



## TERMS AND CONDITIONS OF SERVICE

### 1. Definitions

- 1.1 These Conditions of Contract, the Details of Contract and any quotes or other documents hereto attached or annexed form the contract submitted by MG Kailis Pty Ltd ACN 008 684 802 trading as Kailis Marine ("MGK") to the Vendor named in the Particulars of Contract ("Supply Agreement").
- 1.2 Unless inconsistent with the context, items set out in the Details to this Supply Agreement shall be and shall apply as defined terms in these Conditions of Contract and any other document that constitutes this Supply Agreement.
- 1.3 Neither this Supply Agreement, nor any of its terms may be varied pursuant to these conditions. This contract may only be accepted by written notice to the Vendor within the nominated validity period on the contract and, if not so accepted, MGK reserves the right to revise it.
- 1.4 In these terms and conditions, unless the context otherwise requires:
  - (a) "GST" means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charge.
  - (b) "GST Amount" means any Payment (or the relevant part of that Payment) multiplied by the appropriate rate of GST.
  - (c) "GST Law" has the meaning given to that term in A New Tax System (Goods and Services) Act 1999, or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.
  - (d) "Payment" means any amount payable under or in connection with a Quotation or Sales Invoice including any amount payable by way of indemnity, reimbursement or otherwise (other than a GST Amount) and includes the provision of any non-monetary consideration.
  - (e) "Tax Invoice" has the meaning given to that term by the GST Law.
  - (f) "Taxable Supply" has the meaning given to that term by the GST Law.

### 2. The Contract

- 2.1 This Supply Agreement constitutes a binding contract between the Vendor and MGK solely on these terms contained herein, including the Details and any terms contained in the Vendor's quotation, unless MGK has expressly rejected such terms prior to the execution of this Supply Agreement.
- 2.2 The Vendor has represented ability and capacity to deliver the goods or services to be supplied under this Supply Agreement.
- 2.3 The Vendor will deliver the goods or services described in this Supply Agreement for the Contract Price.
- 2.4 If multiple discrete supplies are to be made under this Supply Agreement, then each supply shall be made pursuant to a purchase order issued by MGK and, unless inconsistent with the terms and conditions of this Supply Agreement, the terms of the purchase order shall be binding and shall then form a part of this Supply Agreement.
- 2.5 This Supply Agreement commences on the Commencement Date and shall continue to apply for the Term unless terminated earlier in accordance with these terms.
- 2.6 No change in the terms of this Supply Agreement, including to the Contract Price, shall be effective unless agreed in writing by MGK. The waiver by the MGK of a term or a breach of any of these terms shall not be deemed to be a waiver of any other term or any subsequent breach of that or any other term.

### 3. Terms of Payment

- 3.1 MGK will pay the Vendor within 45 calendar days from the end of the month in which the Vendor presents a valid Tax Invoice for goods or services supplied pursuant to this Supply Agreement.
- 3.2 If any goods or services supplied under this Supply Agreement are found to be defective or not to comply with the requirements of the relevant Australian Standard, Surveying Authority or other quality standard specified by MGK before MGK has paid the Vendor in relation to those goods or services, then MGK may suspend such payment period until the goods or services have been rectified or resupplied in accordance with the required standards.

### 4. Materials, Details and Dimensions

- 4.1 The Vendor, before accepting this contract, acknowledges that adequate care has been taken to ensure that the materials and articles specified are of the correct type, size, rating, standard, quality, colour and finish and meet the full requirements and conform to the specification against which the Vendor's quotation was submitted.
- 4.2 MGK shall provide the Vendor with all necessary dimensions and locations in adequate time to enable the Vendor to carry out and complete their obligations in accordance with the contract.

### 5. Claims against MGK

- 5.1 Any claim which the Vendor may have against the MGK shall be deemed to be waived if not made in writing within ten (10) working days from the date that the Vendor becomes aware, or should have become aware, of the circumstances giving rise to such claim.

