11. by sending it by registered post to the address stated in the Reference Schedule; or
12. by email to the last known email address of that person.

**Part B – Guarantee & Indemnity**

1. **DEFINITIONS**

The definitions provided in Part A – Terms and Conditions apply to this Part B – Guarantee and Indemnity.

1. **GUARANTEE**
   1. The Guarantor unconditionally and irrevocably guarantees to the Company the due and punctual payment of the Monies Owing and the performance by the Client of all of its other obligations under this document.
2. **INDEMNITY**
   1. The Guarantor unconditionally and irrevocably indemnifies the Company against any liability or loss arising, and any costs or expenses it suffers or incurs:
3. if the Client does not, is not obliged to or is unable to pay the Monies Owing in accordance with this document;
4. if the Company is obliged, or agree, to pay an amount to a trustee in bankruptcy or liquidator (of an insolvent person) in connection with a payment by the Client; or
5. in connection with any person exercising, or not exercising, rights under this document.
6. **PAYMENT ON DEMAND**
   1. Any money payable by the Guarantor must be paid on demand to, or as directed by, the Company.
7. **REINSTATEMENT OF RIGHTS**
   1. If, under any law relating to insolvency event, a person claims that a transaction (including a payment) in connection with this document or the Monies Owing is void or voidable and the claim is upheld, conceded or comprised, then:
8. the Company is immediately entitled as against the Guarantor to the rights in respect of the Monies Owing to which it was entitled immediately before the transaction; and
9. on request from the Company, the Guarantor agrees to do anything (including signing any document) to restore to the Company any security (including the guarantee and indemnity provided by the Guarantor) held by them from such Guarantor immediately before the transaction.
10. **PRINCIPAL AND CONTINUING OBLIGATIONS**
    1. The obligations of the Guarantor are:
11. principal obligations and are not ancillary or collateral to any other encumbrance or other right or obligation however created;
12. independent of, and unaffected by, any other encumbrance or other right or obligation however created which a Guarantor may hold at any time in respect of the Monies Owing; and
13. continuing obligations despite any intervening payment, settlement or other thing and extends to all of the Monies Owing.
14. **RIGHTS OF THE COMPANY ARE PROTECTED**
    1. Rights given to the Company under this document (and the Guarantor’s liabilities under it) are not affected by any act or omission of the Company or any other person or by anything else that might otherwise affect the Company under law or otherwise, including:
15. the fact that the Company varies or replaces any arrangement under which the Monies Owing is expressed to be owing;
16. the fact that the Company releases the Client or any other Guarantor or give such party a concession, such as more time to pay;
17. the fact that the Company releases, loses the benefit of or does not obtain any security;
18. the fact that the Company does not register any security which could be registered;
19. acquiescence or delay by the Company or any other person; or
20. an assignment of rights in connection with the Monies Owing.
21. **OBLIGATIONS ABSOLUTE & UNCONDITIONAL**
    1. The obligations of the Guarantor under this document are absolute, binding and unconditional in all circumstances.
22. **GUARANTOR’S RIGHTS ARE SUSPENDED**
    1. The Guarantor agrees not to exercise a right of proof after an event occurs relating to the insolvency event of the Client of the Monies Owing independently of an attorney appointed under this document.