

ARA Mechanical Services

Standard Terms and Conditions of Sale/Supply of Goods and/or Services

The following terms and conditions may be subject to consumer protection laws, including the *Competition and Consumer Act 2010* (Cth), and other applicable Australian consumer protection laws and regulations. Nothing in these terms and conditions is intended to exclude, restrict or modify any rights available to the Customer under the *Competition and Consumer Act 2010* (Cth) or any other applicable Australian consumer protection laws and regulations (as applicable) which may not legally be excluded, restricted or modified, in the circumstances that such consumer protection laws and regulations are applicable and available to the Customer.

1. Agreement

- 1.1 These Terms apply to and form part of the Agreement between the Supplier and the Customer. They supersede any previously issued terms and conditions of sale and/or supply, including any such terms and conditions issued to the Supplier by the Customer which shall be deemed rejected except as otherwise provided by clause 1.5.
- 1.2 Acceptance by the Supplier to provide the Goods and/or Services described or referred to in any Purchase Order issued to the Supplier from the Customer constitutes the formation of the Agreement and is expressly subject to and conditional upon these Terms.
- 1.3 Any Purchase Order, statement of intent to purchase any Goods and/or Services, or any direction from the Customer to proceed with procurement, manufacture, shipment of, or supply or performance of Goods and/or Services (as applicable), shall constitute acceptance of these Terms by the Customer, and shall be taken as the Customer's representation that it is solvent.
- 1.4 The absence of a Purchase Order will not preclude an Agreement from being formed nor shall it preclude these Terms from applying to the Supplier and Customer, providing that there is acceptance of these Terms by the Customer in any of the forms captured by clause 1.3 above. In such circumstances, any reference herein to a "Purchase Order" shall nonetheless apply as though the Customer had indeed issued the Supplier a Purchase Order, notwithstanding the absence of such documentation in lieu of the Customer's acceptance of the Terms through other methods.
- 1.5 Any alteration, amendment, waiver or cancellation of these Terms and any additional or different terms and conditions provided in any communication from the Customer are rejected by the Supplier and shall not be effective or binding on the Supplier, except where the Supplier's authorised representative, in writing, acknowledges and accepts the application of the Customer's own terms and conditions.
- 1.6 The Customer acknowledges and agrees the Supplier is not bound by any representations, statements, conditions or agreements made by the Supplier's personnel other than the Supplier's authorised representatives (which, for the avoidance of doubt, shall be taken to be limited to the Supplier's directors and company officers).

2. Specification

- 2.1. The Goods shall be supplied and the Services performed by the Supplier in a timely manner and in accordance with the Agreement and any specifications set out in the Purchase Order. Where the Purchase Order does not contain any specifications, or where the specifications are ambiguous or unclear, the specifications set out in the Supplier's Quotation shall apply, if any are applicable to the Goods or Services.

3. Price

- 3.1 The Customer must pay to the Supplier the Price based on the Goods or Services stipulated in a Purchase Order at the then current prevailing rates of the Supplier for those Goods or Services, or, at the discretion of the Supplier, the amount specified in any Quotation. To the extent of any discrepancy or conflict between prices, the Price quoted by the Supplier in a Quotation to the Customer shall prevail. In the absence of a Quotation from the Supplier, the Price stipulated in the Supplier's tax invoice shall prevail above all else.
- 3.2 Any increase in the cost of delivery and/or supply of the Goods or Services between the date of the Purchase Order and the date of delivery or supply of those Goods or Services shall be borne by the Customer.
- 3.3 The Supplier may change the Price by providing written notice to the Customer.
- 3.4 Any Price quoted by the Supplier is based on the costs of labour, materials and statutory obligations applicable at the date of the Quotation. Any variations in these rates or obligations incurred by the Supplier shall be payable by the Customer.
- 3.5 The Supplier shall be entitled to charge its reasonable additional costs and fees for all delays caused as a result of the Supplier obeying any instructions given by the Customer or the Customer not fulfilling the Customer's obligations under the Agreement.

