



## 1. APPLICATION OF THESE TERMS AND CONDITIONS

These Terms and Conditions apply to any Goods or Services provided by Kador. In the event of any conflict between these Terms and Conditions and any other document or conditions these Terms and Conditions shall prevail. "Kador" means KADOR ENGINEERING (AUSTRALIA) PTY. LIMITED ABN 41 010 145 534 its successors and assigns or any person acting on behalf of and with the authority of Kador.

"Customer" means the entity named on the Contract ,Purchase Order or Work Order, Quotation and/or Credit Account or Work Authorisation; "Goods" means engineering products as more particularly described in the Customers Purchase Order and Kador's Quotation; "Purchase Order" or "Work Order" means the document issued by the Customer to Kador for the supply of Goods or Services and includes any specifications, drawings and/or other documents; "Contract" means Kador's accepted Quotation or Work Authorisation; and "Australian Consumer Law" means the Australian Consumer Law set out in Schedule 2 of the competition and Consumer Act 2010 (Cth).

## 2. QUOTATIONS

A quotation shall remain in force as a basis for placing orders with Kador for thirty (30) days from the date of the quotation, unless otherwise stated on the quotation.

## 3. CONTRACT

### 3.1 Acceptance

Kador will not be obligated to proceed until an official Work Order or Purchase Order is issued by the Customer and all details pertaining to the Contract have been received and agreed to by Kador.

### 3.2 Price

The price/s quoted is/are based on the current costs of labour, materials, bank rate of exchange for demand drafts, freight, insurance (including war risk), customs duty and all other costs prevailing at the date of the Contract. Any rise in such costs and any additional tariffs, landing charges, dues, duties, taxes and other Government impositions incurred by Kador whether on an affective hourly rate or otherwise between the date of the Contract and the date of delivery shall be payable by the Customer. Kador's calculations of increase in price due to any of the foregoing shall be conclusive.

3.3 Where the Services are to be undertaken at the Customer's premises or the premises of a third party near the Customer's premises (Offsite) Kador's Contract for Goods and Services is based on the assumption that access to the worksite, with suitable provision for transport and storage of all equipment, materials and plant, will be made readily available during the work period and that reasonable space will be provided in and near the worksite to take deliveries of and to store Kador equipment ,materials, vehicles and other things necessary to carry out the work and that the Customer shall make available to Kador (at the costs of the Customer) all necessary telecommunications, electrical power, compressed air, light, water, waste disposal amenities, toilet and other services and facilities at the worksite during the progress of the work.

3.4 Where the work or services are undertaken offsite the Customer warrants that the structure of the premises or equipment in or upon which the Goods are to be installed is sound and will sustain the installation and work incidental thereto and Kador shall not be liable for and the Customer

agrees to indemnify Kador against any and all loss, damage and/or injury and by whomsoever sustained resulting from insufficient or defective foundation walls or other structures not erected by Kador.

3.5 Maintenance services shall be charged at rates specified in Kador's Contract or where no written contract exists then at Kador's current charges last notified to the Customer. Travel time from Kador's workshop to the Customer's worksite and worksite to workshop will be payable by the Customer.

### 3.6 Sales Tax/GST

Neither GST nor any other indirect tax is included in the quoted price. Any such tax that is applicable will be added to the quoted price at time of invoicing.

### 3.7 Liquidated Damages

No liquidated damages will be accepted unless otherwise stated in writing in the Contract.

## 4. DESCRIPTIVE DATA

All illustrations, drawings, catalogues, advertisements etc. accompanying Kador's Quotation or Work Authorisation must be regarded as informative only and are not part of the Contract unless otherwise stipulated in the Quotation or Work Authorisation. All weights, measurement, powers, capacities and other particulars specified in these illustrations and drawings etc. are stated in good faith but inaccuracies shall not vitiate the Contract or be made the basis of any claim against Kador nor justify rejection.

## 5. THE CUSTOMER'S SPECIFICATIONS

5.1 The Customer shall furnish free of charge to Kador three (3) copies of all specifications, drawings and other information specified to be supplied by the Customer or which may be reasonably required for the execution of the Contract.

