

MORRIS GROUP

ENGINEERING SOLUTIONS

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TERMS AND CONDITIONS OF TRADE

1. GENERAL

These Terms apply to all Goods or Services supplied by the Company to the Customer. The Company reserves the right to vary these Terms on 30 days written notice to the Customer.

2. QUOTATIONS

- (a) Unless previously withdrawn, the Company's written quotation is open for acceptance for the period stated in it, or if no period is stated, 30 days from its date. The Customer reserves the right to refuse any purchase order based on a quotation within 7 days after receipt of the Customer's purchase order.
- (b) All descriptive matter and specifications, drawings and particulars of weights and dimensions submitted with or prior to any quotation, but not expressly forming part of the quotation, or material contained in the Company's catalogue, price lists or advertising matter are intended merely to present a general idea of the Goods or Services, do not form part of the Contract.

3. ORDERS AND CONTRACT FORMATION

- (a) The Customer may order Goods or Services by giving a purchase order to the Company in a form acceptable to the Company, in its discretion.
- (b) A purchase order constitutes an offer by the Customer to purchase the Goods or Services described in the purchase order for the price set out in the purchase order on these Terms.
- (c) The Contract arises when the Company accepts the offer in the purchase order by:
 - i. sending the Customer written acceptance of the purchase order;
 - ii. otherwise notifying the Customer that the purchase order is accepted; or
 - iii. by delivering the Goods or Services.
- (d) The Company may at its absolute discretion accept or reject part or all of any purchase order made by the Customer.
- (e) Once a purchase order has been accepted by the Company, the Customer cannot cancel or withdraw it (wholly or in part) without the Company's written consent.
- (f) The Contract, when created, is wholly documented by (in descending order of precedence):
 - i. any specific terms agreed in writing by the parties;
 - ii. the quotation (if applicable);
 - iii. these Terms;
 - iv. the purchase order (to the extent accepted by the Company); and
 - v. the credit terms applying to the Customer (if applicable).

4. PRICES

- (a) Prices, unless otherwise stated, are quoted and payable in Australian Dollars and do not include any taxes or duties (and such taxes or duties are to be paid by the Customer).
- (b) The Company reserves the right to change the pricing for the whole or any part of the Contract if supply is affected by a Force Majeure cause within the meaning of clause 17.
- (c) Prices in the Contract are those the Company applies at the relevant time. Such prices are based on the cost of materials, packaging, costs, insurance, sorting and stacking charges, cartage and other carrier charges,

rate of goods, wares and merchandise, applicable taxes and duties and other charges affecting the cost of production of the Goods or provision of Services at the relevant date and any variations to those underlying costs at any time will be to the Customer's account.

5. PAYMENT

- (a) Unless the Company has agreed Credit Terms with the Customer and has not withdrawn that credit facility, the Customer must pay for the Goods or Services at the time of placing the relevant purchase order, without deduction, set off or counterclaim.
- (b) The Customer charges to the Company all of its right, title and interest in any Service Related Assets as security for the due and punctual payment of the Amount Payable. The charge operates as a first ranking, fixed charge.