4. GST and Other Taxes

- 4.1 The Price is exclusive of GST. The Customer must pay the Supplier an additional amount for any GST payable in respect of any taxable supply made under or in connection with the Agreement, provided the Supplier provides the Customer with a tax invoice in respect of that taxable supply.
- 4.2 If there is an adjustment event in relation to the taxable supply:
 - (a) the Supplier must refund to the Customer the amount by which the GST paid by the Customer (pursuant to clause 4.1) exceeds the adjusted GST on the taxable supply; or
 - (b) the Customer must pay to the Supplier the amount by which the adjusted GST on the supply exceeds the amount of GST paid (pursuant to clause 4.1).
- 4.3 Any other taxes (excluding income taxes), duties, fees, charges or assessments of any nature levied by any government authority in connection with the Agreement shall be paid directly by the Customer to the governmental authority concerned. If the Supplier is required by law or otherwise to pay such a levy and/or fines, penalties or assessments in the first instance, or as a result of Customer's failure to comply with any applicable laws or regulations governing the payment of such levies by the Customer, the amount of any payments so made by the Supplier shall be reimbursed by the Customer to the Supplier upon receipt of the Supplier's tax invoices.

5. Property and Risk

- 5.1 All risk and liability for the Goods will transfer to the Customer on delivery of goods to the Customer or any third party who is acting on behalf of the Customer.
- 5.2 Notwithstanding the above, the Supplier shall retain the title in the Goods and shall be the sole and absolute owner of the Goods, until the Price for the Goods has been received in full by the Supplier. Subject to the provisions of the PPSA, the Supplier shall be entitled, in addition to the right conferred by clause 5.3(b), to retake possession of all Goods in the possession of the Customer which have been supplied by the Supplier sufficient to clear any outstanding indebtedness by the Customer to the Supplier under the terms of the Agreement, and the Supplier shall not be required to distinguish between Goods which have been paid for and Goods which have not been paid for.
- 5.3 Subject to the provisions of the PPSA, until the Supplier has received payment in full of the Price for all Goods supplied by the Supplier:
- the Customer shall be bailee of the Goods for the Supplier and shall store them at its premises separately from its own goods and items or those of any other person, and shall store them in a manner enabling them to be readily identifiable as Goods of the Supplier;
 - the Customer grants the Supplier an irrevocable licence to enter the Customer's premises and retrieve the Goods; and
 - the Customer shall not sell or dispose of any of the Goods or any interest in the Goods without the prior written consent of the Supplier.
- 5.4 If the Supplier consents in writing to the sale or disposal of Goods, or if any sale or disposal of Goods is made in breach of clause 5.3, notwithstanding such breach:
- the Customer shall inform any person to whom it proposes to sell or dispose of the Goods to (including any interest in the Goods) ("**Acquirer**") of the Supplier's interest;
 - the Customer shall ensure that the terms of the sale or disposal of Goods to the Acquirer includes a term which is identical in substance to this clause 5;
 - notwithstanding that the payment of the Price for the Goods would not otherwise have been due by the Customer, the Customer shall be obliged to pay the Price for the Goods to the Supplier as soon as it receives payment from the Acquirer;
 - the Customer shall hold all its rights against the Acquirer on trust for the Supplier and, to the extent necessary to discharge all debts owing to the Supplier in respect of the supply of Goods or other Goods only, any proceeds it receives;
 - the Customer agrees that the Supplier shall be entitled to trace all and any proceeds arising from any sale or disposal of the Goods until the Customer pays the Price for the Goods to the Supplier (including for all other Goods supplied by the Supplier); and
 - the Customer shall, at the Supplier's request, assign its claims against the Acquirer and agrees irrevocably to appoint the Supplier and each of its officers as its attorney to give effect to and complete that assignment.
- 5.5 Where Goods have become Mixed Goods, the Customer agrees with the Supplier:
- that the ownership of the Mixed Goods immediately passes to the Supplier, to the extent necessary to repay all moneys owing to the Supplier (but to no greater extent); and
 - until payment of all sums owing to the Supplier, whether under this Agreement or any other contract, the Customer shall hold the Goods as a fiduciary for the Supplier.
- 5.6 For the avoidance of doubt, subject to the PPSA, the ownership of Mixed Goods passes to the Supplier at the beginning of the single operation or event by which the Goods are converted, mixed, commingled or become part of Mixed Goods.
- 5.7 Where the Customer has not paid the Supplier in the manner required by these Terms:
- the Customer agrees with the Supplier to keep Mixed Goods as a fiduciary for the Supplier and, unless otherwise required by the Supplier, to store Mixed Goods in a manner that clearly shows the ownership of the Supplier; and
 - the Customer grants the Supplier a security interest in the Mixed Goods as security for payment of the Goods.