5.2 The Customer shall be responsible for, and shall pay the costs of all alterations to the work or delays in execution of the work arising from discrepancies, errors or omissions or delay in providing such specifications, drawing and other information.

## 6. INSTRUCTIONS

Insofar as these Terms and Conditions require that instructions be given in writing or that information be provided, the Customer and Kador agree that minutes certified by Kador of meetings between authorised representatives of the Customer and Kador shall be deemed to be written instructions of information provided. The Customer acknowledges that all the terms and conditions of the Contract are set out therein and that Kador shall not be bound to carry out any oral instructions given or alleged to have been given to any agent or representative of Kador.

## 7. COPYRIGHT AND MANUFACTURING DATA

The proprietary products sold by Kador are covered by various patents, design copyright and licensing agreements. In order to protect Kador's intellectual property, Kador will not release to the Customer any details which may be used to copy Kador's products. Information relating to geometric proportions, material specifications, manufacturing drawings, check sheets that include dimensional tolerances, calculations, formulae and Kador's proprietary software will not be provided. All of the above restricted information is available for the Customer's inspection in Kador's Sumner Park office. Copies

of this information will not be provided. Ownership of Copyright will at all times remain exclusively with Kador.

## **8. CONFIDENTIALITY**

Kador's Quotation/Work Authorisation will contain information and concepts which are proprietary and confidential to Kador. The information contained in any Quotation/Work Authorisation must be kept strictly confidential and used only for the purpose of evaluating Kador's proposal. Disclosure of any proprietary and confidential information to any third party or other use of such information without Kador's written permission is strictly prohibited.

## **9. PAYMENT**

### **9.1 Time for Payment**

Payment terms apply strictly from date of Kador's invoice and all invoices shall be payable not more than thirty (30) days from the date thereof without deduction

### **9.2. Progress Payments**

During the progress of the Contract Kador shall submit from time to time to the Customer a statement showing the value of work done and/or materials purchased for the Contract and the Customer shall make a progress payment to Kador not more than thirty (30) days of the date of each such statement.

### **9.3 Cancellation**

Kador's acceptance at the Customer's request of the cancellation of any order or part thereof implies the Customer's agreement to the payment of a cancellation charge covering all material purchased for and all work whether productive or non-productive on the product or tools for it, carried out in connection with the order plus an amount for indirect costs and profit. Kador's account shall be conclusive as to the amount payable. Payment must be made within thirty days of receipt of Kador's invoice.

### **9.4 Interest**

Kador will charge interest at the rate of two percent (2%) above the commercial lending rate of Kador's bank or financial institution calculated on a daily basis on amounts not paid within the time specified in Kador's invoice.

### **9.5 Damage**

The Customer must pay Kador any costs, expenses or losses incurred by Kador as a result of the Customer's failure to pay Kador all sums outstanding as owed by the Customer to Kador including without limiting the generality of the foregoing any debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis.

## **10. IMPORT LICENSE**

If an Import License is necessary to obtain admission into the country of destination of any part of the Goods or Services the procurement shall be arranged by and at the cost of the Customer who will also make the necessary arrangements for remission of funds to Australia.

## **11. SUSPENSION OF WORK**

In the event of the suspension of work on the Customer's instructions or lack of instructions, the Contract price may be increased by Kador to cover any extra expense thereby incurred and Kador's calculation of such increase shall be conclusive.

## **12. PROLONGATION**

12.1 In the event that Kador is prevented from performing its obligations under the Contract within the Terms and Conditions herein due to any act or omission by any person, body or thing whatsoever, including strike action or act of God, then Kador has the right to extend the time to perform its obligations for a similar period to that for which it was unable to work.

12.2 If the prolongation is due to the Customer or its agents failing to supply material, site access or facilities, information, drawings or do anything whatsoever that the Customer or its agents should have done under its contractual obligations then the Customer must pay prolongation costs as determined by Kador.

## **13. ACCEPTANCE INSPECTION**

13.1 Unless stated in writing in the Contract or the work undertaken offsite, testing and inspection by the Customer shall be at Kador's workshop and shall be final.