### 6. Warranties

- 6.1 All prices are inclusive of the warranties contained in this clause 6 unless stated otherwise in the quotation.
- 6.2 The Vendor warrants that all materials and workmanship comprising the works shall conform to the current Australian Standards, Surveying Authorities or other quality standards that MGK may specify and on the basis of which the Vendor has provided its quotation.
- 6.3 The Vendor will rectify any defects in materials supplied.
- 6.4 The vendor shall warrant all products for a period of not less than 3 months, from date of supply of the product

### 7. Limitation of Liability

- 7.1 MGK shall not be liable in contract or in tort or otherwise arising, for any consequential, special or contingent damages which may be claimed to have resulted from the Vendors failure to perform any obligation under the contract.
- 7.2 Notwithstanding anything to the contrary, in no circumstances whatsoever shall MGK be liable in contract or in tort or otherwise, for loss, expense or damages incurred, sustained or suffered by the Vendor.

### 8. Insurance

- 8.1 The Vendor shall have and shall maintain Workers' Compensation and Public Liability insurance during the Term and shall provide evidence of such insurances to MGK within 3 days of MGK's request.
- 8.2 The Vendor's Public Liability insurance shall be for an amount not less than twenty million dollars (\$20,000,000) in any one event.

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### 9. Alternate supply

If the Vendor cannot supply the goods or services or any part of them by the time specified or conforming to the specification or quality standard specified by MGK, then MGK shall be permitted to procure those goods and services from another supplier.

### 10. Termination

10.1 The Vendor agrees that time is of the essence in respect to the supply of goods and services under this Supply Agreement.

10.2 MGK may suspend the contract, or terminate the contract if the Vendor either fails to perform or observe any term of the contract, repeatedly fails to provide goods or services on time or that conform to the required specification or quality standard, or enters into an agreement or arrangement with its creditors or, commits an act of bankruptcy or is made bankrupt, or, being a company, resolves or is ordered to be wound up or has a liquidator, receiver and manager or official manager or administrator appointed for all or any part of its assets. Such suspension or termination shall not affect any rights of MGK accrued against the Vendor. MGK shall be entitled to be reimbursed for any loss or damage sustained as a result of the default of the Vendor, including any loss sustained through the suspension and subsequent resumption of the contract.

### 11. Cancellation

If the Vendor requests cancellation of the contract, he shall pay MGK compensation for all losses (including consequential losses, lost profits and the loss of prospective profits) suffered by it as a result of such cancellation.

### 12. Confidentiality

The Vendor shall keep secret and confidential and shall not disclose to any third party without the prior written consent of MGK any information, data, specification, drawings, reports, accounts or other documents and things supplied or made available by MGK to the Vendor or brought into existence by MGK for the purpose of performance of the contract set out herein and the Vendor shall take or cause to be taken such reasonable precautions as may be necessary to maintain secrecy and confidentiality and prevent disclosure, including obtaining confidentiality agreements from its employees, agents and subcontractors.

### 13. Assignment and Subcontracting

13.1 Neither party shall assign the contract in whole or in part without the prior written approval of the other party.

13.2 The Vendor shall not subcontract the supply of the goods or services or any part of them without the written consent of MGK and unless in accordance with any conditions specified by MGK in such written consent.

### 14. Implied Terms

To the extent permitted by law, No warranty, condition or representation, other than those contained in these terms and conditions shall be included in this contract by implication, statute or otherwise, but nothing contained herein shall be deemed to attempt to exclude, restrict or modify any implied warranty or condition in relation to the goods and services to be supplied by the Vendor, the exclusion, restriction or modification of which would pursuant to any statute, including the Competition and Consumer Act 2010, render this clause or anything contained herein void or illegal

### 15 GST

The parties agree that:

- (a) the Purchase Price is exclusive of GST;
- (b) all other Payments have been calculated without regard to GST;
- (c) each party will comply with its obligations under the Competition and Consumer Act 2010 (Cth) when calculating the amount of any Payment and the amount of any relevant Payments will be adjusted accordingly;
- (d) if the whole or any part of any Payment is the consideration for a Taxable Supply (other than for payment of the Purchase Price) for which the payee is liable to GST, the payer must pay to the payee an additional amount equal to the GST Amount, either concurrently with that Payment or as otherwise agreed in writing.
- (e) any reference to a cost or expense in this Agreement excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant party for which that party can claim an Input Tax Credit; and the payee will provide to the payer a Tax Invoice