

# TERMS AND CONDITIONS OF TRADE



Following are the Terms and Conditions of Trade (“**Trading Terms**”) for **MasterForm SYSTEMS PTY LTD (ACN 617 573 243)** including, but not limited to any related body corporate, any subsidiary or associated entity and as trustee of any trust from time to time (individually and together called “**MasterForm**”)

1. **Payment:** The Customer must pay for all purchases on delivery, or (if agreed in writing prior to delivery) within 30 days from the end of the month in which the invoice is generated, or within any alternative credit period granted in writing by MasterForm. Amounts payable by the Customer under the Credit Terms must be paid in full without deduction, retention or set-off of any kind and for any reason.
2. **Interest and Administration fee:** MasterForm is entitled to charge the Customer:
  - (a) interest on amounts not paid within the credit period specified by MasterForm at a rate equivalent to 3% p.a. above the annual business overdraft interest rate of its principal banker, as determined and calculated by MasterForm, in its discretion; and
  - (b) if any account remains unpaid at the end of the second month after the invoice is generated, an immediate amount the greater of \$20.00 or 10.0% of the amount overdue for administration fees, which sum shall become immediately due and payable. The Customer acknowledges that this fee is a genuine pre-estimate by MasterForm of the loss, costs and expenses which shall be incurred by reason of the Customer’s default in payment and the recovery thereof.
3. **GST:** Each amount payable by the Customer under the Trading Terms in respect of a Taxable Supply by MasterForm is a GST exclusive amount and on receipt of a tax invoice the Customer must, in addition to that amount and at the same time, pay the GST payable in respect of that supply. “Taxable Supply” and “GST” have the meanings set out in the A New Tax System (Goods and Services) Act 1999 (Cth).
4. **Withdrawal or Variation of Credit:** MasterForm may at any time, without the need to provide a reason, vary or withdraw any credit granted to the Customer. Where the Customer completes a further Application for a Commercial Trading Account, that Application will not be in derogation of but in addition to any previous general Trading Terms existing except as notified by MasterForm (or any of its related entities, subsidiaries and assigns and as Trustee of any Trust) in writing.
5. **Charge over Customer’s Property:** As security for payment to MasterForm of all moneys payable by the Customer and for the Customer’s obligations generally under these Trading Terms, the Customer charges in favour of MasterForm the whole of the Customer’s undertaking, property and assets (including without limitation all of the Customer’s interests, both legal and beneficial, in freehold and leasehold land) both current and later acquired. The Customer irrevocably appoints each Officer as the Customer’s attorney to do all things necessary to create and register each such charge. Upon demand by MasterForm, the Customer agrees to immediately execute a mortgage or other instrument in terms satisfactory to MasterForm to further secure payment of the money payable by the Customer. If the Customer fails within a reasonable time of such demand to execute such mortgage or other instrument, then the Customer acknowledges that MasterForm may execute such mortgage or other instrument as the Customer’s attorney pursuant to the appointment of MasterForm as the Customer’s attorney set out in these Trading Terms.
6. **Suspension or Ceasing of Supply:**
  - (a) MasterForm may in MasterForm’s complete discretion and without incurring any liability to the Customer, cease or suspend supply of Products and Services to the Customer or amend these Trading Terms.
  - (b) Without limiting clause 6(a), if an Event of Default occurs, MasterForm may, without prejudice to MasterForm’s other rights, call up moneys owed to MasterForm by the Customer, retain all moneys paid on account, or cease further deliveries and recover from the Customer all loss of profits and other costs arising from the Event of Default and/or take immediate possession of any Products and Services for which payment remains outstanding.
7. **Liability of MasterForm:** MasterForm will not be liable for any loss or damage whatsoever suffered by the Customer as a result of any act, omission or statement made by MasterForm, its employees, contractors or agents.
8. **Certification:** A statement signed by an Officer certifying the amount of any moneys payable by the Customer, or identifying any products and services, as being “unpaid for” is, in the absence of manifest error, conclusive and binding on the Customer.
9. **Notification of Change of Details:** The Customer will provide written notice to MasterForm of any change in the Customer’s structure or management, including any change of director, shareholder, partnership, trusteeship or address within 7 days of the change.
10. **Continuing Guarantee:** All guarantees under or related to these Trading Terms will be continuing guarantees and will terminate only with MasterForm’s written agreement.
11. **Set-Off:** MasterForm may at any time set-off amounts owed by MasterForm to the Customer against amounts owed by the Customer to MasterForm.
12. **Property:**
  - (a) Where Products are to be supplied by way of sale, property in the Products shall not pass until the Customer has paid all money owing to MasterForm in full. Risk in the Products passes to the Customer at the time of delivery.

