

**Seaview Industries Pty Ltd (ACN 165 281 514) as trustee for the Peter Kelly Trust trading as PMK Welding and Metal Fabrication (ABN 45 673 045 265) SALES TERMS AND CONDITIONS**

The customer named on the face of this document (**Customer**) hereby agrees with Peter Michael Kelly trading as PMK Welding and Metal Fabrication ABN 45 673 045 265 (**Contractor**) that in consideration of the Contractor agreeing to provide to the Customer the services listed in the Schedule (**Services**) the following terms and conditions shall apply:

1. **Legal Agreement:** These terms and conditions shall be a legal agreement between the Customer and the Contractor (**Agreement**). The Agreement shall include all matters and details appearing on the face of this document and/or the Contractor's invoice and order statement (**Schedule**). The Agreement shall not include any terms and conditions of the Customer e.g. The Customer's purchase order even if received by the Contractor after this Agreement is delivered to the Customer.
2. **Law of Agreement:** This Agreement is governed by the law in force in Western Australia and the Customer submits to Courts of that jurisdiction.
3. **Services to be supplied by the Contractor:** The Contractor agrees to:
  - a. Provide to the Customer the Services; and
  - b. subject to clause 5, ensure the Services comply with Australian laws.
4. **Insurance, Freight etc Costs:** The cost of insurance, freight, loading, unloading, customs clearance and delivery with respect to the Services and associated taxes, excises and duties shall be borne and paid as set out in the Schedule.
5. **Responsibilities of the Customer:** The Customer:
  - a. accepts full responsibility for the accuracy of all purchase orders placed by the Customer and agrees that all purchase orders placed by the Customer are on a "firm sale" basis;
  - b. agrees that the Contractor may, at its sole discretion, accept cancellation by the Customer of a purchase order submitted by the Customer, subject to the Customer promptly paying on demand all costs, expenses, losses or damages incurred or suffered by the Contractor as a result of (whether directly or indirectly) such cancellation, including all loss of profit;
  - c. must obtain all approvals, licenses and permits which are required for the lawful shipping or movement of the finished goods that are created pursuant to the Services (whether the Services have been fully performed or not) (**Finished Goods**); and
  - d. is responsible for conforming with all laws applying in that place in relation to the Finished Goods.
6. **Prices for Services:** The Customer must pay the Contractor the prices for the Services as stated in the Schedule (plus GST if the prices are not stated to be GST inclusive). The Customer must also pay all additional costs due to any factor beyond the Contractor's control (including an increase in transport, labour or material costs and any change in delivery dates, quantities or specifications for the Services requested by the Customer).
7. **Tax invoices and Payment:** Tax invoices:
  - a. will be issued by the Customer on the earlier of completion or monthly and must be paid in full by the Customer within 14 days;
  - b. must be paid in full notwithstanding any counterclaim or set-off the Customer may claim against the Contractor; and
  - c. that are not paid in full and on time will attract interest at the rate of 15% per annum, calculated daily.
8. **Risk and title to the Finished Goods:** All legal and equitable title to the Finished Goods remains with the Contractor until payment in full is received from the Customer. The Customer must take all actions necessary to protect and maintain the Contractor's title to the Finished Goods, including storing Finished Goods separate from other goods, always identifying the Finished Goods as property of the Contractor and insuring the Finished Goods. Until title in the Finished Goods passes to the Customer, the Contractor or its agent shall be entitled at any time to require the Customer to deliver up the Finished Goods to the Contractor and the Contractor has the right to enter upon any premises where Finished Goods are located to repossess the Finished Goods (without being liable for any damage caused by so doing). The Contractor must not sell, encumber, pledge or in any way charge by way of security any of the Finished Goods. Risk in the Finished Goods shall pass to the Customer upon the Finished Goods leaving the Contractor's premises.
9. **Force majeure:** If the Contractor is restricted or prevented from performing any of its obligations under this Agreement due to act of God, industrial action, embargo, boycott, delay by freight company, flood, fire, war, civil unrest, adverse weather, decrees or orders or other Government intervention or any other cause whatsoever outside the reasonable control of the Contractor, then the Contractor may give written notice of any such cause to the Customer and the time for performance of the Contractor's obligations shall be extended by the period the cause continues.
10. **Warranties:** To the maximum extent permitted by law the Contractor excludes all other terms, conditions, warranties and liability in relation to the Services, including without limitation, warranties relating to fitness for purpose, title, defects or conformity of the Services. To the extent that the Contractor cannot exclude liability under law, the Contractor's liability shall be limited to the maximum extent permitted by law (at the Contractor's election) to the re-perform the Services/ carry out repairs, to refund of the cost of the Services or payment of the cost of repair of the Finished Goods.
11. **Liability and Indemnity:** Except to the extent caused by the gross negligence or fraudulent act or omission or material breach of this Agreement by Contractor, the Contractor shall have no liability whatsoever to the Customer or third parties for any Claim whatsoever:
  - a. in relation, directly or indirectly, to the Services or provision or non provision of the Services;
  - b. for circumstances beyond the Contractor's control; or
  - c. in relation to acts or omissions of the Customer or any third party, and the Customer shall indemnify and hold the Contractor harmless from such liability. The Customer must pay to the Contractor all expenses, and charges incurred by the Contractor due to breach of this Agreement by the Customer, including the Contractor's debt collection and legal expenses. "Claim" means

