

# Test & Tag Karratha (A.B.N. 34 904 331 363)

## Sale and Supply Terms and Conditions

### 1. PURPOSE OF DOCUMENT

- (a) This document (**Terms and Conditions**) outlines Our terms and conditions in respect of the Sale of Goods or Services even where, for clarity, either Us or the Purchaser take one or more steps which could lead to a Sale Agreement but a Sale Agreement is not reached.
- (b) By placing any order with Us for the sale of Goods or Services, or which if accepted by us would lead to an agreement coming into existence for the sale of Goods or Services, the Purchaser agrees to be bound by these Terms and Conditions.

### 2. DEFINITIONS AND INTERPRETATION

#### 2.1 Definitions

In this document:

**ACL** means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth).

**Goods** means any goods for sale which We stock and includes Special Order Goods.

**GST**, and other words and expressions defined in the GST Act, have the meaning which they have for the purposes of the GST Act.

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

The Purchaser is **Insolvent** if it is bankrupt, has a liquidator, administrator, receiver or other external administrator without limitation appointed to it or any of its assets or cannot pay its debts as and when they become due.

**PMSI** means purchase money security interest.

**PPSA** means the Personal Property Securities Act 2009 (Cth).

**PPSR** means the Personal Property Securities Register maintained under the PPSA.

**Purchaser** means any person, company, organisation, or customer of any kind who purchases Goods or Services from Us, including any person who places an order for Goods or Services which We accept.

**Purchase Price** means the advertised or displayed price of any Goods or Services the price of those Goods or Services of which We inform the Purchaser in the course of the process of forming a Sale Agreement in relation to them.

**Sale** includes an agreement for Us to supply Services.

**Sale Agreement** means an agreement for the sale of Goods or Services.

**Services** means services supplied by Us including by any contractor on Our behalf of testing and tagging of equipment including but not limited to industrial fall-arrest systems, lifting equipment, electrical equipment, and fire safety, as well as workplace health and safety inspections, HSEQ (health, safety, environment, and quality) auditing, semi-quantitative risk assessments, and consultancy and lecturing or any other service without limitation which We provide but does not include the hire of any goods. (Hire of goods is covered by Our Hire Terms and Conditions).

**Special Order** means any order for goods not normally stocked by Us.

**Special Order Goods** means any goods which have been ordered as part of a Special Order.

**We/Us/Our** means Ryan Gregory McEwan trading as Test & Tag Karratha (A.B.N. 34 904 331 363).

#### 2.2 Interpretation

- (a) A reference in this document to:
- the singular includes the plural and vice versa;
  - a gender includes all other genders;
  - another grammatical form of a defined word or expression has a corresponding meaning;
  - a statute includes the regulations, by-laws or other instruments for the time being made under that statute including rulings issued by the Australian Taxation Office in relation to any of the foregoing and all amendments for the time being in force to any of the foregoing; and
  - a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (b) The meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions.
- (c) A word or expression defined in order for the purposes of GST Act or the PPSA it has the meaning which it has for the purposes of the relevant Act.
- (d) Any agreement, representation, warranty, indemnity, obligation or without limitation other provision binding on two or more persons (including where two or more persons are included in the same defined term) binds them jointly and each of them severally.
- (e) The fact that We were responsible for the preparation of this document or any part of it is not a reason to prefer the Purchaser's interests when interpreting it.

#### 2.3 Application

These Terms and Conditions are incorporated into each agreement for a person to buy or otherwise acquire Goods or Services from Us.

### 3. PAYMENT & DELIVERY

#### 3.1 Purchase Price

The Purchaser must purchase the Goods or Services for the Purchase Price.

#### 3.2 Payment

The Purchaser must pay the Purchase Price for Goods or Services at the time when We accept the Purchaser's order for them or any other time when a Sale Agreement in relation to them comes into effect.

