

1. DEFINITIONS:

- 1.1** 'Agreement' means the Quote and these Terms and Conditions;
- 1.2** 'Associate' means the same as it does in the Corporations Act 2001 (Cth)
- 1.3** 'Associated Disbursements' means any disbursement or expense reasonably incurred by the Supplier in providing the Scope of Works;
- 1.4** 'Australian Consumer Law' means the Australian Consumer Law contained in schedule 2 to the *Competition and Consumer Act 2010* (Cth);
- 1.5** 'Client' means the party specified in the Quote;
- 1.6** 'Collateral' means all the Client's present and after-acquired property. It includes:
- 1.6.1 anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest; and
 - 1.6.2 the Trust Property.
- 1.7** 'Millertech Confidential Information' includes all information regarding the business interests, operations and affairs of Millertech and any of its Associates or Related Body Corporates including:
- (a) Designs and drawings;
 - (b) Devices;
 - (c) Plans;
 - (d) Trade secrets;
 - (e) Strategies, techniques and information used for, but not limited to
 - a. installing, maintaining and using Products; and
 - b. The Procurement or manufacturing of Products;
 - (f) Information technology specifications, processes and materials;
 - (g) Estimates and pricing;
 - (h) Notes;
 - (i) Electronic data;
 - (j) Any other information that the Client may be given or which may come to its knowledge, or possession during the term of this Agreement and which they are told or is apparent from its nature or would reasonably be expected to be confidential.
- 1.8** 'Deposit' means the amount specified as the deposit in the Schedule of Prices on page 2 of the Quote);
- 1.9** 'Guarantee' means the guarantee and indemnity attached to this Agreement in Schedule 1.
- 1.10** 'Guarantor' means the guarantor or guarantors required by the Terms of this Agreement to guarantee the performance of the Client.
- 1.11** 'Invoice' means an itemised document, from the Supplier to the Client, in response to an order. The Invoice will contain the date, this quotation number, an individual invoice number, product or service description, quantity, unit price, any GST payable and the total amount payable.
- 1.12** 'Product' and 'Works' means the sale of any product, item, installation, material (whether included in the Quote or not), and its installation as the context may require.
- 1.13** 'Related Body Corporate' has the meaning ascribed to it in the Corporations Act 2001;
- 1.14** 'Scope of Work' means scope of work specified on page 3 of the Quote;
- 1.15** 'Schedule of Rates' the Schedule of Prices on page 2 of the Quote;
- 1.16** 'Secured Money' means all money, obligations and liabilities owing or payable under or in relation to a Quote, the Works or any other debt owing to the Supplier by the Client, including in to any previous or subsequent Quote;
- 1.17** 'Supplier', 'Millertech', or 'us, we, our' means **Millertech Pty Ltd** ACN 152 374 108;
- 1.18** 'Terms' means these terms and conditions.
- 1.19** 'Trust Property' means, for a Trust, all the Client's present and after-acquired property which is the subject of the Trust. It includes anything in respect of which the Client as trustee of the Trust has at any time a sufficient right, interest or power to grant a security interest.
- 1.20** 'Quote' means the quote and these Terms and Conditions and Conditions.

2. ACCEPTANCE

- 2.1** The Quote and these Terms and Conditions constitute the entire Agreement between the Supplier and the Client. All prior negotiations, representations, understandings, arrangements and agreements (whether oral and/or in writing) are superseded by this Agreement.
- 2.2** The Client is taken to have accepted and is immediately bound, jointly and severally, to this Agreement if the Client accepts the Agreement by:
- 2.2.1 Written notice to the Supplier;
 - 2.2.2 Orally;
 - 2.2.3 By paying the Deposit;
 - 2.2.4 Providing the Supplier with a purchase order; or
 - 2.2.5 Conduct, including without limitation the following:
 - 2.2.5.1 by giving us further instructions after we send you a copy of this Quote without notifying us within a reasonable period that these terms are not accepted;
 - 2.2.5.2 Making any payment of an Invoice or payment into our account after this Agreement has been sent to you.
- 2.3** Any amendment to the Agreement must be agreed to in writing by the parties.
- 2.4** If there is any inconsistency between the Quote and these Terms and Conditions, these Terms and Conditions prevail.

- 2.5** If the Supplier had previously entered into an Agreement with the Client for the same Scope of Work, the terms of this Agreement shall prevail to the extent of any inconsistency or conflict of these Terms and Conditions.

3. CANCELLATION

- 3.1** The Client may not cancel its order after the Supplier's acceptance without written approval from the Supplier, such acceptance will not be unreasonably withheld subject to the Client paying the Supplier's reasonable costs associated with issuing the Quote and the termination. This amount must be paid within 7 days of a tax invoice being sent by the Supplier and must be paid without set-off or deduction.

4. CHANGE IN CONTROL

- 4.1** The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.

