

# Terms and Conditions

Revision 1 - 05/10/2023

**MPA ENGINEERING PTY LTD (“MPA”)**  
ACN 011 069 533

## CONDITIONS OF OFFER

### OFFER

These Conditions of Offer (‘Conditions’) will, upon valid acceptance of this Offer, form part of the contract between MPA and the Purchaser for the performance of the Works (‘the Contract’). No correspondence or other document, including without limitation, any standard conditions or order form of the Purchaser, will be incorporated into the Contract unless expressly acknowledged and accepted in writing by MPA. **All Purchaser contract terms and conditions are subject to final review on tender acceptance.**

### general obligations

1.1. MPA will perform the Works in accordance with the Drawings and Specifications (if any) to the stage of Substantial Completion by the Date for Substantial Completion.

1.2. The Purchaser will pay MPA the Contract Sum as adjusted pursuant to these conditions in accordance with clause 5.

## CONTRACT SUM

1.3. The Purchaser acknowledges that the Contract Sum is based on a working week of 8:30am to 5:00pm Monday to Friday, excluding public holidays. The Contract Sum is subject to change by MPA without notice for any rise in costs including without limitation, the cost of goods and materials, labour, freight and cartage.

1.4. In the event that MPA is required (whether as a result of a direction or instruction by the Purchaser or because of any act or omission of the Purchaser or its servants, agents or other contractors) to work outside these hours, an additional charge shall be payable by the Purchaser for each hour or part thereof which MPA works outside such hours. **The additional charge will be calculated using the applicable hourly rates nominated on MPA's Schedule of Rates that are current at the time that the work is performed.**

A Copy of

MPA's current Schedule of Rates applicable to the Contract will be provided to the Purchaser on request.

## taxes

1.5. Where used in this clause:

1.5.1. "GST" means GST within the meaning of the GST Act.

1.5.2. "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (as amended).

1.5.3. "Taxes" means any tax, duty, excise or statutory charge payable in respect to this contract or the goods, work or services to be supplied or performed under the contract.

1.5.4. All other terms and expressions have the applicable meanings given to these in the GST Act.

1.6. Subject to clauses 4.3 and 4.4 below, the Purchaser will pay, as an addition to the Contract Sum, an amount equivalent to any GST payable by MPA in relation to any taxable supply under this Contract. Payment of such amount will be made together with and at the time of payment for the applicable work or services supplied or performed under this Contract.

1.7. MPA will take all actions reasonably available to it to ensure that the amount of GST payable is minimised and the Purchaser is able to claim input tax credits in relation to the supply

1.8. If the imposition of a GST or any subsequent change in the GST law is accompanied by or undertaken in connection with the abolition of or reduction in any existing Taxes, the Contract Sum, (excluding any GST) will be reduced by the same proportion as the actual total costs of MPA (including any Taxes but excluding any input GST paid or payable by the Contractor) are reduced as a consequence of the abolition of or reduction in Taxes, whether directly by way of abolition of or reduction in Taxes paid or payable by the Purchaser to its suppliers or to any government, or indirectly by way of reduction in the prices (excluding GST) charged by suppliers or other contractors to the Purchaser.

### **progress payments**

1.9. The Purchaser will pay the Contract Sum to MPA by monthly instalments. MPA will submit progress claims to the Purchaser monthly, the first such claim to be submitted one month after the valid acceptance of this Offer.

1.10. Each progress claim will set out the value of that part of the Works performed by MPA during the month (whether or not such work have been incorporated into the Works on Site) and for any other amounts due to MPA by virtue of these Conditions. The Purchaser will pay MPA the amount of MPA's claim within 30 days nett from the date on which the claim is made.

1.11. The Purchaser will not at any time be entitled to retain or set off any amounts owing to

the Purchaser or which the Purchaser claims are owing by MPA whether under the Contract or otherwise.

1.12. The Purchaser shall pay to MPA on demand default interest at the rate of 12% per annum on all overdue amounts, which interest shall be compounding and calculated daily and shall be payable to MPA together with the overdue amount. All payments to MPA by the Purchaser shall be first applied to any accrued interest.

### **variations**

1.13. Should the Purchaser require any additional or different work to be performed by MPA (a 'Variation'), the parties will endeavour to agree upon the scope of the Variation, the time for performance of the Variation and the price of the Variation.