- (b) The Customer holds the Products as fiduciary bailee and agent for MasterForm and must keep the Products physically separate from all other Products of the Customer, and clearly identified as owned by MasterForm until payment of all moneys owed by the Customer to MasterForm. If an Event of Default occurs, then without prejudice to MasterForm's other rights, MasterForm may, without notice to the Customer enter any premises occupied by the Customer or any other place where the Products may be and recover possession of the Products.
- (c) If the Customer sells any of the Products supplied while money is owed to MasterForm, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.
- (d) If the Products are resold, or Products using the Products are manufactured and resold by the Customer, the Customer holds all of the book debts owed in respect of such sales and proceeds of such sales in trust for MasterForm. Such part of the book debts and proceeds will be deemed to equal in dollar terms the amount owed by the Customer to MasterForm at the time of the receipt of such book debts. The Customer must not assign or grant a security interest in respect of such book debts without MasterForm's prior written consent.
- (e) If the Customer uses the Products in some manufacturing process of its own or of some third party, then the Customer shall hold such part of the proceeds of such manufacturing process as relates to such Products in trust for MasterForm. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to MasterForm and at the time of payment of such proceeds the Customer's obligation to pay the amount owed for such Products will be discharged.

### 13. Personal Property Securities Act (Cth) 2009 ("PPSA"):

The Customer grants to MasterForm a "**Financing statement**", "**financing change statement**", "**security interest**", "**purchase money security interest**", "**attached**", "**attachment**", "**perfected**", "**accession**", "**commingled**" and all related terms have the meaning given to them by the PPSA.

- (a) In consideration of MasterForm supplying the Products to the Customer at the request of the Customer, the Customer by signing these Trading Terms:
  - (i) grants to MasterForm a "Purchase Money Security Interest" ("**PMSI**") in all Products supplied by MasterForm to the Customer from time to time as security for payment of the purchase price of the Products;
  - (ii) grants to MasterForm a "Security Interest" ("**SI**") in all of its present and after-acquired property and in all of its present and future rights in relation to any personal property (as defined in the PPSA) from time to time as security for payment of any amount owed by the Customer to MasterForm and as security for the performance by the Customer of the obligations set out in the Credit Terms;
  - (iii) agrees that any Products or proceeds of sale of the Products coming into existence after the date of these Trading Terms will come into existence subject to the PMSI and SI granted herein and these Trading Terms without the need for any further action or agreement by any party;
  - (iv) acknowledges that the Customer has received valuable consideration from MasterForm and agrees that it is sufficient;
  - (v) agrees that the PMSI and SI has attached to all Products supplied now or in the future by MasterForm to the Customer and that the attachment of the PMSI has in no way been deferred or postponed.
- (b) MasterForm reserves the right to register a financing statement in the Personal Properties Securities Register to perfect the PMSI and/or SI created under these Trading Terms.
- (c) The costs of registering a financing statement or a financing change statement can be charged to the Customer by MasterForm at MasterForm's complete discretion, and may, where applicable, be charged to the customer's credit account with MasterForm.
- (d) The Customer must promptly, on request by MasterForm, execute all documents and do anything else reasonably required by MasterForm to ensure that the PMSI and SI created under these Trading Terms constitutes a perfected security interest.
- (e) The Customer must not agree to allow any person to register a financing statement over any of the Products in which MasterForm has any PMSI and/or SI without the prior written consent of MasterForm and will immediately notify MasterForm if the Customer becomes aware of any person or entity taking steps to register a financing statement in relation to any such Products.
- (f) The Customer must not allow the Products to become accessions or commingled with other Products unless MasterForm has first perfected any PMSI or SI that MasterForm has in relation to the Products.
- (g) If MasterForm perfects any PMSI and/or SI that MasterForm has in relation to the Products, the Customer must not do anything that results in MasterForm having less than the security or priority granted by the PPSA that MasterForm assumed at the time of perfection, subject only to the rights of a mortgagee pursuant to a registered mortgage.
- (h) The Customer irrevocably grants to MasterForm the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if MasterForm has cause to exercise any of MasterForm's rights under Chapter 4 of the PPSA, and the Customer will indemnify MasterForm for any claims made by any third party as a result of such exercise.
- (i) The Customer acknowledges and agrees that: -

