



Miles Road Holdings Pty Ltd (ACN 123 247 521) ('MRH')
647- 649 Stuart Highway
Berrimah NT 0828

OPERATIVE

1. These T&Cs apply to the sale of Goods by MRH to any Customer unless otherwise agreed in writing.
2. These T&Cs are governed by the Laws of the Northern Territory of Australia.
3. The Customer is the person and/or entity who wishes to buy Goods from MRH by Purchase Orders placed from time to time.
4. MRH has agreed to sell and the Customer has agreed to buy Goods on the terms and conditions set out in these T&Cs.
5. MRH and the Customer agree that these T&Cs are legally binding upon each of the parties.
6. MRH includes its principals, directors, officers, contractors and employees.
7. These T&Cs are binding on MRH, the Customer and each of their respective heirs, administrators, executors, personal representatives, dependants and successors.
8. Where the Customer is a 'Trustee of the Trust', these T&Cs bind the Customer in its own right and in its capacity as Trustee of the Trust. The Customer acknowledges and agrees that MRH may institute proceedings and/or seek recourse to recover any monies owed to it, whether the assets are owned beneficially or held by it in its capacity as Trustee of a Trust.

PURCHASE ORDERS

9. The Customer must place a Purchase Order with MRH in writing and duly executed or signed by a duly authorised officer of the Customer or the Customer personally.
10. Where the Customer (for any reason whatsoever) cancels the whole or part of a Purchase Order then, in addition to any other rights and remedies at law or in equity, the Customer acknowledges and agrees that MRH shall be entitled to recover all liability or costs howsoever incurred by MRH in respect of the cancelled Purchase Order.

PAYMENT TERMS

11. Upon the placement of a Purchase Order which includes Goods that are ordered from a third party supplier, the Customer must pay the Tax Invoice in full upon placement of the Purchase Order.
12. Where the Customer does not hold a Credit Account with MRH, the Customer must make payment in full, without set-off or counterclaim, for all Goods upon delivery of the Goods to the Customer or collection of Goods by the Customer's agent or courier (as the case may be).
13. Where the Customer holds a Credit Account with MRH, the Customer must make payment in full for all Goods on the last Business Day of the calendar month immediately following the month in which the Goods were delivered or collection of the Goods by the Customer's agent or courier is made (as the case may be).
14. MRH reserves the right not to provide Goods to Customers with a Credit Account where that Customer is in any way in breach of the terms and conditions of the Credit Account unless otherwise agreed in writing.

LATE PAYMENT

15. If the Customer fails to pay a Tax Invoice or any part of a Tax Invoice, the Customer shall pay interest on the outstanding amount at the Interest Rate from the date that payment was due up until and including the date that MRH receives payment of the outstanding amount. For the avoidance of doubt, the imposition of interest on any outstanding portion of a Tax Invoice will not prejudice MRH's rights under these T&Cs.
16. The Customer must pay MRH for any reasonable costs MRH incurs including but not limited to legal costs on a solicitor and own client basis in recovering any amounts the Customer owes under these T&Cs.

Terms and Conditions for Sale of Goods

17. The Customer unconditionally and irrevocably indemnifies MRH against, and therefore must pay MRH on demand for, any loss, liability or costs incurred directly or indirectly if:
 - (a) the Customer fails to make payment of any Tax Invoice or arrangement under which it is expressed to be owing (including but limited to any enforcement costs); or
 - (b) the Customer otherwise defaults under these T&Cs.
18. MRH may at time withhold a Purchase Order where the Customer:
 - (a) fails to make payment of a Tax Invoice or any interest applicable thereon in accordance with these T&Cs; or
 - (b) fails to make payment for Goods purchased under a Credit Account in accordance with these T&Cs unless otherwise agreed in writing by parties.

PASSING OF TITLE

19. Title to the Goods constituting the Purchase Order shall pass to the Customer free of encumbrances and all other adverse interests upon receipt by MRH of payment of the Price in full.
20. Until title to the Goods passes to the Customer in accordance with clause 19, MRH holds a security interest in the Goods and all proceeds from the sale of the Goods as contemplated under the PPSA.