6. Delivery

- 6.1 Any dates for delivery of Goods or performance of Services as advised by the Supplier are approximate and are based upon:
- the Customer providing prompt access to any area (and equipment required) for delivery of Goods and/or performance of the Supplier's Services; and
 - prompt receipt of all the necessary information in respect of the Services requested by the Customer.
- 6.2 Where the Customer has failed to properly prepare for the Supplier's delivery or installation of Goods and/or performance of Services, the Supplier reserves its rights to charge the Customer a site attendance or attempted delivery fee.
- 6.3 If the Customer fails to take delivery of Goods (including but not limited to failing to prepare for delivery), in addition to the Supplier's rights under clause 6.2, the Supplier may temporarily store the Goods until such time as the Customer accepts or prepares for delivery of Goods ("**Storage Period**"). In such circumstances, the Customer shall be liable to the Supplier for 0.5% of the Price of the stored Goods for each month, or part thereof, during the Storage Period, in addition to any other reasonable costs incurred by the Supplier for storing the Goods.
- 6.4 All delivery costs for Goods or Services shall be in addition to the Price unless expressly stated otherwise by the Supplier.
- 6.5 Unless otherwise agreed, all shipments are 'Ex Works' (as defined in INCOTERMS 2020 published by the International Chamber of Commerce which may be revised from time to time) at the Supplier's premises.
- 6.6 The Supplier shall not be liable for any delay in delivery of Goods and/or performance of Services where the delay is caused by a Force Majeure Event. If a Force Majeure Event can reasonably be expected to significantly delay delivery of Goods or performance of Services, the Supplier shall, as a courtesy, provide the Customer with written notice of the delay within two (2) business days upon being made aware of a Force Majeure Event. For the purposes of this clause 6.6, significant delay means a delay of thirty (30) consecutive days or more.

- 6.7 In the event of a delay under clause 6.6, the date of delivery or performance shall be extended for a period equal to the time lost by reason of the Force Majeure Event.
- 6.8 The Customer shall not be entitled to a reduction in Price for Goods or Services subject to an event of delay under clause 6.6, except in the circumstances where the Supplier, as a gesture of goodwill, offers to reduce the Price for the delayed Goods and/or Services.
- 6.9 The Supplier shall not be liable to the Customer for any Loss or damages (whether liquidated, general or otherwise) claimed by the Customer arising from or in connection with an event of delay under clauses 6.3 or 6.6.
- 7. Payment**
- 7.1 Unless otherwise specified by the Supplier in writing, payment of the Price is to be made by the Customer no later than thirty (30) days from the date of a tax invoice for supply of Goods issued to the Customer or within thirty (30) days of completion of performance of Services by the Supplier. Where Services are to be performed, the Supplier may submit a detailed payment claim at intervals of one (1) month. Each payment claim shall be for Services performed up to the end of the relevant month.
- 7.2 At the Supplier's sole discretion, a 50% deposit or pre-payment of the Price may be required from the Customer prior to the Supplier supplying Goods and/or performing Services ("Deposit"). The Deposit shall be used towards the value of the Price owing by the Customer to the Supplier.
- 7.3 If the Supplier requests a Deposit and the Customer does not provide such Deposit in a reasonable time frame at least three (3) business days prior to the supply of Goods and/or performance of Services, the Supplier reserves its rights to delay such supply or performance until such time that the Deposit is received. Where the Supplier exercises the right to delay commencement of supply of Goods and/or performance of Services due to the Customer's delay in providing the Deposit, the Supplier shall not be liable to the Customer for any Loss or damage (whether liquidated, general or otherwise) in respect of such delay.
- 7.4 Time for payment for the Goods and/or Services is of the essence. In the event a tax invoice is overdue, the Supplier may, without incurring any liability to the Customer, suspend the provision of Goods and/or Services until payment is made.
