

1 TERMS AND CONDITIONS TO APPLY AND INTERPRETATION

Mendham Engineering Pty Ltd ACN 164 144 647 ("**Mendham Engineering** ") and the Customer agree that these Terms and Conditions ("**Terms & Conditions**") shall apply to the supply of all Goods sold and Services provided by Mendham Engineering to the Customer despite any prior agreements, prior offers, dealings or trade usage, or any terms communicated by the Customer to Mendham Engineering.

In these Terms & Conditions:

"**Customer**" means the individual or entity purchasing and receiving Goods and/or Services sold and/or provided by Mendham Engineering.

"**Customer's Land**" means all of the Customer's right, title and interest in land (held now or in the future, wherever located) whether owned by the Customer beneficially or as trustee of any Trust;

"**Delivery Date**" means, in relation to any Goods or Services, the date agreed between Mendham Engineering and the Customer by which the Goods are to be delivered and/or the Services are to be provided.

"**Goods**" means goods supplied or to be supplied by Mendham Engineering to the Customer including goods manufactured at the Customer's request;

"**Services**" means services supplied or to be supplied by Mendham Engineering to the Customer at the Customer's request;

"**Moneys**" means all moneys now or in the future actually or contingently owing by the Customer to Mendham Engineering and includes any part of those moneys and includes all interest accruals and costs, expenses, and disbursements (as costs, expenses and disbursements);

"**PPSA**" means the *Personal Property Securities Act 2009 (Cth)*;

If the Customer is comprised of more than one person, then "Customer" means those persons collectively and each of them individually and the obligations and liabilities on the part of the Customer in these Terms & Conditions binds all of them jointly and each of them severally.

A reference to the singular includes the plural and vice versa;

A reference to one gender denotes the relevant gender;

A person denotes an individual or corporation or other legal entity as applicable.

2 QUOTATIONS / ESTIMATES

If Mendham Engineering has provided any quotation specifically for Goods and Services ("**Quotation / Estimate**"):

- these Terms & Conditions shall apply to the Quotation / Estimate;
- the price in the Quotation / Estimate shall be Mendham Engineering's current price as at the date of the Quotation and the price payable for the Goods and Services shall be Mendham Engineering's current price as at the date of the Customer's acceptance of the Quotation / Estimate;
- The Quotation / Estimate will detail any charges for delivery of the Goods and Services;
- subject to paragraph (b), the Quotation / Estimate shall remain valid for acceptance by the Customer for thirty (30) days after the date of the Quotation / Estimate;
- If a deposit for Goods and Services is required details will appear in the Quotation / Estimate.

3 ORDERS

If the Customer has made an order for Goods and Services without there being a Quotation / Estimate provided by Mendham Engineering ("**Order**"):

- the Order is subject to acceptance in writing by Mendham Engineering; and
- the price payable for the Goods and Services is Mendham Engineering's current price as at the date of Mendham Engineering's acceptance of the Order; and
- For some Goods and Services Mendham Engineering's requires a deposit to be paid by the Customer at the time of making an Order. The details of the deposit will be provided by Mendham Engineering to the Customer in writing.

4 VARIATION OR CANCELLATION

After the Customer's acceptance of a Quotation / Estimate or Mendham Engineering's acceptance of an Order:

- no change in the specification of Goods and Services shall bind Mendham Engineering, unless Mendham Engineering expressly agrees to the change in writing; and
- if the Customer cancels the Order or Quotation after acceptance, the Customer will pay Mendham Engineering for any loss, damage or expenses incurred by Mendham Engineering in relation to the supply or proposed supply of the Goods and Services.

5 CHARGES AND TAXES

- Unless otherwise expressly stated, the price of Goods and Services excludes all freight, transportation, shipping, insurance, packing, crating or casing, storage, handling, demurrage, external Sublet, delivery, export and similar charges, and all sales, GST, excise or other taxes, and the Customer shall pay and indemnify Mendham Engineering for those charges or taxes. If Mendham Engineering expressly agrees in writing that the price includes any of these charges or taxes, the price is subject to adjustment for increases in any of those charges or taxes after the date of the Quotation or acceptance of the Order.
- The Customer shall pay all taxes, levies, duties and assessments of every nature due in connection with the Goods and Services supplied and hereby indemnifies and holds harmless Mendham Engineering from any liability on account of all such taxes, levies, duties, assessments and deductions.
- The price for Goods and Services includes import duty. However, Mendham Engineering reserves the right to charge the Customer if the amount of import duty increases.
- For the avoidance of doubt the price for Goods and Services does not include the cost of any installation, commissioning or training requested by the Customer.