RIGHTS IN RELATION TO GOODS

21. MRH reserves the right in relation to the Goods until all accounts owed by the Customer to MRH are fully paid. These rights include but are not limited to:
 - (a) ownership of the Goods;
 - (b) entry to the Customer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
 - (c) subject to, and in accordance with, the PPSA, to keep or resell any Goods possessed pursuant to clause 21(b).
22. If the Customer resells the Goods or products manufactured using the Goods, the Customer must hold part of the proceeds of any such sale, as represents the Price, in a separate identifiable account as the beneficial property of MRH. The Customer must pay this amount to MRH upon request. Notwithstanding this clause 22, MRH is entitled to maintain an action against the Customer for the Price and the risk of the Goods shall pass to the Customer upon delivery.
23. Prior to title in the Goods passing to the Buyer under these T&Cs, the Customer agrees that:
 - (a) the Customer has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation MRH owes to the Customer;
 - (b) the Customer cannot claim any lien over the Goods;
 - (c) the Customer will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by MRH;
 - (d) where the Customer is in actual or constructive possession of the Goods:
 - A. the Customer will not deliver them or any document of title to the Goods to any person except as directed by MRH; and
 - B. shall be in possession of the Goods as a bailee of those Goods and owes MRH the duties and liabilities of a bailee.
 - (e) pending payment in full for the Goods, the Customer:
 - A. must insure the Goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Customer carries on business; and
 - B. must not remove, deface or obliterate any identifying plate, mark or number on any of the Goods.



Terms and Conditions for Sale of Goods

24. In connection with the Goods, MRH states to the Customer that:

- (a) MRH has the right to supply the Goods to the Customer;
- (b) the activities of the Customer in supplying the Goods do not infringe the rights of the owner of the Goods (where MRH is not the owner of the Goods); and
- (c) if the Goods are not owned by MRH, that MRH is authorised to supply the goods to the Customer.

25. If the Customer supplies any of the Goods to any person before all moneys payable by the Customer have been paid to MRH, the Customer agrees that:

- (a) it holds the proceeds of re-supply of the Goods on trust for and as agent for MRH immediately when they are receivable or are received;
- (b) it must either pay the amount of the proceeds of re-supply to MRH immediately when they are received, or pay those proceeds into an account with a authorised deposit-taking institution as trustee for MRH;
- (c) any accessory or item which accedes to any of the Goods by an act of the Customer, or of any person at the direction or request of the Customer, becomes and remains the property of MRH until MRH is paid in accordance with these T&Cs; and
- (d) if the Buyer fails to pay for the Goods within the period of credit (if any) extended by MRH to the Customer, subject to, and in accordance with, the PPSA, MRH may recover possession of the Goods at any site owned, possessed or controlled by the Customer and the Customer agrees that MRH has an irrevocable licence to do so.

PASSING OF RISK

26. Risk in each Purchase Order passes to the Customer upon delivery of the Goods to the Customer or collection of Goods by the Customer's agent or courier (as the case may be).

COSTS

27. Where any costs for Goods are provided by MRH to the Customer as 'a quote' within the Purchase Order the quote cost provided will be based solely on information and/or specifications supplied by the Customer.

28. Where MRH considers that such information and/or specifications are inadequate, lacking in details, incomplete and/or contain errors:

- (a) The Customer will indemnify MRH for any cost (if any) that MRH may have incurred prior to the inadequacy or error becoming known. The Customer warrants and agrees that MRH may charge the Customer for the extra costs for the Goods at the Schedule of Rates of MRH at the time the Goods are supplied.
- (b) MRH may issue to the Customer a revised quote for the Goods the Customer has requested MRH to supply or where applicable MRH may issue a variation quote for the Goods.

VARIATIONS

29. Subject to clause 28, there will be no variation to the Goods unless agreed to by MRH and the Customer in writing.

30. MRH is not liable or responsible to the Customer nor any other third party for any loss, cost or expense to the extent it is caused by or attributable to any delay in the Customer accepting or rejecting the proposed variation pursuant to clause 29.

31. Any additional Goods to be supplied as a result of any acceptance of deemed variation shall be charged to the Customer by MRH in accordance with the Schedule of Rates of MRH at the time the Goods are supplied.

RETURN OF GOODS

32. Subject to clause 40, MRH shall not accept the return of any Goods unless:

- (a) the Customer delivers written notice to MRH specifying the fault or defect and providing reasonable evidence with respect to fault or defect; and
- (b) the Customer provides the Goods to MRH for inspection; and

- (c) the Goods are in condition in which they were delivered by MRH and have not been damaged in any way; and
- (d) the Goods have not been installed or altered by either the Customer or MRH.

33. Any notice given to MRH pursuant to clause 32(a) must:

- (a) quote the reference number; and
- (b) state the full particulars of the alleged fault or defect.

GST

34. Unless specially described as being 'GST-inclusive', any consideration to be paid or provided for a supply made under or in connection with these T&Cs does not include any amount on account of GST, and is 'GST-exclusive'.

