

MIG Pacific Pty Ltd (ABN 93 640 640 944)
TERMS AND CONDITIONS OF SALE

The following terms and conditions apply where MIG Pacific Pty Ltd ("MIG") supplies goods or services to a customer ("Customer").

1. Definitions

For the purpose of these Conditions and unless the context otherwise requires:

"**Australian Consumer Law**" means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as supplemented or amended.

"**Conditions**" means these Terms and Conditions of Sale.

"**Contract**" means the contract formed in accordance with clause 2.1, consisting of MIG's quote or proposal (if any), the relevant invoice and these Conditions and where applicable, Special Conditions of Subcontract relating to the Code and Guidelines.

"**Equipment**" means equipment supplied by MIG.

"**Errors**" means the failure of Goods to perform a function as described in the MIG proposal, the functional specification for those Goods, the appropriate user manual or product literature as the case may be.

"**Goods**" means Equipment or Software.

"**GST**" means the tax imposed by the *A New Tax System (Goods & Services) Act 1999* (Cth) and related imposition Acts of the Commonwealth.

"**Loss or Damage**" includes all types of property, pecuniary or other loss or damage, including consequential loss or damage and loss of profits.

"**Non-MIG Goods or Services**" means equipment, documentation, product literature, labour, knowledge, service or computer programs in machine readable form, that is supplied, manufactured, installed or provided by a person other than MIG.

"**Person**" includes a corporation.

"**Services**" means MIG labour or service.

"**Software**" means computer programs supply by MIG in the form of machine readable instructions and any documentation or product literature relating to those computer programs.

"**System**" may include MIG equipment and software and Non-MIG Goods or Services.

2. Contract Formation

2.1 Subject to clause 2.3, a binding agreement will form between the parties:

- (a) if these Conditions form part of a proposal to Customer, on receipt by MIG of Customer's unconditional acceptance of the proposal, evidenced by Customer's purchase order whether or not the proposal is referenced; or
- (b) otherwise, on MIG's written acceptance of Customer's purchase order; and the Contract will constitute the entire contract between the parties in connection with the sale of Goods and Services.

2.2 Any proposal incorporating these Conditions:

- (a) will not be valid after 30 days of its date, unless otherwise agreed by MIG; and
- (b) may be varied or withdrawn by MIG at any time prior to unconditional acceptance by Customer.

2.3 No modifications or variation of the Contract (including any statement by Customer that Customer's terms will apply) shall bind MIG unless expressly agreed to in writing by an authorised representative of MIG. MIG will not be deemed to have waived these Conditions if it fails to object to provisions submitted by Customer.

2.4 These Conditions will prevail in relation to the supply of Goods and Services to the extent of any inconsistency between these Conditions and any other documentation agreed by MIG under clause 2.3.

3. Express Warranty

3.1 Subject to these Conditions, MIG hereby expressly warrants that for three (3) months from date of supply or installation (whichever is the earlier) of Goods (the Period), the Goods shall be free from Errors. MIG will if any Errors occur in Goods, during the Period, at its election, either:

- (a) in the case of Equipment,
 - (i) replace the Equipment or supply equivalent equipment FOB at MIG's facility; or
 - (ii) repair the Equipment; or
 - (iii) pay the cost of replacing the Equipment; and
- (b) in the case of Software,
 - (i) repair, modify or make good the Software; or
 - (ii) make available to Customer instructions to enable Customer to repair, modify or make good the Software; or

3.2 Subject to these Conditions, and only in relation to any Services provided by MIG to a Customer who is not a consumer as defined by the Australian Consumer Law, MIG hereby expressly warrants that for three (3) months from date of provision, the Services shall be free from Errors. MIG will if any Errors occur in Services, during the Period, at its election, either:

- (a) supply the Services again; or
- (b) pay the cost of having the Services supplied again.

