

**MYARD PTY LTD**  
**Terms and Conditions**

**1. Operation**

- 1.1. The Customer is required to sign a MYARD Fee Proposal or Quote, which together with these Terms and Conditions ("Terms"), form the Agreement to obtain Goods from MYARD.
- 1.2. All Goods provided by MYARD are provided in accordance with these Terms.
- 1.3. By signing the MYARD Fee Proposal/Quote, the Customer will be deemed to agree and be bound by these Terms.

**2. Interpretation**

- 2.1. In these Terms unless the contrary intention appears:
  - (a) **Additional Charges** includes all delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Price, payable by the Customer to MYARD arising out of the supply of the Goods.
  - (b) **Agreement** means these Terms and the MYARD Fee Proposal/Quote signed by the Customer.
  - (c) **Australian Consumer Law** means schedule 2 of the Competition and Consumer Act 2010 (Cth).
  - (d) **MYARD** means MYARD Pty Ltd (ACN 602 735 777) and each of its related body corporate, agents, successors and assigns (as applicable).
  - (e) **MYARD Fee Proposal or Quote** means the proposal letter or quote provided by MYARD to the Customer which includes the details of the work.
  - (f) **Corporations Act** means the *Corporations Act 2001* (Cth).
  - (g) **Force Majeure Events** means any act, event or circumstance outside the reasonable control of MYARD, including but not limited to, war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kinds.
  - (h) **Goods** means any product, design or plan provided by MYARD to the Customer and associated services.
  - (i) **Price** means the price for the Goods as charged by MYARD pursuant to the supplied tax invoice or such other price as may be agreed by MYARD and the Customer.
  - (j) **Purchase Order** means an order for Goods that is in the form specified by MYARD from time to time whether written, verbal or otherwise.
  - (k) **Customer** means the person to or for whom the Goods are to be provided to.
  - (l) **Insolvency Event** means, in relation to a party to the Terms, any one or more of the following events or circumstances occurring in relation to the party (or any person comprising the party):
    - i) being in liquidation or provisional liquidation or under administration;
    - ii) having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property;
    - iii) being taken under s 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
    - iv) being unable to pay its debts or being otherwise insolvent;

- v) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;
  - vi) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; and
  - vii) any analogous event or circumstance under the laws of any jurisdiction.
- (m) **Intellectual Property Rights** means all present and future intellectual and industrial property rights in the Goods conferred by law and wherever existing, including:
- i) patents, designs, plans, copyright, rights in circuit layouts, know how, domain names, inventions, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
  - ii) any application or right to apply for registration of any of these rights; and
  - iii) all renewals and extensions of these rights.
- (n) **Third Party** means contractors or consultants MYARD engages to provide anything or comply with any obligation under these Terms.

**3. Order for Goods**

- 3.1. The Customer must initially sign and email the MYARD Fee Proposal/Quote to MYARD. This constitutes confirmation of the acceptance by the Customer of the Agreement.
- 3.2. The MYARD Fee Proposal/Quote is valid for 30 days from the date of issue stipulated on the MYARD Fee Proposal/Quote.
- 3.3. MYARD may provide the Customer with a price list in the Fee/proposal/Quote. The Customer acknowledges that this price list is subject to change from time to time and MYARD will endeavor to advise the Customer when the prices in the price list change.
- 3.4. After receiving the signed MYARD Fee Proposal, MYARD will provide the Customer with a formal quote.
- 3.5. Any quotations given by MYARD are subject to acceptance within 30 days of being given. After then, they will not be binding on MYARD.
- 3.6. Prior to MYARD's manufacturing or placement of orders with suppliers for the Goods outlined in the quote, payment (retail customers) or a Purchase Order (trade customers) is required.
- 3.7. Purchase Orders must be in writing and include:
  - (a) full details of the Customer;
  - (b) full description of the requested Goods and their quantity; and
  - (c) full delivery details if they are different from those provided by the Customer on the quote.
- 3.8. Products listed within the quote are the only products within the scope of works that will be provided by MYARD.
- 3.9. An order which has been accepted in whole or in part by MYARD cannot be cancelled by the Customer without obtaining the prior written approval of MYARD, which it may refuse in its absolute discretion.
- 3.10. MYARD is not bound by a Purchase Order unless and until it accepts the Purchase Order by either notifying the Customer in writing that it has been accepted or commencing the supply of the Purchase Order.
- 3.11. To the fullest extent permitted by law, MYARD is not obliged to accept any Purchase Order.
- 3.12. Any variation in the order details, sizes and quantities, location, delivery instructions or any other specification on which the

quotation or Purchase Order is determined, MYARD reserves the right to amend the Price accordingly.