- (i) Nothing in sections 125, 132(3)(d), 142 and 143 of the PPSA will apply to these Trading Terms;
  - (ii) The Security Agreement created by these Trading Terms may only be reinstated on the terms considered appropriate by MasterForm at its complete discretion.
- (j) The Customer acknowledges and agrees that to the full extent permitted by law and mentioned below, the following provisions of the PPSA will not apply to the enforcement of any PMSI and SI created under these Trading Terms, and the Customer waives it's right to: -
- (i) not have Products damaged or be inconvenienced any more than necessarily incidental if MasterForm removes an accession under s.92 PPSA;
  - (ii) to receive notice of any intention to remove an accession under s.95(1)(a);
  - (iii) to apply to the Court for an Order postponing the removal of the "accession" or to determine the amount payable to MasterForm for the retention of the accession under s.97 PPSA
  - (iv) to receive notice of a decision to enforce the security interest in personal property in the same way as an interest in land which secures the same obligation under s.118(1)(b)(i) PPSA;
  - (v) to receive notice of the enforcement of liquid assets under s.121(4) PPSA
  - (vi) to receive notice of any proposal to dispose of collateral under s.130(1)(a) PPSA;
  - (vii) to receive a Statement of Account if no disposal under s.132(4) PPSA; and
  - (viii) to receive notice of any proposal to retain collateral under s.135(1)(a) PPSA; and
  - (ix) to receive notice of a verification statement in relation to any registration event (including registration of a financing statement or a financing change statement) relating to the PMSI and SI created under these Trading Terms under s.157 PPSA.
- 14. Effect of Other Terms:** These Trading Terms are supplemented by the Credit Terms on MasterForm's website at [www.MasterForm.com.au](http://www.MasterForm.com.au) from time to time, and are in no way affected or amended by any other express or implied terms. No terms of the Customer apply to any agreement between the Customer and MasterForm.
- 15. Expenses:** The Customer must pay to MasterForm any costs, charges and expenses (including all stamp duty and legal fees and costs and debt recovery expenses on a full indemnity basis as a liquidated debt) incurred by MasterForm in connection with the entry into these Trading Terms, the exercise or attempted exercise of any power, right or remedy under these Trading Terms and/or the failure of the Customer to comply with these Trading Terms.
- 16. Service of Notices and Documents:** All notices or documents required to be given to MasterForm for the purposes of the PPSA must be given in accordance with the PPSA. Any notices or documents required to be given by MasterForm to the Customer for the purposes of the PPSA or for any other purposes will be effectively 'given', 'served' and 'delivered' if sent by MasterForm to the Customer by pre-paid ordinary post to any one of the following addresses: -
- (a) the last address for the Customer known to MasterForm;
  - (b) if the Customer is a Company, the registered office or principal place of business; or
  - (c) if the Customer trades under a registered business name, any address contained on a current business extract for that business name.
- 17. Transactions:** The Customer will be liable for all transactions and expenses involving the Customer's credit account including any fraudulent use of the account by the Customer or any person authorised by the Customer to use the account or the Customer's employees, agents or contractors. The Customer will also be liable for any fraudulent use of the Customer's credit account which is directly or indirectly caused or contributed to by the Customer's negligence.
- 18. Application of Moneys Received:** If MasterForm receives or recovers money in respect of a debt of the Customer, MasterForm may use the money to pay off whichever debt or part of a debt MasterForm chooses and is not compelled to apply the money as directed by the Customer or any other person.
- 19. Indemnity:** The Customer will indemnify MasterForm in relation to any direct or indirect loss, liability or damage suffered by MasterForm or any other person as a result of the Customer's negligence or breach of these Trading Terms.
- 20. Trusts:** These Trading Terms bind the Customer both personally and as trustee of any trusts of which the Customer is trustee.
- 21. Joint and Several:** If the Customer consists of more than one person, the obligations of each person are joint and several.
- 22. Severance:** Each clause, subclause and part of these Trading Terms is separate and independent. If any clause or subclause or part is found to be invalid or ineffective, the other clauses or subclauses or parts will not be adversely affected.
- 23. Waiver:** Any waiver by MasterForm must be in writing signed by MasterForm. In the event that MasterForm elects not to exercise any of MasterForm's rights arising in connection with these Trading Terms, MasterForm's election will not constitute a waiver of any rights relating to any other breach of these Trading Terms.
- 24. Amendments:** These Trading Terms may only be amended with MasterForm's express written agreement.
- 25. Assignment:** The Customer may not assign any agreement under these Trading Terms without MasterForm's prior written consent.
- 26. Application of Laws:** These Trading Terms are governed by the laws of the state as determined by MasterForm in its sole discretion. The Customer submits to and consents to the laws of the state (as determined by MasterForm in its sole discretion) having jurisdiction over these Trading Terms.
- 27. Application of Terms and Conditions**
- (a) These Trading Terms apply to and govern all Quotations and Tenders submitted by, all Orders placed with, and all contracts entered into by MasterForm where Products are supplied,

provided and/or delivered by MasterForm (“**Agreement**”)

- (b) Any Agreement may be varied only with MasterForm's prior written consent.
  - (c) To the extent that any conflict exist between these Trading Terms (as varied from time to time) and any other documentation or correspondence forming part of any Agreement these Trading Terms (as varied from time to time) shall be paramount and prevail.
  - (d) Any Order or offer made by any Customer shall not be binding on MasterForm unless and until accepted by MasterForm in writing or in such manner as MasterForm in its sole discretion determines.
  - (e) A Quotation or Tender submitted by MasterForm may at any time prior to acceptance of an offer by MasterForm in respect of the supply of Products and/or services be varied or withdrawn by MasterForm. Clerical, typing or other errors made in, or in respect of, any Quotation or Tender shall be subject to correction by MasterForm and the corrected Quotation or Tender shall apply.
  - (f) To the extent that there is any inconsistency existing between any terms and conditions appearing in a Customer's Order or any other document and these Trading Terms then these terms and conditions shall only apply and the acceptance by a Customer of the supply by of Products the subject of such an Order shall constitute an acceptance by the Customer of the supply by MasterForm of such Products solely on these Trading Terms.
  - (g) These Trading Terms replace in their entirety any previous trading terms and/or terms and conditions of sale previously published, issued or used by MasterForm or any division or subsidiary of MasterForm.
- 28. Period of the Quotation or Tender:** Subject to clause 27(e) a Quotation or Tender submitted by MasterForm shall remain valid for 30 days from the date of such Quotation or Tender.