#### 3.3 Method of Payment

Payment must be made by cash, bank cheque, credit card, direct credit into Our bank account or by any other method agreed between the Purchaser and Us. Receipt of any form of payment other than cash will not constitute payment until that form of payment has been honoured, cleared and recognised by Our bank as cleared funds. If the Purchaser pays by credit card We may invoice the Purchaser and, if We do, the Purchaser must pay, the amount of any surcharge charged to Us by the financial institution which provides Us with credit card merchant services where the amount paid by credit card exceeds \$10,000.

#### 3.4 GST

If GST is imposed on any taxable supply which We make under these Terms and Conditions, the Purchaser must pay Us an additional amount equal to the GST payable by Us on the taxable supply (without regard to Our entitlement to an input tax credit) at the same time as payment for the taxable supply is due to Us.

#### 3.5 Deposit

Where the Purchase Price is not payable in full on Our acceptance of an order for Goods or Services, We reserve the right to request a deposit for Goods and/or Special Orders and may refuse to deliver the Goods or supply the Services if the Purchaser refuses to pay a deposit requested by Us when requested by Us.

#### 3.6 Quotations

A Quotation is valid indicatively for 30 days from date of issue or any lesser period stated in it, but any quote is subject to change without notice if Our supply costs change. We may amend or withdraw a Quotation at any time.

#### 3.7 Delivery

- (a) The Purchaser may receive the Goods by:
- collection of the Goods from Our place of business at the time of purchase or as soon as practicable afterwards; or
  - delivery through a courier or postal service arranged by the Purchaser; or
  - delivery by Us,
- as agreed between the Purchaser and Us in the Sale Agreement.
- (b) If the Purchaser elects to have the Goods delivered to them, then the Purchaser will be responsible for providing accurate details as to the location, time and date of delivery and will be responsible for the costs of delivery, including all additional charges (if any) stemming from the delivery or failure to deliver the Goods. Risk of loss or damage to the Goods shall pass to the Purchaser on delivery in accordance with clause **Error! Reference source not found.**

### 4. RETURNS AND EXCHANGES

#### 4.1 Returns

- (a) We will accept returns for faulty Goods or Goods which are not as described if We are presented with recent proof of purchase. The Purchaser shall be responsible for any postage or courier costs in returning the Goods to Us.
- (b) The Purchaser must allow Us access to inspect the Goods and determine whether or not that the Goods are faulty or not as described. We are not liable for any defects, damage or failure of Goods to the extent caused or contributed to by them not being stored or used properly.
- (c) Goods will not be accepted for return in any circumstances (including any Special Order Goods, or custom made, proceed or acquired Goods) other than those specified in this clause 4.1 or required by law.

#### 4.2 Exchange

Subject to clause 5.3, We may allow exchanges of unused Goods in their original unopened/undamaged packaging, at Our complete discretion, with proof of purchase and subject to any adjustment of Purchase Price and within seven (7) days of purchase.

### 5. SPECIAL ORDERS

#### 5.1 Placing of Order

A Purchaser may request that We place a Special Order. If We accept that request, payment for the Special Order must be made at the time of acceptance.

#### 5.2 Cancellation of Order

A Purchaser may request that We cancel a Special Order. If the Special Order Goods have been ordered by Us, the Purchaser will not be entitled to a refund.

#### 5.3 Exchanging Special Order Goods

We may choose to allow a Purchaser to exchange Special Order Goods, however no refunds shall be issued where there is a difference in price between the Goods and the Special Order Goods.

### 6. TITLE TO GOODS

#### 6.1 Passing of Title

Title in the Goods passes to the Purchaser only when the Purchaser has paid the Purchase Price includes any GST amount due in respect thereof in full and, further, only when the Purchaser has all other money owing by the Purchaser to Us (whether in respect of money payable under this Sale Agreement, any other agreement for the sale or supply of goods or services by Us to the Purchaser or on any other account whatsoever without limitation).

#### 6.2 Trustee

- (a) Until title to Goods passes to the Purchaser, the Purchaser holds the Goods as trustee for Us and agrees to store the Goods in such a manner that they can be identified as Our property and will not mix the Goods with other similar goods and must not sell or grant any interest in or part

with possession of the Goods without Our consent in writing, which We may withhold in Our absolute discretion.