13.2 All costs and fees incurred in connection with testing and inspection other than those specifically included in the Contract will be payable by the Customer.

13.3 No claim for defective Goods or Services shall be made by the Customer after delivery and acceptance following such testing and inspection unless such defect was not capable of being ascertained during such inspection and testing.

13.4 The Customer must within thirty (30) days of the date of delivery of the Goods or Services notify Kador in writing of any matter or thing by reason whereof the Customer alleges that the Goods are not in accordance with the Contract, otherwise the Goods and Services shall be deemed to be in all respects in accordance with the Contract and the Customer shall be bound to accept and pay for same accordingly.

13.5 Subject at all times to the provisions of the Australian Consumer Law, Goods returned to and accepted by Kador as defective will be dealt with in accordance with these Terms and Conditions but such acceptance shall not give rise to any claim on account of any loss, damage, expense or otherwise whatsoever outside of these Terms and Conditions.

13.6 Returns for credit will not be accepted except by written agreement authorised by Kador. The Customer shall be solely liable for all freight costs of any return. GST shall be adjusted as required.

13.7 Where the Work or Services have been carried out at the Customer's premises or third party premises near the Customer the following clauses 13.8 to 13.11 shall apply.

13.8 Upon completion of the Services or any mutually agreed part thereof the Customer and Kador shall carry out Acceptance Tests in accordance with Clauses 13.2 to 13.4 and those clauses shall with suitable amendments apply.

13.9 Following such testing and inspection and before Kador leaves the site the Customer shall issue a Certificate of Acceptance of the work or part thereof which shall then be deemed to have been finally accepted and delivery made to the Customer.

13.10 Acceptance shall not be unreasonably withheld because of minor omissions or deficiencies which do not affect the commercial use of the work provided always that Kador undertakes to make good such omissions and



defects at the earliest date practicable.

13.11 If testing or inspection not have been carried out within seven days of Kador advising the Customer that the Goods or Services are ready for testing and inspection, the work shall be deemed to have been accepted on the expiry of the said seven days and payments to Kador shall be made as if satisfactory Acceptance Tests had taken place.

#### **14. STORAGE OF GOODS AND PROPERTY**

14.1 The risk with the Goods and the Customers property remains with the Customer even while in Kador's possession. Kador shall take reasonable care of the Customers property and the Goods but Kador is not responsible for any damage or loss however sustained.

##### **14.2 SITE SECURITY**

Where the Work or Services are carried out offsite the Customer agrees to provide adequate site security for Kador's property (including but not limited to vehicles and equipment hired by Kador, materials tools and equipment) during such times as they are left unattended at the Customer's site or third party site.

14.3 The Customer shall ensure Kador's property is protected from the elements, flooding and other conditions which may damage Kador's property.

14.4 The Customer shall indemnify Kador for all losses, costs and expenses incurred should Kador's property be lost or damaged when left unattended by Kador at the Customer's site.

#### **15. INSURANCE**

Unless otherwise stipulated in the Contract Kador shall not be responsible for loss or damage occasioned by burglary, fire, water damage, flood damage, accident or any other cause to the Customer's property when left in Kador's custody and it shall not be obligatory on the part of Kador to insure or exercise special care with the Customer's property. If so directed by the Customer, Kador may take out suitable insurance at the cost of the Customer.

#### **16. DELIVERY**

16.1 Delivery of the Goods "Ex Works", to a third party and/or site nominated by the Customer is deemed to be delivery to the Customer.

16.2 Any time or date for delivery is given and intended as an estimate only and Kador shall not be responsible for the consequences of delayed delivery howsoever arising. The Customer shall accept delivery of the Goods ordered upon completion of manufacture by Kador but not earlier than the specified delivery time.

16.3 All charges incurred should the Customer not take delivery as specified in the Contract shall be payable by the Customer including a storage charge of 1% per month (calculated on a daily basis) of the value of the Goods. In the case of sales on "Ex Works" delivery shall be deemed to be completed on dispatch of the completed Goods.