6. TITLE AND RISK

- (a) Risk in the Goods passes to the Customer once the Goods leave the Company's premises. Legal and equitable title to the Goods only passes to the Customer when it has paid the Amount Payable in full.
- (b) Until title passes to the Customer, the Customer must:
 - i. store the Goods in a safe manner in accordance with the Company's instructions and in a manner which makes clear that the Goods are the Property of the Customer;
 - ii. insure the goods against loss, damage or destruction, keep the goods clearly identifiable and not grant any charge, bill of sale, mortgage or other encumbrance over the goods; and
 - iii. keep the goods as bailee and fiduciary of the Company in a manner that clearly shows the Company retains ownership of the goods and, if the Customer sells the goods, keep the proceeds of sale in a separate bank account and give a full account to the Company in respect of the proceeds of sale in accordance with the Customer's fiduciary obligations to the Company.
- (c) If the Customer is in Default, in addition to the Company's other rights under these Terms, the PPSA or any other applicable law, the Company may:
 - i. take possession of the Goods or the processed goods (as applicable);
 - ii. remove any Goods which have become an accession;
 - iii. enter upon the Customer's premises (or any other place where the Goods or processed goods are located) to give effect to sub clauses i. and ii. above; and
 - iv. dispose of the Goods as permitted under the PPSA, including disposal by way of lease.
- (d) Unless the Company expressly agrees in writing, the Company will allocate and apply amounts received from the Customer in the following order:
 - i. in or towards payment of any part of the Amount Payable which is not part of the price of any Goods, in the order in which those amounts were incurred; and
 - ii. secondly, in or towards payment of the price of the Goods in the order in which those Goods were invoiced.

7. DELIVERY

- (a) The Company will deliver the Goods or Services to or at the Customer's address specified in the purchase order. The Company will use reasonable endeavours to deliver the Goods or Services by the Contract's delivery date (if any) but does not guarantee it will do so.
- (b) The Customer must check the Goods or Services delivered against the Contract. If the Goods or Services are not in accordance with the Contract, the Customer must notify the Company within 48 hours of delivery. If the Customer does not do so it is deemed to have accepted the Goods or Services as delivered and will not be entitled to make a claim in respect of them. This subclause does not apply to the extent that the supply of Goods or Services is to a Consumer and the application of this subclause would be contrary to the Consumer Guarantees.
- (c) The Customer must not return any Goods to the Company without obtaining the Company's written authorisation.
- (d) Unless the Company agrees otherwise, the cost of delivery, return and packing shall be an additional charge to the Customer.
- (e) If the Contract provides that the Goods are subject to tests and/or inspection, such tests or inspection may only be undertaken prior to delivery to the Customer and shall be final.
- (f) To the full extent permitted by law, the Company is not liable for loss or damage to the Goods in transit caused by any event of any kind by any person (whether or not the Company is legally responsible for the person who caused or contributed to the loss or damage).

8. DELAYS

The Customer is liable for all claims, demands, losses, costs or expenses suffered or incurred by the Company as the result of any delay, suspension or postponement to the delivery of the Contract that occurs at the Customer's request.

9. WORKING DOCUMENTS AND TOOLING

- (a) All Tooling and Working Documents made, developed or purchased by the Company in order to supply the Goods or Services are the property of, and will remain in the custody of, the Company. The Company will retain the Tooling for a period of at least three years following the latest order which required their use.
- (b) If the Customer provides Service Related Assets, the Customer warrants that:
 - i. the Service Related Assets, are accurate, complete and fit for the purposes of the Contract; and
 - ii. use of Service Related Assets by the Company for the purposes of the Contract will not infringe any third party's intellectual property.
- (c) Whilst the Customer's Service Related Assets are in the Company's possession, the risk of loss or damage to them is at the Customer's risk and the Customer must insure their full value against all risks (and shall produce evidence of such insurance upon being requested to do so by the Company).
- (d) Irrespective of whether the Working Documents or Tooling are supplied by the Customer or otherwise obtained by the Company, alteration to the Working Documents or Tooling to meet the requirements of the Customer and the replacement or renewal of Tooling shall be paid for by the Customer.
- (e) The Customer must deliver all the Service Related Assets without charge to the Company prior to commencement of the supply of the Goods or Services.

10. WARRANTY AND LIMITATION OF LIABILITY

Note: The application of this clause may vary depending on whether or not the Customer is a Consumer.

- (a) If the supply of Goods or Services under the Contract is to a Consumer, the Consumer Guarantees will apply

to this Contract and nothing in the Contract shall be construed as excluding, restricting or modifying any applicable Consumer Guarantee.