35. Where pursuant to the GST Law any supply to be made by a party (Supplier) to another party (Recipient) under or in connection with these T&Cs, is subject to GST (other than a supply in consideration for which is specifically described in these T&Cs as GST-inclusive) then:

- (a) the consideration payable or to be provided for that supply under these T&Cs will be increased by, and the Recipient will pay to the Supplier, an amount equal to the GST calculated according to the GST Law; and
- (b) the Recipient must pay that additional GST amount at the same time and in the same manner as the GST-exclusive consideration is paid or provided; and
- (c) a reference to the consideration payable for a supply includes the value of any non-monetary consideration for the supply.

PROVISION OF TAX INVOICE

36. If the Supplier is Registered or required to be Registered, the Supplier must provide a GST compliant Tax Invoice in connection with any supply made by it pursuant to these T&Cs, failing which the Recipient will not be obliged to make any payment for that supply.

GOODS EXCLUDED

37. Should the Customer require the inclusion of any Goods not included in the Purchase Order the Customer shall be charged by MRH in accordance with the Schedule of Rates of MRH at the time the Goods are supplied.

38. The Customer acknowledges and agrees that the Purchase Order may include allowance for disbursements which will be incurred on the Customer's behalf and may be subject to GST. Disbursements include but are not limited to:

- (a) government charges, taxes and duties;
- (b) other consultant and experts' fees; and
- (c) freight, delivery and packaging costs.

CERTIFICATION

39. A certificate signed by an Authorised Officer of MRH certifying the value of the Goods supplied shall be regarded as being true and correct.

EXCLUSION/LIMITATIONS OF IMPLIED CONDITIONS

40. In circumstances where the Goods come with guarantees that cannot be excluded under The Australia Consumer Law, the Customer is entitled to either:

- (a) a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage; or
- (b) replacement or repair of the Goods where the Goods fail to be of acceptable quality (as defined under section 54(2) of The Australian Consumer Law) and failure does not amount to a major failure.

41. Notwithstanding clause 40 and to the extent permitted by law, MRH excludes all implied conditions and warranties, except for any implied condition or warranty where the exclusion of which would contravene any statute or cause this clause to be void.

42. MRH's liability to the Customer for breach of any non-excludable Condition (other than an implied warranty) is limited, at KAP's discretion, to refunding the costs of the Goods in respect of the specific Good or Goods which has caused the breach to occur. In these



circumstances MRH may opt to provide those Goods, which has caused the breach to occur, again to the Customer.

LIMITATION OF LIABILITY

43. MRH is only liable to the Customer for damages which are suffered by the Customer as a direct result of the actions of MRH. MRH is not liable for:
- (a) any indirect damage or loss suffered by the Customer; or
 - (b) the requirements of other trades, services or professions connected with the Goods, unless such requirements are specifically noted as such on the Purchase Order produced by MRH.

SEVERABILITY

44. Where any clause of these T&Cs are found by a Court of competent jurisdiction to be illegal or unenforceable at law, that specific clause or clauses may be removed from these T&Cs, however the remaining clauses of these T&Cs will continue to be operative and binding to the full extent of their effect.

TERMINATION

45. MRH may terminate these T&Cs on the following grounds with immediate effect by giving notice to the Customer where:
- (a) The Customer breaches any clause of these T&Cs or fails to remedy the breach within seven (7) days upon receiving notice from MRH to do so;
 - (b) The Customer breached a clause of these T&Cs and the breach committed by the Customer is not capable of remedy; or
 - (c) The Customer becomes 'Insolvent' and/or 'Bankrupt' as defined the *Corporations Act* or *Bankruptcy Act*, including where the Customer is alleged by a third party or MRH as being insolvent and/or bankrupt.

ASSIGNMENT

46. The Customer is prohibited from assigning these T&Cs without the prior written consent of MRH which consent must not be unreasonably be withheld and/or delayed.

SECURITY

47. Despite anything to the contrary contained herein or any other rights which MRH may have whatsoever:
- (a) where the Customer is the owner of land, realty or any other asset capable of being charged, both the Customer agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to MRH (or MRH's nominee) to secure all amounts and other monetary obligations payable under these T&Cs.
 - (b) The Customer acknowledge and agree that MRH (or MRH's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
48. Should MRH elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer shall indemnify MRH from and against all of MRH's costs and disbursements including legal costs on a solicitor and own Customer basis.
49. The Customer agree to irrevocably nominate constitute and appoint MRH (or MRH's nominee) as the Customer's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause.
50. This Agreement provides for consent to the registration of a 'security interest' for the purposes of the PPSA. References to PPSA in these T&Cs include references to amended, replacement and successor provisions or legislation.
51. The Customer must do anything (such as obtaining consents and signing documents) which MRH requires for the purposes of:
- (a) ensuring MRH's security interest is enforceable, perfected and otherwise effective under the PPSA;
 - (b) enabling MRH to obtain first priority (or any other priority agreed to by MRH in writing) for its security interest; and
 - (c) MRH exercising its rights in connection with the security interest.

