



1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Terms & Conditions, unless the contrary intention appears:

Additional Charge means:

- (a) fees or charges for any additional Goods and/or Services supplied at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with the Supplier's then current rates and fees; and
- (b) all expenses or costs incurred by the Supplier, at the Customer's request or reasonably required as a result of the Customer's conduct.

Agreement means the agreement for the supply of Goods and/or Services from the Supplier to the Customer as specified in cl. 2.1 of these Terms & Conditions as amended or varied from time to time;

ACL or Australian Consumer Law means Schedule 2 to the *Competition and Consumer Act 2010* (Cth);

Business Day means a day other than a Saturday, Sunday or public holiday in Western Australia;

Claim(s) means all matters of fact and Law alleged in or arising directly or indirectly from, and/or otherwise related to or connected with this Agreement and includes any and all present and future claims, demands, debts, actions, proceedings, suits, costs, charges, expenses, damages, losses and other liabilities arising directly or indirectly therefrom, or relating directly or indirectly thereto;

Customer means the customer (or any person acting on behalf of and with the authority of the Customer) as described or identified on any Quote or other form as provided by the Supplier to the Customer and includes the Customer's agents, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;

Customer Enrolment Application means the enrolment forms and processes specified on the Supplier's website (<https://www.caninesunleashed.com.au/>) from time to time or as otherwise provided by the Supplier to the Customer from time to time;

Customer's Obligations means the due and punctual observance and performance by the Customer of all the Customer's and the Guarantor's liabilities, obligations and agreements (whether monetary or non-monetary, present or future, actual or contingent) to the Supplier arising under or in connection with this Agreement;

Customer's Personnel means officers, employees, agents and contractors of the Customer;

Confidential Information means all information belonging to a Party or acquired or created by a Party during the term of this Agreement that is not in the public domain (or, if in the public domain, is not in the public domain by reason of a breach of this Agreement), including but not limited to:

- (a) information relating to (without limitation) the operations, dealings, finances, transactions, process, systems, policies, organisation, personnel, general affairs and clients (or anyone associated with them) of the Party; and
- (b) any information relating to (without limitation) the Party's business methods, business policies, management, organisation, methods of operation, procedures, techniques, research or development, precedents, projects, financial information of any kind,

intellectual knowledge, Intellectual Property, know-how, trade secrets, client lists or other client information, business strategies, tactics or methods, information pertaining to its services, marketing, advertising, artwork ideas, concepts, promotions or strategies, supplier information, price list, passwords, software programmes and security;

Force Majeure means a circumstance beyond the reasonable control of the Supplier which results in the Supplier being unable to observe or perform on time an obligation under this Agreement. Such circumstances include but are not limited to:

- (a) strikes or industrial disputes or actions adversely affecting or likely to adversely affect the Supplier's ability to supply the Goods and/or Services;
- (b) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (c) acts of war acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution;
- (d) specific weather events adversely affecting or likely to adversely affect the Supplier's ability to supply the Goods and/or Services and/or impose any unnecessary risk on the Supplier or any of the Supplier's Personnel, as deemed by the Supplier in its absolute discretion;

Goods mean any goods supplied by the Supplier to the Customer including those supplied in the course of providing any Services;

GST means the goods and services tax as provided for by the GST Law;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended or replaced from time to time;

GST Law means the GST Act and any associated legislation including without limitation delegated legislation;

Insolvency Event means, in relation to a Party, the Party:

- (a) stops or suspends payment of all or a class of its debts;
- (b) has an administrator appointed over all or any of its assets or undertaking;
- (c) has a controller within the meaning of the *Corporations Act 2001* (Cth) or similar officer appointed to all or any of its assets or undertaking;
- (d) has an application or order made, proceedings commenced, a resolution passed, an application to a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its deregistration, winding up or dissolution or for it to enter into an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them and the application, order, proceeding or resolution is not withdrawn or otherwise removed within 20 business days; or
- (e) has any step taken to enforce security over or a distress, execution or other similar process levied or served against the whole or any of its assets or undertaking,

or any event occurs in relation to a Party which, under the Laws of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above;



Law includes any present or future requirement of any statute, regulation, proclamation, ordinance or by-law, whether State, Federal, local or otherwise;

Loss or **Losses** include but are not limited to, costs (including party-to-party legal costs and the Supplier's legal costs), expenses, lost profits, award of damages, personal injury and property damage.