**29. Price**

- (a) The prices quoted by MasterForm for the supply of Products exclude Products and services tax ("GST") and the Customer must also pay to MasterForm an additional amount in respect of the impact of the GST or calculated by multiplying the price by the prevailing GST rate.
- (b) Any additions or increases in the cost of the supply of Products as a result of any additions or increases in charges, taxes (including the rate of GST) or costs associated with manufacture or supply of Products by MasterForm, including without limitation increases due to variations in exchange rates, the cost of materials or labour and/or the cost of conforming with any relevant legislation, court Orders, regulations or bylaws, between the date of MasterForm's relevant Quotation or Tender or, where there is no such Quotation or Tender, from the date of MasterForm's acceptance of the Customer's Order, as the case may be, and the date of supply of the relevant Products shall be borne by

the Customer. In addition, any credit card fees or bank charges associated with any payment by the Customer to MasterForm for Products shall be borne by the Customer.

- (c) The prices quoted by MasterForm shall only apply to the specific Products and quantities of Products specified in such Quotation or Tender or accepted Order.
- (d) Unless otherwise stipulated all references to dollars are references to the lawful currency of Australia.

**30. Delivery**

- (a) Unless otherwise agreed, where the Customer has nominated in writing an address to MasterForm (“**the nominated address**”), MasterForm shall deliver the Products to the nominated address. MasterForm shall not be responsible for unloading Products at the point of delivery.
- (b) Where Products are to be delivered to a nominated address MasterForm shall be deemed to have delivered the Products in accordance with the contract if it obtains a receipt or signed delivery docket for the Products from any person at that address.
- (c) If a nominated address is unattended or if delivery cannot otherwise be effected or the Products cannot be dispatched due to any act, matter or thing beyond the control of MasterForm, MasterForm in its sole discretion may store the Products at the Customer's risk and expense or take such other steps as it considers appropriate. MasterForm reserves the right to refuse to supply Products and/or services under an Agreement if a Customer is in default of any of its payment obligations under any one or more Agreements. MasterForm reserves the right to choose or vary the means, route and procedure of delivery, transport and handling of Products. If the Customer requires a different means, route or procedure, the cost of delivery shall be borne by the Customer notwithstanding any other provision of these Trading Terms. MasterForm may supply Products in instalments and these Trading Terms shall apply to each supply of Products by instalments as if each instalment constituted supply under a separate Agreement and in particular the Customer shall pay MasterForm for each instalment of Products so supplied irrespective of any failure or delay in the supply of any other instalment of good s and/or services.
- (d) The risk of loss or damage to Products shall pass to the Customer at the time of delivery or when the Customer is notified that the Products are available for dispatch, as the case may be.
- (e) MasterForm shall make all reasonable efforts to meet any date for supply of Products agreed between MasterForm and the Customer. Where a delay in supply is caused by any act, matter or thing beyond the control of MasterForm, including without limitation a variation requested by the Customer, the time for supply shall be extended by a period agreed between MasterForm and the

Customer or, failing such agreement, by a reasonable period. In no event shall MasterForm incur any liability due to any failure on its part to supply Products/and or services by an agreed date.

- (f) MasterForm may in its discretion supply Products prior to any agreed date for such supply (including any extensions of that date)

### 31. Claims

- (a) No claim in relation to damaged Products or shortage of volume, length, quantity or weight may be made unless such claim is made by the Customer in writing to MasterForm within 7 days of delivery of the Products to the Customer. MasterForm's only liability for any such loss or damage shall be, in its sole discretion, to replace or repair Products lost or damaged or pay for such Products to be replaced or repaired.
- (b) Goods may only be returned for credit upon the written agreement of MasterForm and in any event after the expiration of the earlier of reasonable time after the Customer has had a reasonable opportunity to inspect the Products and 60 days from the date of original invoice. In all cases the original invoice or delivery docket must be quoted and return freight must be prepaid by the Customer.
- (c) Goods specifically Ordered by MasterForm for the Customer will not be accepted for credit.
- (d) MasterForm reserves the right to charge a restocking fee on good accepted for credit.
- (e) All Products returned for credit must be in their original pack and in a completely resalable condition.
- (f) MasterForm reserves the right to impose special conditions on the return of cable

**32. Packing:** The prices include the cost of packing the Products in accordance with MasterForm 's standard practice. If the Customer requires the Products to be provided in any other manner the cost of the packing shall be the responsibility of the Customer.