1.14. Upon agreement of the terms of the Variation and receipt of such in writing, MPA will perform the work comprising the Variation, the agreed price will be added to the Contract Sum and paid to MPA by the Purchaser in the progress payment next following completion of the Variation, and the Date for Substantial Completion will be extended by the agreed amount of time required to perform the Variation.

1.15. Nothing in this Contract will oblige MPA to perform any Variation the terms of which have not been agreed between MPA and the Purchaser.

### **risk and title**

1.16. Risk in any goods, equipment or materials intended for incorporation into the Works ('the Goods') will pass to the Purchaser immediately upon delivery of the Goods to the Site. If ownership of the Goods has not passed to the Purchaser on delivery, then the Purchaser must insure (and keep insured) the Goods in the names of both the Purchaser and MPA until ownership passes to the Purchaser.

1.17. Title to the Goods will not pass from MPA to the Purchaser until the Purchaser has paid to MPA the full price of the Goods. Notwithstanding that the Goods are affixed to assets of the Purchaser. Until title in the Goods passes to the Purchaser in accordance with this clause, the Purchaser holds the Goods as fiduciary for MPA. In the event that MPA makes a demand to the Purchaser for payment under the Contract then the Purchaser must deliver and return the Goods to MPA within 48 hours of the demand being made. If the Purchaser does not comply with the demand within 48 hours of its receipt by the Purchaser, the Purchaser irrevocably authorises MPA and its servants and agents to enter upon the Purchaser's premises at any time and to do all things necessary in order to re-take possession of the Goods.

### **insurance**

1.18. Unless otherwise agreed, the Purchaser will effect, in the joint names of the Purchaser and MPA -

1.18.1. a contractor's all risks insurance policy covering the Works and all Goods delivered to the Site which are the property of MPA for the full replacement value thereof; and

1.18.2. a public liability policy of insurance,

such policies to be maintained from the date of acceptance of this Offer until Substantial Completion.

### **substantial completion**

1.19. When in the opinion of MPA, Substantial Completion has been achieved, MPA will notify the Purchaser accordingly. The Purchaser will, if satisfied that Substantial Completion has been achieved, issue to MPA a Certificate of Substantial Completion stating the Date of Substantial Completion or, if not satisfied that Substantial Completion has been achieved, advise MPA in writing of the reasons for not issuing such Certificate.

1.20. Should the Purchaser fail to issue a Certificate of Substantial Completion or notify MPA of its reasons for not issuing such Certificate within seven (7) days of being notified of Substantial Completion by MPA, the Works will be deemed to be Substantially Complete. In any case where the Purchaser advises MPA that it is not so satisfied, the parties will forthwith commence negotiations aimed at resolving the matter. If the matter cannot be resolved within seven (7) days, the provisions of clause 16 will apply.

### **delays**

1.21. Should completion of the Works be delayed due to causes beyond the control of MPA (including without limitation, manufacturing delays, delivery delays and inclement weather), MPA will be entitled to an extension of the time for Substantial Completion to the extent of such delay.

1.22. Where the delay has been caused or contributed to by an act or omission of the Purchaser or anyone on the Purchaser's behalf, an amount for any costs, losses, expenses or damages incurred as a consequence of the delay (such amounts deemed to be liquidated) will be added to the Contract Sum. MPA will notify the Purchaser of the adjustment to the Contract Sum and once notified, the Contract Sum is deemed to be adjusted in accordance with the notice.

### **defects**

1.22.1. MPA will at its own expense make good any defects which appear in the Works and which are notified to it in writing by the Purchaser within 7 days after delivery, installation or construction whichever is the latter. MPA will not accept the return of or give credit for any Goods specifically supplied or manufactured under this Contract.

1.22.2. MPA Engineering Pty Ltd offers a standard Defects Liability Period of 12 months, in line with the warranties provided by suppliers on hardware and equipment.

## **RETENTION**

Where the standard conditions or order form of the Purchaser indicate that retention is to be deducted, the Purchaser will be entitled to retain from progressive progress claim an amount equal to a maximum of 10% of the progress claim, until 5% of the Contract Sum is reached. At the option of MPA, a bank guarantee may be substituted at any time for such retention. Retention money and/or the bank guarantee is returnable to MPA on the Date of Substantial Completion, or in accordance with the standard conditions or order form of the Purchaser if such indicate that 50% of Retention is to be returned at Substantial Completion date with the remaining 50% to be returned at the end of the Defects Liability Period.