6 PAYMENT

- The Customer shall pay for Goods and Services prior to the collection of the Goods or if the Customer's credit application is approved by Mendham Engineering, within thirty (30) days after the EOM of the date of the invoice issued by Mendham Engineering for the Goods and/or Services. Time shall be of the essence in respect of payment for the Goods and Services.
- If payment is not made by the due date for payment, the Customer shall be liable to pay to Mendham Engineering interest at the rate of two percent (2%) per month until paid. This will not affect any other rights of Mendham Engineering.
- Whilst any moneys are owed by the Customer to Mendham Engineering, the Customer is not entitled to set off any amounts owed by Mendham Engineering or withhold any

payments to Mendham Engineering.

- Mendham Engineering is entitled to recover from the Customer, in addition to the price, any GST on the supply of the Goods and Services except to the extent that the prices expressly include GST.
- Mendham Engineering is entitled to recover from the Customer, in addition to the price of Goods and Services, all costs (including legal fees) on a full indemnity basis, consequent upon Mendham Engineering seeking to execute or enforce a right under these Terms & Conditions and/or any guarantees related to the Customer's account, and all such amounts are recoverable from the Customer by Mendham Engineering as a liquidated debt.

7 DELIVERY

- Mendham Engineering will use all reasonable endeavours to deliver the Goods and Services on or before the Delivery Date, but:
 - The Delivery Date is subject to extension for any delay caused by strikes, lockouts, war, breakdowns, accidents, delays in transport, fire or any cause beyond the reasonable control of Mendham Engineering; and
 - Mendham Engineering will not be liable for any loss, damage or other liability whether in contract, tort, negligence or otherwise and whether directly or indirectly arising from the Goods and Services not being delivered by the Delivery Date for any reason.
- The Customer will be charged for all costs related to delivery and such costs will be detailed on a tax invoice provided to the Customer.
- Mendham Engineering may, with the agreement of the Customer, deliver Goods and Services to the Customer in instalments and in which Mendham Engineering may separately invoice the Customer for payment for each delivery instalment (each of which shall be taken to be the subject of a separate and distinct contract between the parties).
- Any Goods and Services sought to be returned will only be accepted with the prior written approval of Mendham Engineering and may be subject to a 20% handling/restocking fee.
- Goods which have been specifically manufactured by Mendham Engineering for the Customer or altered by the Customer cannot be returned simply because the Customer has changed their mind in respect of those Goods.

8 RISK AND PROPERTY IN GOODS

- For the purposes of the PPSA (as amended from time to time) "Goods" means all present and after acquired goods supplied by Mendham Engineering to the Customer;
- The Goods shall be entirely at risk (including loss, damage or deterioration) of the Customer from the delivery of the Goods (the carrier of the Goods shall be taken to be the agent of the Customer even if engaged or paid by Mendham Engineering).
- Mendham Engineering retains full title to the Goods until Mendham Engineering receives payment in full for the Goods and all other amounts owed by the Customer to Mendham Engineering.
- Until all such monies have been paid:
 - Mendham Engineering has the right to call for or recover possession of the Goods (for which purpose Mendham Engineering's employees or agents may enter onto the Customer's premises) and the Customer must deliver the Goods if so directed by Mendham Engineering;
 - the Customer:
 - agrees that the relationship between the Customer and Mendham Engineering shall be fiduciary and the Customer shall keep the Goods safely, securely and separately stored and marked in a manner which clearly indicates that they belong to Mendham Engineering;
 - has the right to resell the Goods in the ordinary course of the Customer's business as Mendham Engineering's fiduciary agent but must not otherwise dispose of or encumber the Goods;
 - shall not mix the Goods with or attach them to other materials or otherwise make them unable to be returned to Mendham Engineering in their original state;
 - agrees that if the Goods are incorporated with goods of the Customer, the resultant product shall become and be deemed to be the sole property of Mendham Engineering. If the Goods are incorporated in any way with the property of a party other than the Customer, the resultant product shall become and be deemed to be owned in common by Mendham Engineering with that other party (or parties) on a pro-rata basis to be calculated by reference to the cost to the Customer of the incorporated materials; and
 - will hold any proceeds (as that term is defined in the PPSA) of any resale, disposal or other dealing with the Goods or any product incorporating the Goods (including sale or supply to a party other than the Customer) in trust for Mendham Engineering and shall pay the proceeds into a separate fiduciary account to be held in trust for Mendham Engineering until accounted for to Mendham Engineering at the demand of Wi Mendham Engineering.
- To avoid any doubt, for the purposes of the PPSA, it is the intention of the parties by this clause 8 that there is created for the benefit of Mendham Engineering a Purchase Money Security Interest in the Goods;
- The Customer agrees that Mendham Engineering may register any personal property security interest created by these Terms & Conditions on the Personal Property Securities Register and the Customer waives its rights to receive a verification statement (as that term is defined in the PPSA) in respect of any financing statement or financing change statement (as those terms are defined in the PPSA) registered by Mendham Engineering in respect of any personal property of the Customer. The parties agree that, insofar as the provisions of Chapter 4 of the PPSA are for the benefit of the Customer or place an obligation on Mendham Engineering, those provisions will apply only to the extent that they cannot be contracted out of or to the extent that Mendham Engineering otherwise agrees in writing.