- (b) Subject to subclause (a) and any express warranty in the Contract, the Company excludes all other warranties and conditions (whether implied or otherwise) to the fullest extent permitted by law. Where such a warranty or condition cannot be excluded, the Customer's sole remedy is limited, at the option of the Company, to:
 - i. replacement of the relevant Goods or supply of equivalent Goods; or
 - ii. repair of the Goods; or
 - iii. payment of the cost of replacing or repairing or having the Goods replaced or repaired; or
 - iv. in the case of Services, the provision of the Services again or payment of the cost of having the relevant Services provided again.
- (c) Any Goods or components of Goods not manufactured by the Company are subject solely to the warranties (if any) provided by the manufacturer or the third party supplier to the Company, and the Customer acknowledges that, to the extent permitted by law, the Company gives no warranties for such Goods or component parts beyond such manufacturers' or suppliers' warranties.
- (d) The Customer acknowledges it has relied on its own enquiries to satisfy itself as to the fitness or suitability for purpose of the Goods or Services.
- (e) The Company is not liable to the Customer (or any person claiming through the Customer) for any liability, cost or loss the Customer incurs arising directly or indirectly out of any act or omission of the Company, whether negligent or not, or use of the Goods or Services.

11. INDEMNITY

- (a) The Customer releases the Company from all claims, demands, loss or damage that the Customer suffers directly or indirectly in connection with the Contract or the goods or services (however caused).
- (b) The Company will not be liable to the Customer for any special, indirect, consequential or economic loss or damage of any nature.
- (c) The Customer is liable for, and indemnifies the Company, against any liability or loss arising from, and any cost, charge and expense (including legal costs on a full indemnity basis) incurred directly or indirectly by the Company in connection with any of the following:
 - i. the Customer's breach of the Contract;
 - ii. the acts or omissions of the Customer and its employees, contractors and agents in connection with the Contract;
 - iii. any claim against the Company by any third party, including the Customer's customers, employees, contractors or agents in connection with the goods.
 - iv. registering, maintaining or releasing any security interest, or caveat in connection with the Contract, or in otherwise enforcing the Company's rights against the Customer under the Contract.
- (d) The above release and indemnity survives termination of the Contract.

12. INTELLECTUAL PROPERTY

The copyright, patent rights, design rights and all other intellectual property rights in respect of or contained within the Goods or Services, any component part of the Goods or Services, or in any Working Documents or Tooling which have been developed by or on behalf of the Company, remain the property of the Company. Unless expressly provided otherwise in Contract, no transfer to the Customer of any such rights occurs by reason of the supply of the Goods or Services, including circumstances where the price under the Contract includes an amount for designing or producing the Goods or Services. Unless authorised in writing by the Company, neither the Customer nor any third party is authorised to reproduce, adapt or use in any

manner whether in part or in whole, any of the abovementioned materials.

13. DEFAULT AND TERMINATION

- (a) The Customer will be in Default if:
- i. payment for the Goods or Services is not been received by the Company by the due date for payment;
 - ii. it breaches any other term of the Contract and such breach is not remedied within 14 days of receiving notice from the Company requiring it to do so;
 - iii. it commits an Act of Insolvency;
 - iv. any representation or warranty made by it in or in connection with the Contract, or any information provided by it to the Company in or in connection with the Contract, is incorrect, misleading or deceptive (whether by omission or otherwise) in any material respect; or
 - v. the Company, in its absolute discretion, forms the opinion that there has been a material adverse change in the business assets or financial condition of the Customer.
- (b) If the Customer is in Default, the Company may (without prejudice to any other rights or remedies it may have) by giving written notice to the Customer:
- i. immediately terminate the Contract;
 - ii. refuse to supply any Goods or Services to the Customer on credit or at all; and
 - iii. require the immediate payment of all monies actually or contingently owing by the Customer to the Company on any account whatsoever (including the Amount Payable).
 - iv. charge interest on any overdue amount at the Default Interest Rate from the date the payment was due until the date payment is received in full.