### default by purchaser

If the Purchaser -

1.22.3.                    being a natural person, commits an act of bankruptcy or enters into any arrangement pursuant to Part X of the *Bankruptcy Act 1966*; or

1.22.4.                    being a company

1.22.4.1.                is wound up;

1.22.4.2.                has a notice served against it pursuant to the Corporations Law;

1.22.4.3.                enters into a compromise or other arrangement with its creditors;

1.22.4.4.                becomes an externally administered body corporate as defined by the *Corporations Law*  
; or

1.22.5. is in default of the performance or observance of any of its obligations under this Contract and remains in default for a period of 7 days after a notice in writing to remedy the default has been given to it by MPA,

then MPA may either immediately suspend work or determine the Contract. These rights are without prejudice to any other rights which exist at common law.

### **limitation of liability**

1.23. In the event that MPA is considered to be a supplier of goods or services to a consumer within the Trade Practices Act 1974 (as amended) or the Fair Trading Act 1989 (as amended) then to the extent that either Act permits MPA to limit its liability for breach of a condition or warranty implied by such Act then MPA's liability for such breach including any loss or profit, revenue or other consequential will be limited: □

1.23.1. in the case of goods deemed under either Act to be supplied to a consumer hereunder, to any one or more of the following: □

1.23.1.1. replacement of such goods or the supply of equivalent goods or payment of the cost of replacing such goods or acquiring equivalent goods;

1.23.1.2. the repair of goods or payment of the cost of having such goods repaired at the original contract price agreed on by MPA;

1.23.2. in the case of services deemed under either Act to be supplied to a consumer hereunder: □

1.23.2.1. the supplying of such services again; or



1.23.2.2. the payment of the cost of having such services supplied again, as the case may require.

1.24. MPA will not be liable to the Purchaser, whether by way of indemnity or for damages for breach of contract or in tort (including negligence) or otherwise, for any indirect or consequential loss (including loss of production, loss of profit, loss of any contract, loss of use of any plant or any part thereof) that may be suffered by the Purchaser in connection with the Contract or the Works.

1.25. Notwithstanding any other provision of this Contract, if MPA is found to be liable to the Purchaser in any way arising out of or in any way connected to this Contract or the Works, including for any breach thereof, and if the standard conditions or order form of the Purchaser indicate that liquidated damages shall apply, MPA's maximum liability to the Purchaser is limited to a daily rate of 0.1% of the Contract Sum, and to a cumulative maximum of 5% of the Contract Sum, or if lesser amounts are indicated in the standard conditions or order form of the Purchaser, then the lesser amounts shall apply.

### **exclusions**

MPA is not responsible for:

1.25.1. warping of the Goods due to improper storage;

1.25.2. breakages occurring after delivery or installation;

1.25.3. structural failures to the building or structure to which the Goods are fixed or attached;

1.25.4. statutory charges and supply authority charges and associated works.

### **arbitration**

Any dispute or difference arising between the Purchaser and MPA either before or after the determination of the Contract, as to any matter or thing of whatsoever nature arising out of, related to, or in connection with the Contract, including any question regarding its existence, validity or termination, then either party must give to the other notice in writing of such dispute or difference and at the expiration of 7 days, unless it has been resolved, the dispute or difference may be referred by either party to arbitration under the *ACDC Arbitration Guidelines* the terms of which are hereby deemed incorporated. Notwithstanding any dispute or difference arising between the parties, each party shall at all times continue to perform its obligations pursuant to the Contract.

### **VALIDITY**

This offer shall remain valid for 30 days from the date of issue.

### **BACK CHARGE AND COST OFFSETTING**

Should the client claim back charges or wish to cost offset for services provided or damages caused by MPA, we will require:

- (a) Notice in writing within two days of the back charge or cost offset event occurring;
- (b) The opportunity to repair or repair the back charge or cost offset event.

It is agreed between MPA and the client that no charge can be claimed and no monies withheld

from MPA unless procedures (a) and (b) are implemented by the client.