- 7.5 Payment of the Price and any other payment must be made in cleared funds by cash, cheque, bank transfer, credit card, direct debit, or by any other method as agreed between the Customer and the Supplier. Credit Card payments will incur a surcharge.
- 7.6 In the event of bankruptcy or insolvency of the Customer, or in the event any proceeding is brought against the Customer, voluntarily or involuntarily, under the bankruptcy or any insolvency laws, the Supplier shall be entitled to cancel any Purchase Order outstanding at any time during the period allowed for filing claims against the Customer, and shall receive reimbursement for its reasonable and proper cancellation charges.
- 7.7 The Supplier, at its discretion, may retain possession of Goods repaired, modified, inspected, maintained or serviced under this Agreement until the Price is paid in full. If the Price is not paid within ninety (90) days from the date of the relevant tax invoice, the Supplier may, upon not less than seven (7) days' written notice by registered mail or email to the Customer, at the Customer's last known address or email address (as applicable), sell the Goods at public or private sale and apply the net proceeds to the outstanding Price.
- 7.8 Interest on overdue tax invoices owed by the Customer accrues from the date when payment becomes due, until the date of payment, at a rate of ten percent (10%) per annum, calculated daily.
- 7.9 The Customer indemnifies the Supplier from and against all Loss incurred by the Supplier in pursuing any sums owed by the Customer to the Supplier.
- 8. Security**
- 8.1 The Customer consents to the Supplier creating and maintaining a registration on the Personal Property Securities Register ("Register") in any required form, in relation to any security interest contemplated or created by the Agreement, including a security interest as defined in the PPSA.
- 8.2 The Customer agrees to sign any necessary documents and provide all reasonable assistance and information to facilitate the registration and maintenance of a security interest on the Register if required by the Supplier. The Supplier reserves the right to register a financing statement or financing change statement in respect of any security interest and the Customer waives the right to receive notice of a verification statement in relation to any registration of a security interest on the Register, by way of clause 8.1 or 8.2, in respect of any Goods supplied.
- 8.3 The Customer undertakes to do any and all acts that are reasonably required by the Supplier so as to:
- (a) allow the Supplier to create and maintain a perfected security interest (including a purchase money security interest) pursuant to the PPSA in respect of any Goods supplied and any and all proceeds of those Goods;
 - (b) allow the Supplier to register a financing statement or financing change statement;
 - (c) ensure that the Supplier maintains its secured position under the PPSA;
 - (d) not register a financing statement or financing change statement without the Supplier's prior written consent; and
 - (e) not register or commit to the register of a financial statement or financing change statement in respect of the Goods, in favour of a third party, without the Supplier's prior written consent.
- 8.4 The Supplier and Customer agree that no information (as defined in section 275(1) of the PPSA) will be provided to an interested person or person requested by an interested person. This clause 8.4 may be waived by providing prior written notice to the Supplier authorising the disclosure of the above information to a specified party.
- 8.5 In the event that the Agreement is subject to Chapter 4 of the PPSA:
- (a) the Supplier and Customer agree that, pursuant to section 115(1) of the PPSA, the Customer waives sections 95, 96, 118, 121(4), 125, 130, 132(3)(d), 134, 135, 142 and 143 of the PPSA; and
 - (b) the Supplier and Customer agree that, pursuant to section 115(7) of the PPSA, sections 127, 129(2), 129(3), 130(1), 132, 134(2), 135, 136(3), 136(4), 136(5) and 137 of the PPSA do not apply to the Agreement.
- 8.6 The Agreement (including clauses 5, 6 and 8 of these Terms) is a security agreement for the purposes of the PPSA. For the avoidance of doubt, collateral, for the purposes of section 20(2) of the PPSA includes but is not limited to, Goods (as described in the Agreement) or Goods provided by the Supplier to the Customer at any subsequent time.
- 8.7 The Supplier may apply amounts received in connection with the sale of Goods to satisfy obligations secured by security interests contemplated or constituted by the Agreement, at the Supplier's absolute discretion.