5. PRICE & PAYMENT

- 5.1** The Deposit is due prior to the commencement of any Works set out in the Scope of Works.
- 5.2** The price for the Scope of Works is calculated on an hourly basis pursuant to the Supplier's specified rates, as outlined in the Schedule of Rates;
- 5.3** Invoices will be issued to the Client at the Supplier's discretion for the Works;
- 5.4** Each Invoice is due to be paid within 14 days of the date the Invoice is issued;
- 5.5** Unless otherwise stated:
 - 5.5.1 the price for the Goods agreed in the Quote and any other amount payable in any Invoice or these Terms and Conditions shall be exclusive of any tax payable pursuant to A New Tax System (Goods and Services Tax) Act 1999 (Cth) ('GST'); and
 - 5.5.2 the Client will be required to pay to the Supplier an amount equal to the GST (which will be included in the Quote or Invoice) in addition to the price or any relevant other amount.
- 5.6** The Client must pay the invoiced amounts by bank transfer or by any other method of payment reasonably specified by the Supplier.
- 5.7** Payment is only received by the Supplier when it receives cash or when the proceeds of other methods of payment are credited and cleared to nominated bank account of the Supplier.
- 5.8** The Client may not assert or exercise any right of set-off against monies payable by it to the Supplier.

6. WARRANTY

- 6.1** Subject to the Client's prompt (within 7 days) payment of its invoices, for a period of twelve months from the completion of the Scope of Works (the **Warranty Period**), the Supplier warrants that any Product provided by the Supplier will be properly installed and maintained and operated at ratings, specifications and design conditions as specified by the Supplier. The Supplier's liability under any warranty is limited solely (in the Supplier's discretion) to replacing, repairing or issuing credit for the Products which fail to meet the Supplier's specifications for such during the Warranty Period.
- 6.2** The Supplier further warrants that all Works will be performed in a workmanlike manner and that the Supplier will use suitably qualified personnel (this warranty shall survive for 90 days following the Supplier's completion of the Works). The Supplier's liability under this warranty is limited (in the Supplier's discretion) to repeating the service that during the foregoing 90-day period does not meet this warranty or issuing credit for the nonconforming portion of the Works.
- 6.3** Notwithstanding anything else in these terms and conditions, any warranty issued by the Supplier will be immediately void and unenforceable for any Product altered by someone other than the Supplier, its Associates, Related Body Corporate or Contractors or for a Product subjected to misuse, abuse, improper installation, application, operation, maintenance or repair, alteration, accident or for negligent in use storage, transportation or handling or for any other negligence of the Client.

7. DEFAULT

- 7.1** The Client will be deemed to be in default of the Agreement if it has not paid the Invoice in full by the due date specified in the Invoice.
- 7.2** The Supplier reserves its right to charge interest on the outstanding amount. Interest on overdue Invoices shall accrue daily from the date when payment becomes due, until the date of payment, and will charge interest at a rate that is seven percentage points above the cash rate target announced by the Reserve Bank of Australia from time to time.
- 7.3** If the Client owes the Supplier any money, the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the collection agency costs, and bank dishonour fees).
- 7.4** Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation in this Agreement, the Supplier may suspend or terminate the Agreement. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.

7.5 Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel any Scope of Works which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:

7.5.1 any money payable to the Supplier becomes overdue, or in the Supplier's opinion (acting reasonably) the Client will be unable to make a payment when it falls due;

7.5.2 the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

7.5.3 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

8. RISK

8.1 It is the sole responsibility of the Client to ensure any of its assets are adequately insured for the duration of the Agreement.

9. PERSONAL PROPERTY SECURITIES ACT 2009 ('PPSA')

9.1 In this clause 9 Financing Statement, Financing Change Statement, Security Agreement, and Security Interest has the meaning given to it by the PPSA.

9.2 In accepting the Terms of the Agreement, the Client grants a Security Interest in the Collateral to the Supplier to secure payment of the Secured Money.

9.3 This Security Interest is a transfer by way of security of Collateral consisting of:

9.3.1 accounts and chattel paper (each as defined in the PPSA) which are not, or cease to be, Revolving Assets; or

9.3.2 this Agreement.

9.4 To the extent any Collateral is not transferred, this Security Interest is a charge.

9.5 Upon assenting to these Terms and Conditions in writing the Client acknowledges and agrees that these Terms and Conditions constitute a Security Agreement for the purposes of the PPSA and creates a Security Interest the Collateral.

9.6 The Client undertakes to:

9.6.1 promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to:

9.6.1.1 register a Financing Statement or Financing Change Statement in relation to a Security Interest on the Personal Property Securities Register;

9.6.1.2 register any other document required to be registered by the PPSA; or

9.6.1.3 correct a defect.