- (b) The Purchaser's indebtedness to Us to the extent represented by any money received by the Purchaser as trustee for Us referred to in clause 6.2(a) will not be discharged by the operation of clause 6.2(a) unless and until the funds held on trust are remitted to Us.

### 6.3 Inspection and repossession

- (a) While title in the goods remains with Us, We have the right, with prior notice to the Purchaser except in an emergency when no notice is necessary, by Our employees, officers, contractors and agents to enter upon any premises where the Goods are stored (**Premises**) including by force to inspect the Goods, and/or to repossess the Goods when an amount payable by the Purchaser to Us for which the Goods are collateral is overdue or if the Purchaser is Insolvent.
- (b) Where We exercise any right to enter the Premises, including by force, that entry will not give rise to any action of trespass, for damage to property or similar action on the part of the Purchaser against Us, Our employees, officers, agents or contractors.
- (c) The Purchaser must upon demand pay Us Our costs of exercising Our rights under clause 6.3(a).

### 6.4 Nature of Our right in Goods

For clarity, and without limiting the other characteristics of that interest, Our interest in the Goods under clauses 6.1 and 6.2, to the extent that interest:

- (a) secures payment of the Purchase Price (including any GST amount) of the particular Goods and payment of any other monies connected with the sale of those Goods which may be secured over Goods by a PMSI, is a PMSI; and
- (b) is not a PMSI it is nevertheless a security interest.

### 6.5 PMSI Collateral

To the extent that a security interest granted by the Purchaser to Us under this Agreement is registered, or an application is made to register it, on the PPSR as a PMSI, the collateral over which the security interest is registered is:

- (a) goods Supplied by Us to the Purchaser which are inventory of the Purchaser, to the extent and only while, the goods are inventory, within of the Purchaser (**Inventory**);
- (b) Goods sold by Us to the Purchaser which were Inventory after they have ceased to be Inventory; and
- (c) Goods described in any invoice, purchase order, record of sale, or other document given by Us to the Purchaser or vice versa forming part of the Sale Agreement referring to the fact that We sold or agreed to sell Goods to the Purchaser, which Goods are in, or ever were in, the possession of the Purchaser,

and in any of such cases, the proceeds of sale by or for the Purchaser of those Goods (**Collateral**).

### 6.6 Registration on PPSR

- (a) The Purchaser irrevocably consents to Us recording any security interest granted by the Purchaser or which otherwise arises under these Terms and Conditions on the PPSR and agrees to do all things and sign all documents reasonably required by Us to enable Us to effect such registration.
- (b) The Purchaser must, at Our request, execute documents and do such further acts as may be required for Us to register the security interest granted by the Purchaser under the PPSA.
- (c) The Purchaser further agrees that where We have rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
- (d) The Purchaser waives the rights which it would otherwise have under sections 95, 96, 118, 121(4), 125, 129, 130, 132(2), 132(3)(d), 132(4), 135, 137(2), 142, 143, 157(1) and 157(3) of the PPSA and any other provision of the PPSA that We notify the Purchaser after the date of this Agreement, to the extent that the law permits the exclusion of the right.
- (e) The parties agree not to disclose information of the kind that can be requested under section 275(1) of the PPSA when requested under that section. The Purchaser must do everything necessary to ensure that PPSA s275(6)(a) continues to apply. This clause is solely to allow Us the benefit of PPSA s275(6)(a) and We are not liable for damages or other compensation or subject to an injunction if We breach this clause.