- 3.13. If any variations are made pursuant to clause 3.10, the Customer agrees to pay the variation in price and any additional costs and fees including an administration fee of \$200.00 and any other payment resulting out of the variation of works.

#### **4. Delivery of the Goods**

- 4.1. If a delivery date is specified in the Purchase Order or quote, MYARD will endeavor to deliver within the time so specified but in no circumstances will MYARD be liable for any loss or damage of any kind whatsoever caused directly or indirectly by any delay in or failure of delivery in whole or in part.
- 4.2. The cost of delivery may be included in the Price if stipulated on the quote provided by MYARD. If delivery is not included in the Price, MYARD's obligation to deliver the Goods shall be charged upon the arrival of the Goods at the Customer's nominated delivery destination, nominated transport company, nominated agent or the address appearing on the Purchase Order.
- 4.3. The Customer is not relieved of any obligation to accept or pay for the Goods because of any delay in delivery and has no right to refuse delivery.
- 4.4. A charge may be rendered at the discretion of MYARD to cover MYARD's cost of any delivery wherein the Customer is not present at the delivery location on the date for delivery as set out in the Purchase Order or quote or, if the delivery location is different, in the details provided in writing by the Customer in the Purchase Order.
- 4.5. MYARD reserves the right to make part deliveries of any Purchase Order and each part delivery constitutes a separate sale of Goods upon these Terms and Conditions.
- 4.6. The Customer acknowledges that MYARD may charge a separate delivery fee to the costs of handling and the Price of the Goods. MYARD will endeavor to notify the Customer of the separate delivery fee on the Fee Proposal/Quote but the Customer acknowledges that this is only an estimate and not a determinative amount of the delivery fees payable by the Customer.

#### **5. Risk and Title**

- 5.1. The risk in the Goods passes to the Customer on delivery of the Goods to the Customer's requested delivery location. MYARD is not liable to the Customer for any loss or damage or deterioration of the Goods after delivery. The Customer must insure the Goods for any loss or damage from the date and time of delivery. Title to all Goods supplied by MYARD to the Customer remains with MYARD and does not pass to the Customer until the Price for those Goods and all other moneys owing by the Customer to MYARD on any account whatsoever is paid to and received in full by MYARD in cleared funds.

#### **6. Price and Payment**

- 6.1. The Customer must pay the Price and the Additional Charges to MYARD.
- 6.2. The Customer must pay the full Price of the Goods provided by MYARD before delivery of the Goods to the Customer via direct deposit to MYARD as outlined on the MYARD Fee Proposal/Quote. Notwithstanding this, MYARD may waive this requirement for Customers purchasing Goods on a credit account with MYARD, in which case, payment will be in accordance with the payment terms of the credit account.
- 6.3. Payment will be made by the following methods:
- (a) Direct Credit (EFT);
  - (b) Credit Card (plus a surcharge of up to three percent (3%) of the invoiced amount, or four and a half (4.5%) of the invoiced amount if payment is made by American Express card); or

- (c) By any other method as agreed between the Customer and MYARD in writing.