3.3 Clauses 3.1 and 3.2 will not apply to Errors attributable to:

- (i) Non-MIG Goods or Services;
- (ii) any modification or repair of Goods unless made by MIG or with MIG's prior written approval;
- (iii) negligent use, abuse or misuse of Goods;
- (iv) the use of Goods under environmental, power or operating conditions beyond the limits or constraints specified by MIG;
- (v) the installation or wiring of any Goods other than in accordance with MIG's instructions;

- (vi) the use of any Goods with any Non-MIG Goods or Services;
- (vii) wear or burn-out resulting from usage of goods of a kind inherently susceptible to burn-out.

3.4 MIG authorises Customer to pass on the express warranties contained in clauses 3.1(a) and (b) (as applicable) to end users who purchase Goods from Customer, provided that:

- (a) Customer is not authorised to, and must not purport to, pass on to such end-users any warranty rights greater than, or different to, those granted by MIG in clause 3.1(a) or (b) (as relevant); and
- (b) if Customer wishes to pass on the warranty rights granted in clause 3.1(a) or (b) in writing, Customer must provide MIG with a copy of the document which it proposes to use for this purpose for review and written approval by MIG before such document is provided to the end-user.

3.5 To the full extent permitted by law, MIG does not make any representations or give any warranty as to the overall performance of any System or the results of any process with which the Goods or Services are used or integrated.

4. Limitation of Liability

4.1 To the full extent permitted by law and subject to clauses 3.1 and 4.2:

- (a) MIG makes no warranty and will not be liable for any breach of statutory obligation or implied condition or warranty in respect of Goods and Services or the materials used, Systems or results of any process with which the Goods and Services are used or integrated;
- (b) MIG shall under no circumstances be liable in any way whatsoever to Customer for any Loss or Damage sustained or incurred by Customer or any other party arising directly or indirectly out of the supply of Goods or Services by MIG, the use or performance of Goods or Services in isolation or as part of a System, any breach by MIG of the Contract, or negligence of MIG. MIG's liability to the Customer, if any, in contract, tort or otherwise will be reduced to the extent the Customer contributed to the Loss or Damage; and
- (c) the express warranty in clause 3.1 is in substitution for all other terms, conditions, warranties and representations, implied by statute or otherwise, and all other terms, conditions, warranties and representations are excluded.

4.2 Where the Australian Consumer Law imposes statutory consumer guarantees in respect of Services provided by MIG to the Customer, and the Services are of a kind not ordinarily acquired for personal, domestic or household use or consumption, then the Customer's remedies for breach of any such statutory consumer guarantee shall be limited to, at MIG's election:

- (a) re-supply of the Services; or
- (b) payment of the cost of having the Services supplied again.

4.3 This clause 4 will survive termination or completion of the Contract.

5. Price and Terms of Payment

5.1 Unless stated otherwise in writing, all prices quoted by MIG, are exclusive of all taxes, (including any GST), duties, levies and any other government charges, and where applicable shall be added to the price payable by the Customer to MIG. When GST is payable by MIG in respect of a taxable supply made by MIG to the Customer, the Customer shall pay MIG, in addition to the GST-exclusive price, the amount on account of GST shown in the tax invoice rendered by MIG.

5.2 Where prices are based on supplier price list as held by MIG at date of proposal and also on rates of duty and primary wages and salaries, freight insurance and exchange rates prevailing at the date of the proposal. Any increase in price resulting from variation in any of these factors shall be payable by Customer. All prices are quoted based on MIG's terms and conditions; to the extent Customer's terms and conditions are deemed to apply, MIG reserves the right to modify all prices according to the additional level of risk and responsibility that Customer's terms and conditions require MIG to undertake. Additionally, thirty (30) days prior to the expiry of the first term of this Contract or such other time as nominated by MIG and every anniversary thereafter, MIG may give to the Customer notice in writing that the price of the Goods or Services shall increase.

