

## TERMS & CONDITIONS FOR SUPPLY OF GOODS OR SERVICES

### 1. DEFINITIONS

- 1.1. In these terms and conditions, the following words have the following meanings:
- 1.11 *Agreement* means that these terms and conditions for the supply of Goods or Services by the Supplier and any attached Quotation or Form.
- 1.12 *Australian Consumer Law* means schedule 2 of the *Competition and Consumer Act 2010* (Cth); any equivalent state or territory legislation; or any other applicable consumer laws in a jurisdiction outside of Australia.
- 1.13 *Claim* means any claim by any third person for loss or damage to any property, injury to or death of any person or economic loss arising out of or relating to any or all the Goods or Services, any delay or failure in supplying the Goods or Services.
- 1.14 *Confidential Information* of a party means the following information in any form:
- all confidential information (including without limitation, trade secrets and confidential know-how) relating to that party or a related body corporate (as that term is used in the *Corporations Act*) to that party from time to time;
  - of which the other party becomes aware, both before and after the Goods or Services are supplied to the Customer. Confidential Information of the Supplier includes any Quotation or Form, and any specifications, product information and drawings of the Supplier.
- 1.15 *Consequential Loss* means any loss or damage suffered by a party or any other person that is indirect or consequential, including but not limited to loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, loss of use, loss of interest, damage to credit rating or loss or denial of opportunity.
- 1.16 *Consumer Guarantee* means a right or guarantees the Customer may have under the Australian Consumer Law or other rights in relation to the supply of goods or services that cannot lawfully be excluded.
- 1.17 *Corporations Act* means the *Corporations Act 2001* (Cth).
- 1.18 *Customer* means the person(s), company, firm or organisation named in the attached Quotation or Form.
- 1.19 *Dispute* means a dispute arising out of or relating to this Agreement, including without limitation, a dispute about the breach, termination, validity or subject matter of this Agreement, or a claim in equity or in tort relating to the performance or non-performance of this Agreement.
- 1.110 *Fee* means the total amount payable for Services in accordance with the attached Quotation or Form.
- 1.111 *Force Majeure Event* affecting a party means anything outside the party's reasonable control, including without limitation, labour dispute or shortage, materials shortage, fire, flood, drought, storm, lightning, act of God, peril of sea or air, explosion, sabotage, accident, embargo, civil commotion, act of war and war.
- 1.112 *Goods* mean all the goods described in the Quotation or Form which the Supplier is required to supply under this Agreement.
- 1.113 *Intellectual Property Rights* means all intellectual property rights, including without limitation;
- patents, copyright, rights in circuit layouts, plant breeder's rights, registered designs, trademarks and the right to have confidential information kept confidential; and
  - any application or right to apply for registration of any of those rights.
- 1.114 *Price* means the price for Goods described in the Supplier's current price list or in any Quotation or Form. *PPS Law* means:
- the PPSA;
  - any regulation made pursuant to the PPSA; and
  - any other legislation or regulation made to implement or contemplated by, any PPSA Law referred to in paragraph (a) or (b).
- 1.115 *PPSA* means the *Personal Properties Securities Act 2009* (Cth).
- 1.116 *Quotation or Form* means the attached document prepared by the Supplier for the supply of Goods or Services to the Customer, as varied in writing by the parties from time to time.
- 1.117 *Security Interest* means:
- any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust or power, or title retention arrangement;
  - a security interest as defined in the PPSA; or
  - any document to grant or create anything referred to in either paragraph (a) or (b) of this definition and any other thing which gives a creditor priority to any other creditor with respect to any asset or an interest in any asset.
- 1.118 *Secured Moneys* means the amounts referred to in clause 6.4.
- 1.119 *Services* mean all the services described in the Quotation or Form which the Supplier is required to supply under this Agreement.
- 1.120 *Supplier* means WJ & GM Baker and WJB Nominees Pty Ltd ABN 59 171 188 983 trading as: "MSA Magnetics".

### 2. AGREEMENT DOCUMENTS

- 2.1. This Agreement consists of:
- this document; and
  - any Quotation or Form.
- 2.2. If there is any inconsistency between one or more terms in this document and terms stated on any Quotation or Form, the terms in the Quotation or Form will govern to the extent of the inconsistency.
- 2.3. No Customer document, including without limitation, any purchase terms or consignment note or receipt or delivery docket, forms part of or varies this Agreement.
- 2.4. This Agreement supersedes all prior representations and agreements between the parties.
- 2.5. If the parties want to vary this Agreement, they must do so in writing signed by both parties.