- 6.4. If the Customer fails to make a payment by the due date identified on a tax invoice, quote or any form supplied requesting payment, or in accordance with these Terms or any other agreement between MYARD and the Customer, after demand for payment by MYARD, or if MYARD believes that the Customer cannot fulfill their obligations under these Terms, then MYARD may do some or all of the following:
- (a) suspend performance of its obligations under the agreement between MYARD and the Customer until all amounts owing by the Customer to MYARD are paid in full;
  - (b) withhold deliveries to the Customer;
  - (c) cancel a contract without prejudice to any of its existing rights;
  - (d) charge interest on the outstanding balance at a rate of 1.5% per month or part of a month from the due date for payment until full payment is received by MYARD;
  - (e) charge the Customer for all costs and expenses incurred or considered against the Customer whether for debt, repossession of the Goods or otherwise, for the recovery of the outstanding amounts;
  - (f) MYARD is entitled to claim the sum of \$200.00 or 10% of the purchase price (whatever is lower) from the Customer as the reasonable costs of recovering any outstanding amount and the Customer acknowledges that this is a fair and reasonable amount incurred by MYARD;
  - (g) lodge a caveat over any charged property of the Customer in accordance with clause 6.6; and/or
  - (h) MYARD may further claim from the Customer all costs relating to any action taken by MYARD to recover money or Goods, including but not limited to, any legal costs and disbursements on an indemnity basis.
- 6.5. The Customer expressly agrees that if the Customer is in default of any payments owing to MYARD pursuant to clause 6, this creates an equitable interest over all real and/or personal property in the Customer's name (held in its name or jointly). The Customer expressly authorises MYARD to lodge a caveat over any real and/or personal property in the Customer's name.
- 6.6. All amounts payable by the Customer under these Terms must be paid without set-off or counter claim of any kind.
- 6.7. If MYARD incurs processing fees as a result of any payments made by the Customer which are subsequently dishonored, then MYARD may charge the Customer the amount of such processing fees and the Customer must pay that amount to MYARD immediately on request.
- 6.8. The Customer hereby acknowledges that, pursuant to the *Storage Liens Act 1935* (NSW), MYARD has a lien over all goods in its possession belonging to the Customer to secure payment of any or all amounts of outstanding from time to time. Without prejudice to any other remedies MYARD may have, MYARD may hold a lien over the Customer's belongings in MYARD's possession until the Customer pays any amount outstanding to MYARD.
- #### **7. Third Party Fees, Reports and Services**
- 7.1. The Customer accepts that they must undertake their own processes, at their own costs, to determine if the activities for which they are purchasing the Goods require approvals, in accordance with the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 and any other relevant compliance requirements.
- 7.2. The Customer must obtain, at their own costs, their own architects and engineers (and any other required third party's) to ensure compliance with any and all approvals required.

## 8. MYARD's Warranties

- 8.1. To the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Terms are excluded and MYARD is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate Customer for:
- (a) any increased costs or expenses;
  - (b) any loss of profit, revenue, business, contracts or anticipated savings;
  - (c) any loss or expense resulting from a claim by a third party; or
  - (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by MYARD's failure to complete or delay in completing the order to deliver the Goods to the Customer's event.
- 8.2. MYARD does not accept responsibility for personal injury or accidents caused by the use of the Goods.
- 8.3. MYARD accepts no responsibility for works that have been carried out on land or property that is not under the ownership of the Customer and it is assumed that all planning laws or regulations have been applied prior to the commencement of any works.
- 8.4. The Customer acknowledges that MYARD is a supplier of the Goods and the Customer must approach the manufacturer directly for any defects, claims, losses or any other matters which are or ought to be covered by a warranty over the Goods.

## 9. Customer's Obligations, Warranties and Acknowledges

- 9.1. The Customer warrants, acknowledges and accepts that:
- (a) It is the sole responsibility of the Customer to check and confirm the proposal, quote and any associated drawings or plans with MYARD prior to payment or the submission of a Purchase Order. MYARD will not be held liable for incorrect orders;
  - (b) Products supplied may change or fade colour over time, expand, contract or distort as result of exposure to elements and weather, mark or stain if exposed to certain substances and be damaged or disfigured by impact or scratching, and MYARD will not be held responsible for any changes to the material or products as a result of this clause;
  - (c) If any materials specified within the quotation or Purchase Order are unavailable at the time of delivery, MYARD, in its absolute discretion, may substitute a reasonable alternative;
  - (d) Subject to subclause (f), if a dispute arises, or the Customer is not satisfied with the Goods provided by MYARD, the Customer hereby warrants and agrees to contact MYARD to advise of any dispute and/or negative feedback;
  - (e) If a dispute in relation to any defects, claims, losses or any other matters which are or ought to be covered by a warranty over the Goods arises, the Customer must contact the manufacturer of the Goods directly and not hold MYARD liable or responsible in any way for such issues; and
  - (f) The Customer will not denigrate or bring into disrepute the reputation of MYARD by posting negative feedback or comments on any forum, including but not limited to social media, unless the Customer has adhered to clause 9.1(e).

## 10. Liability

- 10.1. Subject to this clause, and to the maximum extent permitted by Law, MYARD is not liable to the Customer or to any third party for:

- (a) any loss or damage of any kind caused by or resulting from any act or omission of that other party or any of its employees, agents, contractors; or
- (b) any loss, damage, liability, expense, injury or death sustained or incurred by the Customer or any other party, including without limitation any loss of profits, or economic, special, indirect or consequential loss or damage, whether resulting directly or indirectly out of any negligence of MYARD, the supply, performance or use of any Goods or out of any breach of MYARD under any contract incorporating these Terms, even if notified of the possibility of that potential loss or damage.