5.3 MIG reserves the right to raise and be paid for progress claim invoices on the Customer. Progress claim invoices may be raised upon the supply of Equipment Services or Software to Customer or to some other place agreed or upon the completion of agreed benchmarks or other measure as agreed between Customer and MIG.

- (a) where MIG has Goods ready for supply in accordance with a delivery schedule agreed between MIG and Customer, but Customer is not able to adhere to that delivery schedule, then MIG may invoice Customer in accordance with that delivery schedule. In the absence of an agreed delivery schedule, the current MIG delivery schedule, as provided to Customer, shall be deemed to be the delivery schedule.
- (b) Goods paid for by Customer under sub-clause 5.3 will be held for Customer under MIG's custody, care and control and will be insured by MIG for fire and burglary at replacement value.

5.4 Except as otherwise agreed, invoices will be raised by MIG upon the supply of Equipment, Services or Software.

5.5 Subject to approval of Customer's credit by MIG, all charges shall be due and payable and paid by Customer to MIG within ten (10) days from date of invoice. Where MIG has not approved Customer's credit, all charges shall be due and payable and paid by the Customer to MIG upon delivery of Goods or Services.

- 5.6 All payments shall be in Australian legal currency.
- 5.7 Any moneys for which an account or invoice has been furnished to Customer, and which remain unpaid for fortyfive (45) days after the due date for payment shall, at MIG's option, bear interest as from the date upon which payment is due at the prevailing commercial overdraft rate of MIG's then current bank.
- 6. Risk and Title**
- 6.1 Property and ownership in Equipment will not pass to the Customer but will remain in MIG until the purchase price of the Equipment has been paid in full.
- 6.2 Until property in the Equipment passes to the Customer:
- the Customer shall hold the Equipment as fiduciary bailee and agent for MIG;
 - unless otherwise notified in writing, the Customer is authorised to sell or use the Equipment in the ordinary course of business;
 - after giving 48 hours notice to the Customer, MIG shall be entitled to enter the Customer's premises between 9am and 5pm to inspect the Equipment;
 - the Equipment shall be stored separately and in a manner to enable them to be identified and cross-referenced to particular invoices;
 - if the Customer sells or uses the Equipment in a manufacturing or value added process of its own or a third party, then the Customer shall hold such part of the proceeds of the sale, manufacturing or value added process as relates to the Equipment in trust for MIG. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to MIG for these Equipment at the time.
- 6.3 If the Customer:
- fails to make payments for the Equipment on the due date; or
 - commences to be wound up or is placed under official management or suffers a receiver or manager to be appointed or becomes insolvent or bankrupt or commits an act of bankruptcy,
- the Customer will deliver the Equipment to MIG upon demand. In the event the Customer does not comply with a demand within 48 hours of receipt, MIG shall be entitled to enter upon the Customer's premises at any time to do all things necessary in order to take possession of the Equipment. The Customer will also pay on demand all costs associated with the exercise of MIG's rights under this clause.
- 7. Delay**
- 7.1 It is contemplated that any Goods or Services to be supplied by MIG will be supplied during regular working hours on regular working days. If for any reason Customer requests MIG to supply Goods or Services outside regular working hours, any overtime or additional expenses occasioned thereby shall be invoiced to and paid by Customer to MIG as part of the purchase price for such Goods or Services, at MIG's then current labour rates to customers.
- 7.2 Extra costs incurred by MIG due to cessation of work occasioned by Customer's instructions or lack of instructions, by interruptions, mistakes, or work for which MIG is not responsible shall be reimbursed by Customer to MIG upon demand. Extra costs incurred by MIG due to occurrences under clause 8 and sub-clause 8.2 in these terms and conditions shall be reimbursed by Customer to MIG upon demand.
- 8. Delivery, etc.**
- 8.1 Delivery of Goods not agreed to be installed by MIG shall be FOB a MIG warehouse or MIG affiliated or office selected by MIG.