## 7. WARRANTIES AND LIABILITY

### 7.1 Standard of Goods and Services

- (a) We provide the warranties in respect of Goods and Services Sold by Us provided for in the ACL (each an **ACL Warranty**) to the extent that the law does not permit Us to exclude or modify an ACL Warranty. To the extent that the law permits Us to:
  - (i) exclude an ACL Warranty or a remedy in respect of it, that ACL Warranty or remedy is excluded from its application to the Sale Agreement; or
  - (ii) modify an ACL Warranty or a remedy in respect of it in a way more favourable to Us than the ACL Warranty or the remedy in respect of it, then that ACL Warranty or remedy is modified in the way most favourable to Us that applicable law allows it to be modified. If there is any uncertainty about which modification is most favourable to Us, the modification specified by Us by notice to the Purchaser at any time is conclusive of that issue.
- (b) The remaining provisions of this clause 7 are not intended to operate inconsistently with this clause 7.1. To the extent that a remaining provision of this clause 7 would otherwise be inconsistent with this clause 7.1 the remaining provision must to the extent possible be read down to remove the inconsistency but to the extent that it cannot be so read down it will be taken to be excluded from these Terms and Conditions without affecting the validity of the remainder of them.

### 7.2 Warranties

The Purchaser warrants that, in purchasing Goods or Services from Us that:

- (a) it satisfied itself as to the description and condition of the Goods or Services and their fitness for the purpose for which they will use them; and

- (b) has not relied on any statement, representation, warranty, guarantee, condition, advice, recommendation, information, assistance or service provided or given by Us or anyone on Our behalf in respect of the Goods, or Services other than those expressly contained in this Agreement, the quotation or any other document that We have provided to the Purchaser.

### 7.3 Limit of Liability

Neither We nor any of Our officers, employees or contractors are liable to the Purchaser for or in respect of any indirect, incidental, or consequential damages or damages sustained by the Purchaser for:

- (a) increased costs or expenses;
- (b) loss of profit, revenue, business, contracts or anticipated savings;
- (c) loss or expense resulting from a claim by a third party; or
- (d) special, indirect or consequential loss or damage of any nature whatsoever,

arising out of or in connection with any Sale Agreement or the Sale of any Goods or Services, including any breach by Us of any obligation We owe to the Purchaser under any Sale Agreement or arising out of or in connection with any Sale Agreement under any civil law other than contract law.

### 7.4 Scope of Limitation of Liability

Where any provision of these Terms and Conditions:

- (a) excludes or limits Our liability; or
- (b) excludes or modifies any warranty or other provision without limitation which would otherwise be implied into the Sale Agreement,

each referred to as a **Liability Limitation**, the Liability Limitation applies regardless of whether the Purchaser sues or otherwise seeks a remedy without limitation against Us in respect of the relevant matter for breach of contract, for any tort (including negligence), for any other civil wrong without limitation, in equity for any remedy provided by statute or in respect of any provision implied into the Sale Agreement by any statute.

### 7.5 Third-Party Benefit

Where a Liability Limitation is expressed to be for the benefit of any of Our directors, employees or contractors (each a **Third Party**) We hold the benefit of that Liability Limitation on trust and as agent for the Third Party and may exercise that Liability Limitation on behalf of the Third Party or may permit the Third Party to do so in its own name.

## 8. MISCELLANEOUS

### 8.1 Suspension

Where the Goods are to be delivered or collected in instalments or where We have any continuing obligation to provide Services and any amount due by the Purchaser to Us has not been paid in full by its due date or the Purchaser is Insolvent We may suspend the delivery, collection or sale of any further Goods and the further provision of any Services until the matter is resolved to Our satisfaction or terminate the Sale Agreement by notice without liability on Us and with liability of the Purchaser to Us as if it had repudiated the Sale Agreement.

### 8.2 Changes

We may change these Terms and Conditions from time to time without notice to the Purchaser. We will put any amended version of these Terms and Conditions on Our Website within a reasonable time after any change.

### 8.3 Jurisdiction

these Terms and Conditions will be interpreted in accordance with, and any dispute arising out of or in connection with it will be determined according to, the laws which apply in Western Australia, without regard to choice of law rules which would result in the substantive law which applies in another place applying to any of those matters.

### 8.4 Severability

If any provision or part of a provision of these Terms and Conditions is void, voidable, unenforceable or illegal:

- (a) it must be read down so as to be valid and enforceable; or
- (b) if it cannot be so read down, the provision or part provision will be severed from these Terms and Conditions without affecting the validity, legality or enforceability of the remaining provisions of this document, which will continue in full force and effect.