- 8.8 Despite anything to the contrary contained in these Terms or any other rights which the Supplier may have howsoever:
- the Customer charges all of its estate and interest in land, personal property or other property in favour of the Supplier to secure all monetary and other obligations under the Agreement;
 - the Customer acknowledges and agrees that the Supplier is entitled to register securities for all purposes of clause 8.8(a) (including an absolute caveat) with any applicable security registries, providing that those registered securities must be withdrawn once all payments and other monetary obligations payable under the Agreement have been met; and
 - the Customer irrevocably appoints the Supplier as the Customer's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 8.
- 9. Insurance**
- 9.1 The Supplier shall, until acceptance of the Goods by the Customer, at its own cost and in a form reasonably acceptable to the Customer, insure the Goods and any materials provided by the Customer to the Supplier pursuant to clause 12 for any loss of or damage to the Goods and/or such materials.
- 9.2 The Supplier shall have in effect for the duration of the Agreement, the following insurances:
- those which the Supplier is required to hold by law; and
 - public and products liability insurance for an amount of at least \$20,000,000 in the aggregate.
- 10. Warranty**
- 10.1 The Customer acknowledges and agrees that:
- the Customer has determined that the Goods are fit for the purpose for which they are required;
 - the Customer has not relied on the skill and judgement of the Supplier in selecting the Goods;
 - the Customer has checked the Goods for suitability, functionality, completeness, and compliance with any applicable specifications; and
 - the Supplier will not be liable for the provision of goods or services other than in respect of those Goods or Services specified on any Purchase Order, tax invoice, or Quotation, pursuant to which the Supplier has supplied the Goods and/or Services to the Customer.
- 10.2 The Supplier warrants to the Customer that:
- the Services to be performed under the Agreement will be performed with reasonable care and skill in accordance with any specifications; and
 - the Goods to be provided under the Agreement will be free from material defects and will be of the kind and quality stipulated in the Agreement ("**Warranty**").
- 10.3 The Warranty shall apply only to defects appearing within twelve (12) months from the date of completion of the Services or provision of the Goods ("**Warranty Period**") following which the Customer is deemed to have accepted the Services or Goods, subject to any rights the Customer may have under the *Competition and Consumer Act 2010* (Cth) or other applicable Australian consumer protection laws and regulations. The conditions of any tests to Goods or Services provided by the Supplier shall be mutually agreed upon and the Supplier shall be notified of, and may be represented at, all tests that may be made.
- 10.4 If the Supplier breaches the Warranty, provided the Customer has given the Supplier written notice of such breach within the Warranty Period, the Supplier's liability is strictly limited to the remedies available under clauses 10.7(a) or 10.7(b), provided that any Goods to be returned are returned to the Supplier at the Customer's cost.
- 10.5 The liability of the Supplier for any loss or damage incurred by the Customer as a result of the Warranty breach (whether the claim is based on contract or negligence) will not, under any circumstance, exceed the actual cost of correcting the defect in the relevant Services and/or Goods. The foregoing shall constitute the exclusive remedy of the Customer and the exclusive liability of the Supplier.
- 10.6 Any condition, term, guarantee or warranty which would otherwise be implied in the Agreement is hereby excluded to the full extent permitted by law.
- 10.7 Where legislation implies in the Agreement any condition, term, guarantee or warranty ("**Mandatory Warranty**"), and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of liability under such Mandatory Warranty, the Mandatory Warranty is deemed to be included in the Agreement. If the Supplier breaches any Mandatory Warranty, the Supplier's liability is limited, at the absolute discretion of the Supplier, to one or more of the following:
- if the breach relates to the Goods:
 - the replacement of the Goods or the supply of equivalent Goods;
 - the repair of such Goods;
 - the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - the payment of the cost of having the Goods repaired; and
 - if the breach relates to the Services:
 - the supplying of the Services again; or
 - the payment of the cost of having the Services supplied again.
- 10.8 Notwithstanding clause 10.7, where the Customer is a "consumer" (as defined in the *Competition and Consumer Act 2010* (Cth)), the Customer may be entitled to a refund of the Price paid for the relevant Goods or Services in the event of a Mandatory Warranty breach. No interest shall be payable by the Supplier on any such refund. Further, if the Customer is deemed to be a "consumer", the Customer acknowledges and agrees that beyond any Mandatory Warranties the Supplier is obliged to give the Customer, the Supplier provides no other warranty, guarantee or assurance, express or implied, and it is fair and reasonable in all circumstances for the Supplier to do so.
- 11. Limitation of Liability**
- 11.1 The Supplier's liability for or under any claim by the Customer in respect of this Agreement, or matters associated with this Agreement, is strictly limited to the value of the portion of the Price allocable to the Goods or Services which give rise to such claim, including negligence for any direct loss arising out of or connected with this Agreement, or from the performance or breach thereof or from the design, manufacture, sale, delivery, resale, installation, technical direction of installation, inspection, repair, test, modification, operation or use of any equipment, material or components covered by or furnished under this Agreement.