9.6.2 indemnify, and upon demand, reimburse the Supplier for all Associated Disbursements incurred in registering a Financing Statement or Financing Change Statement on the Personal Property Securities Register established by the PPSA or releasing any Collateral charged thereby;

9.6.3 not register a Financing Change Statement in respect of a Security Interest without the prior written consent of the Supplier;

9.6.4 not register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Collateral in favour of a third party without the prior written consent of the Supplier; and

9.6.5 immediately advise the Supplier of any material change in its business practices which would result in a change in the nature of proceeds derived from such sales.

9.7 Subject to any express provisions to the contrary, nothing in these Terms and Conditions is intended to have the effect of contracting out of any of the provisions of the PPSA;

9.8 To the extent the law permits:

(a) for the purposes of sections 115(1) and 115(7) of the PPSA:

(i) the Supplier need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and

(ii) sections 142 and 143 are excluded;

(b) for the purposes of section 115(7) of the PPSA, the Supplier need not comply with sections 132 and 137(3).

10. LIMITATION OF LIABILITY

10.1 If under the Australian Consumer Law or any other law any terms which apply to the Agreement cannot be legally excluded, restricted or modified then those terms apply only to the extent required by law.

10.2 To the extent permitted by law, the Supplier's liability for any breach of the Agreement or these Terms and Conditions, and any condition or warranty implied by the provisions of the Australian Consumer Law, is limited to and will be completely discharged by supplying the required Scope of Works

to the Client, and in any event the Supplier's liability will be limited to the cost of the Works billed and paid for by the Client.

10.3 The Client indemnifies, releases and forever holds harmless the Supplier in respect of any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the Supplier where indirect, special or consequential loss or damage includes:

10.3.1 any loss of income, profit or business; or

10.3.2 any loss of goodwill or reputation.

11. PRODUCT LIABILITY

11.1 The Client must not make any representation, statement or warranty on behalf of the Supplier relating to the Products. The Client indemnifies and undertakes to defend at its own expense, the Supplier against claims or liability for any applicable patent, trademark or other intellectual property infringement and for product liability arising from the preparation, installation or manufacture of the Products according to the Client's specifications, or from the Client's unauthorised use of the Products or from any changes or alterations to the Products made by persons other than the Supplier or improper uses of the Products or from the manufacture or sale or use of the Products which incorporate or integrate the Products.

12. CONFIDENTIAL INFORMATION

12.1 The Supplier grants the Client a non-exclusive, non-transferrable licence to use Confidential Information to the extent necessary and solely for the Client's use of the Products and Works provided by the Supplier under this Agreement.

12.2 The Client will not divulge to any other person or allow any other person access to any information relating to this Agreement and the Confidential Information which would not otherwise be available to a member of the general public without the prior written consent of the Supplier.

12.3 The Client acknowledges that the Supplier has invested substantial time, resources and money into Millertech's Confidential Information some of which may be provided to the Client at the Supplier's sole discretion. The Client (in its own capacity and that of its agents, employees and assigns) covenants and irrevocably agrees not to use any material (in whole or in Part) for any purpose not included in this Agreement.

12.4 The Client warrants that it has in place appropriate mechanisms to prevent the theft, unauthorised use and dissemination of Millertech's Confidential Information provided to it.

12.5 The Client irrevocably agrees to destroy any of Millertech's Confidential Information upon a written request by the Supplier.

12.6 The Client may use the Confidential Information in connection with complying with its obligations under these Terms and Conditions, but may not otherwise disclose or use Millertech's Confidential Information without the Supplier's written consent.

12.7 The parties must keep confidential the terms of these Terms and Conditions except as may be required by law, or as reasonably required to give to the parties' professional advisors.

12.8 The parties agree that upon the expiration or termination of these Terms and Conditions, the Client must deliver up to the Supplier all of Millertech's Confidential Information in their possession.

12.9 All clauses in this Agreement relating to Millertech's Confidential Information will survive the termination of these Terms and Conditions for a period of 7 years

13. GENERAL

13.1 The Agreement is governed by the laws of the Commonwealth of Australia and Queensland and the parties submit to the jurisdiction of the courts of the Commonwealth of Australia and the courts or tribunals of Queensland, which any proceedings to be issued out of a court or tribunal of competent jurisdiction in or nearest to the capital of such State or Territory.

13.2 The rights and obligations of the parties will not merge on completion of any transaction under the Invoice and these Terms and Conditions or upon the execution of any other document in connection with the subject matter of the Agreement.

13.3 All rights under the Agreement are in addition to and do not abrogate, limit or reduce any other rights that the Supplier may have.

13.4 The failure by the Supplier to enforce any provision of this Agreement shall not be treated as a waiver of that provision, nor shall it affect the Supplier right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

13.5 A right or obligation under the Agreement cannot be waived except by a document executed by the party waiving that right or obligation and specifying the waiver.

13.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lockout, Industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

13.7 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.