### 33. Limitation of Liability

- (a) Subject only to clauses 30, 32 and 33(d) and notwithstanding any other provision of these Trading Terms or any Agreement or otherwise, if any liability on the part of a rises to or in favour of the Customer (whether in contract, tort or otherwise) for any loss, damage, harm or injury arising out of or in any way connected with the supply of or failure in the provision of or the purported supply of Products and/or services by MasterForm, MasterForm's liability for all such loss, damage, harm or injury in all and any circumstances shall be limited in aggregate to the payment by MasterForm of a sum not exceeding 5% of the monies payable to MasterForm pursuant to the relevant Agreement.
- (b) Any Customer of Products from MasterForm agrees to release, hold harmless and indemnify MasterForm from and against all liabilities, claims damages, losses, costs and expenses of whatsoever nature and howsoever occurring including without limitation loss of market, loss of profit, loss of use, loss of production or for any

financial or economic loss including indirect or consequential loss or damage which may be suffered by the Customer or by any third party arising out of or in any way connected with the supply of the Products or the performance of services by MasterForm, by reason of breach of these Trading Terms, or of statutory duty or by reason of tort (including but not limited to negligence).

- (c) Except as otherwise expressly provided in these conditions and subject to clause 33(d), all statements, representations, provisions, conditions, promises, undertakings, covenants and other provisions, express or implied (and whether implied by law or otherwise) relating to any Quotation or Tender submitted by MasterForm, Orders accepted by MasterForm, Products (whether as to their quality or merchantability, fitness for any purpose, correspondence with any description or sample or otherwise) and/or services or their supply, being provisions which might otherwise form part of these Trading Terms or any Agreement or be collateral to form part of any agreement that is collateral to these Trading Terms or any Agreement, are hereby excluded in their entirety and are of no effect whatsoever.
- (d) These Trading Terms do not, and no provision of these Trading Terms will or purports to exclude, restrict or modify or have the effect of excluding, restricting or modifying:
  - (i) the application in relation to the supply of Products and/or services of any provision of the TPA;
  - (ii) the exercise of any right conferred by any such provision; or any liability of MasterForm for breach of a condition or warranty implied by any such provision
- (e) Where MasterForm is permitted under the TPA to limit its liability for breach of a condition or warranty that is implied by the TPA, MasterForm 's liability shall be limited at MasterForm's sole discretion to:
  - (i) in the case of Products which are Products:
    - A the replacement of the Products or the supply of equivalent
    - B Products; or
    - C the repair of the Products; or
    - D the payment of the cost of replacing the Products or of acquiring equivalent Products; or
    - E the payment of the cost of having the Products repaired;
  - (ii) in the case of Products which are services:
    - A the supply of the services again by MasterForm; or
    - B the payment of the cost of having the services supplied again
- (f) To the full extent permitted by law:
  - (i) the Customer acknowledges that it relies on its own skill and judgment in relation to Products and/or services supplied to it by MasterForm and MasterForm shall be under

no liability for any unsuitability for any purpose of the Products irrespective of any knowledge which it may possess as to the purpose for which the Products were required by the Customer unless that purpose has specifically notified to MasterForm in writing prior to the formation of the relevant Agreement.

- (ii) All liability of MasterForm shall cease at the end of the warranty period as stated in clause 33(a) and no claim shall be made against MasterForm after that date

**34. Passing of Title:** In addition to the matters set out in paragraph 12 above:

- (a) No legal or equitable interest in the Products whatsoever will pass to the Customer unless and until:
  - (i) the full amount for the Products has been paid to MasterForm; and
  - (ii) there is no money owing by the Customer to MasterForm for any other Products delivered by MasterForm or on any account whatsoever; and
  - (iii) the Customer has met all other obligations due by the Customer to and paid all monies due by the Customer to MasterForm in respect of all contracts for Products between the Customer and MasterForm.
- (b) Payment is not deemed to have occurred until funds have cleared in MasterForm's account.

**35. Drawings, Documentation and Information**

- (a) Any descriptive and shipping specifications, illustrations, drawings, data, dimensions and weights, either submitted by MasterForm with a Quotation or Tender or otherwise provided by MasterForm to the Customer, are illustrative and approximate only and do not form part of any Agreement entered into between MasterForm and the Customer unless expressly agreed in writing by MasterForm.
- (b) Following MasterForm's acceptance of the Customer's Order MasterForm shall, if applicable and at the request of the Customer, supply the Customer with certified drawings. The cost of MasterForm providing such drawings will be borne by the Customer.
- (c) Drawings which are provided by MasterForm to the Customer for the Customer's approval shall be returned to MasterForm within 7 days from the date of supply to the Customer.
- (d) If MasterForm's Quotation or Tender requires MasterForm to provide initial detailed drawings to the Customer for approval, except for design errors or omissions on the part of MasterForm, any extra costs arising from or as a result of any changes to such drawings or subsequent revisions of them or the provision of new drawings requested by the Customer shall be borne by the Customer.
- (e) Any drawings or other documents submitted and any information supplied by MasterForm to the Customer remains the property of MasterForm and constitutes confidential information of MasterForm (to the extent that it is not in the

public domain) and the Customer shall keep all such confidential information confidential and shall not use such drawings, documents and information for any purpose other than that stipulated by MasterForm nor provide the same to third parties.