16.4 Packing and freight will be charged to and payable by the Customer unless otherwise stated in the contract. In the case of sales on an F.O.B or similar basis any risk for which Kador might otherwise be liable shall cease after the Goods have been placed on the wharf, rail, ship or other vehicles at the place of delivery whether or not the freight may be

arranged or the carrier engaged by Kador for the Customer's benefit or convenience.

#### **17. FREIGHT**

17.1 The Customer agrees that as Kador has no control over the carrier's conditions the Customer accepts and abides by the conditions and stipulations on Bills of Lading and similar documents.

17.2 Kador will ensure goods are packed and loaded for transport using reasonable care. However the Customer acknowledges that Kador has no control over the state of the public roads, the Customer's site access roads and the work practices of the Customer's unloading crews. Kador therefore requires that minor paint and other damage caused during transport to site will be repaired by the Customer, at no cost to Kador.

#### **18. FORCE MAJEURE**

Kador will have no liability to the Customer in relation to any loss, damage or expense caused by Kador's failure to deliver the Goods or delay in delivering the Goods as a result of fire, flood, strike, accident, lock-out, hindrance, riot, civil commotion, war, inability to produce or obtain raw materials or component parts or import or other licenses or any other occurrence beyond Kador's control but any such delay shall not exempt the Customer from the obligation to accept or take delivery of and pay for the said Goods.

#### **19. WARRANTY**

Application and Scope of Warranty

19.1 Kador provides this warranty to the Customer who originally purchased the Goods or Services from Kador pursuant to a Purchase Order or Work Order.

19.2 Kador warrants that its Goods and Services will be free from defects in workmanship and materials for the period set out applicable to the type of Goods or Services as set out in this warranty document.

19.3 Kador will at its option repair or replace any defective Goods provided that the defect is not excluded under the warranty conditions.

19.4 Kador's liability shall be limited to repairing the defect or replacing the Goods or defective component and Kador shall not be responsible for any other incidental or consequential loss or damage.

19.5 Any implied warranties are limited to the duration of this written warranty.

19.6 All parts or components replaced under warranty will be considered as part of the original Goods and any warranty on those parts will expire on the same day as the original warranty.

19.7 The Australian Consumer Law contains certain provisions that cannot be excluded and to that extent no term of this warranty can restrict or modify the benefits of that legislation to the Customer.

19.8 Warranty Time Period for new Goods manufactured by Kador

Kador warrants new Goods manufactured by Kador will be free from defects in workmanship and materials for a period of 12 months from the date of delivery to the Customer.

19.9 Warranty Time Period for Spare Parts manufactured by Kador

Kador warrants spare parts supplied to a Customer manufactured by Kador will be free of defects in



workmanship and materials for a period of 3 months from the date of delivery to the Customer unless another period is agreed to in writing between Kador and the Customer in the Purchase Order.

19.10 Warranty Time Period for work carried out by Kador on items which are the property of the Customer

Kador warrants work carried out by Kador on items which are the property of the Customer, will be free of defects in workmanship and materials for a period of three months from the date of delivery to the Customer unless another period is agreed to in writing between Kador and the Customer in the Purchase Order or Work Order .

19.11 Kador's warranty for Work carried out by Kador on items which are the property of the Customer does not extend to any failure of the item or any component of same where such failure is not a defect in workmanship or materials supplied by Kador but where such failure is caused or contributed to by a failure of the Goods the property of the Customer or any part of such Goods whether due to fatigue, stress, age or other cause not the fault of Kador .

19.12 Warranty Time Period for externally sourced components included in a Purchase Order or Work Order.

Where components sourced from a third party supplier are installed in Goods by Kador and the cost of such component is included in the Purchase Order or Work Order and the warranty period of such component is less than the Kador warranty period for those Goods Kador shall only be responsible (in relation to any claim relating to that component) for the warranty period applying to such third party component.

19.13 Warranty for Customer sourced components

Where components or parts supplied by the Customer are incorporated into a Kador Goods and such components fail during the warranty period for such Goods, Kador shall not be liable for that part of the claim relating to that component or part and such claim shall be a matter between the Customer and the third party supplier of such component or part.