52. The rights of MRH under these T&Cs are in addition to and not in substitution for MRH's rights under other law (including the PPSA) and MRH may choose whether to exercise rights under this Agreement, and/or under such other law, as it sees fit.
53. For the avoidance of doubt MRH's security interest will attach to proceeds.
54. To the extent that Chapter 4 of PPSA applies to any security interest under this Agreement, the following provisions of the PPSA do not apply and, for the purposes of section 115 of the PPSA are 'contracted out' of this agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires MRH to give a notice to the Customer); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires MRH to give a notice to the Customer); section 129(2) and 129(3); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security agreement).
55. The following provisions of the PPSA confer rights on MRH: section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral) confer rights on MRH. The Customer agrees that in addition to those rights, MRH shall, if there is default by Customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this Agreement and the Customer agrees that MRH may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.
56. The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPSA.
57. MRH and the Customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPSA. The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPSA continues to apply. The Agreement in this sub-clause is made solely for the purpose of allowing MRH the benefit of section 275 (6)(a) and MRH shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this sub-clause.
58. The Customer must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' (as defined in PPSA) other than with the express written consent of MRH.
59. The Customer must take all steps including registration under PPSA as may be required to:
- (a) enable the Customer to gain (subject always to the rights of MRH) first priority (or any other priority agreed to by MRH in writing) for the security interest; and
 - (b) enable MRH and the Customer to exercise their respective rights in connection with the security interest.

PRIVACY POLICY

60. The Customer consents to MRH using information contained in the Purchase Order or Credit Account for the purpose of providing information regarding any goods and services.
61. The Customer consents to MRH disclosing any information contained in the Purchase Order or Credit Account for the purposes of providing information in respect of warranties, products and services related to the Goods or the Customer to:
- (a) related corporation (as defined under section 9 of the *Corporations Act 2001* (Cth)) and third party service providers;
 - (b) any entity to which MRH are authorised or required by law to disclose information to;
 - (c) MRH's professional advisers, contractors or other service providers that MRH engages to provide (or advise on) Goods; and
 - (d) any parties which MRH notified the Customer of at the time the information is collected.



DEFINITIONS

In these T&Cs:

'Authorised Officer' means a person holding or acting in the office of director, chief executive or secretary, or whose title includes the word 'Manager', 'Director', 'Counsel' or a person notified to a party to act as its Authorised Officer for the purpose of these T&Cs.

'Business Day' means mean any day that banks are generally open for business in Darwin in the Northern Territory of Australia but not a Saturday, Sunday or a public holiday pursuant to the *Public Holidays Act* (NT).

'Credit Account' means an account held by the Customer with MRH on terms of credit specified by MRH from time to time.

'Customer' means person or body corporate (whether incorporated or unincorporated) purchasing the Goods named in the Tax Invoice as the Recipient.

'Goods' means any chattels personal purchased from MRH or to be manufactured or acquired by MRH.

'GST' means Goods and Services Tax pursuant to the GST Act.

'GST Act' means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

'GST Law' means the GST Act and any associated legislation including without limitation delegated legislation.

'GST, Registered, supply, tax invoice' and any other expression used that is defined in the GST Law has that defined meaning.

'Interest Rate' means the rate that is two per cent (2%) above KAP's bank for unsecured overdraft accommodation over \$100,000.00 on the date that payment is made.

'MRH' means Miles Road Holdings Pty Ltd (ACN 123 247 521) and includes its principals, directors, officers, contractors and employees.

'PPSA' means the *Personal Property Securities Act 2009* (Cth).

'Price' means the amount specified within the Tax Invoice for the supply of the Goods to the Customer.

'Purchase Order' means any order placed for the purchase of Goods by the Customer in accordance with clause 9.

'Quote' means the quote provided by MRH to perform the Works as set out in the Purchase Order.

'Schedule of Rates' means the hourly rates charged by MRH for the relevant service provider as outlined in the Fee Submission.

'T&Cs' means these terms and conditions and includes all schedules and annexures.

'The Australian Consumer Law' means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

'Work' means the services to be performed by MRH as set out in the Purchase Order in accordance with these T&Cs.

END.