- (f) Where any drawings or other documents submitted by MasterForm with or as a part of a Quotation or Tender are not incorporated into an Agreement between MasterForm and the party to which such Quotation or Tender was submitted they shall be returned to MasterForm within 7 days of expiry of the Quotation or Tender or otherwise as reasonably required by MasterForm.
- (g) Where drawings and/or other materials referred to in clause 36(a) form part of the Agreement, they shall be subject to recognized tolerances.

**36. Test and Performance**

- (a) MasterForm shall at its own expense carry out its standard tests on the Products together with any tests required by any government or regulatory authorities. Any additional tests required by the Customer shall be at the Customer's expense.
- (b) After 7 days' notice that MasterForm is ready to conduct any test the test may be conducted by MasterForm in the absence of the Customer who shall be deemed to have been present.
- (c) If the results of the tests are outside any performance limits specified in the Agreement MasterForm shall be given a reasonable time within which to rectify performance.
- (d) MasterForm does not guarantee the performance limits stated in the Quotation or Tender unless such limits are expressly guaranteed by MasterForm in writing

**37. Subject and Limit of the Offer**

- (a) Following its submission of a Quotation or Tender or its acceptance of an Order MasterForm shall not be required to comply with any additional standards, specifications, rules or other requirements whatsoever whether proposed by the Customer or otherwise and if any such additional standards, specifications, rules or other requirements are proposed to apply to such Quotation or Tender or Order MasterForm reserves the right to decline to proceed with the Quotation or Tender or fill the Order, vary the Quotation or Tender or Order, or adjust the price of the Products the subject of the Quotation or Tender or Order, in its sole discretion.
- (b) MasterForm shall use all reasonable endeavours to comply with all relevant legislation, court Orders, requirements or bylaws having application to the manufacture, delivery and/or supply of Products by it.
- (c) Unless expressly stated in a Quotation or Tender, the price of Products does not include installation, erection or commissioning.
- (d) Any technical assistance provided by MasterForm shall be at the Customer's expense provided that if an Agreement is one for or includes installation, erection or commissioning any technical assistance provided by MasterForm

pursuant to such installation, erection or commissioning shall be at expense.

- (e) Unless expressly stated in a Quotation or Tender the price of Products does not include training of the Customer's employees, servants or agents by MasterForm.
- (f) Unless otherwise notified in writing by MasterForm to the Customer Products are of standard design and MasterForm shall not be obliged to comply with Quotation or Tender specifications of minor importance to the operation of the Products.
- (g) Drawings and documentation supplied by MasterForm shall be standard technical commercial literature.

### **38. Termination**

- (a) MasterForm may terminate any Agreement without notice if the Customer:
  - (i) is in breach of any term of the Agreement and fails to remedy the breach within 14 days of notice in writing by MasterForm specifying the breach and requiring the Customer to remedy it;
  - (ii) fails to make payment to MasterForm in accordance with the Credit Terms, these Trading Terms and/or any Agreement or a payment or amount payable by the Customer to MasterForm is overdue in whole or part;
  - (iii) has failed or refused to take delivery of Products the subject of the Agreement and such failure or refusal continues for a period of 14 days after MasterForm has notified the Customer that the Products are ready for delivery or dispatch, as the case may be, and/or the Customer has failed or refused to allow MasterForm to supply services the subject to the Agreement and such failure or refusal continues for a period of 14 days after MasterForm has notified the Customer that it is ready, willing and able to supply such services; and/or
  - (iv) commits an Event of Default;
- (b) In the event of such termination:
  - (i) notwithstanding any provision of this Agreement to the contrary and notwithstanding that any period of credit previously granted by MasterForm may not have expired, all amounts payable to MasterForm in respect of any Products supplied by it to the Customer shall be immediately due and payable; and MasterForm shall, after taking into account payments made by the Customer to MasterForm, be entitled to be paid by the Customer for work done and expenditure made under the Agreement up to and including the date of termination; and
  - (ii) the Customer shall be liable for and shall pay to MasterForm on demand any direct and indirect loss suffered by MasterForm including without limitation MasterForm's loss of profit on the Agreement and all costs and expenses incurred or charged to

MasterForm (in the case of legal costs on a full indemnity basis) in relation to the termination and any prior breach and in exercising any rights and remedies as a consequence of the termination and any prior breach including but not limited to costs and expenses as a result of attempts and/or actual recovery of any overdue amount or interest (including costs charged by any mercantile collection agency on lodgement of an overdue account); and

- (iii) the Customer expressly and irrevocably authorises MasterForm to enter the premises of the Customer and remove any Products that are owned by MasterForm equal to but not in excess of all monies owing at any given time to MasterForm by the Customer; and/or
- (iv) MasterForm may terminate any Agreement with the Customer, terminate any Credit Terms and/or refuse to supply any Products to the Customer.

