

1. Definitions

- (a) "Agreement" means the contract between the Supplier and the Customer for the Goods and/or the Services which is constituted by these General Terms and Conditions of Trade.
- (b) "Customer" means the purchaser of Goods and/or Services and any person acting on behalf of or with the authority of the Customer.
- (c) "Goods" mean goods, products, materials, parts or components provided, supplied or delivered by the Supplier to the Customer.
- (d) "Guarantor" means, where the Customer is a corporation, each director of the Customer and/or any person(s) who agrees to be liable for the debts of the Customer on a principal debtor basis.
- (e) "PPSA" means the *Personal Property Securities Act 2009* (Cth).
- (f) "Price" means the price of the Goods and/or Services as agreed between the Supplier and the Customer subject to clause 4 of this Agreement.
- (g) "Services" mean all services provided, supplied or delivered by the Supplier to the Customer and includes any advice or recommendations.
- (h) "Supplier" means Yaraandoo Pty Ltd (ACN 648 701 946) and its successors and assigns.

2. Acceptance and application of these General Terms and Conditions of Trade

- (a) This Agreement (and these General Terms and Conditions of Trade) apply to and govern all:
 - (i) tenders, quotations or offers made by the Supplier; and
 - (ii) instructions given or orders made by the Customer,for the provision, supply or delivery of Goods and/or Services, and the Customer's acceptance of Goods and/or Services provided, supplied or delivered by the Supplier constitutes acceptance of the General Terms and Conditions of Trade by the Customer.
- (b) A tender, quotation or offer made by the Supplier in respect of Goods and/or Services may at any time prior to acceptance of that offer by the Customer be varied or withdrawn by the Supplier.
- (c) Any tender, quotation or offer made by the Supplier shall remain valid until the expiry of 30 days from the date of such tender, quotation or offer unless it is expressly stated in that tender, quotation or offer that an expiry date applies.
- (d) This Agreement represents the entire agreement between the Supplier and the Customer and prevails over any Customer's terms and conditions contained in any document (whether between the Supplier and the Customer or otherwise incorporated by reference and whether before or after the date of this Agreement) and supersedes all other discussions and arrangements. No purchase order or other document or terms issued by the Customer will vary the Agreement. Any amendment or waiver of a term of the Agreement must be in writing and signed by a director of the Supplier otherwise the Supplier will not be bound by that purported amendment or waiver.
- (e) Orders cannot be cancelled except by arrangement with, and written and signed agreement by, the Supplier.
- (f) Where more than one party, person or entity has entered into this agreement as Customer, each of the Customers are jointly and severally liable for all payments of the Price and obligations under this Agreement.
- (g) Without limiting clause subparagraph (d), none of the Supplier's agents or representatives are authorised to make any representations, statements, conditions or agreements and the Supplier will not be bound by any such representations, statements, conditions or agreements.

- (h) The Customer undertakes to give the Supplier not less than fourteen (14) days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, email address or business practice).

3. Goods and/or Services

The Goods and/or Services will comprise those goods and/or services as specified on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Supplier to the Customer.

4. Price and payment

- (a) Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Supplier's quotation and will be shown as variations on the corresponding invoice. Payment for all variations must be made in full at their time of completion.
- (b) Time for payment for the Goods and/or Services shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated, then payment shall be due upon delivery of the Goods and/or Services.
- (c) Payment must be made by bank cheque or by direct credit, or by any other method as agreed to between the Customer and the Supplier, in full and without set off or deduction.
- (d) The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Supplier.