9 LIABILITY

The Customer agrees that:

- the Customer must satisfy itself as to the truth and accuracy of and may not rely for any purpose upon, any technical or other advice or information provided by or on behalf of Mendham Engineering in connection with Goods and Services or these Terms & Conditions;
- except to the extent prohibited by law (and subject to clause 11(c) herein), the only remedy of the Customer against Mendham Engineering for any loss, damage or liability whether in contract, tort, negligence or otherwise of the Customer in connection with these Terms & Conditions and/or Goods and Services, Mendham Engineering's supply of the Goods and Services, or Mendham Engineering's failure to supply the Goods and Services to the Customer, shall be limited to Mendham Engineering, at its option, replacing or repairing any Goods supplied and/or re-performing the Services; and
- Mendham Engineering shall otherwise have no liability to the Customer whether in contract, tort, negligence or otherwise.

10 REFURBISHED PARTS

Mendham Engineering may carry out work by using refurbished parts of the same type rather than repairing parts. Refurbished parts may be used to replace existing parts.

11 DEFECTIVE GOODS & SERVICES

- (a) Within ten (10) days after the delivery of the Goods and Services and the provision of the Services the Customer shall complete any inspection or testing required by it to confirm the Goods and Services comply with these Terms & Conditions or any Order or specifications and notify Mendham Engineering in writing of the extent to which the Goods and Services do not comply with the Terms & Conditions or any Order or specifications.
- (b) The Customer shall not use the Goods and Services (other than to the extent reasonably necessary for inspection and testing) before the Customer completes inspection and testing and satisfies itself that Goods and Services comply with the Terms & Conditions or any Order or specifications, or, if the Customer notifies Mendham Engineering in writing that the Goods and Services do not comply with the Terms & Conditions or any Order or specifications, until Mendham Engineering has had a reasonable opportunity to inspect and test the Goods and Services after Mendham Engineering receives that notice.
- (c) If the Customer does not comply with clause 10(a) or 10(b), the Customer shall be taken to have unconditionally accepted the Goods and Services.

12 MENDHAM ENGINEERING WARRANTY

- (a) This warranty is given by Mendham Engineering of 15 Hub Crescent, Heathwood Qld 4110 (Telephone 07 3275 3311 or Facsimile 07 3275 3121) in addition to other rights and remedies under Australian Consumer Law.
- (b) During the period of 3 months from the Delivery Date, Mendham Engineering will replace or repair (at Mendham Engineering's discretion) any defective Goods and Services without charge so long as the defect does not arise from:
 - (i) Improper adjustment, operation or use of the Goods and Services by any party other than Mendham Engineering;
 - (ii) Any modification or adaptation of, or addition to, the Goods and Services by any party other than Mendham Engineering;
 - (iii) Misuse of the Goods and Services or operation contrary to specifications by any party other than Mendham Engineering; or
 - (iv) Inadequate maintenance or storage of the Goods and Services.
- (c) If the Customer is a Consumer ("Consumer" has the meaning defined in Section 3 of the Competition and Consumer Act 2010) the Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Goods and Services repaired or replaced if the Goods and Services fail to be of acceptable quality and the failure does not amount to a major failure.

