

KDAire Mechanical Services PTY LTD

(ACN 110 618 883)

TERMS AND CONDITIONS OF SALE

Terms and conditions of sale

the following terms and conditions apply where KDAire Mechanical Services Pty Ltd(KDAire) supplies goods or services to a customer

("Customer")

1. Definitions

For the purpose of these terms and conditions and unless the context otherwise requires:

"equipment" means equipment manufactured by KDAire or its affiliates.

"errors" means the failure of goods to perform a function described in the KDAire proposal, the KDAire functional specification for those goods, the appropriate KDAire user manual or KDAire product literature as the case may be.

"goods" means equipment or software.

"loss or damage" includes all types of property, pecuniary or other loss or damage, including consequential loss or damage and loss of profits.

"non-KDAire goods or services" means equipment, documentation, product literature, labour, knowledge, service or computer programs in machine readable form, that is supplied, manufactured, installed or provided by a person other than KDAire.

"person" includes a corporation.

"services" means KDAire labour or KDAire service as provided under a KDAire service agreement.

"software" means computer programs developed by KDAire or its affiliates in the form of machine readable instructions and any documentation or product literature relating to those computer programs.

"system" may include equipment and software and non-KDAire good or services.

2. Contract Formation

2.1 Subject to clause 2.3, a binding agreement will form between the parties:

(a) if these terms and conditions form part of a proposal to Customer, on receipt by KDAire of Customer's unconditional acceptance of the proposal, evidenced by Customer's purchase order referencing the proposal; or

(b) otherwise, on KDAire's written acceptance of Customer's purchase order.

2.2 Any proposal incorporating these terms and conditions:

(a) will not be valid after 30 days of its date, unless otherwise agreed by KDAire; and

(b) may be varied or withdrawn by KDAire at any time prior to unconditional acceptance by Customer.

2.3 Any terms and conditions of Customers order, specification, instruction, letter of interest, contractual documents of Head Contract or other instruction which are in addition to, or inconsistent with KDAire's terms and conditions of sale or other documentation provided by KDAire shall not be binding on KDAire unless specifically agreed to and confirmed in writing by an authorized officer of KDAire.

3. Express Warranty

3.1 Subject to these terms and conditions, KDAire hereby expressly warrants as follows:

THAT for a period of three (3) months from date of supply, installation or provision (whichever is the earlier) of goods or services, the goods and services shall be free from errors and KDAire will, in the event of any errors occurring in goods or services, at its election, either:

(a) in the case of equipment, do any one of the following as determined by KDAire:

(i) replace the equipment or supply equivalent equipment FOB at KDAire's facility;

(ii) repair the equipment;

(iii) pay the cost of replacing the equipment

(b) in the case of services, do any one of the following as determined by KDAire:

(i) supply the services again; or

(ii) pay the cost of having the services supplied again;

(c) in the case of software, do any one of the following as determined by KDAire:

(i) repair, modify or make good the software; or

(ii) make available to Customer instructions to enable Customer to repair, modify or make good the software; or

(iii) supply customer with replacements.

PROVIDED that this express warranty shall not apply to errors attributable to:

(i) goods or services supplied by others unless with the prior written approval of KDAire;

(ii) non-KDAire goods or services;

(iii) any modification or repair of goods unless made by KDAire or with prior written approval of KDAire;

(iv) negligent use, abuse or misuse of goods;

(v) the use of goods under the environmental, power or operating conditions beyond the limits or constraints specified by KDAire;

(vi) the installation or wiring of any goods other than in accordance with KDAire's instructions;

(vii) the use of any goods with any non-KDAire goods or services;

(viii) wear or burn-out resulting from usage of goods of a kind inherently susceptible to burn-out.

3.2 To the full extent permitted by law, KDAire does not make any representations or give any warranty as to the overall performance of any system or the results of any process with which the goods or services are used or integrated, and subject to clause 4.2, will not be responsible or liable to any person for the loss or damage arising from the failure of any system or process with which the goods or services are used or integrated to perform any particular task or to produce a particular result.