19.14 Warranty for manufacture to Customer specifications

Where Kador manufactures Goods to the Customer's specifications the liability of Kador is limited to defects in Kador's workmanship and defects in the materials supplied against the specifications of those materials and Kador shall not be liable for any claim relating to the performance of the Goods not being due to a defect in workmanship or materials supplied by Kador.

19.15 Grounds for exclusion of warranty

Kador shall not be liable for any defect caused or contributed or resulting from the following

- a) the use of the Goods after the defect has become apparent
- b) the use of the Goods outside of their intended purpose.
- c) the improper transport of the Goods after delivery to the Customer
- d) improper use of the Goods.
- e) failure to properly store the Goods
- f) failure to protect the Goods from the elements
- g) modification or alteration of the Goods.
- h) improper or inadequate maintenance or servicing
- i) improper installation or commissioning.

- j) abrasive wear of part of the Goods where such was intended or anticipated .
- k) failure to use or operate the Goods in accordance with Kador's guidelines
- l) failure to use or operate the Goods in accordance third party guidelines
- m) normal wear and tear having regard to the intended use of the Goods
- n) failure by the Customer to abide by the process for warranty claims
- o) any act of God or force majeure event.

19.16 Process for warranty claims

19.16.1 The Customer must advise Kador in writing as soon as a defect becomes apparent and provide particulars of the defect .

19.16.2 To commence the warranty claim procedure the Customer must complete and submit a warranty claim form to Kador.

19.16.3 The Customer must co- operate with Kador and provide details of the relevant Purchase Order or Work Order , details of the circumstances leading to the failure, the production of maintenance records and provide any further information reasonably requested by Kador to process the claim.

19.16.4 The Customer must allow Kador access to the Goods that are the subject of the warranty claim.

19.16.5 Any warranty Work will be undertaken at a place nominated by Kador.

19.16.6 If possible the Work will be undertaken at the Customers worksite.

19.16.7 If Work is undertaken at the Customers worksite the Customer will provide reasonable facilities to Kador to undertake the Work without charge.

19.17 General Warranty conditions.

19.17.1 Kador will repair or rectify the defect without charge for labour and materials to the Customer but otherwise each party must pay its own expenses incurred in attending to the warranty claim. In particular Kador shall not be responsible for loss incurred by the Customer due to down time of the equipment, hire of replacement equipment or any other incidental or consequential loss incurred by the Customer.

19.17.2 Each party must do everything reasonably expected on its part and must ensure that its employees and agents do everything reasonably expected of them so as to give full effect to the warranty provided by Kador to the Customer.

19.17.3 The Customer acknowledges that only an amendment in writing signed by an authorised officer of Kador may alter the terms of the warranty and that this warranty document contains the entire warranty benefits available to the Customer.

## **20. DISPUTE RESOLUTION (including Warranty Claims)**

20.1The parties agree that all disputes relating to claims shall be attempted to be resolved as quickly and informally as possible.

20.2The parties further agree that all reasonable attempts will be made to resolve any dispute including mediation and alternative dispute resolution before a party seeks to resolve the dispute by other means.



20.3 If a dispute in relation to a claim arises a representative of each of the parties who has capacity to reach a binding agreement must meet within seven (7) days and make a bona fide attempt to resolve the dispute.

20.4 If the dispute is not resolved at the meeting of the representatives a further attempt shall be made to resolve the dispute with the aid of the mediator to be agreed to by the parties with the parties to equally share the costs of the mediation.

20.5 If necessary an expert may be engaged by the parties to arbitrate the dispute and the parties shall pay the costs of the arbitration in accordance with the recommendation of the arbitrator.

20.6 Kador and the Customer acknowledge by their signature that these conditions form part of the Purchase Order or Work Order to which they are **attached**.

## **21. CONSEQUENTIAL LOSS**

21.1 To the extent permitted by the Australian Consumer Law Kador shall not be subject to, nor incur, and the Customer hereby releases Kador from any claim, action or liability for consequential loss or damage to persons or property including loss of use of the Goods or of profits arising by reason of delays, non-delivery, defective materials or workmanship, negligence or any matter, conduct or thing done or omitted by Kador.