14. THE PERSONAL PROPERTY SECURITIES ACT

- (e) The Customer acknowledges that these Terms provide for security interests in:
- i. all Goods supplied under these Terms; and
 - ii. all Service Related Assets;
- in order to secure payment of the Amount Payable, and that the Company may register one or more financing statements in respect of such security interests.
- (f) The Customer acknowledges that the security interests in the Goods granted to the Company pursuant to the retention of title in clause 6 secures payment of the Amount Payable and:
- i. extends to and continues in all proceeds and accessions and processed goods; and
 - ii. is a purchase money securities interest to the extent which it secures payment of that part of the Amount Payable which comprises the aggregate unpaid purchase price of the Goods.
- (g) The Customer must do anything which the Company reasonably considers necessary to ensure the security interest is at all times enforceable, perfected and otherwise effective.
- (h) The Customer must not do or permit anything to be done that may result in the purchase money security interest granted to the Company ranking in priority behind any other security interest.
- (i) The Customer must give the Company prior notice of any change to its name or business that would require lodgement of a financing change statement on the PPSA register.
- (j) The Customer:
- i. waives the right to receive a copy of any verification statement under section 157 of the PPSA; and
 - ii. to the extent permitted by law, waives its rights to receive any other notice or statement under any other provision of the PPSA (including for the avoidance of doubt, any of the provisions specified in subclause (k)).
- (k) To the extent permitted by the PPSA, the parties agree that:

- i. the Company need not comply with sections 95, 121(4), 125, the second sentence of section 126(2), sections 129(2), 129(3), 130, 132(3)(d), 132(4), or 135; and
 - ii. Sections 142 and 143 are excluded.
- (l) To the extent permitted by law the parties further agree to exclude any provisions of the PPSA which may be excluded in the Company's discretion and which would otherwise confer rights on the Customer.
- (m) If the Company exercises a right, power or remedy in connection with this Contract, that exercise is not taken to be an exercise of a right, power or remedy under the PPSA unless the Company states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA.
- (n) The costs of registering or amending any PPSA financing statement will be paid by the Customer and may be invoiced or debited against the Customer's credit account.
- (o) To the extent permitted by law, the parties must not disclose information of the kind mentioned in s 275(1) of the PPSA. The Customer further agrees not to exercise its rights to make any request of the Company under s275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

15. NOTICES

Any notice under or in connection with the Contract shall be deemed to be sufficiently given by one party if either delivered to the other party ("the recipient") personally or by forwarding it to the recipient by mail addressed to the recipient's usual or last known address or by leaving it at such address. All notices sent by mail shall be deemed to have been delivered to the recipient on the second business day following the date of posting of that notice.

16. FORCE MAJEURE

The Company is not liable for failure to perform its obligations under the Contract to the extent and for so long as its performance is prevented or delayed without substantial fault or negligence by the Company because of circumstances outside the Company's control, failure of the Company's machinery, or failure of a supplier to the Company, provided that the Company gives notice to the Customer of the delay and uses reasonable efforts to remedy the cause of the delay quickly.

17. SEVERANCE

If any provision of the Contract is invalid or unenforceable in accordance with its terms, other provisions which are self-sustaining and capable of separate enforcement with regard to the invalid provision, are and continue to be valid and enforceable in accordance with their terms.

18. ASSIGNMENT

- (a) The Company may assign its rights and obligations under the Contract (in whole or in part) to any person without the consent of the Customer.
- (b) The Customer may not assign or otherwise transfer its rights under the Contract without the Company's prior written consent.

19. WAIVER

The Company may only waive a right under the Contract by providing express written notice to the Customer. A waiver is limited to the specific instance to which it relates and the specific purpose for which it is given.

20. VARIATIONS

Any variations to the Contract and consequential amendments to the price must be approved in writing by the Company. The Customer is bound by any variation approved in writing by the Customer or its employees, contractors and agents.