any loss, damage, claim, expense or demand of any kind or character, whether in contract, at common law, in equity or pursuant to any statute or law.

12. **Consequential Loss:** In all circumstances, damages recoverable by the Customer in connection with this Agreement shall not include damages for special, punitive or consequential loss, including loss of profits.
13. **Time limit on claims and action:** The Customer agrees that:
  - a. The Contractor must be notified in writing of any claim in relation to this Agreement within 3 days of completion of the Services;
  - b. unless notice is given pursuant to (a) above, the Services are deemed to have been performed in accordance with this Agreement; and
  - c. in all circumstances, the Contractor shall be discharged from all liability whatsoever in relation to this Agreement unless proceedings as referred to in clause 15 are brought by the Customer within 30 days of delivery.
14. **Dispute Resolution:** Any dispute, controversy or claim arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be resolved in the following order:
  - a. by negotiation between the executives of each party;
  - b. by mediation in accordance with the Australian Centre for International Commercial Arbitration (ACICA) Mediation Rules; and
  - c. if the dispute has not been settled within 60 days following the written invitation to mediate or within such other period as agreed by the parties in writing, the dispute shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. Mediations and arbitrations shall be administered by ACICA in Perth, Australia in English.
15. **Termination:** The Customer or the Contractor may immediately terminate this Agreement (without prejudice to any right to claim damages) if the following apply:
  - a. the other party defaults in the performance of this Agreement in any respect and the non-defaulting party has issued a notice of default and the default alleged therein remains unrectified 14 days after service of the default notice;
  - b. the other party defaults in performance of any other contract between the parties and the default remains unrectified 14 days after service of a notice to rectify the default; or
  - c. the other party becomes insolvent, has a receiver, manager, administrator, liquidator or other controller appointed over it or its assets or it makes composition with its creditors.
16. **PPSA:** If Chapter 4 of the Personal Property Securities Act 2009 (Cth) ("PPSA") would otherwise apply to the enforcement of a security interest arising in connection with this Agreement, the Customer agrees that the following provisions of the PPSA will not apply to enforcement of this Agreement: section 95 (notice of removal of accession), to the extent that it requires the Contractor to give a notice to the Customer; section 96 (when a person with an interest in the whole may retain an accession); subsection 121(4) (enforcement of liquid assets – notice to grantor); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal), to the extent that it requires the Contractor to give a notice to the Customer; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement). If the Customer makes a payment to the Contractor at any time whether in connection with the supply of goods or otherwise, the Contractor may, at its absolute discretion, apply that payment to first satisfy obligations that are not secured, then obligations that are secured, but not by a purchase money security interest, in the order in which those obligations were incurred, and then obligations that are secured by a purchase money security interest in the order in which those obligations were incurred. Notices or documents required or permitted to be given to the Contractor for the purposes of the PPSA must be given in accordance with the PPSA. The Customer consents to the Contractor effecting a registration on the PPSA register (in any manner the Contractor considers appropriate) in relation to any security interest contemplated by this Agreement and the Customer agrees to provide all assistance reasonably required by the Contractor. The Customer waives any right to receive notice of a verification statement. In this clause the following words have the meanings given to them in the PPSA: account, proceeds, purchase money, register, registration, security interest and verification statement.
17. **Credit Account:** Supply and/or credit facilities may be suspended or withdrawn by the Contractor, in its absolute discretion, at any time without notice. The Customer agrees to pay on demand all sums owing in connection with a credit facility provided by the Contractor in the event that such credit facility is suspended or withdrawn. Liability for accounts held in more than one name is joint and several.
18. **Interpretation:**
  - a. Reference in this Agreement to the singular includes the plural, and reference to any party includes the party's successors, administrators, personal representatives and assigns.
  - b. A notice to be served under this Agreement shall be deemed to have been duly served if it is in writing and is sent to the address in the Schedule for each party by certified mail, facsimile, personal delivery or email provided there is proof of delivery of the facsimile or email.
  - c. Neither party may assign any obligation under this Agreement without the written consent of the other.
  - d. If any provision or part provision of this Agreement is invalid, unenforceable or illegal then it shall be deemed deleted from this Agreement and the remaining provisions and part provisions continue to apply with full force and effect.
  - e. The terms of this Agreement may only be waived or varied by writing signed by an executive officer of both parties.
  - f. Any omission by the Contractor to enforce a provision of this Agreement shall not operate as a waiver by the Contractor and will not prejudice the rights of the Contractor to enforce any of the provisions of this Agreement.
  - g. All rights and remedies expressly reserved to the Contractor herein are without prejudice to any other right or remedy available to the Contractor.