- 10.2. In any event, the parties agree that the liability of MYARD to the Customer will not exceed the Price of the Goods or services offered by MYARD to the Customer.

## 11. Indemnity

- 11.1. To the full extent permitted by law, the Customer will indemnify MYARD and keep MYARD indemnified from and against any liability and any loss or damage MYARD may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms by the Customer or its agents, invitees to use, third parties or representatives.

## 12. Force Majeure

- 12.1. The obligations of MYARD will be suspended during the time and to the extent that MYARD and/or its related body corporates is/are prevented from or delayed in complying with those obligations as a result of the Force Majeure Event.
- 12.2. The Customer acknowledges and agrees that MYARD is not liable for any delay, costs, loss or damage as a result of a Force Majeure Event and these Terms can be used as a bar to proceedings.

## 13. Termination

- 13.1. MYARD may terminate the Terms with immediate effect by giving notice to the Customer if:
- (a) the Customer breaches any of its obligations under any agreement with MYARD and does not rectify the failure (where the failure is rectifiable) within 14 days of notice; or
  - (b) the Customer suffers an Insolvency Event.
- 13.2. Termination will not affect any rights or obligations which may have accrued prior to termination.
- 13.3. On termination, all monies owing by the Customer to MYARD become immediately due and payable.

## 14. Intellectual Property

- 14.1. The Customer acknowledges and agrees that each Intellectual Property Right is owned or entitled to be owned by MYARD and/or its related body corporates.
- 14.2. The Customer's supply of the Goods does not confer on the Customer any licence or assignment of any patent, design, trademark, or any other Intellectual Property Rights that exist in the Goods.
- 14.3. The Customer must:
- (a) only use the Intellectual Property Rights in accordance with the reasonable written directions of MYARD;
  - (b) not license any of the Intellectual Property Rights to or allow the use of any of the Intellectual Property Rights by any other person in any circumstances;
  - (c) immediately notify MYARD of, and comply with MYARD's directions in relation to, any issue, claim, demand, threat, notice of proceedings, or cause of action (whether contingent, accrued or otherwise) against or involving the Customer relating to any Intellectual Property Rights; and

- (d) do all other acts and things that may be reasonably required by MYARD to ensure the protection of the Intellectual Property Rights.

## 15. Samples and Promotions

- 15.1 MYARD may offer prospective customers free samples (including delivery) of Goods it sells. These samples are offered for the express purpose of customer evaluation and may not be of a marketable quantity or size.
- 15.2 A limit of 1 free sample applies per offered product or product range. At the discretion of MYARD Management, additional samples may be issued freely or may require the prospective customer to pay a delivery fee.

## 16. General Provisions

- 16.1. These Terms are governed by and construed in accordance with the laws of New South Wales.
- 16.2. Each party to these Terms irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.
- 16.3. MYARD may suspend the Customer from requesting Goods and/or Services at its sole discretion, without liability to the Customer, if the Customer breaches these Terms or if MYARD reasonably suspects that these Terms has been breached, or if suspension is required for technical reasons.

- 16.4. MYARD may license, sub-contract or assign all or any part of its rights and obligations without the Customer's consent and in so doing MYARD is fully discharged from its obligations to the Customer.
- 16.5. The Customer may not assign its obligations under these Terms without MYARD's written consent.
- 16.6. The Customer warrants that it has the power to enter into these Terms and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that these Terms create binding and valid legal obligations on it.
- 16.7. These Terms shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and MYARD.
- 16.8. A provision of these Terms or a right created under it may not be waived or varied except in writing, signed by MYARD.
- 16.9. The failure by MYARD to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect MYARD's right to subsequently enforce that provision.
- 16.10. Nothing in these Terms is intended to contract out of or exclude the provisions of the Australian Consumer Law and any term of these Terms which is construed by a Court to contract out of or exclude the Australian Consumer Law shall be severed from these Terms and the remainder of these Terms are to remain in force.
- 16.11. If any provision of these terms is held invalid, unenforceable or illegal for any reason, these Terms remain otherwise in full force apart from such provision which shall be severed from these Terms
- 16.12.