21. JOINT LIABILITY

If the Customer comprises more than one person, then each person is liable jointly and severally for the obligations of the Customer under the Contract.

22. TRUSTEE CAPACITY

If the Customer is a trustee of a trust (whether disclosed to the Company or not), the Customer warrants that:

- (a) it enters into the Contract in its capacity as trustee and its personal capacity;
- (b) it has the power to enter into the Contract under the trust deed; and
- (c) it will not retire or appoint another trustee without notifying the Company.

23. INTERPRETATION

- (a) This Contract is governed by the laws of New South Wales, Australia and the parties submit to the non-exclusive jurisdiction of the courts of the State. The parties exclude the application to the Contract of the United Nations Convention on the International Sale of Goods and the *Sale of Goods (Vienna Convention) Act 1986 (NSW)*.
- (b) In these Terms unless the contrary intention appears, the words below have the following meaning:
 - i. "ACL" means the Australian Consumer Law which is contained in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*;
 - ii. "Act of Insolvency" means becoming subject to external administration within the meaning of Chapter 5 of the *Corporations Act 2001 (Cth)*, a party having an application for bankruptcy filed against it, or a party entering into a composition or arrangement with its creditors generally;
 - iii. "Amount Payable" means, at any time, all amounts payable by the Customer to the Company at that time (whether or not those amounts have become due for payment under the Contract (including, without limitation, any invoiced amount, interest, fees, costs or expenses));
 - iv. "Company" means whichever of D. & N. Engineering Supplies Pty Limited ABN 25 001 453 363, Morris Technology Group Pty Ltd t/a "Pritchard Electronics" ABN 18 143 689 445 and the Trustee of the Morris Family Trust t/a G. L. McGavin ABN 73 383 170 955 who supplies the relevant Goods or Services to the Customer; and unless inconsistent with the context includes each of their employees, agents, contractors, sub-contractors and consultants;
 - v. "Consumer" means a Customer that is a consumer (as that term is defined in the ACL) in respect of the particular supply of Goods and Services;
 - vi. "Consumer Guarantees" means the guarantees relating to the supply of goods and services to consumers provided by Division 1 of Part 3-2 of the ACL;
 - vii. "Contract" means the contract under which the Goods or Services are supplied, as set out in clause 3;
 - viii. "Customer" means the entity purchasing the Goods or Services and unless inconsistent with the context includes its employees, agents, contractors, sub-contractors and consultants;
 - ix. "Default" is defined in clause 14(a);
 - x. "Default Interest Rate" means 1.5% per month;
 - xi. "Goods" means goods, components of goods, products and materials supplied by the Company under the Contract (including any such items supplied in connection with the Services);
 - xii. "PPSA" means the *Personal Property Securities Act 2009 (Cth)*;
 - xiii. "Services" means any labour performed or services supplied by the Company under the Contract, whether alone or in conjunction with the supply of Goods including but not limited to estimating, detailing, design, redesign, prefabrication, repair, modification and manufacture services;
 - xiv. "Service Related Assets" means any tangible or intangible property of the Customer or any third party

which is provided by the Customer to the Company in connection with the Company's supply of Goods or Services, and includes and Working Documents and Tooling provided by the Customer;

- xv. "Terms" means this document, as varied from time to time;
 - xvi. "Tooling" includes all tooling, dies, moulds or patterns, gauges and other similar equipment;
 - xvii. "Working Documents" includes structural, construction or other drawings, designs, specifications, plans, descriptions, prototypes and samples relating to the Goods, their manufacture or, where relevant, the location at which the Goods will be used or installed;
- (c) the terms "accession", "financing statement", "proceeds", "processed goods", "purchase money security interest", "security agreement", "security interest" and "verification statement" have the respective meanings given to them under, or in the context of, the PPSA;
 - (d) words indicating the singular include the plural and vice versa.