4. Limitation of Liability

4.1 To the full extent permitted by law and subject to clause 4.2, the express warranty in clause 3.1 is in substitution for all other terms, conditions, warranties and representations, implied by statute or otherwise, and all other terms, conditions, warranties and representations are excluded.

4.2 Certain legislation may imply warranties or conditions or impose obligations on KDAire which cannot be excluded, restricted or modified or cannot be excluded, restricted or modified except to a limited extent. These terms and conditions must be read subject to those statutory provisions. If those provisions apply, KDAire's liability for breach of those provisions, is limited to:

(a) in the case of goods, any one of the following as determined by KDAire:

(i) the replacement of goods or the supply of equivalent goods FOB at KDAire's facilities;

(ii) the repair of the goods;

(iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or

(iv) payment of the cost of having the goods repaired;

(b) in the case of services, any one of the following as determined by KDAire:

(i) the supplying of the services again; or

(ii) the payment of the cost of having the services supplied again.

4.3 To the full extent permitted by law and subject to these terms and conditions including clause 4.2, KDAire will under no circumstances be liable to Customer for any loss, damage or expense, sustained or incurred, by Customer or any other party, whether directly or indirectly out of any negligence of KDAire, the supply, performance or use of any goods or services, or out of any breach by KDAire of any contract incorporating these terms and conditions. KDAire's liability to Customer, if any, in contract, tort or otherwise, will be reduced by the extent to which the customer contributed to the loss.

4.4 This clause 4 will survive termination or cessation of the agreement in which these terms and conditions are incorporated.

5. Price and Terms of Payment

5.1 Unless stated otherwise in writing, all prices quoted by KDAire, are exclusive of all taxes, (including any goods and services tax), duties, levies and any other government charges, and where applicable shall be added to the price payable by the customer to KDAire. The Customer must pay to KDAire any goods and services tax for which KDAire is liable as a consequence of a taxable supply made under, in connection with or arising out of, these terms and conditions.

5.2 Unless stated otherwise in writing, prices quoted by KDAire, are based on the factory or supplier price list as held by KDAire at date of proposal and also on rates of duty and primage wages and salaries, freight insurance and exchange rate prevailing at the date of the proposal. Any increase in price resulting from variation in any of these factors shall be payable by customer.

5.3 KDAire reserves the right to raise and be paid for progress claim invoices on the Customer. The basis for progress claim invoices is as follows:

(a) In the case of equipment services (excluding KDAire service as provided under a KDAire Service Agreement) or software, progress claim invoices may be raised upon the supply of equipment services or software to Customer or to some other place agreed or upon the completion of agreed benchmarks or other measures as agreed between Customer and KDAire.

(b) In the case of KDAire service as provided under a KDAire Service Agreement, progress claim invoices shall be raised in accordance with the invoicing schedule set out in the KDAire Service Agreement or, in the absence of such an invoicing schedule progress claims may be made by KDAire at its option.

5.4 (a) Where KDAire has goods ready for supply in accordance with a delivery schedule agreed between KDAire and Customer, but Customer is not able to adhere to that delivery schedule, then KDAire may invoice Customer in accordance with that delivery schedule. In the absence of an agreed delivery schedule, the KDAire Construction Status Report shall be deemed to be the delivery schedule.

(b) Goods paid for by Customer under the sub-clause 5.4 will be held for the customer under KDAire's custody, care and control and will be insured by KDAire for fire and burglary cover at replacement value.

5.5 Title to the goods purchased under these terms and conditions shall remain vested in KDAire until the full purchase price had been paid.

5.6 Except as otherwise agreed, invoices will be raised by KDAire upon the supply of equipment, services or software.

5.7 Subject to approval of Customer's credit by KDAire, all charges shall be due and payable and paid by Customer to KDAire within thirty (30) days from date of invoice. Where KDAire has not approved Customer's credit, all charges shall be due and payable and paid by the Customer to KDAire upon delivery of goods or services.

