



Supplier Terms and Conditions

1. TERMS

- 1.1. "MFE" means MFE Pty Ltd of 88 – 94 Warrego Highway, CHINCHILLA, Queensland 4413.
- 1.2. "Purchase Order" means the purchase order issued by MFE describing the scope of the Services.
- 1.3. "Main Contract" means a head contract between MFE (as the contractor) and MFE's client (as the principal).
- 1.4. "Services" means the provision of services and supply of any goods (including equipment hire) described in the Purchase Order.
- 1.5. "Supplier" means the supplier identified on the Purchase Order, its employees, personnel, contractors, agents and assigns.

2. APPLICATION

- 2.1. These terms and conditions apply to all Services performed by the Supplier.
- 2.2. If MFE issues a Purchase Order:
 - a) the Supplier must carry out the Services described in the Purchase Order in accordance with these terms and conditions, the Purchase Order and if applicable, the Main Contract; and
 - b) the documents embody the whole commercial agreement between the parties.
- 2.3. Where MFE is the named contractor under a Main Contract:
 - a) this agreement is a subcontract under that Main Contract; and
 - b) the Supplier agrees to be bound to the terms of the Main Contract in respect of the Services, as though it were the named contractor in the Main Contract.
- 2.4. In the event of conflicting terms between clauses or documents to the agreement, the documents prevail in this order –
 - a) any Main Contract;
 - b) Purchase Order; and
 - c) these terms and conditions.
- 2.5. The agreement supersedes any written or oral agreements or understandings between the parties.
- 2.6. If any part of the agreement is invalid or unenforceable, that provision may be severed from the agreement without affecting the validity or enforceability of any other part of the agreement.

3. VARIATIONS

- 3.1. Variations to the agreement are only enforceable if in writing and signed by both parties.

4. PAYMENT

- 4.1. MFE will pay the fee set out in an undisputed valid tax invoice (**Contract Fee**) within 30 days from the last day of the month the invoice was received in .
- 4.2. All invoices must be submitted to MFE within 30 days of the date of completion of the Service.
- 4.3. MFE may set-off any part of the Contract Fee against any amount the Supplier owes it under an unrelated tax invoice.

5. TITLE AND RISK

- 5.1. Title to and property in the Services will pass to MFE at the earlier of:
 - a) payment of any part of the Service;
 - b) in respect of goods, delivery of the goods to site; or
 - c) completion of the Services.
- 5.2. Risk to the Services will transfer upon MFE issuing a inspecting the Services and providing written confirmation of acceptance of Services.

6. PERFORMANCE

- 6.1. The Supplier will perform the Services at the site identified on the Purchase Order, if any, and by the due date specified in the Purchase Order, if any.
- 6.2. The parties agree that time is of the essence.

- 6.3. If the Services are performed in a place other than an MFE controlled site, the Supplier will provide MFE unfettered access to the premises to inspect and test the Services.
- 6.4. If applicable, certifications for all goods (including batch numbers, serial information and milling certifications) must be provided to MFE electronically.

7. WARRANTIES

- 7.1. The Supplier warrants and guarantees, that at all times, the Services:
 - a) meet a high industry standard, are fit for the intended purpose, are of sound materials, workmanship and design, free of defects and comply with law;
 - b) meet the standards and technical specifications of Standards Australia;
 - c) will only be carried out by trained, competent and authorised personnel; and
 - d) will be carried out in strict accordance with the agreement and any drawings or plans given, and that the Supplier:
 - e) will follow all health, safety, security and environment requirements;
 - f) will ensure that all Supplier plant and equipment meets Australian Standards.
 - g) will observe all laws; and
 - h) holds all permits, licences, authorisations, consents and tickets necessary to undertake the Services.

- 7.2. MFE may in its sole discretion reject and or return any defective part of the Services at the Supplier's expense.

- 7.3. If Services are defective within 24 months from the delivery, the Supplier must promptly follow MFE's instruction to replace, repair or reperform the Service at its own expense, and the warranty period will then continue for 12 months from the new completion date.

- 7.4. **THE SUPPLIER RELEASES, DEFENDS, INDEMNIFIES AND HOLDS HARMLESS MFE FOR ALL CLAIMS AND ACTIONS FOR ALL LOSS AND DAMAGE CAUSED BY DEFECTIVE SERVICES SUPPLIED BY THE SUPPLIER.**

8. INTELLECTUAL PROPERTY

- 8.1. Title to all intellectual property rights, copyrights, design rights, patents and other invention rights created by the Supplier in performing the Services transfer to MFE upon creation and MFE grant the Supplier a license to use such intellectual property and other rights for the purpose of carrying out the Services.

- 8.2. **THE SUPPLIER WILL SAVE, INDEMNIFY, DEFEND AND HOLD MFE HARMLESS FROM ALL CLAIMS, LOSSES AND DAMAGES ARISING OUT OF ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT OR PROPRIETARY OR PROTECTED RIGHT RELATING TO THE SERVICES.**

9. SAFETY

- 9.1. If part of the Services is to be performed at MFE's premises, the Supplier must comply with all MFE site security and safety requirements.
- 9.2. The Supplier must provide MFE with all instructions about safe handling, storing and transportation of any goods forming part of the Services, where it is reasonable for it to do so.