- 11.2 The Supplier will not, under any circumstances whatsoever, be liable to the Customer for:
- (a) loss of use of the equipment or any associated equipment, facilities or services downtime costs;
 - (b) special, indirect or Consequential Loss or damage; or
 - (c) any claims by third parties against the Customer for Loss or damages.
- 11.3 The Supplier does not give any warranty with respect to (without limitation):
- (a) breaches of the Warranty not reported to the Supplier within the Warranty Period;
 - (b) failures or damage in respect of the Goods or Services due to misapplication, abuse, abnormal conditions of temperature, dirt or corrosive matter;
 - (c) failure in respect of the Goods or Services due to operation (either intentional, accidental or otherwise) above rated capacities or in an otherwise improper manner;
 - (d) Goods which have been in any way tampered with or altered by anyone other than an authorised representative of the Supplier;
 - (e) Goods which have been installed by the Customer or a third party in a manner inconsistent with the Supplier's (or manufacturer's) installation instructions or operating manual (as applicable);
 - (f) Goods which have been improperly stored or maintained;
 - (g) defects in the design of Goods (or in the designs upon which the performance of Services was based) where such designs were not those of the Supplier or prepared by the Supplier;
 - (h) Goods damaged in shipment or otherwise without fault of the Supplier; and
 - (i) expenses incurred by the Customer in an attempt to repair or rework any alleged damage to Goods or failures in respect of Services.
- 11.4 The Customer agrees to indemnify the Supplier from and against:
- (a) any Loss arising from the injury to or death of any person caused by the act, omission, negligence or recklessness of the Customer, the Customer's employees, servants and agents, whilst the Supplier performs the Services and/or supplies the Goods;
 - (b) any Loss caused to the Supplier in the course of supplying the Goods or Services, except where such Loss was caused by the act, default or negligence on the part of the Supplier; and
 - (c) any Loss arising from the injury to or death of any person caused by the act, omission, negligence or recklessness of the Customer, the Customer's employees, servants and agents, to the extent permitted by law, where the Goods and/or Services were misappropriated, misused, stored or handled in a way contrary to the Supplier's instructions or reasonably expected ordinary storage and use, or otherwise where due care and skill were not applied.
- 11.5 The Customer shall assume all risks and liabilities for and in respect of the provision of Goods and/or Services and for injuries to or death of persons and damage to property howsoever arising and the Customer indemnifies the Supplier from and against:
- (a) the loss of or damage to any Goods for which payment of the Price has not yet been made in full, whether by fire, theft, accident, seizure, confiscation or otherwise whilst in the Customer's custody, possession or control; and
 - (b) all other Loss howsoever arising or incurred, as a result of or in connection with the provision of the Goods and/or Services, except where such Loss arises or is incurred by reason of the Supplier's wilful, reckless or negligent act or omission
- 12. Materials Supplied by the Customer**
- 12.1 The Customer shall provide to the Supplier any patterns, designs, specifications, drawings, samples, technical information or otherwise, as specified in the Agreement (whether in electronic format or otherwise), or which the Customer has agreed in writing to provide to enable the Supplier to supply the Goods and/or Services ("Materials").
- 12.2 All Materials and the Customer's Intellectual Property within such Materials (if any), remain the property of the Customer.
- 12.3 The Supplier will not use the Materials for any purpose other than to the extent required to supply the Goods and/or Services to the Customer.
- 13. Intellectual Property**
- 13.1 Other than as agreed between the Parties:
- (a) the Supplier hereby grants to the Customer a perpetual, irrevocable, non-exclusive, royalty-free, transferable licence to use all Intellectual Property (where owned by the Supplier) which is used by the Supplier in connection with the supply of Goods or performance Services under the Agreement;
 - (b) all Intellectual Property developed by the Supplier in connection with the supply of Goods or performance of the Services under the Agreement vests in the Supplier; and
 - (c) the Customer agrees to enter into and/or execute any document reasonably required to give effect to the provisions of this clause 13.1.
- 13.2 The Supplier warrants that:
- (a) the supply of Services by the Supplier to the Customer and the licence granted by the Supplier pursuant to clause 13.1 do not infringe the Intellectual Property rights of any third party; and
 - (b) the Services are not subject to any Intellectual Property rights of any third party that in any way restrict the rights of the Customer or its Customers to use or sell the same.
- 13.3 Notwithstanding clause 13.1 above, nothing in these Terms nor the Agreement shall be taken to have the effect of assigning the ownership of any pre-existing Intellectual Property rights the Supplier has in of its pre-existing material.
- 14. Termination, Cancellation and Returns**
- 14.1 The Customer may cancel any Purchase Order prior to provision of the Goods and/or Services under that Purchase Order by seven (7) days' written notice to the Supplier. Regardless of the circumstances, where the Customer cancels a Purchase Order, the Customer will be liable to make payment to the Supplier for any costs reasonably incurred by the Supplier together with such reasonable and proper cancellation charges as are determined by the Supplier, in fulfilling or otherwise preparing to fulfil the Purchase Order. In the event a Customer cancels a Purchase Order concerning custom-made Goods supplied or manufactured by the Supplier in accordance with the Customer's specifications, if the written notice to cancel the Purchase Order is received after the Supplier has begun fulfilling the Purchase Order, the Supplier reserves its rights to charge the Customer the full Price of the cancelled Goods.