5.8 All payments shall be in Australian legal currency.

5.9 Any money for which an account or invoice has been furnished to customer, and which remain unpaid for ninety (90) days after the due date for payment shall, at KDAire's option, bear interest as from the date upon which payment is due at the prevailing commercial overdraft rate of KDAire's then current.

A: A late payment fee of \$55.00 including GST will be applied per month after the due date at the supplier's discretion if payment in full is not received by the due date.

B: All expenses incurred by the supplier in recovering the moneys due inclusive of Solicitor's charges, debt collectors fees and disbursements, any costs or charges in relation to security documents and any fees on dishonour shall be a debt due and owing by the customer

6. Delay

6.1 It is contemplated that any goods or services to be supplied by KDAire will be supplied during regular working hours on regular working days. If or any reason Customer request

KDAire as part of the purchase price for such goods or services, at KDAire's then current labour rates to customer.

6.2 Extra costs incurred by KDAire due to cessation of work occasioned by Customer's instructions or lack of instruction, by interruptions, mistakes, or work for which KDAire is not responsible shall be reimbursed by customer to KDAire upon demand.

Extra costs incurred by KDAire due to occurrences under clause 8 and sub-clause 8.2 in these Terms and Conditions shall be reimbursed by Customer to KDAire upon demand.

7. **Work to be done by others.**

7.1 Without prior written agreement with Customer to the contrary, KDAire will not set in place or install panels, automatic valve bodies, dampers, orifice plates, thermowells, sockets, tapings, or services piping nor carry out any electric wiring work, welding or entry into process lines, or building work such as concreting, cutting and making good, or painting. Such work shall be responsibility of the customer and at its expense and shall not be the responsibility of KDAire.

7.2 KDAire will not set the cut or operating points of safety devices unless under the supervision and at the sole responsibility of the Customer.

7.3 KDAire will not provide lifting machinery, scaffolding, toilets or other site amenities.

8. Delivery, etc.

8.1 Delivery of goods not agreed to be installed by KDAire shall be FOB a KDAire warehouse or KDAire affiliated or office selected by KDAire.

8.2 The delivery times made known to customer are estimates only and KDAire does not accept responsibility for delays whether caused by fire, strike, lockout, dispute with workman, delays caused by suppliers or others, flood, accident, transportation delays, fuel shortage, inability to obtain material, war, demand or requirement of Government or statutory authorities or any cause beyond its control. In event of any delay, the date or dates for performance of this contract by KDAire shall be extended for a period at least equal to the times lost by reason of the delay or the delays subsequently caused therefrom.

8.3 If the goods or services ordered by the Customer are unable to be supplied to the Customer by the scheduled delivery date, KDAire will notify Customer and with Customer's consent, KDAire may substitute equivalent goods or services in place of the goods and services ordered by Customer, in order to satisfy Customers order.

9. Loss Of or Damage to Goods.

9.1 To the extent permitted by law and subject to clause 4.2, in the case of goods not agreed to be installed by KDAire, KDAire shall not be liable for any loss of or damage to the same after delivery FOB point of shipment, including any loss or damage in transit.

9.2 To the extent permitted by the law and subject to clause 4.2, in the case of goods not agreed to be installed by KDAire, KDAire shall not be responsible for loss of or damage to goods, after those goods have been delivered to the site. Should any goods after being delivered and prior to payment by Customer be damaged or destroyed in any way whatsoever, other than by the fault of KDAire, Customer agrees promptly upon demand to pay or reimburse KDAire, in addition to and apart from any and all other sums due to or to become due to KDAire under these terms and conditions, an amount equal to the loss or damage so occasioned.

10. Claims.

Goods supplied shall be examined by Customer promptly upon delivery. To the full extent permitted by law and subject to clause 4.2, no claim will be recognized by KDAire unless such claim is reported to KDAire within seven (7) days after delivery of the goods to which the claim relates.

11. Return of Goods.

11.1 Goods may be returned for credit if:

(a) They do not correspond with the description under which they were sold;

(b) They are not of merchantable quality; or

(c) They are not reasonably fit for the purpose for which they were sold.

