



1. APPLICATION OF THESE TERMS AND CONDITIONS

- i. These Terms and Conditions apply to the supply of any Goods and Services provided by the Supplier to Kador.
- ii. In the event of any conflict between these Terms and Conditions and any other document or Conditions these Terms and Conditions shall prevail.
- iii. *Default* means anything done or manufactured contrary to the Contract or to these Terms and Conditions.
- iv. *Kador* means Kador Engineering Australia Pty Ltd ABN 41 010 145 534 its successors and assigns.
- v. *Supplier* means the entity named as such on the Contract between Kador and the Supplier.
- vi. *Contract* means a contract, purchase order, work order, arrangement or other agreement between Kador and the Supplier under which the Supplier agrees to provide Goods or Services to Kador.
- vii. *Force majeure event* means an event or circumstances which causes or results in the prevention of delay from a party from performing any of its obligations under the Contract which was not reasonably foreseeable when the Contract was entered into and has occurred without the negligent act omission or fault on the part of the affected party and was beyond the reasonable control of that party and includes but is not limited to a pandemic or epidemic, flood, earthquake and other similar natural events, riots, acts of terrorism, civil war and strikes at a national level but does not include a strike or industrial disruption restricted to the party affected.

2. CONTRACT

- i. The Supplier must ensure it appraises itself fully of its obligations to Kador before it provides a quotation to or enters into a Contract with Kador.
- ii. Any quotation provided by the Supplier to Kador shall remain in force as the basis for the formation of a Contract for 30 days from the date of quotation unless otherwise agreed to by Kador.
- iii. Kador will not be deemed to have entered into a Contract with the Supplier until a formal binding arrangement is entered into between Kador and the Supplier.
- iv. Time is deemed to be the essence for the delivery of Goods and Services by the Supplier to Kador.
- v. The Supplier assures and warrants to Kador that it is ready willing and able to perform its obligations under the Contract.
- vi. If requested by Kador the Supplier shall draw up a manufacturing programme which shall show the dates and times of the various means by which milestones under the Contract will be achieved.

- vii. The Supplier must give Kador reasonable advance notice if it requires Kador to provide information documents or things.
- viii. Kador may require the Supplier to use stipulated key personnel to undertake specified work on the Goods or Services.
- ix. Kador may require the Supplier to not allow a specified employee, person or entity associated with the Supplier to undertake work on the Goods or Services.
- x. The Supplier acknowledges that Kador has no duty to monitor the work performance of the Supplier and is entitled to assume that such work is being carried out in accordance with the Contract.
- xi. Where the Supplier comprises two or more persons or entities each of them will be jointly and severally liable for all of the Supplier's obligations and liabilities under the Contract.
- xii. Both Kador and the Supplier must appoint a representative to be the first point of contact between Kador and the Supplier.
- xiii. These Terms and Conditions and the Contract are governed by the laws of the State of Queensland and all disputes arising between Kador and the Supplier shall be submitted to the Brisbane Registry of any court or tribunal competent to hear the matter in Queensland.

3. CONTRACT PRICE AND PAYMENT

- i. Except as expressly provided in the Contract the Contract sum is not subject to adjustment.
- ii. The Contract shall make it clear as to whether GST or any other indirect taxes is included in the Contract price. If the Contract does not state whether such is included it shall be deemed to have been included in the Contract price.
- iii. Kador is obliged to pay the Supplier for the Goods and Services in accordance with the Terms of the Contract.
- iv. Unless otherwise provided for in the Contract a retention of 5% of interim payments and 2.5% of final account payments may be retained with such retention monies to be released upon the completion of any required defects at the end of the Suppliers warranty period.
- v. The Supplier must comply with all site instructions issued by Kador.
- vi. Where work is to be carried out by the Supplier to be paid for at a daily rate the Supplier must keep and present day worksheets signed by an authorised employee of the Supplier. Day worksheets must include the name of the personnel undertaking the work and the costs of materials and all other expenses charged to Kador.
- vii. Where the Contract provides for payment on the basis of milestones Kador is required to pay the



Supplier only when such milestones have been achieved.

viii. The Supplier will not be entitled to claim payment for partly achieved milestones.

ix. The Supplier shall deliver invoices to Kador in accordance with the terms provided in the Contract.

x. Unless otherwise stated the Supplier will be entitled to payment within 30 days from the end of the month in which an invoice is delivered to Kador.

xi. If Kador disputes any invoice in whole or in part Kador will notify the Supplier as soon as possible setting out the basis of its objection.

xii. Kador shall pay the undisputed portion of the disputed invoice in accordance with these Terms and Conditions and Kador and the Supplier will at the earliest possible date endeavour to resolve the dispute using the dispute resolution procedures set out in these Terms and Conditions. If Kador and the Supplier resolve the dispute payment shall be made within a reasonable time.

xiii. Payments by Kador will not prejudice the right of Kador to question or dispute any Goods or Services supplied whether or not they have been paid for or to recover any payment from the Supplier which has already been paid.

xiv. Kador may deduct from and set-off against any payment otherwise due to the Supplier any debt or other monies due or any other amount due by the Supplier to Kador.

