

MILCast Standard Terms and Conditions

1 Definitions and interpretation

1.1 Definitions

In the Agreement:

- (1) **Agreement** means these standard terms and conditions and the Quotation and any schedule or annexure to it;
 - (2) **Claim** means any claim, legal action or demand;
 - (3) **Credit Application** means any credit application by the Customer to MILCast in connection with the Goods or Services;
 - (4) **Customer** means the person to receive the Goods or Services under the Quotation;
 - (5) **Defect** means any defect in the Goods or Services including any part of the Goods or Services which does not comply with the Agreement;
 - (6) **Goods** means the products, equipment, materials and other items of any kind, whether or not fixed or incorporated, described in the Quotation and which are to be supplied by MILCast;
 - (7) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
 - (8) **Insolvency Event** means the happening of any of these events in relation to a party:
 - (a) execution or other process of a court or authority or distress is levied for an amount exceeding \$10,000 upon any of the party's property and is not satisfied, set aside or withdrawn within 7 days of its issue;
 - (b) an order for payment is made or judgment for an amount exceeding \$10,000 is entered or signed against the party which is not satisfied within 7 days;
 - (c) the party suspends payment of its debts;
 - (d) where the party is a body corporate:
 - (i) the party becomes an externally-administered body corporate under the *Corporations Act 2001* (Cth);
 - (i) steps are taken by any person towards making the party an externally-administered body corporate (but not where the steps taken consist of making an application to a court and the application is withdrawn or dismissed within 14 days);
 - (ii) a controller (as defined in section 9 of the *Corporations Act 2001* (Cth)) is appointed of any of the property of the party or any steps are taken for the appointment of a controller (but not where the steps taken are reversed or abandoned within 14 days);
 - (iii) the party is taken to have failed to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001* (Cth); or
 - (iv) a resolution is passed for the reduction of capital of the party or notice of intention to propose such a resolution is given, without the prior written consent of the other party;
 - (e) where the party is a natural person:
 - (i) the party authorises a registered trustee or solicitor to call a meeting of his or her creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of his or her creditors;
 - (ii) a person holding a security interest in assets of the party enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets; or
 - (iii) a party commits an act of bankruptcy; or
 - (f) if an event happens analogous to an event specified in clauses 1.1(8)(a) to 1.1(8)(e) to which the law of another jurisdiction applies and the event has an effect in that jurisdiction similar to the effect which the event would have had if the law of Australia applied.
- (9) **Intellectual Property Rights** means any intellectual or industrial property right, whether protected by statute, at common law or in equity, including any patent, registered design, (whether or not registrable), invention, trade secret, circuit layout design, or right in relation to circuit layouts, right to confidential information (whether in writing or recorded in any form), know-how, processes, technical information, trademark or name, copyright or other protected right;
 - (10) **MILCast** means Murray Irrigation Limited ABN 23 067 197 933 trading as MILCast;
 - (11) **Quotation** means the written quotation for the supply of the Goods or Services by MILCast to the Customer for a stated sum;
 - (12) **Services** means the services described in the Quotation and which are to be supplied by MILCast; and
 - (13) **Tax Invoice** has the meaning given to that expression under the GST Act.

1.2 Interpretation and operation

- (1) Reference to:
 - (a) a party includes the party's executors, administrators, successors and permitted assigns;
 - (b) a statute, regulation, code or other law or a provision of any of them includes:
 - (i) any amendment or replacement of it; and
 - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
 - (c) dollars means Australian dollars unless otherwise stated.
- (2) "Including" and similar expressions are not words of limitation.
- (3) A provision of the Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
- (4) If an act must be done on a specified day which is not a business day, it must be done instead on the next business day.
- (5) These terms and conditions apply to all contracts of sale entered into between MILCast and the Customer unless otherwise agreed in writing.