5. Risk and title

- (a) Notwithstanding that the Customer may have possession of the Goods, title to the Goods remain with the Supplier, and no legal or equitable interest in the Goods whatsoever will pass to the Customer, until the full amount of the Price for the Goods has been paid.
- (b) Until title passes to the Customer, the Customer holds the Goods on the Supplier's behalf as bailee and acknowledges that a fiduciary relationship exists between the Supplier and the Customer.
- (c) The Customer acknowledges that this Agreement creates a security interest in all Goods supplied to the Customer under the PPSA and that the Supplier may register a financing statement to perfect its security interest in the Goods.
- (d) The Customer shall provide all information, execute or arrange for execution of all documents and do all other things that the Supplier may reasonably require, to ensure that the Supplier has a perfected first ranking security interest in the Goods under the PPSA.
- (e) The Customer waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by or on behalf of the Supplier under the PPSA to the extent permitted by the PPSA.
- (f) Until the Customer has made full payment for Goods it shall not without the prior written consent of the Supplier, create a security interest in the Goods or the sale proceeds of the Goods to any third party or permit any lien or security interest to be created over the Goods or the sale proceeds of the Goods.
- (g) If any of the Goods are damaged or destroyed prior to title passing to the Customer, the Supplier is entitled, without prejudice to any of its other rights or remedies under this Agreement (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods (whether or not the Price has become payable under the Agreement). The production of this Agreement by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.

6. Customer's acknowledgement

The Customer hereby disclaims any right to rescind, or cancel the Agreement or to sue for damages or to claim restitution arising out of any misrepresentation made to it by any servant or agent of the Supplier and the Customer acknowledges that it purchases the Goods and/or Services relying solely upon its own skill, judgement and inquires and that the Supplier shall not be bound by nor responsible for any term, condition, representation or warranty other than any warranty given by the relevant manufacturer which warranty shall be personal to the Customer and shall not be transferable to any subsequent purchaser.

7. Defects and returns

- (a) The Customer shall inspect the Goods on delivery and Services upon completion and shall within seven (7) days of delivery or completion notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Supplier an opportunity to inspect the Goods and/or Services within a reasonable time following delivery if the Customer believes the Goods and/or Services are defective in any way. If the Customer fails to comply with this clause, the Goods and/or Services shall be conclusively deemed to be in accordance with the Agreement and free from any defect or damage.
- (b) For defective Goods and/or Services, which the Supplier has agreed in writing are defective or that the Customer is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods or repairing the Goods or reperforming the Services, provided that:
 - (i) the Customer has complied with the provisions of clause 7(a);
 - (ii) the Goods are returned at the Customer's cost within seven (7) days of the delivery date;
 - (iii) the Supplier will not be liable for Goods and/or Services which have not been stored or used in a proper manner or pursuant to any directions, instructions or recommendations of the Supplier or the manufacturer; and
 - (iv) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonable possible in the circumstances.

8. Warranty

Subject to clause 7 and the conditions of warranty set out below, the Supplier warrants that if any defect in any workmanship manufactured by the Supplier becomes apparent and is reported to the Supplier within twelve (12) months of the date of delivery (time being of the essence) then the Supplier will either (at the Supplier's sole discretion) repair the defect or replace the workmanship. The conditions applicable to the warranty are:

- (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer or any user to properly maintain any Goods;
 - (ii) failure on the part of the Customer or any user to follow any directions, instructions or recommendations of the Supplier the manufacturer;
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form;
 - (iv) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident, wilful or malicious damage or act of God.
- (b) The warranty shall cease, and the Supplier shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Supplier's prior written consent.

- (c) In respect of all claims, the Supplier shall not be liable to compensate the Customer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Customer's claim.
- (d) For Goods not manufactured by the Supplier, the warranty shall be limited to the current warranty provided by the manufacturer of the Goods. The Supplier shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturer's warranty.

9. Cancellation

The Supplier may cancel the Agreement or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.

10. Default & Consequences of Default

- (a) Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.
- (b) If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Supplier from and against all the Supplier's costs and disbursements including on a solicitor and own client basis and in addition to all of the Supplier's nominee's costs of collection.
- (c) Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Supplier may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the Agreement. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier exercised its rights under this clause.
- (d) If any account remains unpaid at the end of the second month after supply of the goods or services an immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.
- (e) Subject to the *Corporations Act 2001* (Cth), in the event that:
 - a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to meet its payments as they fall due; or
 - b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer, then without prejudice to the Supplier's other remedies at law:
 - (i) the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and
 - (ii) all amounts owing to the Supplier shall, whether or not due for payment, immediately become payable.