**PRIVACY ACT 1988 POLICY**

The Contractor hereby notifies the Customer and the Guarantors that the Contractor may give information about the Customer and the Guarantors to credit reporting agencies to obtain a credit report about the Customer and the Guarantors and/or to allow the credit reporting agencies to create or maintain credit information files containing information about the Customer and the Guarantors. This information includes, as allowed under Section 18E(1) of the *Privacy Act 1988*:

- a) identity details for the Customer and/or the Guarantors;
- b) the fact that the Customer has applied for credit and the amount;
- c) the fact that the Guarantors have offered to act as guarantor in respect of a credit facility or loan or application for a credit facility or loan;
- d) the fact that the Contractor is a credit provider to the Customer;
- e) details of payments overdue from the Customer for at least 60 days and for which collection action has commenced;
- f) that credit provided to the Customer by the Contractor has been paid or otherwise discharged;
- g) if applicable, information that, in the Contractor's opinion, the Customer has committed a serious credit infringement (fraudulently or shown an intention not to comply with the Customer's credit obligations); and
- h) if applicable, details of cheques drawn by the Customer for \$100 or more which have been dishonoured more than once.

This information may be given before, during or after the provision of credit to the Customer.

The Customer and Guarantors authorise the Contractor to contact the references referred to above and credit reporting agencies to obtain information about the credit worthiness of the Customer and/or Guarantors, both to assess the credit application and on an ongoing basis, including for the purpose of collecting payments which are overdue.

**SIGNATURES ON BEHALF OF THE CUSTOMER**

I/We agree to be bound by the Terms and Conditions of Sale (which this credit application forms part of) and consent to the *Privacy Act 1988* disclosures as referred to above. I/We certify that all information contained in this application is true and correct and that no omissions have been made.

Signed on behalf of the Customer on (insert date) \_\_\_\_\_.