### 3. SUPPLY OF GOODS OR SERVICES

- 3.1. The supplier must supply the Goods or Services to the Customer in accordance with this Agreement, including without limitations, any Quotation or Form.
- 3.2. An order placed by the customer under this agreement will not be effective unless it is accepted by the supplier which may be by the supply of all or part of the Goods or Services ordered.
- 3.3. The supplier may refuse to accept an order, or part of an order, placed by the customer without giving reasons.
- 3.4. The supplier may cancel the supply of Goods or Services at any time before the delivery of any instalment of the Goods or Services by written notice to the customer. The supplier is not liable for any costs incurred by the supplier up to the time of cancellation.
- 3.5. The Customer may not without the Supplier's consent cancel an order after the Supplier has accepted the order. If the Supplier consents to the cancellation of an order, the Customer will be liable for any costs incurred by the Supplier up to the time of cancellation.

### 4. PLACEMENT OF ORDERS

- 4.1. The Customer must sign any order it places with the Supplier. A Customer may make an order by phone if the Customer confirms the order in writing.

### 5. DELIVERY

- 5.1. Unless otherwise stated in any Quotation or Form, the Price for Goods does not include delivery fees.
- 5.2. If the Customer requests, the Supplier will arrange for delivery of the Goods to the Customer's premises (or any other location) notified to the Supplier. The Customer bears all risk and cost of any delivery the Supplier arranges. The Supplier will arrange delivery, as agent only, on behalf of the Customer.
- 5.3. The Supplier will not be liable for:
- any loss of or damage to the Goods; or
  - any delay in delivery, non-delivery, or mis delivery of the Goods that arise in any way in relation to the delivery of Goods arranged by the Supplier under Clause 5.2.
- 5.4. The Customer must pay any delivery fee for Goods supplied as well as any insurance premium or deductible for damage to Goods during delivery. Fees for delivery may be high because airfreighting of magnetic materials require special packaging and insulating of Goods.
- 5.5. Any reference in Quotation or Form to "Delivery time" means that period starting when the Supplier receives the Customer's order, approved dimensions and all information the Supplier needs to complete manufacture and, where applicable, installation.
- 5.6. If the Customer orders quantities of different Goods for various locations, the Customer must give the Supplier a prioritised list showing the desired delivery dates for each item before the Supplier will confirm a delivery schedule.

### 6. RISK AND TITLE TO GOODS

- 6.1. Risk in Goods passes to the Customer when those Goods are put onto a vehicle at the Supplier's premises.
- 6.2. The Supplier will not be liable for:
- any loss of or damage to the Goods; or

