



DOC21 – Customer Terms and Conditions

1. TERMS

- 1.1. “Customer” means the person or entity named as the purchaser on a written Service Request or the person or entity placing the Service Request.
- 1.2. “MFE” means MFE Pty Ltd of 88 – 94 Warrego Highway, CHINCHILLA, Queensland 4413.
- 1.3. “Service Request” means any instruction to MFE describing the scope of the Services, accepted by MFE, and including, and not limited to a verbal instruction, a written purchase order, a Cash Customer Order Form and any other notification to undertake a service.
- 1.4. “Services” means the provision of services (including subcontracted services), the supply of any goods and supply of plant and equipment, described in the Service Request.

2. APPLICATION

- 2.1. These terms and conditions set out in this document apply to all Services performed by MFE.
- 2.2. The Customer must place a Service Request, and if accepted:
 - a) MFE agrees to carry out the Services described by the Service Request in accordance with these terms and conditions; and
 - b) the Service Request and these terms and conditions embody the whole commercial agreement between the parties.
- 2.3. In the event a Service Request comprises written and verbal instructions, the written instruction will take precedence over any verbal instruction.
- 2.4. In the event of conflicting terms -
 - a) between a Service Request and these terms and conditions – only a written Service Request will prevail over these terms and conditions to the extent of the inconsistency.
 - b) between a written and verbal Service Request, the written Service Request will prevail over the verbal Service Request.
- 2.5. If any part of the agreement is invalid or unenforceable, that part may be severed from the agreement without affecting the validity or enforceability of the rest of the agreement.
- 2.6. MFE is not obliged to accept a Service Request.
- 2.7. The agreement supersedes any other written or oral agreements or understandings between the parties.

3. VARIATIONS

- 3.1. Variations made at the request of the Customer, are only enforceable where they are approved by MFE at its sole discretion.
- 3.2. Variations to –
 - a) written Service Requests must be made in writing.
 - b) verbal Service Requests may be made verbally.

4. PAYMENT

- 4.1. If required by MFE, the Customer must pay the amount of any cash deposit to MFE prior to MFE carrying out the Services.
- 4.2. The Customer must pay MFE the fee set out in the tax invoice (**Contract Fee**):
 - a) upon completion of the Services; or
 - b) for approved account customers only – within 30 days of the date on a valid tax invoice.
- 4.3. The Contract Fee is exclusive of goods and services tax unless stated otherwise. To the extent that any supply made under or in connection with this agreement is a taxable supply, the consideration for that supply is increased by the amount multiplied by the rate at which goods and services tax is imposed in respect of the supply, and is payable by the Customer in addition to the Contract Fee.
- 4.4. Unpaid Contract Fees will accrue interest at a rate of 2% each month late after the due date, calculated monthly.
- 4.5. If the Customer fails to pay the Contract Fee, the Customer will compensate MFE (on an indemnity basis) for any losses

incurred to recover the unpaid Contract Fee from the Customer.

- 4.6. Notwithstanding anything in these terms and conditions, MFE reserves the right to suspend or terminate any agreement between it and the Customer where the Customer fails to pay a Contract Fee after the due date.

5. TITLE AND RISK

- 5.1. Title in the Services will pass to the Customer only once the full Contract Fee is received by MFE.
- 5.2. Risk will transfer to the Customer upon earlier of creation or delivery of any part of the Services to the Customer.

6. WARRANTIES

- 6.1. MFE warrants and guarantees that:
 - a) it has the necessary skill and resources to supply the Services;
 - b) its personnel will perform the Services to an accepted industry standard;
 - c) Services will meet the specifications if specified in a Service Request; and
 - d) Services will be fit for any ordinary purpose,
- 6.2. The warranties set out in clause 6.1 are the sole warranties provided by MFE in relation to the Services and all other warranties (express or implied) are expressly excluded.
- 6.3. Where Services include goods supplied by a third party and those goods are defective, MFE is only liable to the extent of the re-supply of those goods. The Customer is liable for any re-mobilisation, demobilisation and labour costs incurred to remedy a default.

7. CUSTOMER’S PROMISES

- 7.1. The Customer will promptly provide MFE with all information and assistance to enable it to perform the Services.
- 7.2. Where a worksite is not owned by MFE, the Customer:
 - a) will provide MFE with free and uninterrupted access;
 - b) warrants the site is safe and suitable for the Services; and
 - c) agrees to obtain at its own expense, the authorisations, licences and permits required for MFE to perform the Services at the worksite.
- 7.3. If access to a worksite is interrupted or the Customer otherwise breaches clause 7.2, MFE will be entitled to an extension of time for the period access was interrupted and the Customer will be liable for any unavoidable costs incurred by MFE as a result of the delay.