- 8.2 The delivery times made known to Customer are estimates only and MIG does not accept any responsibility for delays whether caused by fire, strike, lockout, dispute with workmen, delays caused by suppliers or others, flood, accident, transportation delays, fuel shortage, inability to obtain material, war, demand or requirement of Government or statutory authorities or any other cause beyond its control. In event of any delay, the date or dates for performance of this contract by MIG shall be extended for a period at least equal to the time lost by reason of the delay or the delays subsequently caused therefrom.
- 8.3 If the Goods or Services ordered by Customer are unable to be supplied to Customer by the scheduled delivery date, MIG will notify Customer and with Customer's consent, MIG may substitute equivalent goods or services in place of the Goods and Services ordered by Customer, in order to satisfy Customer's order.
- 9. Loss of or Damage to Goods**
- 9.1 To the extent permitted by law and subject to clause 4.1(b), in the case of Goods not agreed to be installed by MIG, MIG shall not be liable for any loss of or damage to the same after delivery FOB point of shipment, including any loss or damage in transit;
- 9.2 To the extent permitted by law and subject to clause 4.2, in the case of Goods agreed to be installed by MIG, MIG shall not be responsible for loss of or damage to goods, after those Goods have been delivered to the site. Should any Goods after being delivered and prior to payment by Customer be damaged or destroyed in any way whatsoever, other than by the fault of MIG, Customer agrees promptly upon demand to pay or reimburse MIG. In addition to and apart from any and all other sums due to or to become due to MIG under these terms and conditions, an amount equal to the loss or damage so occasioned.
- 10. Claims**
- Goods supplied shall be examined by Customer promptly upon delivery. To the full extent permitted by law and subject to clause 3.1 and 4.2, no claim will be recognised by MIG unless such claim is reported to MIG within seven (7) days after delivery of the Goods to which the claim relates.
- 11. Return of Goods**
- 11.1 Goods may be returned for credit if they do not correspond with the description under which they were sold.
- 11.2 Subject to sub-clause 11.1 no Goods may be returned for credit unless MIG's written approval has been first obtained and the original invoice number and date have been quoted for reference.
- 11.3 Subject to sub-clause 11.1, only Goods of current design in original sealed cartons, will be considered for credit, and a handling charge will be levied by MIG and paid by Customer to cover necessary inspection, adjustment, repacking and clerical work. Goods invoiced more than three (3) months prior to attempted return, Goods which are special in any nature whatsoever, software wirings and tubing cut to length and goods bought in to special order may not be returned.
- 12. Variations**
- Subject to its statutory obligations in relation to the supply of services under the Australian Consumer Law, MIG reserves the right to revise at any time the extent or type of goods or services it supplies to the Customer, if it believes that other goods or services supplied by MIG can fulfil the same function.
- 13. Dispute Resolution**
- 13.1 The parties agree that if a dispute arises out of or relates to the Contract, a party may not commence any court or arbitration proceedings relating to the dispute unless it has complied with the provisions of this clause 13, except to seek urgent interlocutory relief.
- 13.2 A party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute. On receipt by the other party of the notice, the matter must be referred to the senior management of each party for resolution. If the managers are unable to resolve the dispute within ten business days, the parties must mediate the dispute under the mediation rules of the Law Society of New South Wales and the President of the Law Society or the President's nominee will select the mediator and determine the mediator's compensation.
- 14. Governing Law**
- These Conditions are governed by the laws of Victoria. Each party submits to the non-exclusive jurisdiction of the courts of Victoria and the courts which hear appeals from those courts.
- 15. Indemnity**
- Customer agrees to indemnify MIG, its employees and agents and each of them from and against all loss or damage, resulting directly or indirectly from any acts, errors or omissions of Customer in connection with the Contract or the use, possession, operation of the Goods or Services. This clause will survive termination or completion of the Contract.
- 16. Intellectual Property**
- Nothing in these Conditions shall confer on Customer any licence, right, title or interest in or to any intellectual property comprised in the Goods or Services, which will at all times remain the property of MIG or its suppliers.