4. SUPPLIERS OBLIGATIONS

i. The Supplier must perform and complete the Suppliers obligations in accordance with these Terms and Conditions and the Contract.

ii. The Supplier must deliver the Goods and Services to Kador or at the delivery point designated in the Contract on the due date for delivery under the Contract.

iii. The Supplier must ensure that the Goods or Services meet any key performance indicators set out in the Contract when they fall due.

iv. The Supplier must keep Kador fully informed of all matters affecting or likely to affect the performance or completion of the Suppliers obligations under the Contract.

v. Should it become apparent to the Supplier that the date for delivery will not be met the supplier must immediately notify Kador in writing of the expected date of delivery and the reason for the delay.

vi. In carrying out its obligations the Supplier must not create unnecessary noise disturbance, nuisance or controversy.

vii. The Supplier must maintain good industrial relations with its employees and must not in any way adversely affect the relationship between Kador and its employees.

viii. The Supplier must ensure that any of its employees who are required to attend any work site or place undertake the necessary induction to do so and carry the necessary permits to enter that site or place.

ix. The Supplier must not cause harm, pollution or contamination to the environment and must ensure that it complies with all requirements of the Contract and the laws of any level of government relating to the protection of the environment.

x. The Supplier will indemnify and keep Kador indemnified in respect of all claims and liabilities and losses which may occur as a result of any failure by the Supplier to comply with the Contract or these Terms and Conditions.

5. SUPPLIER'S WARRANTIES

The Supplier warrants

i. That the Goods that and every part of the Goods and all Services supplied to Kador will be manufactured to, or be of the highest standards of care skill and diligence that would normally be expected of a reputable competent entity providing Goods and Services similar to those provided.

ii. That the Goods will be manufactured strictly in accordance with the Contract, and the specifications or descriptions supplied to the Supplier.

iii. That the Goods and the Services will be fit for the purpose specified in the Contract under the conditions intended that the be subjected to.

iv. That the Goods will be free of defects in material and workmanship for the period of 12 months from the delivery of the Goods or Services or such other time as may be specified in the Contract.

v. That the Goods and Services will be in good working order and condition when delivered.

vi. That the Goods will have a life expectancy similar to that which would be expected of similar Goods.

6. DELIVERY AND INSPECTION

i. Kador may conduct inspections or tests to determine whether the Goods and Services comply with the terms of the Contract.

ii. Unless otherwise stated in the Contract testing and inspection of the Goods and Services shall be at Kador's workshop, at the delivery point or some other appropriate place.

iii. If the inspection tests reveal that the Goods and Services do not comply with the terms of the Contract Kador may deliver a notice to the Supplier setting out the way in which they do not comply.

iv. The Supplier must at its cost remedy the defects within a reasonable time.

v. Kador is not obliged to accept any Goods or Services which do not comply with the terms of the Contract or which contain a defect.

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vi. A claim for a defect in Goods or Services is not waived if such defect was not capable of being ascertained or was not ascertained during such inspection or test.

vii. Within a reasonable time of being notified of the defect the Supplier must investigate the defect, advise Kador of the findings, what they propose to do to remedy the defect and when they propose to remedy same.

viii. Delivery of Goods or Services will not be taken to have occurred until all requirements for delivery stated in the Contract and these Terms and Conditions have been satisfied.

ix. Unless the Contract provides otherwise the Supplier is responsible for the cost of having the Goods and Services delivered to the designated delivery point including all packaging handling loading and unloading transportations freight costs export and import licences and all necessary authorisations and clearances to the point of delivery.

7. TERMINATION AND SUSPENSION

i. Kador may direct the Supplier in writing to immediately suspend any part of the work or Services where Kador is of the opinion (which must be reasonably based) that same is necessary for the protection or safety of any person, property, the environment or the interests of Kador. If so directed the Supplier shall immediately suspend work on the Contract.

ii. If Kador believes that the Supplier is in default under the Contract Kador may give a notice to the Supplier specifying the default and directing the Supplier to remedy the default within the time specified in such notice (default notice).

iii. If the Supplier does not remedy the default within the time specified in the default notice Kador may engage a third party to remedy the defect or may do so themselves at the Supplier's expense and may by notice in writing to the Supplier terminate the Contract.

iv. If the Contract is terminated under the previous sub clause and Kador does engage a third party to rectify the default and complete the Contract Kador shall be entitled to recover the cost of rectifying the default and to complete the Contract from the Supplier.

v. Kador may reject any Goods or Services that do not comply with the Contract. The Supplier will not be entitled to payment for the rejected Goods or Services.

vi. Kador may give notice to the Supplier of the termination of the Contract for convenience. Upon such termination the Supplier shall immediately suspend work under the Contract and the Supplier shall be entitled to payment for the work carried out by the Supplier since the last milestone in full and final satisfaction of its claim against Kador.