14.2 The Supplier may suspend or terminate the Agreement at any time:

- (a) for convenience by giving the Customer thirty (30) days' written notice to such effect ("**Termination Notice**"). The Supplier will fulfil any Purchase Orders issued to the Supplier prior to the date of the Termination Notice, unless the Parties agree otherwise. Fulfilment of such Purchase Order(s) shall not effect termination of the Agreement in accordance with this clause 14.2(a). If a Purchase Order is issued to the Supplier after the date of the Termination Notice, but prior to termination of the Agreement, the Supplier may at its discretion elect to accept the Purchase Order;
- (b) if the Customer is in default of a material term of the Agreement, by giving fourteen (14) days' written notice to the Customer, if the Customer fails to remedy such default within fourteen (14) days of written notice from the Supplier, or if such default is otherwise not capable of remedy;
- (c) immediately, if Supplier has requested a Deposit from the Customer pursuant to clause 7.2, and the Customer has delayed or failed to provide the Deposit and the period of such delay or failure exceeds ten (10) business days following the date on which the Supplier requested the Deposit;
- (d) immediately if the Customer has failed to pay a tax invoice by its due date; or
- (e) immediately if the Customer becomes insolvent, is made bankrupt, is placed into external administration or liquidation or has a receiver or other controller appointed over its assets.

14.4 Termination of the Agreement pursuant to this clause 14 shall be without prejudice to the rights of either party accruing prior to termination.

15. Dispute Resolution

- 15.1 If a Dispute arises, either Party may by hand, registered post or email, give the other Party written notice of the Dispute identifying and providing details and particulars of the Dispute and entitled Dispute Notice ("**Dispute Notice**"), within fourteen (14) days of the occurrence of the event(s) or circumstance(s) on which the Dispute arises or is based.
- 15.2 The Supplier shall not be liable to the Customer in respect of any Dispute (including any claim) in connection with the Agreement where clause 15.1 is not complied with.
- 15.3 Within seven (7) days of receipt of a Dispute Notice, representatives of the Parties having authority to bind the Parties shall confer to seek to resolve the Dispute or agree on a method of doing so and whether that method shall be binding. If a resolution or method of resolution has not been agreed within twenty-one (21) days of the service of Dispute Notice, the Dispute shall be referred to mediation. All aspects of such mediation shall be subject to "without prejudice" privilege.
- 15.4 In the event a Dispute is not resolved between the Parties, reasonable efforts must be made to endeavour to resolve the Dispute through mediation before commencing proceedings in relation to the Dispute. The Customer will be barred from commencing proceedings unless the procedure in clause 15 is strictly complied with. The Supplier is exempt from complying with the mediation requirement where the Dispute concerns non-payment by the Customer for Goods or Services provided by the Supplier.

16. Compliance with laws

- 16.1 The Parties must at all times comply with all applicable laws relating to anti-bribery, improper payments, anti-money laundering, and modern slavery, including but not limited to

the *Criminal Code Act 1995* (Cth), the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), the *Anti-Money Laundering and Counter-Terrorism Financing Rules 2007* (Cth), and the *Modern Slavery Act 2018* (Cth).

17. General

- 17.1 If any provision or part of any provision of the Agreement is unenforceable, such unenforceability shall not affect other parts of such provision or any other provision of the Agreement.
- 17.2 The Supplier may alter, amend, revise or change any terms of the Agreement with written notice given to the Customer of any such alteration, amendment, revision or change. The Agreement (as amended from time to time) shall apply to all Services performed and all Goods supplied by the Supplier for the Customer and shall comprise the entire agreement between the Parties, notwithstanding any other terms and conditions which may be supplied by the Customer.
- 17.3 Any waiver by the Customer of strict compliance with any provision of the Agreement shall not be effective unless in writing, signed by an authorised officer of the Customer and authorised by the Supplier.
- 17.4 Written notice for the purposes of these Terms means notice given by an authorised representative of the Party giving notice, given to the receiving Party by hand, registered post or mail, or by email.
- 17.5 The Agreement shall be governed by and construed in accordance with the laws in force in New South Wales, Australia, and the Parties submit to the exclusive jurisdiction of the courts of New South Wales, Australia.
- 17.6 No provision of the Agreement shall be construed adversely against one party solely on the basis that that party was responsible for the drafting of that provision.

18. Survival

- 18.1 Clauses 8, 9, 10, 11, 12, 14, 15, and 16 survive the termination of this Standard Terms and Conditions of Sale/Supply of Goods and/or Services.