2 Agreement

- 2.1 In the event of any conflict arising between these standard terms and terms conditions, the Credit Application, Quotation, invoice, monthly statement, order confirmation or other similar document issued by MILCast, the following order of precedence will apply:
 - (1) these standard terms and conditions;
 - (2) the Credit Application;
 - (3) the Quotation; and
 - (4) any other document.
- 2.2 Each supply of Goods or Services by MILCast to the Customer constitutes a separate contract in accordance with the Agreement.
- 2.3 No terms or conditions on or referred to in any purchase order or other document issued by the Customer will form a part of or vary the Agreement unless expressly agreed to in writing by an authorised representative of MILCast. A failure by MILCast to object to any terms or conditions will not constitute acceptance by MILCast of such terms or conditions.

3 Supply

- 3.1 MILCast must supply the Goods or Services at the place specified in the Quotation where the Goods or Services are to be supplied by MILCast.
- 3.2 Any statement made by MILCast as to the date for supply of Goods or Services is an estimate only.
- 3.3 MILCast will have no liability whatsoever (including liability for negligence) for any loss or damage, consequential or otherwise, if supply is delayed. Delayed supply does not entitle the Customer to terminate the Agreement.

4 Acceptance of Goods or Services

- 4.1 The Customer must inspect the Goods and Services immediately upon supply and within 7 days after the date of inspection, must give notice to MILCast, with particulars of any claim that the Goods or Services are not in accordance with the Agreement.
- 4.2 If the Customer fails to give that notice (or fails to identify any Defect in that notice), then to the maximum extent permitted by law and to the extent that any Defects could reasonably have been identified at the time by which notice is required, then the Customer releases MILCast from Claims arising directly or indirectly as a result of or in connection with such Defects.

5 Payment

- 5.1 MILCast must issue a valid Tax Invoice to the Customer in respect of the supply of the Goods or Services. Each Tax Invoice must state the details of the Goods or Services and the moneys payable to MILCast.
- 5.2 MILCast must issue a monthly statement to the Customer. The monthly statement must state the details of the Goods or Services supplied and the moneys payable to MILCast.
- 5.3 Within 30 days after receiving the first monthly statement in respect of the Goods or Services issued by MILCast in accordance with clause 5.2, the Customer must pay to MILCast the amount set out in that monthly statement.
- 5.4 All payments under the Agreement must be made by cash, cheque drawn by an authorised deposit-taking institution as defined in the *Banking Act 1959* (Cth), by funds transfer or other mechanism agreed between MILCast and the Customer.
- 5.5 Where there is a credit arrangement between MILCast and the Customer, should MILCast at any time deem the credit of the Customer to be unsatisfactory for any reason, it may:
 - (1) require an alternative payment regime to that contained in clauses 5.2 and 5.3;
 - (2) suspend or cancel any existing credit arrangement; and

(3) withhold supply of Goods and Services.

5.6 MILCast may elect, at its sole discretion, to charge:

- (1) a monthly administration fee of \$50 in connection with any amount payable by the Customer under the Agreement (including the sum stated in the Quotation) from the date on which the amount falls due for payment until it is paid; or
- (2) interest on any amount payable by the Customer under the Agreement (including the sum stated in the Quotation) from the date on which the amount falls due for payment until it is paid.

5.7 The rate of interest to apply under clause 5.6(2) above will be the current cash rate published by the Reserve Bank of Australia plus 2%.

5.8 Any collection costs incurred by MILCast in connection with recovering any outstanding monies, including debt collection agency fees and legal costs (calculated on a solicitor and client basis), must be reimbursed by the Customer.

5.9 The Customer is not entitled to defer, offset or withhold payment in whole or in part for any reason unless agreed to by MILCast in writing.

5.10 Time is of the essence in respect of the Customer's obligation to make payment for Goods and Services.

6 Risk in and ownership of the Goods

6.1 In this clause 6:

- (1) **PPSA** means *Personal Property Securities Act 2009* (Cth); and
- (2) a term that is used has the same meaning as in the PPSA.

6.2 The Goods and all parts of them remain at the risk of MILCast until delivered to the Customer at which time risk in the Goods passes to the Customer.

6.3 Property in the Goods supplied by MILCast to the Customer does not pass to the Customer until the amount owing for those Goods, and any other amount owing by the Customer to MILCast, has been paid.