Full Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Position: \_\_\_\_\_

Full Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Position: \_\_\_\_\_

**GUARANTEE**

It is the policy of the Contractor that personal guarantees must be provided for all credit facilities provided by the Contractor. **FAILURE TO SIGN THE GUARANTEE WILL RESULT IN NO CREDIT FACILITIES BEING GRANTED.** I/We the undersigned (in this document "the Guarantors"):

- a) unconditionally and irrevocably jointly and severally guarantee to the Contractor as principal debtors the due and punctual payment of all moneys payable to the Contractor by the Customer under the Terms and Conditions of Sale (the "Guaranteed Moneys") as and when the same are due;
- b) unconditionally and irrevocably agree that, if for any reason the Customer does not pay any amount of the Guaranteed Moneys to the Contractor as and when due, in whole or in part, I/We will pay that amount to the Contractor on demand;
- c) as a separate and additional liability, undertake and agree jointly and severally to indemnify and keep indemnified the Contractor against any loss, damage, cost, charge or expense whatsoever (including legal costs on a full indemnity solicitor client basis and debt collection costs) that the Contractor may suffer as a consequence of any of (i) the non payment of any of the Guaranteed Moneys, in whole or in part, (ii) enforcing this guarantee, or (iii) the liability of the Customer to pay the Guaranteed Moneys to the Contractor being void, voidable or unenforceable in whole or in part, as a result of any lack of capacity, power or authority or any improper exercise of power or authority affecting the Customer;
- d) consent to the *Privacy Act 1988* disclosures as referred to above; and
- e) understand that this guarantee binds me/us personally.

**SIGNATURES OF GUARANTORS**

Guarantor 1 Full Name: \_\_\_\_\_ Address: \_\_\_\_\_ Signature: \_\_\_\_\_

Guarantor 2 Full Name: \_\_\_\_\_ Address: \_\_\_\_\_ Signature: \_\_\_\_\_

Witness Full Name: \_\_\_\_\_ Address: \_\_\_\_\_ Signature: \_\_\_\_\_

**OFFICE USE ONLY**

Approved/Rejected: \_\_\_\_\_ Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Credit Limit:  
\$ \_\_\_\_\_ Account Number: \_\_\_\_\_

To: Seaview Industries Pty Ltd (ACN 165 281 514) as trustee for the Peter Kelly Trust trading as PMK Welding and Metal Fabrication (ABN 45 673 045 265) ("PMK Welding and Metal Fabrication") of Shed 2, 236 Port Drive, Broome WA 6725 (in this document "the **Contractor**"). I/We (in this document "the **Customer**") hereby apply for credit facilities from PMK Welding and Metal Fabrication/ the Contractor in accordance with the Terms and Conditions of Sale. I/We submit the following credit information:

**CREDIT APPLICATION**

Date: \_\_\_\_\_

**Details of the Customer**

Name:	
ACN/ABN:	
Trading name:	
Name of CEO:	
Postal address:	
Business started:	
Website:	
Description of business:	

Phone (W):	
Fax:	
Mobile:	
Street address:	
Accounts Contact:	
Accounts Email:	
Monthly cut off for invoices:	

**Details of Guarantors – at least 2 required**

Name 1:	
Address:	
Name 2:	
Address:	
Credit Limit Sought:	\$

Telephone (H):	
Fax:	
Email:	
Telephone (H):	
Fax:	
Email:	

**Trade references – at least 3 required**

Name:		Fax:		Telephone:	
Name:		Fax:		Telephone:	
Name:		Fax:		Telephone:	

**Financial reference (bank or other lender) – at least 1 required**

Name:		Fax:		Telephone:	
Name:		Fax:		Telephone:	

**The Customer's Details:** please Circle One:      Company/ Partnership / Sole Trader / Trust / Other

Registered Name/ Company Name/Trading Name: \_\_\_\_\_

ABN: \_\_\_\_\_ ACN: \_\_\_\_\_

Business Address: \_\_\_\_\_

Postal Address (if different): \_\_\_\_\_

Email address: \_\_\_\_\_ Website: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Date the business commenced trading: \_\_\_\_\_

**Business owner's details:**Director 1/ Partner 1/Sole Owner

Full Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Home Address: \_\_\_\_\_

Director 2/ Partner 2

Full Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Home Address: \_\_\_\_\_