8. INSURANCE AND RISK

1. The Supplier must at its own expense carry and maintain at all relevant times the following insurances.

- a) Workers compensation and employers liability insurance including cover to protect Kador against claims by deemed or statutory employees.
- b) Third-party public liability insurance to cover any legal liability to any third party for death, bodily injury including illness and also for damage of any property belonging to the Supplier, Kador or any third party.
- c) Comprehensive motor vehicle cover for personal injury and death and damage to the vehicle and any third party property.
- d) Marine vessel insurance if such vessel is used as part of the supply of the Goods and Services.
- e) Suppliers plant and equipment insurance to cover theft damage or destruction of the Supplier plant machinery and equipment when on Kador's premises.
- f) Insurance to cover the full replacement value of the Goods prior to their delivery to Kador.
- g) Professional indemnity insurance where the Supplier carries out design engineering architectural or other professional services for or on behalf of Kador under the Contract to cover all claims.

ii. The Supplier must continue to maintain the insurances and must not cancel the insurances or materially vary them without notice and approval from Kador.

iii. The Supplier must carry all insurances in a form acceptable to Kador.

iv. The Supplier must provide copies of any insurance policies requested within a reasonable time and in any event within three business days of written request.

v. Any policy of insurance must continue to cover Kador and the Supplier for such time as Kador is liable to any third party.

vi. If a claim arises the Supplier must fully comply with the requirements of Kador's insurers.

vii. The Supplier must notify Kador immediately in writing if any event occurs which may give rise to a claim whether upon the Supplier or Kador relating to the Contract. In the event of an accident involving death or serious injury or major property damage the Supplier will notify Kador immediately.

viii. Where a claim arises which may in any way affect Kador, Kador may at its option have the conduct of such claim.



ix. The supplier indemnifies Kador against any loss, damage, expense incurred or liability in connection with any defect in the Goods or Services, or failure to comply with Contract including but not limited to loss or damage or the contamination of any property or the environment or loss or damage to any third party or their property.

x. Each indemnity in these Terms and Conditions is a continuing obligation separate and independent from the other obligations and survives termination completion or expiration of the Contract.

xi. Risk in the Goods will be with the Supplier until the delivery of the Goods to Kador at the delivery point is made in accordance with Contract even if such goods are in the possession of Kador prior to delivery.

xii. The Supplier indemnifies Kador against any loss or damage to the Goods suffered prior to the delivery to Kador or to the delivery point.

xiii. Kador shall take reasonable care of the Goods while in their possession, but Kador is not responsible for damage to the Goods or for their loss however sustained.

9. DISPUTE RESOLUTION

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

ii. The 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.

iii. 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 days and make a bona fide attempt to resolve the dispute.

iv. 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.

v. 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.

10. FORCE MAJEURE

i. If either Kador or the Supplier is affected by a Force Majeure event then as soon as reasonably possible the party so affected shall give notice to the other of the event and provide details of the obligations affected including the affected parties estimate of the time during which it will be unable to carry out the affected obligations and the steps that the affected party has taken or proposes to take to remedy the situation.

ii. The affected parties obligations under the contract shall be suspended for such reasonable time as may be

11. CONFIDENTIALITY

i. Unless otherwise authorised by Kador anything in this Contract and other confidential information which is not in the public domain must be kept confidential and must not be disclosed except where such is necessary for the performance by the Supplier of its obligations.

ii. If it is necessary for the Supplier to disclose confidential information to another person or entity the Supplier must inform such person or entity of the confidential nature of the information provided and obtain an undertaking from such person or entity that they will keep the information confidential.

iii. The Supplier will indemnify Kador for any loss or damage suffered as a result of any unauthorised disclosure by the Supplier or any third party to whom the Supplier disclosed confidential information.

12. INTELLECTUAL PROPERTY

i. Any intellectual property rights of any nature in any plan design writing or thing provided to the Supplier remain with Kador.

ii. If Kador supplies any intellectual property information to the Supplier such is only for the purposes of the Supplier performing the Supplier's obligations.

iii. The Supplier warrants that any intellectual property in the Goods or Services supplied by the Supplier is supplied with the authority or permission of the owner of the intellectual property and the Supplier indemnifies Kador for any loss or damage as a result of any breach.

13. COUNTERPARTS

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

ii. 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.

iii. 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.

iv. 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.

v. 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.

required to adequately deal with the effects of the Force Majeure event.



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

_____)
Name

_____)
Signature

Signed by _____)
Pty Ltd ABN _____)
as Supplier in accordance with section 127)
of the Corporations act 2001)

_____)
Name

_____)
Signature

_____)
Position