6.4 Until the Goods have been paid for in full, the Customer:

- (1) may not either sell the Goods or use the Goods in a manufacturing or construction process, other than in the ordinary course of its business, in which case the Customer grants to MILCast a security interest in either every payment to the Customer for the Goods or the portion of every payment for the manufactured product that relates to the Goods (both as proceeds of the Goods and as original collateral); and

- (2) must not sell, assign, charge or otherwise encumber or grant any interest over any debts and other obligations which any third party may owe to the Customer as a result of the use, manufacture or resale of the Goods.

6.5 The Customer irrevocably authorises MILCast at any time, to enter any land, property or premises upon which the Goods are stored to enable MILCast to inspect the Goods and, if the Customer has breached these terms and conditions or suffers an Insolvency Event, to reclaim possession of the Goods. The Customer indemnifies MILCast against any liability to any person in connection with the entry or reclamation.

6.6 The Customer acknowledges that:

- (1) this clause 6 creates a security interest in all present and after acquired Goods and any proceeds as security for the Customer's obligations to MILCast;
- (2) MILCast is a secured party in relation to the Goods and any proceeds of the Goods, and is entitled to register its interest on the register as:
 - (a) a security interest; and
 - (b) if applicable, a purchase money security interest;
- (3) MILCast may, by notice to the Customer, require the Customer to take all steps requested by MILCast to ensure its security interest in the Goods and the proceeds is enforceable, and to perfect, or better secure the position of MILCast and the Customer must comply with that notice; and
- (4) MILCast is not obliged to give any notice, document or information under the PPSA, unless the provision of the notice, document or information is required by the PPSA and cannot be excluded.

6.7 The parties may not disclose any information of a kind referred to in subsection 275(1) of the PPSA that is not in the public domain.

6.8 The Customer acknowledges and agrees that MILCast may recover the price of the Goods by legal action if payment for the Goods is overdue, notwithstanding that property in the Goods has not passed to the Customer.

7 Limitation of liability

7.1 The Customer acknowledges that it:

- (1) does not rely, and it is unreasonable for the Customer to rely, on the skill or judgement of MILCast; and
 - (2) has made its own investigations,
- as to whether the Goods and Services are reasonably fit for any purpose for which they are being supplied.

7.2 To the maximum extent permitted by law, all terms, conditions, warranties, statements or representations by MILCast (whether express, implied, written, oral, collateral, statutory or otherwise) in connection with the Goods or Services which are not expressly set out in the Agreement are excluded, and to the extent they cannot be excluded, MILCast disclaims all liability that it may have in relation to them.

7.3 To the maximum extent permitted by law, MILCast's liability, whether arising in contract, tort (including negligence), or otherwise for or in connection with any failure to comply with the Agreement or any statutory or implied condition, warranty or guarantee, is limited (at MILCast's option) to, and completely discharged by:

(1) in the case of Goods:

- (a) replacing the Goods or supplying equivalent goods;
- (b) repairing the Goods;
- (c) paying the cost of replacing the Goods or acquiring equivalent goods; or
- (d) the payment of the cost of having the Goods repaired; and

(2) in the case of Services:

- (a) supplying the Services again; or
- (b) paying the cost of having the Services supplied again,

and MILCast excludes all other such liability, whether direct, indirect or consequential, arising out or in connection with, the Goods or their use or the Services.

7.4 Notwithstanding anything else contained in the Agreement, to the maximum extent permitted by law, MILCast is not liable whether in contract, tort (including negligence), or otherwise for any indirect or consequential loss, damage, liability, cost or expense of any kind arising out of or in connection with the Agreement or a breach of it, whether or not the loss, damage, liability, cost or expense was in the reasonable contemplation of the parties when the Agreement was entered into. For the purposes of this clause 7, consequential loss or damage includes:

- (1) loss of profit or revenue;
- (2) anticipated loss of profit or revenue;
- (3) loss of production;
- (4) loss of opportunity;
- (5) loss of use; or
- (6) indirect, special or consequential loss or damage.

8 Intellectual Property

8.1 All Intellectual Property Rights arising out of the provision of the Goods or Services and the

Agreement and all material developed or created in connection with such Intellectual Property Rights are, as between MILCast and the Customer, owned by MILCast.

