

These are the Terms and Conditions (“T&C’s”) of Sale for goods and / or services (“the services”) supplied by Multi Services Solutions Group Pty Ltd and its subsidiaries (MSSG), MSS Hard Services Pty Ltd, MSS Select Services Pty Ltd, MSS Hard Services NZ Limited, Trak Group and its subsidiaries, Trak Limited, Bio-Cell Limited, Control Air Limited, Trak Security Limited and MSS Transport NZ Pty Ltd, MSS Transport Pty Ltd (MSST) (all part of MSSG) to any person, firm or company placing an order with MSSG for the purchase of any goods or services (“the Customer”).

Any exception or change to these T&C’s must be in writing between a duly authorised officer of MSS, SELECT or TRAK or MSST and the Customer, these T&C’s shall apply notwithstanding any provisions to the contrary which may appear on any order form or other document issued by any Customer.

## GENERAL

1. A quotation by MSSG (MSS, MSST, SELECT or TRAK) does not necessarily constitute an offer unless otherwise agreed.
2. All orders placed with MSSG shall only be accepted subject to the T&C’s being agreed by the Customer. MSSG may at any time and from time to time alter these T&C’s, as such all changes to T&C’s shall apply after notification by MSSG to the Customer.
3. Goods and Services Tax (“GST”) Sales Tax or any other applicable tax or duty payable shall be paid by or reimbursed by the Customer to MSSG, or MSS, or MSST, or SELECT or TRAK on demand and the customer shall indemnify and keep indemnified MSS, or MSST or SELECT or TRAK in respect of all taxes and duties including GST arising out of any sale of goods or the subsequent use of goods after the sale to the customer.

## PRICES

4. Quotations are firm for thirty (30) days after date of issue and thereafter subject to increases without notice.

## TERM OF PAYMENT

5. (a) Unless otherwise stated in writing all prices are strictly nett. The granting of credit to a Customer shall be at the absolute discretion of MSSG, or MSST or MSS, SELECT or TRAK and unless otherwise demanded by MSSG for specific service or goods, the Customer shall make payment of all amounts payable within thirty (30) days after the end of the month of delivery.  
(b) Customers shall not be entitled to withhold payment on any account due to an account query, dispute or off-set.  
(c) The Customer agrees to pay MSSG Administration and Handling fees in respect of any copies of documents required or other processing involved in the conduct of the account including by not limited to account administration fees, Merchant or other fees incurred as a result of payment by credit, charge card, B-Pay or payment by any other

means and such fees will be charged to the Customer’s account.

6. If the Customer fails to make payment in accordance with Clause 5, MSSG shall be entitled to:  
(a) Require the payment of cash upon delivery of any further goods or services.  
(b) Charge interest at the rate of one point seven five percent (1.75%) per month on a cumulative basis on overdue amounts including but not restricted to late payment fees. These charges are calculated on a daily basis from the due date for payment on all unpaid monies. The parties agree that the interest charge is not a penalty but is a true measure of damages incurred by MSSG. Payments received from the Customer will be credited first against any interest charge and all residual outstanding amounts paid on demand.  
(c) Claim from the Customer all costs, expenses and charges incurred on any account whatsoever including but not limited to any action taken by MSSG to recover monies or goods due to the Customer including but not limited to any mercantile agents costs and legal costs and disbursements on a solicitor – Customer basis; and  
(d) Cease any further services or deliveries to the Customer and to terminate any agreement in relation to goods and services that have not been delivered.

## DELIVERY

7. The Customer shall be responsible for the cost of any delivery made ex-MSS, MSST SELECT or TRAK store.

## INSPECTION

8. The Customer shall assess services or goods immediately upon delivery and MSSG shall not be liable for any mis-delivery, shortage, defect or damage unless MSS, SELECT or TRAK receives proof in writing within seven (7) days of the date of delivery of the goods and or services.

## PROPERTY AND RISK

9. Notwithstanding delivery of the services or goods or their installation, property in any given services and or goods shall remain with MSSG until the Customer has paid and discharged any and all other indebtedness to MSSG on any account whatsoever, including all applicable and statutory fees and charges. Any payment made by or on behalf of a Customer which is later avoided by the application of any Statutory Provision shall be deemed not to discharge the Customer’s indebtedness and, in such an event the parties are to be restored to rights which each respectively would have had if the payment had not been made.
10. The risk in the goods and services shall pass to the Customer upon delivery to the Customer or his agent or to a transport company nominated by the Customer.