- b) any delay in delivery, non-delivery or mis delivery of the Goods occurring after the Goods have been placed on a vehicle at the Supplier's premises whether or not any liability asserted against the Supplier arises in contract, tort or bailment.
- 6.3. The Supplier is not a common carrier and accepts no liability as a common carrier.
- 6.4. The Supplier's rights under this clause 6 secure:
  - a) the Supplier's right to receive the Price of the Goods; and
  - b) all other amounts owing to the Supplier under this Agreement and any other agreement.
- 6.5. All payments received from the Customer must be applied in accordance with section 14(6) (c) of the PPSA.
- 6.6. Until full payment in cleared funds is received by the Supplier of the Secured Moneys:
  - a) legal title and property in all Goods supplied under this Agreement remains in the Supplier and does not pass to the Customer;
  - b) the Customer must not sell or otherwise dispose of Goods except in the ordinary course of the Customer's business; and
  - c) in addition to any rights the Supplier may have under Chapter 4 of the PPSA, the Supplier may, without notice, enter any premises where it suspects the Goods may be located and remove them without committing a trespass, even though they may have been attached to other goods or land not the property of the Supplier, and for this purpose the Customer irrevocably licenses the Supplier to enter such premises and also indemnifies the Supplier from and against all losses suffered or incurred by the Supplier as a result of exercising its rights under this clause.
- 6.7. If the Customer resells the Goods before they have been paid for, the Supplier is entitled to the proceeds of the resale.
- 6.8. The Customer warrants that it does not intend to use the Goods predominantly for personal, domestic or household purposes.
- 7. VARIATION TO GOODS OR SERVICES
  - 7.1. If the parties want to vary the Goods or Services, including without limitation, extending the time for delivery of the Goods or completion of the Services, they must do so by a document signed by both parties. The Supplier will not deliver any Goods or start work on any varied Services until the parties have agreed in writing the scope and Price or Fee for those varied Goods or Services.
- 8. PAYMENT
  - 8.1. Unless otherwise stated in a Quotation or Form, the Customer must pay to the Supplier;
    - a) for ready-made (non-imported) Goods – COD;
    - b) for Goods which the Supplier custom builds for the Customer and/or which the Supplier imports for the Customer – when the Customer places the order a non-refundable deposit/progress payment of 50% of the Price and thereafter any further agreed progress payment and the balance of the price within 7 days of the date of the relevant invoice for the payment in respect of those Goods unless otherwise stated on the quotation; and
    - c) for Services – the fee, including without limitations, the cost of the technician's time, travel, and accommodation for the site visit within 7 days of the date of the invoice for those Services.
  - 8.2. The Customer may only return Goods for which an invoice has been issued, if first agreed with the Supplier or if Clause 14.3(a) applied.
  - 8.3. If the customer does not pay for the Goods when they are delivered COD, or returns Goods under Clause 8.2, the Customer must pay to the supplier a restocking fee in the amount of 15% of the Price for those Goods as well as any delivery fee and insurance premium or deductible incurred by the Supplier in supplying the Goods to the customer.
  - 8.4. In addition to the applicable price for Goods and/or the fee for Services, the customer must pay applicable goods and services tax and any other tax or charge which may be required by legislation from time to time.
- 9. INTELLECTUAL PROPERTY
  - 9.1. The Customer acknowledges that:
    - a) The Supplier owns all Intellectual Property Rights in all material created by the Supplier, in relation to the Goods or Services (whether alone or with the Customer or its employees); and
    - b) this Agreement does not transfer to the Customer any rights in and to any Intellectual Property Rights in any material created by the Supplier or its employees in relation to the Goods or Services.
  - 9.2. It is a condition of this Agreement that the Goods must not be given to third parties or reproduced in any form or reverse-engineered without the Supplier's written permission.
- 10. CONFIDENTIALITY
  - 10.1. The Customer:
    - a) May use Confidential Information of the Supplier solely for the purposes of this Agreement;