11. Security and Charge

- (a) Notwithstanding anything to the contrary contained herein or any other rights which the Supplier may have howsoever:
 - (i) Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Supplier or the Supplier's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Supplier (or the Supplier's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - (ii) Should the Supplier elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis.
- (b) To give effect to the provisions of clause 11(a), the Customer and/or the Guarantor (if any) hereby irrevocably appoint the Supplier or the Supplier's nominee as the Customer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as the Supplier and/or the Supplier's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Customer and/or the Guarantor in any land, realty or asset in favour of the Supplier and in the Customer's and/or Guarantor's name as may be necessary to secure the said Customer's and/or Guarantor's obligations and indebtedness to the Supplier and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Supplier's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.
- (c) For the avoidance of doubt, the Supplier does/will not provide any security (whether bank guarantee, insurance bond, retention monies, personal guarantees or otherwise) to the Customer in connection with this Agreement.

12. Intellectual Property

- (a) Any descriptions, specifications, illustrations, drawings, data, dimensions and weights, either submitted by the Supplier with a quotation or tender or otherwise provided by the Supplier to the Customer, are illustrative and approximate only and do not form part of the Agreement unless expressly agreed in writing by the Supplier.
- (b) All intellectual property rights in any drawings or other documents submitted and any information supplied by the Supplier to the Customer remains the property of the Supplier and constitutes the Supplier's confidential information (to the extent that it is not in the public domain) and the Customer shall keep all such information confidential and shall not use such drawings, documents and information for any purpose other than that stipulated by the Supplier.
- (c) Where the Customer has supplied drawings or other documents, the Customer warrants that the drawings and documents do not infringe any third party intellectual property rights (including copyright, patents, registered designs or trademarks) and that those drawings and documents are complete, accurate and suitable for their intended purpose and indemnifies the Supplier against any loss, damage, cost and expense suffered as a result of a breach of that warranty.

13. Delay

Should the Supplier be delayed, hindered, or otherwise prevented from complying with the terms of this Agreement by reason of events or circumstances beyond the reasonable control of the Supplier including but not limited to Acts of God, wars, riots, strikes, lockouts, epidemics, pandemics, trade disputes or labour disturbances, breakdown of plant or machinery, accident, storm, fire, flood, difficulties or delays in obtaining materials, discovery of site conditions (natural or artificial (such as artefacts or heritage items)) which had not been disclosed by the Customer, inclement weather and the effects thereof, changes in legislative requirements, transport or labour or any other circumstances affecting the supply of the Goods or Services, then any additional costs incurred by the Supplier will be payable by the Customer under clause 4(a) and the Supplier shall not be liable to the Customer for the delay or any loss or damage which may be suffered by the Customer whether as a direct or indirect result of any such occurrences.

14. General

- (a) If any provision of the Agreement is found to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- (b) This Agreement is governed by and will be construed according to the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the courts and appellate courts of Western Australia with respect to any legal action or proceedings that may be brought at any time relating in any way to this Agreement.
- (c) The Supplier shall be under no liability whatsoever to the Customer for any indirect or consequential loss, cost, damage or expense (including loss of profit, loss of revenue, loss of opportunity, loss of saving, loss of use or loss of reputation or goodwill) suffered by the Customer arising from or in connection with this Agreement. Under no circumstances shall the liability of the Supplier exceed the Price.
- (d) The Supplier reserves the right to review these General Terms and Conditions of Trade at any time and from time to time. If, following any such review, there is to be any change in such General Terms and Conditions of Trade, that change will take effect from the date on which the Supplier notifies the Customer of such change.