Order means any order for Goods and/or Services to be provided by the Supplier placed by a Customer by way of the Customer's submission of a Customer Enrolment Application or otherwise submitted by the Customer to the Supplier from time to time;

Party or **Parties** means the Supplier and the Customer and includes the Party's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;

Personal Property has the same meaning as defined under the *Personal Property Securities Act 2009* (Cth);

Privacy Act means the *Privacy Act 1988* (Cth);

Privacy Laws mean the Privacy Act and any other laws, codes or principles that deal with privacy or the collection, use or disclosure of Personal Information;

Quote means any written description or communication from the Supplier to the Customer of:

- (a) any Goods and/or Services to be provided to the Customer; and
- (b) of the Supplier's rates, fees and charges for the supply of any Goods and/or performance of any Services, and which incorporates these Terms & Conditions;

Related Bodies Corporate has the meaning given to this term under the *Corporations Act 2011* (Cth);

Services mean any services to be provided by the Supplier to the Customer in accordance with a Quote and these Terms & Conditions;

Subcontractor means a subcontractor engaged by the Supplier to supply the Goods and/or Services requested by the Customer;

Supplier means Canines Unleashed Pty Ltd (ACN 623 284 720) trading as Canines Unleashed and includes all of its successors and assigns or any person acting for or on behalf of and with the authority of Canines Unleashed Pty Ltd (ACN 623 284 720) from time to time;

Supplier's Personnel means any person who is an employee, agent or contractor (including a Subcontractor) of the Supplier to assist in supplying the Goods and/or Services;

Terms & Conditions means these terms and conditions as amended supplemented or varied from time to time;

1.2 Interpretation

In these Terms & Conditions, unless the context otherwise requires:

- (a) A reference to these Terms & Conditions or another instrument includes any amendment or replacement of it and notwithstanding any change in the identity of the Parties.
- (b) If any Party to this Agreement comprises two or more persons then, unless expressly stated otherwise in these Terms & Conditions, the obligations of those persons shall be joint and several.
- (c) A provision of these Terms & Conditions (including

any agreement, representation or warranty) which is in favour of, or creates an obligation in respect of, two or more persons is for the benefit of, or observance by, them jointly and severally.

- (d) References to these Terms & Conditions include its recitals and any schedule or annexure.
- (e) Provisions or terms of these Terms & Conditions or another document, agreement understanding or arrangement include a reference to both express and implied provisions and terms.
- (f) "\$" or "dollars" is a reference to the lawful currency of Australia.
- (g) References to statutes, regulations and by-laws include reference to all statutes, regulations, and by-laws that amend, consolidate or replace the statutes regulations or by-laws referred to and also include any notices or orders issued under any statutes regulations or by-laws for the time being in force.
- (h) Unless otherwise provided in these Terms & Conditions references to clauses are to clauses in these Terms & Conditions.
- (i) A cross-reference to a clause number is a reference to its sub-clauses.
- (j) In the interpretation of these Terms & Conditions, no rule of contract interpretation applies to the disadvantage of a Party on the basis that it put forward these Terms & Conditions or any part of them.

2. GENERAL

2.1 Agreement

The agreement for the supply of Goods and/or Services from the Supplier to the Customer (**Agreement**) is comprised of:

- (a) any Quote provided to the Customer by the Supplier;
- (b) any Order placed by the Customer to the Supplier;
- (c) these Terms & Conditions; and
- (d) any other documents and terms as incorporated in the agreement by the Supplier from time to time.