## LIMITATION OF LIABILITY

11. MSSG or MSS or MSST or SELECT or TRAK shall not be liable in any circumstances for claims, damages, consequences, injuries or losses that result directly or indirectly from MSSG properly carrying out the work in accordance with the terms and the Agreement for claims, damages, consequences, injuries or losses arising from the carrying out of the work that could not be reasonably foreseen by MSS/MSST/TRAK/SELECT or from any other cause beyond the control of MSS/SELECT/MSST or TRAK.
12. The Customer must indemnify and keep indemnified MSS or MSST or SELECT or TRAK against any and all actions, claims, costs, demands, damages, expenses, liabilities, losses, penalties and suits whatsoever, and howsoever arising out of or in connection with any liability of MSSG in the terms of subclause (11) above.
13. The provisions of this clause may be pleaded by MSS or MSST or SELECT or TRAK as an absolute bar and defence to any and all actions, suits or proceedings commenced by the Customer against MSS or MSST or SELECT or TRAK, to the extent that any such action, suit or proceeding, litigates or purports to plead or litigate any of the matters referred to in subclauses (11) and (12) of this clause. These T&C's do not exclude, restrict or modify the application of any provisions of any Commonwealth or New Zealand law, which by law cannot be excluded, restricted or modified.

## FORCE MAJEURE

14. MSS or SELECT or TRAK shall not be liable for any failure or delay in supply or delivery of the services or goods where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of MSSG including, but not limited to, war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown or plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind.

## TERMINATION

15. If the Customer fails to comply with any of these T&C's or being a natural person or persons commits and act of bankruptcy, or being a corporation passes a resolution for winding up or liquidation (other than for the purpose of re-organisation or reconstruction) or administration or enters into any composition or arrangement with creditors of if a receiver or manager or administrator or controller is appointed for any property or assets of the Customer or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, or if a liquidator or provisional liquidator or administrator is appointed, MSS or SELECT or TRAK may, in addition to exercising all or any of its rights against the Customer, suspend any further deliveries of goods and immediately

recover possessions of any services or goods not paid for in accordance with these Terms and Conditions.

## GOVERNING LAW

16. The Customer agrees that these T&C's shall be construed according to the laws of Australia or New Zealand as MSSG may in its sole discretion determine. Proceedings by either MSS/SELECT/TRAK or the Customer may be instituted and/or continued as MSS/SELECT/TRAK may in its sole discretion determine. Failing such determination, the Customer consents to any proceedings being instituted and heard by any appropriate Australian or New Zealand Court of Law as to the relevant jurisdiction.

## SERVICE OF DOCUMENTS

17. The Customer agrees that service of any notices or Court documents may be affected by forwarding same by pre-paid post and or email to the last known address of the Customer.

## STATEMENT OF DEBT

18. A certificate signed by a Director, Secretary, Financial Controller or Credit Manager of MSSG or MSS or MSST or SELECT or TRAK shall be prima facie evidence of the amount of indebtedness of the Customer to MSS or MSST or SELECT or TRAK at that time.

## ELECTRONIC COMMUNICATION

19. a) In addition to delivery in person, via post and or via facsimile, the customer agrees to have invoices sent via email.  
(b) The Customer agrees that email communications from MSS or SELECT or TRAK to the Customer constitute an "electronic communication" within the meaning of the Electronic Transactions Act 2002 (NZ) or Electronic Transactions Act 2000 (NSW).  
(c) The Customer agrees that in agreeing to receive invoices via email, the Customer is in both instances designating "an information system for the purpose of receiving electronic communications" within the meaning of the Electronic Transactions Act 2002 (NZ) or Electronic Transactions Act 2000 (NSW).  
(d) The Customer agrees that evidence of the "dispatch" (within the meaning of the Electronic Transactions Act 2002 (NZ) or Electronic Transactions Act 2000 (NSW). by MSSG of an email is also prima facie evidence of the "receipt" of the email by the Customer within the meaning of the Act. Unless the contrary is proven the time of receipt will be deemed to be twenty (20) seconds after the time of the "dispatch" of the email.  
(e) The Customer agrees to advise MSSG or MSS or SELECT or TRAK of any changes to relevant email address within 24 hours of the changes being implemented and or agreed