(c) Termination of the Agreement pursuant to this clause 39 shall be without prejudice to the rights of MasterForm accruing up to the date of termination

### **39. Intellectual Property**

- (a) MasterForm's offer, Quotation or Tender and any subsequent contract may contain information for the Customer's secret and confidential use based on MasterForm's own design and development work and that of MasterForm's technical collaborators. The Customer is hereby bound not to disclose this information to any third party without MasterForm's consent in writing. The Customer is further bound not to make nor have made by any third party any Products described in the offer, Quotation or Tender and in any drawings, designs, design proposals, photographs, plans, reports, recommendations, specifications or any other visible data accompanying or relating to the offer, Quotation or Tender and/or any subsequent contract.
- (b) The supply of Products to the Customer does not constitute a transfer of any intellectual property rights in the Products or any part thereof. The Customer shall not do anything inconsistent with or in infringement of such intellectual property rights including but not limited to the decompilation, disassembly and re-engineering thereof. Where has designed, drawn or written anything relating to the Products for the Customer, then the copyright in those designs, drawings and documents shall remain vested in MasterForm and shall only be used by the Customer at MasterForm's discretion.
- (c) MasterForm does not warrant that the supply by it and the use by the Customer of the Products does not and will not infringe any patent, registered design, trademark or intellectual property rights of any third party whether such rights take the form of letters patent, registered designs, copyright, trade mark rights, or any other similar right.
- (d) Where MasterForm or its contractor manufactures the Products or any part thereto or provides the services to the Customer's instructions, design or

specifications the Customer agrees to indemnify and keep indemnified and its related corporations against all actions, claims, loss, damages, costs and fines that MasterForm and/or its related corporations may incur or suffer as a result of a claim by a third party that the manufacture and sale by MasterForm of the Products or any part thereof or the provision of the services infringes any patent, registered design, trademark or intellectual property rights of such third party.

**40. MasterForm's Obligations:** Notwithstanding any other provision of these Trading Terms if the Customer breaches a term of an Agreement MasterForm shall not be bound to perform its obligations under that Agreement until the breach is remedied by the Customer.

**41. Vienna Convention:** The United Nations Convention on Agreements for the International Sale of Goods ("the Vienna Convention") shall not apply to any Agreement entered into between MasterForm and the Customer.

**42. Dispute Resolution:** Any dispute between the Customer and MasterForm arising out of or in any way connected with an Agreement which is not resolved by the Customer and within 14 days of a notice by either party to the other advising that it is a notice pursuant to this clause 43 shall be referred for determination to a person agreed between MasterForm and the Customer or, failing such agreement to the nominee of MasterForm, who shall act as an independent expert and not as an arbitrator and the experts written determination is final and binding on the parties.

**43. Export:** Goods the subject of an Agreement may have been authorised for export from Australia under a restricted distribution licence on condition that such Products may not be re-exported to certain destinations, or at all, without the prior approval of Australian authorities. The Customer shall not export Products the subject of any such restrictions without first having obtained all necessary consents and approvals, including those of such Australian authorities.

**44. Survivorship:** Clauses 12, 13, 30, 32, 33, 34, 35, 39, 42, 44, 46 and 47 shall not merge but survive completion of the Agreement

**45. Privacy Act Consent – Credit Reports** The Customer (and each of its individual directors, partners or proprietors) and each person signing as guarantor of the Customer's obligations under any application for commercial trading account and/or Credit Terms (each a "Guarantor") acknowledges and agrees that MasterForm:

- (a) may give certain information about them to related bodies corporate of a credit reporting agency, other credit providers, collecting agencies of legal firms (some being located in foreign countries) in Order to obtain a credit report about them or to recover money which is due and payable from them. (The information which may be given is covered by s18E(1) of the Privacy Act 1988 (Cth)(the "Privacy Act") and may include, as relevant, identity particulars and the fact that the Customer has applied for credit

or the Guarantor has offered to act as a guarantor); and

- (b) may in assessing whether to grant the Customer's application for a commercial trading account and/or Credit Terms, and/or whether to accept the Guarantor as a guarantor, seek and obtain information about them from a credit reporting agency or another credit provider and may give information about them to another credit provider. (The information may include anything about credit worthiness, history, standing or capacity (including information about commercial credit) which credit providers are permitted by the Privacy Act to obtain or receive.)

#### **46. Confidentiality**

- (a) Except as required by law, this Agreement and subject to the PPSA, MasterForm and the Customer agree to treat these terms and conditions as confidential.
- (b) MasterForm and the Customer acknowledge and agree that the terms of these Trading Terms constitute a confidentiality agreement pursuant to section 275(6) of the PPSA.
- (c) Neither MasterForm or the Customer will disclose, send or make available any of the information referred to in section 275(1) of the PPSA to any person except as required by law, these terms and conditions and subject to the PPSA

#### **Additional Conditions applicable to contracts relating to or including installation, erection or commissioning of plant or Products**