21.2 For the avoidance of doubt the parties agree that Kador shall not be liable for any of the following in relation to any claim or warranty claim:

- a) Any expense other than the repair or replacement of the defective Goods or Services
- b) Any associated transport costs
- c) Any associated labour costs
- d) Any associated overtime or penalty labour costs
- e) Any unproductive down time or waiting time
- f) Accommodation and meals
- g) Specialised equipment hire
- h) Loss of income from inability to use the Goods or Services or associated equipment

## **22. DEFAULT IN PAYMENT**

Should the Customer make default in payment under a Work Order or Purchase Order or fail to carry out the terms of the Contract or fail to duly make payment under any arrangement with Kador or become insolvent or bankrupt or call a meeting of creditors or go into liquidation, voluntary or otherwise Kador may, not withstanding any waiver of any such default or failure, and without prejudice to its other rights under the Contract, suspend work or delivery of the Goods or suspend or cancel the Contract or require payment in cash before or on delivery of the Goods or Services, notwithstanding the terms of payment specified in the Contract, Work Order or Purchase Order may be otherwise.

## **23. RETENTION OF TITLE**

23.1 Notwithstanding the delivery of the Goods or their installation, title in any particular Goods shall remain with Kador regardless of whether the Goods are on-sold by the Customer until the Customer has paid and discharged any and all monies owing pursuant to any invoice issued by Kador for the Goods and/or Services, including all applicable GST and other taxes, levies and duties.

23.2 Should the Goods be installed into another piece of equipment to form part of that equipment, the Customer shall ensure that the Goods remain separate, distinct and identifiable and shall be severable from the equipment into which it is installed.

23.3 Goods belonging to Kador whether they are installed or in storage shall be marked permanently so they are identifiable as such.

23.4 Any payment made by or on behalf of the Customer which is later voided by the application of any Statutory Provisions shall be deemed not to discharge Kador's title in the Goods nor the Customer's indebtedness to Kador and, in such an event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made.

23.5 The Customer acknowledges that it is in possession of the Goods solely as Bailee until payment of all invoices for the Goods is made pursuant to the Contract and until that time:

- (a) The Customer is not entitled to sell the Goods ; and
- (b) The Customer shall be fully responsible for any loss or damage to the Goods whatsoever and howsoever caused following delivery or installation of the Goods to the Customer.

## **24. REPOSSESSION**

24.1 The Customer hereby irrevocably grants to Kador the right, at its sole discretion, to remove or repossess any Goods from the Customer and sell or dispose of them, and Kador shall not be liable to the Customer or any person claiming through the Customer and Kador shall be entitled to retain the proceeds of any Goods sold and apply same towards the Customer's indebtedness to Kador.

If the Customer commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or fails to make a payment to Kador when due, then Kador may, without prejudice to any other remedies it may have, repossess any Goods delivered to the Customer on any account which has not been paid and commence proceedings to recover the balance of any monies owing to Kador by the Customer.

## **25. PERSONAL PROPERTY SECURITIES ACT ("PPSA")**

25.1 In this clause, the following words have the respective meanings given to them in the PPSA: Financing Statement, Financing Change Statement, Proceeds, Register, Security Agreement, Security Interest and Verification Statement.

25.2 The Customer acknowledges and agrees:

- a) That these Terms and Conditions constitute a Security Agreement that creates a Security Interest in all Goods and Services (and Proceeds):
  - (i) Supplied to the Customer by Kador under the Contract
  - (ii) Previously supplied by Kador to the Customer;
  - (iii) To be supplied in the future by Kador to the Customer;
- b) That the Security Interest created by these Terms & Conditions is a continuing Security Interest in all Goods (supplied now or in the future by Kador to the Customer) and Proceeds, which will operate (despite any intervening payment or settlement of account) until Kador has signed a release;



c) To waive its rights in relation to the sections listed in sub section 115 (1) of the PPSA (or as otherwise amended), which will not apply (to the extent, if any, mentioned) to the Security Agreement created by these Terms & Conditions.