11.2 Subject to sub-clause 11.1 no goods may be returned for credit unless KDAire's written approval has been first obtained and the original invoice number and date have been quoted for reference.

11.3 Subject to clause 11.1, only goods of current design in original sealed cartons, will be considered for credit, and a handling charge of ten per cent (10%) of selling price will be made by KDAire and paid by the Customer to cover necessary inspection, adjustment, repacking and clerical work. Goods invoiced more than three (3) cut to length and goods bought in to special order may not be returned.

11.4 Nothing in clause 10 or 11 will exclude, limit or reduce any rights or remedies that customer may have under the trade practices act or at law regarding the return of any goods.

12. Entire Agreement and Amendment.

12.1 These terms and conditions of sale and any document in which they are incorporated constitute the entire agreement between the parties.

12.2 No waiver, change or modification of any of these terms or conditions or specified in any additional terms and conditions of sale or other documentation provided by KDAire or otherwise, shall be binding on KDAire unless in writing signed by an authorized officer of KDAire.

12.3 In the event that any terms and conditions of sale or additional terms and conditions of sale or documentation provided by KDAire conflict in meaning, Interpretation or fact these terms and conditions will prevail unless otherwise agreed in writing.

13. Variations.

Any variations in the extent or type of goods or services required by Customer, or the extent and type of goods or services supplied by KDAire, will be in accordance with these terms and conditions and any additional terms and conditions of sale agreed by the parties. KDAire reserves the right to revise at any time to extend or type of goods or services it supplies to the customer, if it believes that other goods or services supplied by KD Aire can fulfill the same function.

14. Dispute Resolutions.

14.1 The parties agree that if a dispute arises out of or relates to these terms and conditions, a party may not commence any court or arbitration proceedings relating to the dispute unless it has complied with the provisions of this clause 14, except to seek urgent interlocutory relief.

14.2 A party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute. On receipt by the other party of the notice, the matter must be referred to the national purchasing manager or branch manager (or equivalent) as the case may be, for resolution. If the managers are unable to resolve the dispute within ten business days, the parties must refer the dispute to the Chief Executive Officer (or their nominee) of each party of resolution. If the Chief Executive Officers (or their nominees) cannot resolve the dispute within five business days, the parties must mediate the dispute under the mediation rules of the law society of Western Australia and the President of the Law Society or the President's nominee will select the mediator and determine the mediator's compensation.

15. Software Licence

KDAire agrees to grant to Customer a licence to use any software provided pursuant to the agreement formed by Customer's acceptance of this proposal, upon and subject to the terms and conditions set out in KDAire's standard software licence agreement which Customer shall execute prior to delivery or installation of such software.

16. Governing Law

These terms and conditions are governed by the laws of Western Australia. Each party submits to the non-exclusive jurisdiction of the courts of Western Australia and the courts which hear appeals from those courts.

17. Credit Reporting.

Where goods or services are supplied to the customer on credit, the customer irrevocably authorises KDAire, it's employees and agents to make such enquiries as it deems necessary to investigate the credit worthiness of the customer from time to time, including but without limitation, the making of enquiries of persons nominated as trade referees, the bankers of the Customer or any other credit provider and the Customer which is requested by KDAire. The customer further authorises KDAire to receive and disclose any personal information of the customer to a credit reporting agency for the purpose of evaluating the credit worthiness of the Customer.

18. Indemnity.

Customer agrees to indemnify KDAire, its employees and agents and each of them from and against all loss or damage, resulting directly or indirectly from any acts, errors or omissions of Customer in connection with the use, possession, operation of the goods or services. This clause will survive termination or cessation of the agreement in which these terms and conditions are incorporated.

19. Intellectual Property.

Subject to clause 15, nothing in these terms and conditions shall confer on Customer any licence, right, title or interest in or to any intellectual property comprised in the goods and services, which will at all times remain the property of KDAire or its suppliers.