2.2 Acceptance Services on these Terms & Conditions

The following shall constitute the Customer's acceptance of this on the Terms & Conditions contained herein: any instructions, correspondence, or Orders received by the Supplier from the Customer for the supply of Goods and/or Services and/or the Customer's acceptance of the Quote supplied by the Supplier to the Customer.

2.3 General

- (a) These Terms & Conditions apply to all transactions between the Customer and the Supplier relating to the provision of Goods and/or Services. This includes all quotations, contracts and variations. These Terms & Conditions take precedence over terms and conditions contained in any document of the Customer, or elsewhere.
- (b) The variation or waiver of a provision of these Terms & Conditions or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the Parties.
- (c) The Supplier may amend any details in a Quote by notice in writing to the Customer. Such amended details supersede any relevant prior detail in dealings between the Parties.

3. CUSTOMER'S OBLIGATIONS



- (a) properly inform the Supplier about how they wish the Services to be delivered;
- (b) advise the Supplier of any changes to personal details and emergency contact details (contact number, address, etc.);
- (c) treat the Supplier with courtesy and respect;
- (d) discuss with the Supplier if the Customer has any concerns about the Services being provided;
- (e) give the Supplier a minimum of 24 hours' notice if the Customer cannot make a scheduled appointment for the provision of any Services;
- (f) promptly pay all amounts due and payable for the Provision of the Services to the Supplier under the terms of this Agreement;
- (g) give the Supplier the required notice under the terms of this Agreement if the Customer terminates this Agreement;
- (h) promptly provide all information required by the Supplier and complete the Customer Enrolment Application fully, accurately and truthfully;
- (i) ensure that any dog belonging to the Customer which is subject of this Agreement, or the provision of any Services hereunder is/are fully desexed and fully vaccinated after the age of 6 months before any Services are carried out or performed;
- (j) ensure that the Supplier is made promptly and fully aware of any existing medical, behavioural or other relevant and material issues of any dog belonging to the Customer which is subject of this Agreement, or the provision of any Services hereunder.

4. QUOTES

- (a) The Supplier may provide the Customer with a Quote. Any Quote issued by the Supplier is valid for **7 days** from the date of issue.
- (b) The Supplier reserves the right to amend any Quote before the Order has been completed to take into account any rise or fall in the cost of completing the Order. The Supplier will notify the Customer of any amendment as soon as practicable, at which point the amended Quote will be the estimate or Quote to these Terms & Conditions.
- (c) An indication in a Quote of the time frame for the provision of the Goods and/or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law (ACL), this estimate is not binding upon the Supplier.

5. ORDERS

5.1 Placement of Orders

- (a) Every Order by the Customer for the provision of Goods and/or Services must be submitted by way of the Supplier's standard Order forms and processes (unless otherwise agreed).
- (b) An Order will only be deemed to be placed by the Customer if the Order clearly identifies the Goods and/or Services ordered and the Supplier's Quote. Any costs incurred by the Supplier in reliance on incorrect or inadequate information provided by the Customer in an Order may result in the imposition of an Additional Charge.
- (c) Without limiting cl. 2.2, placement of an Order by the Customer signifies acceptance by the Customer of

these Terms & Conditions and the most recent Quote provided by the Supplier relating to that Order.

- (d) The Supplier may in its absolute discretion refuse to provide Goods and/or Services where:
 - (i) Goods are unavailable for any reason whatsoever;
 - (ii) credit limits cannot be agreed upon or have been exceeded; or
 - (iii) payment for Goods and/or Services previously provided to the Customer or any Related Bodies Corporate of the Customer or to any other party who is, in the reasonable opinion of the Supplier, associated with the Customer under the same or another supply contract, has not been received by the Supplier.
- (e) An Order cannot be cancelled without the prior written consent of the Supplier. Where an Order is cancelled, the Customer indemnifies the Supplier against any Losses incurred by the Supplier as a result of the cancellation. This includes but is not limited to, loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.