##### **47. Access To Site**

- (a) The Customer shall permit MasterForm such access to the site as MasterForm requires to perform its work under the Agreement and shall take all reasonable measures to avoid interference with the work of MasterForm including, without limitation, coordinating MasterForm's work with that of others on the site.
- (b) The Customer shall provide without cost to MasterForm every facility for the performance of MasterForm's work under the Agreement including, without limitation, providing proper foundations to receive the Products the subject of the agreement (in clauses 30, 31 and 32 called "the plant"), adequate cranes, lifting tackle and scaffolding and suitable protection for the plant from the time of delivery until the time of taking over and the proper fencing, lighting and guarding of the plant until the time of taking over.
- (c) The Customer shall provide without cost to MasterForm all electricity, water, gas, fuel and any other supplies necessary for the installation, erection or commissioning of the plant.
- (d) Prior to MasterForm commencing any work the Customer must advise MasterForm of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, Telstra and

telecommunications cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

- (e) Whilst MasterForm will take all care to avoid damage to any underground services the Customer agrees to indemnify MasterForm in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 49(d).

#### 48. Tests On Site

- (a) Where a relevant Agreement provides for tests on site the Customer shall provide without cost to MasterForm all labour, materials, electricity, water, gas, fuel and any other supplies, facilities and/or apparatus necessary to carry out such tests, including without limitation instruments and other such items as may be required by MasterForm.
- (b) Site tests shall be carried out within 30 days after completion of installation or erection.

#### 49. Time Of Taking Over

- (a) A certificate shall be issued to MasterForm by the Customer when satisfactory tests have been completed in accordance with the provisions of the Agreement or when the plant is put into commercial use, whichever is the earlier, and the plant shall be deemed to be taken over by the Customer at that time.
- (b) Notwithstanding any other provision of these Trading Terms or otherwise the plant shall be deemed to have been taken over by the Customer at the earlier of the issuing of the certificate referred to in clause 51(a) or the expiry of 2 calendar months after MasterForm has given the Customer written notice that installation and/or erection and/or commissioning (as the case may be) is complete unless site tests carried out by MasterForm demonstrate that the plant does not comply with the provisions of the Agreement, except for minor omissions or defects.

#### 50. Definitions & interpretation: In these Trading Terms unless the context requires otherwise:

- (a) **“Agreement”** means all Quotations and Tenders submitted by, all Orders placed with, and all contracts entered into by MasterForm where Products are supplied, provided and/or delivered by MasterForm, and (unless otherwise agreed in writing) expressly includes these Trading Terms and (in the event an Application for a Commercial Trading Account has been made, or Credit Terms have been granted by MasterForm) the Credit Terms.
- (b) **“Credit Terms”** means the General Credit Terms annexed to the Application for a Commercial Trading Account, as amended from time to time.
- (c) **“Credit-related information”** includes “credit information”, “credit reporting information”, “credit eligibility information” and/or “regulated information” (as the context permits) within the meaning of those terms in the Privacy Act.
- (d) **“Customer”** means the customer whose details appear in the Application for a Commercial

Trading Account and the Customer’s subsidiaries, holding companies and other related entities, or (if no Application for Commercial Trading Account has been completed) any person who places an Order for and/or receives Products supplied by MasterForm.

- (e) **“Event of Default”** means any of the following events:
- (i) the Customer fails to pay for any Products and Services in accordance with these Credit Terms and/or the Customer otherwise breaches these Credit Terms;
- (ii) if the Customer is in breach of any obligations under the Trading Terms and/or any other agreement between the Customer and MasterForm;
- (iii) the Customer ceases or threatens to cease carrying on business;
- (iv) if the Customer is a company: an Order is made or a resolution is effectively passed for winding up of the Customer, or the Customer goes into liquidation, or the Customer stops payment or is deemed unable to pay the Customer’s debts within the meaning of the Corporations Act 2001 (Cth); if the Customer is a natural person: an Order is made for the Customer’s bankruptcy, or the Customer dies or becomes mentally or physically incapable of managing his or her affairs.
- (f) **“GST”** and **“Taxable Supply”** have the meanings set out in the *A New Tax System (Goods and Services) Act 1999* (Cth).
- (g) **“Officer”** means each director, secretary, credit manager and authorised representative of MasterForm; and
- (h) **“Order”** means any request made in writing by the Customer to MasterForm for the provision of Products.
- (i) **“PPSA”** means the Personal Property Securities Act (Cth) 2009 (as amended from time to time);
- (j) **“Privacy Act”** means the *Privacy Act 1988* (Cth) as amended from time to time.
- (k) **“Products”** includes all Products and Services supplied by MasterForm to the Customer.
- (l) **“Quotation or Tender”** means any quote, quotation, tender, formal statement or other document supplied, provided or issued by MasterForm to the Customer setting out the estimated price or cost of the provision of Products in respect of a particular job, service and/or supply.
- (m) **“Trading Terms”** means these Terms and Conditions of Trade.

#### 51. Interpretation:

- (a) In these Trading Terms, unless the context requires otherwise, all references to a party include the party’s successors and permitted assigns.
- (b) No provision of these Trading Terms will be construed adversely against a party solely because the party was responsible for drafting the provision.