25.3 The Customer undertakes to:

a) Keep all Goods free of any charge, lien or Security Interest except as created under these Terms & Conditions and not otherwise deal with the Goods in a way that may prejudice any rights of Kador under these Terms & Conditions or the PPSA;

b) Sign any further documents and provide any further information (which must be complete, accurate and up-to-date in all respects) that Kador may require to:

- (i) Register a Financing Statement or Financing Change Statement in relation to a Security Interest on the Register;
- (ii) Register any other document required to be registered by the PPSA; or
- (iii) Correct a defect in a statement referred to in clause 25.3(b) (i) or 25.3 (b) (ii);

c) Indemnify, and upon demand reimburse, Kador for all fees (including actual legal fees on a solicitor/own client basis), costs, disbursements and expenses in:

- (i) Registering and maintaining a Financing Statement or Financing Change Statement on the Register or releasing any Goods charged thereby; and
- (ii) Enforcing or attempting to enforce the Security Interest created by these Terms & Conditions.

d) Not register, or allow to be registered, a Financing Statement or a Financing Change Statement in respect of the Goods or Proceeds in favour of a third party, without the prior written consent of Kador; and

e) Immediately advise Kador of any material change in its business details (including, but not limited to, its trading name, address facsimile number) or business practices.

## **26. SECURITY AND CHARGE**

The Customer hereby charges all property, both equitable and legal present or future of the Customer in respect of any monies that may be owing by the Customer to Kador under the Contract and these Terms and Conditions or otherwise and hereby authorises Kador or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the Customer at any time.

## **27. PRIVACY**

27.1 The Customer hereby authorises Kador to collect, retain, record, use and disclose consumer and/or commercial information about the Customer, in accordance with the Privacy Act 1988 and subsequent amendments, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by Kador, a debt collector, credit reporting agency and/or any other individual or organisation which maintains credit references and/or default listings.

27.2 Kador may give information about the Customer to a credit reporting agency for the purposes of obtaining consumer and commercial credit reports and/or lodging consumer and commercial defaults on the

Customer's credit file. This information may be given before, during or after the provision of credit to the Customer and will be in accordance with the Privacy Act 1988 and subsequent amendments.

## **28. SEVERABILITY**

28.1 The Contract is to be regarded as severable in the event of the Goods or Services being of different kinds or the Contract providing for delivery by installments and the separate items of the Contract shall be regarded as separately contracted for each and every delivery under the Contract shall be regarded as a separate contract and damages arising from any alleged breach of Contract by Kador shall be limited accordingly.

28.2 Any provision in these terms and conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to allow the Contract be valid and enforceable.

28.3 If any provision cannot be read down but it is capable of being severed to the extent of its invalidity or unenforceability without affecting the remaining provisions of the Contract or these terms and conditions such shall be severed so as to leave as far as is possible the Contract valid as between the Customer and Kador.

## **29. GOVERNING LAW AND JURISDICTION**

These terms and conditions are governed by the laws of the State of Queensland and all disputes arising between the Customer and Kador shall be submitted to the Brisbane Registry of any Court or Tribunal competent to hear the matter in Queensland .

## **30. COUNTERPARTS**

30.1 The parties agree that the Contract may be signed in counterparts comprising two or more separate documents.

30.2 The Contract shall become binding on both parties when each has signed a copy and transmitted such copy to the other party by facsimile or other electronic communication.

30.3 Each party shall forward the original copy of the Contract signed by them to the other party within a reasonable time of such request being made.

30.4 The contract date shall be the date when the last party transmits a copy of the Contract signed by that party to the other party.

30.5 The parties give their consent (in accordance with sections 11 and 12 of the Electronic Transactions (Queensland) Act 2001) for correspondence in relation to this matter including notices Contracts and information being given by electronic communication as defined in that Act.



Signed by Kador Engineering )  
(Australia) Pty Ltd ABN 41 010 145 534 )  
in accordance with section 127 of the )  
Corporations act 2001 )

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Signed by \_\_\_\_\_ )  
Pty Ltd ABN \_\_\_\_\_ )  
as Customer in accordance with section 127 )  
of the Corporations act 2001 )

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