8. INTELLECTUAL PROPERTY

- 8.1. “Background Technology” means
 - a) all technical information and know-how, any invention, improvement or discovery owned or created by MFE before, during or after entering the agreement; and
 - b) any improvement or change of MFE’s technical information and know-how arising during the agreement, including any patent rights.
- 8.2. “Documents” means documents created by MFE including reports, drawings, plans, specifications, calculations, methods and records by does not include any Background Technology.
- 8.3. MFE grants the Customer title to, copyright in, the right to possession of and the free right to use of all Documents upon payment of the Services.
- 8.4. MFE retains title to all intellectual property rights, copyrights, design rights, patents and other invention rights created prior to the Services, during the Services and after completion of the Services.
- 8.5. MFE retains all rights, title, and interest in and to all MFE’s Background Technology and no license, right to use or any other interest is granted to the Customer over MFE’s Background Technology, or any modifications or improvements (other than the limited right to use MFE’s Background



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Technology as may be necessary for the provision of the Services).

8.6. **THE CUSTOMER 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 DUE TO:**

- a) **THE PERFORMANCE OF THE CUSTOMER'S OBLIGATIONS;**
- b) **THE USE OF CUSTOMER'S TECHNICAL INFORMATION; OR**
- c) **CUSTOMER ISSUED MATERIALS OR EQUIPMENT.**

9. **ASSIGNMENT**

9.1. MFE may subcontract or transfer all or part of the Services to a third party without notice to the Customer.

10. **TERMINATION**

- 10.1. The Customer may terminate for convenience at any time.
- 10.2. Where a party terminates for convenience, the Customer must pay:
 - a) all undisputed invoices for the Services performed up to the date of termination; and
 - b) all incurred, unavoidable and committed costs of MFE (including demobilisation costs),

and, if the Customer is the terminating party, it forfeits any deposit paid to MFE under clause 4.1.

10.3. Notwithstanding anything contained in these terms and conditions, MFE may terminate an agreement and any licence granted immediately by notice in writing if:

- a) a Contract Fee or other monies owed by the Customer becomes outstanding after the due date;
- b) the Customer becomes or is in jeopardy of becoming the subject of an insolvency event;
- c) the Customer passes away; or
- d) the Customer fails to give adequate and prompt instructions to MFE about the Services.

10.4. Where an agreement is terminated under clause 10.3 or clause 11.3, the Customer forfeits any deposit paid under clause 4.1 and must pay for all Services completed up to the date of termination and any of MFE's reasonably incurred and committed costs.

11. **SUSPENSION AND FORCE MAJEURE**

11.1. "**Force Majeure Event**" means an event beyond the control of the party affected including fire, flood, hail, blackout, terrorism, war, explosion, riot, war, rebellion, sabotage, strike or similar official labour dispute.

11.2. MFE will notify the Customer as soon as practical of any anticipated delay due to a Force Majeure Event and MFE's performance under the agreement is suspended for the period of the Force Majeure Event.

11.3. If a Force Majeure Event exceeds 30 days, the Customer may terminate.

11.4. Where MFE suspends the Services due to reasons outside its control, the Customer is liable for:

- a) any demobilisation and re-mobilisation costs relating to the suspension; and
- b) for all Services provided up to the time of suspension including committed and incurred costs.

12. **LIABILITY**

12.1. "**Consequential Loss**" means special, indirect or consequential loss, loss of revenue, profit or anticipated profit, loss of a contract or opportunity, loss of reputation, loss of financing or business interruption.

12.2. 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.

12.3. Notwithstanding anything contained in these terms and conditions, MFE's cumulative maximum contractual liability is capped to the amount of the Contract Fee.

13. **SOLICITING EMPLOYEES**

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

14. **SECURITY INTERESTS**

14.1. "**PPSA**" means *Personal Property Securities Act 2009*.

14.2. The Customer 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.

14.3. The Customer must not:

- a) encumber or create any security interest over any of MFE's personal property whatsoever (including equipment, any part of the Services and where personal property becomes commingled with non-MFE property);
- b) sell, lease or otherwise part with the whole or any part of its interest in, control or possession of MFE's personal property.

14.4. MFE need not give, and the Customer waives its right to receive, any notice under the PPSA (including notice of a verification statement) unless the notice is otherwise required by the PPSA to be given.

15. **CONFIDENTIALITY**

15.1. "**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.

15.2. A party will not, without the other party's prior written approval, 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.

15.3. This clause will survive completion of the Services or earlier termination of the agreement.

16. **DISPUTES**

16.1. 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.

16.2. Where a dispute is unresolved 20 days after meeting to resolve in accordance with clause 16.1, 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.

16.3. 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.

16.4. The losing party is responsible for paying for the cost of the expert.

17. **NOTICE**

17.1. Any notices which are required to be given under the agreement must be in writing.

17.2. Notices are deemed to be received –

- a) on the date given, if delivered in person, by fax or by email; or
- b) on the third day, if sent by prepaid post.

18. **JURISDICTION**

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