13 TRUST AND TRUSTEES

Where the Customer is a trustee of any trust:-

- (a) The Customer agrees to produce immediately to Mendham Engineering a stamped copy of the trust deed (including all amendments) upon written notice from Mendham Engineering demanding a copy of that trust deed.
- (b) The Customer warrants that it has full power and authority to enter these Terms & Conditions on behalf of the trust and that it shall be bound by these Terms & Conditions both personally and as trustee.

14 DEFAULT, INSOLVENCY AND TERMINATION

If the Customer:

- (a) commits a substantial breach of the Terms & Conditions including unreasonably refusing to accept any Goods and Services or failing to pay for any Goods and Services, in accordance with the Terms & Conditions; or
- (b) informs any person it is insolvent, commits an act of bankruptcy, has a bankruptcy petition presented against it, becomes bankrupt, becomes subject to or bound by any arrangement, assignment, composition or moratorium of debts with its creditors, official management, receivership, liquidation, voluntary administration, winding up or other external administration,

All monies owing by the Customer to Mendham Engineering become immediately due and payable and Mendham Engineering may, without affecting Mendham Engineering's other rights:

- (c) immediately terminate the supply of the Goods and Services;
- (d) refuse, suspend or withhold supply of any further Goods and Services;
- (e) enter upon (personally or by its employees or agents) any premises in the possession or control of the Customer and use reasonable force for the purposes of retaking possession of any of the Goods (title to which has not passed to the Customer), in which case the sale of those Goods shall be taken to be terminated and Mendham Engineering shall have no liability to the Customer whether for trespass, negligence, payment of damages or compensation or otherwise;
- (f) terminate any credit arrangement with the Customer.

15 GOVERNING LAW

The laws of the State of Queensland shall apply to the Terms & Conditions, and the Customer submits to the exclusive jurisdiction of the Courts of the Central Business District in Brisbane.

16 LIEN

- (a) The Customer acknowledges that Mendham Engineering has a right to a lien (under general law and/or equity) over all Goods in Mendham Engineering possession belonging to the Customer to secure payment of any or all amounts outstanding ("Lien").
- (b) The Customer agrees that Mendham Engineering may, at its discretion, exercise the Lien in respect of any due and unpaid amounts outstanding by the Customer and may retain the Customer's Goods until payment of the amounts outstanding by the Customer and Mendham Engineering will be at liberty pursuant to clause 17 herein to sell any Goods of the Customer in Mendham Engineering's possession so as to recover part or all of the monies owed by the Customer to Mendham Engineering.

17 ABANDONMENT

- (a) If any amounts outstanding have not been paid within six (6) calendar months of Mendham Engineering providing notice to the Customer that Mendham Engineering is exercising its right to a Lien over the Customer's Goods and Mendham Engineering does not receive full payment from the Customer after making reasonable attempts to contact the Customer, Mendham Engineering may sell the Customer's Goods in accordance with any applicable legislation relating to the disposal of uncollected goods.
- (b) If Mendham Engineering sells the Customer's Goods, Mendham Engineering will apply

the proceeds in the first instance to the satisfaction of the amounts outstanding by the Customer and the costs of exercising the right of sale.

- (c) Any balance of the proceeds of the sale will be returned, where possible, to the Customer.

18 NON-WAIVER

Mendham Engineering's failure to exercise any right under the Terms & Conditions or to insist on strict performance of any part of the Terms & Conditions does not operate as a waiver and a partial exercise of a right does not preclude any further or fuller exercise of that right.

19 SEVERANCE

If any part of these Terms & Conditions or any related document is or becomes void or unenforceable that part is severed so that all parts which are not void or unenforceable remain in full force and effect and are unaffected by the severance.

20 NOTICES

- (a) Notices required to be given by the Customer to Mendham Engineering pursuant to these Terms & Conditions may be delivered to Mendham Engineering:
 - (i) personally, to Mendham Engineering at 15 Hub Crescent, Heathwood Qld 4110; or
 - (ii) sent by post to Mendham Engineering postal address at PO Box 4422 Forest Lake, QLD 4078; or
- (b) Notices will be taken as delivered when received by Mendham Engineering.
- (c) Notices required to be given by Mendham Engineering to the Customer pursuant to these Terms & Conditions may be delivered:
 - (i) by post to the Customer's last known address (and shall be taken as delivered on the second business day following posting); or
 - (ii) by email to the last notified email address of the Customer (which will be taken to be received within 24 hours of Mendham Engineering sending the email to the correct email address).