19. Definitions 19.1

In these Terms:

- (a) "**Agreement**" means the agreement between the Supplier and the Customer for the provision of Goods or Services comprising of:
 - (i) the applicable Purchase Order;
 - (ii) any applicable Quotation issued by the Supplier;
 - (iii) any applicable tax invoice issued by the Supplier; and
 - (iv) these Terms.
- (b) "**Consequential Loss**" means:
 - (i) exemplary, punitive, aggravated or nominal damages;
 - (ii) loss of opportunity;
 - (iii) loss of revenue, profit, or anticipated profit;
 - (iv) loss of contract;
 - (v) loss of goodwill;
 - (vi) loss arising from business interruption; and
 - (vii) any loss that is not within the reasonable contemplation of the Supplier and Customer at the time of formation of the Agreement as the probable result of a breach of the Agreement or any relevant matter,

whether present or future, fixed or ascertained, actual or contingent.

- (c) **“COVID-19 Event”** means any of the events set out below that specifically relate to the COVID-19 coronavirus global pandemic (including related epidemic, pandemic or disease outbreak) which have the effect of delaying and/or preventing the Supplier from performing its obligations under the Agreement:
- (i) the act of any government or authority which impacts or has reasonable potential to impact the Supplier or otherwise has the effect of preventing or delaying the supply of Goods and/or performance of Services;
 - (ii) the declaration of a state of emergency, or the invocation of lockdown or martial law having an effect on commerce generally; and
 - (iii) any other cause, impediment or circumstance beyond the reasonable control of any party within the Supplier’s supply chain whose consequences could not be avoided under this Contract.
- (d) **“Customer”** means the Customer (or any person acting on behalf of and with the authority of the customer) as described on any Purchase Order, Quotation or tax invoice, including their successors or permitted assigns.
- (e) **“Dispute”** means a dispute between the Parties which has arisen in connection with the subject matter or interpretation of the Agreement, including a dispute concerning a claim in tort, contract, under statute, or on any other basis in law or equity available under the law governing the Agreement.
- (f) **“Force Majeure Event”** means:
- (i) any causes beyond the Supplier’s reasonable control;
 - (ii) acts of God, acts of the Customer, acts of civil or military authorities, fire, strikes or other labour disturbances, floods, cyclones, war, riots, invasions, hostility between nations, civil insurrection, military coup or act of a foreign enemy, delays in transport or car shortages, or default of a third party supplier from whom the Supplier acquires goods or services from and which form part of the Goods or Services supplied to the Customer;
 - (iii) any causes beyond the Supplier’s reasonable control resulting in it being unable to obtain necessary labour, drawings, materials, components or manufacturing facilities; any
 - (iv) a COVID-19 Event.
- (g) **“Goods”** means goods, materials, parts or products sold or supplied by the Supplier, as described in a Purchase Order, Quotation or tax invoice.
- (h) **“GST”** means the Goods and Services Tax imposed by A *New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related act and/or regulations.
- (i) **“Intellectual Property”** means any intellectual or industrial property whether protected by statute, at common law, or in equity, including any trade mark, patent, invention, copyright, or design right (whether or not registrable), in any design, specification, process, technique, software, know how, trade secret, technical information, financial information, business method and confidential information.
- (j) **“Loss”** means any loss (including but not limited to direct loss, indirect loss, Consequential Loss, loss of anticipated profits and/or loss of business opportunity), liability, damage (including but not limited to any damages or compensation and/or any damage to reputation and damage to property), cost or expenses (including legal costs on a full indemnity basis) or whatever kind and however it arises.
- (k) **“Mixed Goods”** means where:
- (i) the Customer makes a new object from the Goods, whether finished or not; or
 - (ii) the Customer mixes or otherwise comingles the Goods with other articles, goods or products; or
 - (iii) the Goods become part of another product.
- (l) **“PPSA”** means the *Personal Property Securities Act 2009* (Cth) as may be amended or replaced from time to time.
- (m) **“Price”** means the price payable for the Services and/or Goods in accordance with clause 3.
- (n) **“Purchase Order”** means any purchase order, work order, work authorisation or any other form requesting for the supply of Goods and/or Services from the Supplier (whether oral or written).
- (o) **“Quotation”** means any quotation provided by the Supplier to the Customer in respect of a Purchase Order.
- (p) **“Parties”** means the Customer and Supplier.
- (q) **“Related Entity”** is defined in section 9 of the *Corporations Act 2001* (Cth) as may be amended or replaced from time to time.
- (r) **“Services”** means all services or described in a Purchase Order or Quotation.
- (s) **“Supplier”** means ARA Mechanical Services Pty Ltd ABN 37 122 466 693 and its Related Entities, to the extent of the involvement of any such Related Entities in the supply of Goods and/or performance of Services.
- (t) **“Terms”** means these Standard Terms and Conditions of Sale/Supply of Goods and/or Services as amended from time to time.