9 Privacy Act authorisation

9.1 Where MILCast collects credit information about an individual in connection with a credit application, the Customer:

- (1) acknowledges receiving MILCast's credit reporting collection statement (a copy of which is attached to the credit application), which sets out how MILCast collects, uses, holds and discloses credit eligibility information;
- (2) consents to the collection, use, holding and disclosure of credit eligibility information about the Customer, its directors, other authorised representatives and any other guarantors offered by the Customer (if any) as described in that collection statement; and
- (3) agrees that MILCast may obtain a credit report from a credit reporting body about the Customer and the commercial creditworthiness of the Customer, its directors or other authorised representatives and any guarantors (if any). MILCast may use this report for the purpose of assessing the creditworthiness of those persons (or their capacity to guarantee any credit provided to the Customer) and for collecting (or engaging any third party to collect) any overdue payments under the Agreement.

9.2 The Customer has or will procure any necessary written consents from any Customer guarantor, Customer director or authorised Customer representative and any other person set out in the credit application which accompanies the Agreement and will provide a copy of those consents to MILCast (in a form reasonably acceptable to MILCast) on demand.

10 Change of details

Where there is a credit arrangement between MILCast and the Customer, the Customer must notify MILCast within 7 days in the event of a change to the information supplied in the credit application.

11 Termination

11.1 Either party may terminate the Agreement with immediate effect by notice if:

- (1) a party commits a material breach of the Agreement (including a failure to pay any amount owing) and does not remedy that breach within 7 days after the other party gives notice; or
- (2) an Insolvency Event occurs in respect of the other party.

11.2 Notice under clause 11.1(1) above must:

- (1) state that it is given under this clause 11;

- (2) identify and particularise the material breach; and
- (3) specify a date which is 7 days from the date the notice is given by which the other party must remedy the material breach.

12 Goods and services tax

12.1 In this clause 12:

- (1) **GST** means GST as defined in the GST Act;
- (2) words or expressions used in this clause 12 which have a particular meaning in the **GST law** (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
- (3) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;
- (4) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and
- (5) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

12.2 Unless GST is expressly included, the consideration to be paid or provided under any other clause of the Agreement for any supply made under or in connection with the Agreement does not include GST.

12.3 To the extent that any supply made under or in connection with the Agreement is a taxable supply, the GST-exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST-exclusive consideration is otherwise to be paid or provided.

12.4 A party's right to payment under clause 12.3 is subject to a valid Tax Invoice being delivered to the recipient of the taxable supply.

12.5 To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

12.6 To the extent that any consideration payable to a party under the Agreement is determined by reference to a cost incurred by a party, or is determined by reference to a price, value, sales,

revenue or similar amount, the GST-exclusive amount of that cost, price, value, sales, revenue or similar amount must be used.

13 Force Majeure

13.1 The obligations of MILCast (other than an obligation to pay money) are suspended during the time and to the extent that MILCast is prevented from or delayed in complying with an obligation by an event beyond its reasonable control (including any force or act of nature or any third party).

14 Assignment

The Customer must not assign or otherwise deal with the Agreement without the prior written consent of MILCast.

15 Entire understanding

The Agreement:

- (1) is the entire agreement and understanding between the parties on everything connected with the subject matter of the Agreement; and
- (2) supersedes any prior agreement or understanding on anything connected with that subject matter.

16 Variations

16.1 MILCast may, from time to time, without the Customer's consent, vary, amend, supplement or replace these standard terms and conditions by giving 7 days' notice to the Customer. The parties agree to be bound by the variation, amendment, supplementation or replacement (whether material, adverse or otherwise).

16.2 MILCast is not obliged to carry out any variation to the Goods or Services unless and until the parties have agreed, in writing, to the cost and scope of the Goods or Services resulting from the variation.

17 Waiver

A waiver by one party of a breach or default of any provision of the Agreement by the other party is not a waiver of any further or other breach or default by that other party.

18 Governing law and jurisdiction

18.1 The law of New South Wales governs the Agreement.

18.2 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.