    - b) Except as permitted under clause 10.1(c) and subject to clause 10.3, must keep all confidential information of the supplier; and
    - c) May disclose Confidential Information of the Supplier only with the prior written approval of the Supplier (whose approval must not be unreasonably withheld):
      - i. To persons who: (a) are aware and agree that the confidential information of the supplier must be kept confidential; and (b) either have a need to know (and only to the extent that each has a need to know) or have been specifically approved by the supplier, or
      - ii. As required by law or stock exchange regulation.
  - 10.2. Even though the information is the Confidential Information of the Supplier, the Customer is not obliged to comply with Clause 10.1 in relation to that Confidential Information if:
    - a) The Confidential Information becomes public knowledge during this Agreement; or
    - b) the Customer became aware of that Confidential Information from a third person, in circumstances where there was no breach of any obligation of confidence.
  - 10.3. PPSA Confidentiality:
    - a) Except if section 275(7) of the PPSA applies, the parties agree not to disclose any information of the kind referred to in section 275(1) of the PPSA that is not publicly available.
    - b) The Customer agrees not to authorise the disclosure of any information as contemplated under section 275(7)(c) of the PPSA.
- 11. INSTALLATION
  - 11.1. The Customer or its nominated contractor will install all Goods unless the Quotation or Form states otherwise or the Supplier otherwise agrees in writing to supply installation services on the terms of this Agreement.
  - 11.2. If requested by the Customer, the Supplier will provide installation, maintenance, and servicing instructions with or before the delivery of the Goods.
- 12. CUSTOMER RELIES ON OWN INQUIRIES
  - 12.1. The Customer acknowledges that magnetic separators and metal detectors cannot be 100% efficient.
  - 12.2. The Supplier, its employees and representatives do not provide professional advice. Any recommendations which the Supplier gives to the Customer are provided for information purposes only, hence the Supplier does not warrant the accuracy of any information or advice it provides to the Customer.
  - 12.3. The Customer must make its own inquiries in relation to the appropriateness of the Goods for a particular purpose. If the Customer requests, the Supplier will assist with tests of the Goods at the cost of the Customer.
- 13. SAFETY
  - 13.1. The Goods are for industrial use only and the Customer must acquaint itself before use with the hazards of using, handling and installing the Goods.
  - 13.2. The Customer must follow and cause the user of the Goods to acquaint itself with and follow appropriate safety precautions and the safety instructions sheets and labels applicable to the Goods purchased. Additional or replacement safety instruction sheets and labels to those normally supplied with the Goods are available on request. The Customer must request these of the Supplier in writing if for any reason they are missing, lost or illegible.
- 14. LIABILITY
  - 14.1. In addition to any applicable legislation, this Agreement states:
    - a) the entire liability of each party to the other; and
    - b) the extent of each party's liability for any Claim.
  - 14.2. With the exception of Consumer Guarantees, the Supplier excludes:
    - a) any term, condition or warranty that may otherwise be implied by custom, law or statute;
    - b) any liability for loss caused by the negligence of the Supplier; and
    - c) any liability for Consequential Loss.
  - 14.3. To the extent permitted by law, the liability of the Supplier in respect of any breach of or failure to comply with any Consumer Guarantee is limited, at the option of the Supplier, to any one or more of the following:
    - a) In the case of Goods, to:
      - i. the replacement of the Goods or the supply of equivalent Goods;
      - ii. the repair of the Goods;
      - iii. the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
      - iv. the payment of the cost of having the Goods repaired.
    - b) In the case of Services, to:
      - i. the supplying of the Services again; or
      - ii. the payment of the cost of having the Services supplied again.
  - 14.4. Except where clause 14.3 applies, the Customer bears all liability for any Claim, and the Customer acknowledges that it will ensure for all its liability under this Agreement.
  - 14.5. This Agreement applies even in circumstances arising from a fundamental breach of contract or breach of a fundamental term.
- 15. INDEMNITY
  - 15.1. The Customer indemnifies:

- a) the Supplier, its employees, agents and subcontractors against all losses, damages, expenses and costs (on a full indemnity basis and whether incurred by or awarded against any of them) that any of them may sustain or incur as a result, whether directly or indirectly, of any Claim, even in circumstances where the Supplier has been negligent or breached this Agreement; and
- b) the Supplier against all losses, damages, expenses, and costs on a full indemnity basis that the Supplier may sustain or incur as a result, whether directly or indirectly, from any breach of this Agreement by the Customer.
16. FORCE MAJEURE EVENT
- 16.1. If a party is wholly or partially precluded from complying with its obligations under this Agreement by Force Majeure Event affecting that party, then that party's obligations to perform in accordance with this Agreement will be suspended for the duration of the delay arising out of the Force Majeure Event.
- 16.2. As soon as possible after a Force Majeure Event arises, the party affected by it must notify the other party of the Force Majeure Event and the extent to which the notifying party is unable to perform its obligations under this Agreement.
17. PPS LAW
- 17.1. If the Supplier determines that a PPS Law applies to this Agreement or any Goods or Services supplied under this Agreement, then the Customer must promptly upon request from the Supplier:
- a) do anything (including obtaining consents, or agreeing on such variations, amendments or supplements to this Agreement as may be required by the Supplier) for the purposes of:
- i. ensuring that any Security Interest created under, or provided for by, this Agreement attaches to the collateral that is intended to be covered by that Security Interest, is enforceable, perfected, maintained and otherwise effective; and any Security Interest created under, or provided for by, this Agreement has the priority contemplated by this Agreement; or
- ii. enabling the Supplier, to prepare and register a financing statement or financing change statement; or
- iii. enabling the Supplier to exercise any of its powers in connection with any Security Interest created under, or provided by, this Agreement; and
- b) provide any information requested by the Supplier in connection with this Agreement to enable it to exercise any of its powers or perform its obligations under the PPS Law.
- 17.2. Anything that is required by the Supplier to be done under this clause 17 must be done by the Customer at its own expense. The Customer agrees to reimburse the costs of the Supplier in connection with any action taken by the Supplier under or in connection with this clause 17.
- 17.3. The Customer agrees that:
- a) the Supplier is under no obligation to dispose of or retain any secured property it seizes within a reasonable time, under section 125 of the PPSA;
- b) following a default, the Customer has no rights to redeem the secured property under section 142 of the PPSA; and
- c) following a default, the Customer has no rights to reinstate this Agreement under section 143 of the PPSA.
- 17.4. The Supplier does not need to give the Customer any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.
- 17.5. The Customer waives its rights to receive:
- a) a notice of the Supplier's proposal to remove PPSA personal property which has become an accession under section 95 of the PPSA;
- b) a notice of the Supplier's proposal to seize proceeds of collateral in the form of an account, chattel paper and a negotiable instrument under section 121(4);
- c) a notice of the Supplier's proposal to dispose of any PPSA personal property under section 130 of the PPSA;
- d) a notice of the Supplier's proposal to retain PPSA personal property under section 135 of the PPSA;
- e) details of the amounts paid to other secured parties in a statement of account provided by the Supplier under section 132(3)(d) of the PPSA;
- f) a statement of account under section 132(4) of the PPSA; and
- g) a copy of, or notice of, any verification statement confirming the registration of a financing statement or a financing change statement relating to any Security Interest under, or provided for by, this Agreement.
- 17.6. The terms *account*, *attaches*, *chattel paper*, *collateral*, *financing change statement*, *financing statement*, *negotiable instrument*, *perfected*, *purchase money security interest* and *verification statement* as used in this clause 17 have the meaning given to them in the PPSA.
18. DISPUTE RESOLUTION
- 18.1. Neither party may start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a Dispute unless it has first complied with this clause.
- 18.2. A party claiming that a Dispute has arisen must notify the other party in writing.
- 18.3. Within 7 working days after a notice is given under clause 18.2 each party must nominate in writing to the other party an employee authorised to settle the Dispute on its behalf.
- 18.4. During the 20-working day period after a notice is given under clause 18.2 (or if the parties agree a longer period, that longer period) each party's nominee must use his or her best efforts to resolve the Dispute.
- 18.5. If a Dispute is not resolved within the time allowed in clause 18.4, the Dispute must be referred:
- a) for mediation, in accordance with the Australian Commercial Disputes Centre (ACDC) Mediation Guidelines; and
- b) to a mediator agreed by the parties, or if the parties do not agree on a mediator, a mediator nominated by the then current chief executive officer of ACDC or the CEO of ACDC's nominee (or if no such person is available or willing to nominate a mediator, by the then President of the Law Society of New South Wales).
- 18.6. The Customer must not withhold payment for Goods or Services supplied that are not the subject of a Dispute.
- 18.7. The Supplier will continue to supply those Goods or Services ordered that are not the subject of a Dispute unless otherwise agreed in writing by the parties.
19. ARBITRATION
- 19.1. Each party agrees that any Dispute not settled under clause 18 must be settled by binding arbitration under arbitration rules agreed in writing by the parties (or, if the parties fail to agree on rules within a reasonable time, under UNCITRAL Arbitration Rules).
- 19.2. Unless the Rules require otherwise:
- a) the appointing and administering body will be the Australian Centre for International Commercial Arbitration;
- b) the arbitration will be:
- i. by 1 arbitrator appointed in accordance with the Rules;
- ii. in English;
- iii. in Sydney; and
- c) under substantive New South Wales law.
20. TERMINATION
- 20.1. The Supplier may terminate this Agreement:
- a) if the Customer breaches any term of this Agreement and fails to remedy the breach within 14 days after receiving a notice requiring it to do so; and
- b) with immediate effect by giving notice to the Customer, if a liquidator or receiver or receiver and manager or any other administrator of the Customer's business or assets is appointed or if the Customer enters any composition with its creditors.
- 20.2. The Customer may terminate this Agreement if the Supplier breaches any term of this Agreement and fails to remedy the breach within 14 days after receiving a written notice requiring it to do so.
21. AFTER TERMINATION
- 21.1. Promptly after termination, the Customer must pay the Supplier for all Goods or Services supplied up to and on termination.
- 21.2. On termination, each party (first-party) must return to the other party all Confidential Information of that other party in material form (including without limitation, those parts of all notes and other records of the first party containing Confidential Information of the other party) in the first party's possession or control.
- 21.3. At any time after termination of this Agreement a party must not:
- a) use or disclose to any person any Confidential Information of the other party;
- b) record any Confidential Information of the other party into any form (including without limitation, machine-readable form); or
- c) sell or otherwise transfer any Confidential Information of the other party.
22. SUB-CONTRACTORS
- 22.1. The Supplier may subcontract the performance of any of its obligations under this Agreement.
23. GOVERNING LAW
- 23.1. This Agreement is governed by New South Wales law, and each party agrees to submit to the jurisdiction of the courts in that state.
24. CLAUSE HEADINGS HAVE A LIMITED PURPOSE
- 24.1. Headings are for ease of reading only and do not affect the interpretation of this Agreement.