10. TERMINATION

- 10.1. MFE may terminate for convenience at any time.
- 10.2. If MFE terminates for convenience, it agrees to pay all undisputed invoices for the Services performed up to the date of termination and all incurred costs.
- 10.3. The amount due under 10.2 will be reduced by the amount already paid by MFE to the Supplier, including payment of any deposits and if no amount is due, the Supplier will return any deposit paid to MFE.



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11. MFE ISSUED MATERIALS

- 11.1. Where MFE provides materials to be incorporated into the Services, the risk of those materials transfers to the Supplier until the Services are accepted by MFE and the Supplier agrees to use those materials economically with any surplus to be returned to MFE.

12. FORCE MAJEURE

- 12.1. "Force Majeure Event" means an event beyond the control of the party affected including, but not limited to fire, flood, terrorism, war, explosion, riot, war, rebellion or sabotage.
- 12.2. The Supplier must notify MFE as soon as practical of any anticipated delay due to a Force Majeure Event and the Supplier's performance under the agreement is suspended for the period of the Force Majeure Event.

13. SUSPENSION

- 13.1. MFE may suspend the Services at any time.
- 13.2. Unless a suspension is a result of the Supplier's default, the Supplier may request a variation prior to resuming the Services if the suspension will impact the Contract Fee or Services schedule.
- 13.3. The Supplier must resume any suspended Services when notified to do so by MFE.

14. LIABILITY

- 14.1. "Consequential Loss" means special, indirect or consequential loss, loss of revenue, profit or anticipated profit, loss of contract or opportunity, loss of reputation, loss of financing, loss of use, loss of product, production, delayed or interrupted production, increased costs of operation or maintenance, business interruption or facilities downtime.
- 14.2. Notwithstanding anything contained in these terms and conditions:
- a) neither party will be liable to the other for Consequential Loss; and
 - b) EACH PARTY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER PARTY FROM ITS CONSEQUENTIAL LOSS ARISING FROM OR IN CONNECTION TO THE PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES.
- 14.3. THE SUPPLIER RELEASES, DEFENDS AND INDEMNIFIES MFE, ITS EMPLOYEES, AGENTS AND ASSIGNS FOR ANY:
- A) LOSS OR DAMAGE TO ANY PROPERTY; AND
 - B) ILLNESS, INJURY OR DEATH OF ANY PERSON, CAUSED AS A RESULT OF OR IN CONNECTION WITH THE SUPPLIER PERFORMING THE SERVICE, IRRESPECTIVE OF MFE'S NEGLIGENCE, OMISSION OR BREACH OF DUTY.

15. SOLICITATION

- 15.1. The parties agree not to solicit for employment, any employee of the other party, for at least 12 months from the completion of the Services.

16. SECURITY INTERESTS

- 16.1. "PPSA" means *Personal Property Securities Act 2009*.
- 16.2. The Supplier must promptly provide MFE financing statements and other consents MFE requests to:
- a) ensure that a PPSA security interest is registrable, enforceable, perfected and otherwise effective;
 - b) enable MFE to exercise rights in connection with a registered PPSA security interest.
- 16.3. The Supplier must not:
- a) encumber or create any security interest or lien over any of the Services whatsoever (including equipment, any part of the Services and where personal property becomes commingled with non-MFE property) or MFE issued materials;
 - b) sell, lease or otherwise part with the whole or any part of its interest in, control or possession of the Services.

- 16.4. MFE need not give, and the Supplier waives its right to receive, any notice under the PPSA (including notice of a verification statement) unless the notice is otherwise required by law.

17. INSURANCE

- 17.1. The Supplier will, at its sole cost, effect and maintain adequate:
- a) material loss or damage insurance for the full reperformance or replacement of the Services;
 - b) Worker's compensation insurance to the amount required by law;
 - c) public and product liability insurance up to \$20 million;
 - d) any policy reasonably required by MFE,
- and will provide copies of certificates of currency and underlying policies upon request.

18. CONFIDENTIALITY

- 18.1. "Confidential Information" means information that is by its nature confidential but does not include information already known at the time of disclosure or information in the public domain.
- 18.2. A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information unless it is legally compelled to do so or for the purpose of an audit or obtaining legal, financial or other professional advice.
- 18.3. This clause will survive completion of the Services or earlier termination of the agreement.

19. ASSIGNMENT

- 19.1. The Supplier must not subcontract or transfer any part of the Services to a third party without MFE's prior written consent.

20. CORRUPTION AND BRIBERY

- 20.1. The Supplier must not give or offer to give, receive, or agree to accept, any payment, gift or other benefit which would violate any anti-corruption or anti-bribery laws.

21. DISPUTES

- 21.1. Where the parties are in dispute about the agreement, the disputing party must issue the other party with a notice specifying the dispute and the parties must meet within ten days to resolve the dispute by negotiating in good faith.
- 21.2. Where a dispute is unresolved 20 days after meeting to resolve in accordance with clause 21.1, the parties will jointly appoint (or where they cannot agree, the President of the Queensland Law Society will appoint) an independent third party expert, to resolve the dispute.
- 21.3. The parties must deliver all documents and information to the appointed third party expert within ten days of the appointment so they expert can make a determination.
- 21.4. The losing party is responsible for paying for the cost of the expert.

22. NOTICE

- 22.1. All notices which are required to be given under this agreement must be in writing.

23. JURISDICTION

- 23.1. The laws of Queensland apply and the parties agree to submit to the courts and tribunals of Queensland.