6. VARIATIONS

- (a) The Customer may request that its Order be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier in order to have effect.
- (b) If the Customer wishes to vary its requirements after a Quote has been prepared by the Supplier or after the placement of an Order, the Supplier reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Supplier in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods and/or Services or both.
- (c) The Supplier has an automatic extension of time for the provision of the Goods and/or Services equal to the delay caused by the variation.

7. INVOICING & PAYMENT

7.1 Invoicing

- (a) The Supplier may, in its absolute discretion, issue an invoice to the Customer in any one or more of the following ways:
 - (i) prior to commencing the supply of the Goods and/or Services, for an amount equal to the Quote and Additional Charges where the Supplier has not previously carried out work for the Customer or where the Supplier chooses to do so;
 - (ii) at the end of each week before the Order is completed, the Supplier may issue one or more invoices for a proportion or the whole of the amount of the Quote (the proportion to be calculated at the Supplier's discretion either for work done to that point, work in the future or both) and require that proportion of the Quote be paid in advance of any further Goods or Services



being provided; or

(iii) upon completion or the delivery of the Goods and/or Services or any time after such completion, for an amount equal to the Quote or the balance of the Quote outstanding, any Additional Charges and any amount not previously invoiced, or if no Quote was provided, for an amount representing the Supplier's charge for the work performed in completing the Order and for any Additional Charges.

(b) The amount payable by the Customer will be the amount set out in the invoice. This will be calculated as:

(i) the amount for the Goods and/or Services as set out in the Quote and any Additional Charges; or

(ii) where no Quote has been provided by the Supplier, the Supplier's usual charges for the Goods and/or Services as described in the Order.

(c) The Customer must pay an invoice issued by the Supplier to the Supplier **within 7 days** of a valid tax invoice being issued to the Customer.

(d) If any invoice is due but unpaid, the Supplier may withhold the provision of any further Goods and/or Services until overdue amounts are paid in full.

(e) The Supplier may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to the Supplier.

(f) The Customer is not entitled to retain any money owing to the Supplier regardless of any default or alleged default by the Supplier of these Terms & Conditions, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods or Services. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the ACL.

(g) The Customer shall be liable to pay interest to the Supplier calculated at the rate of 10% p.a. compounding daily on any moneys due but unpaid by the Customer to the Supplier pursuant to these Terms & Conditions.

(h) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Supplier (on a full indemnity basis), are to be paid by the Customer as a debt due and payable under these Terms & Conditions.

(i) At the Supplier's sole discretion, a non-refundable deposit may be required to be paid as specified on any Quote and the Supplier may appropriate any part of the deposit as payment of any amount that is overdue or remains unpaid or outstanding under these Terms & Conditions.

7.2 Method of Payment

All payments to be made under this Agreement by the Customer to, or at the direction of the Supplier must unless otherwise notified in writing by the Supplier, be made by way of cash, by cheque, by bank cheque, or by credit card (plus a surcharge of up to two per cent (2%) of the invoiced amount), or by direct credit, or by any other method as agreed to between the Customer and the Supplier.

7.3 No set-off

Notwithstanding any term, whether express or implied in these Terms & Conditions or any rule of Law or course of conduct to the contrary, payments made by the Customer to the Supplier for any Goods and/or Services supplied under this Agreement must be made by the Customer without set-off or counterclaim and free and clear of, and without, any deductions whatsoever.

8. ADDITIONAL CHARGES

(a) The Supplier may require the Customer to pay Additional Charges in respect of Costs incurred by the Supplier as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by the Supplier in order for it to provide the Goods or Services within the specified time frame (if any).

(b) The imposition of Additional Charges may also occur as a result of:

(i) cancellation by the Customer of an Order where cancellation results in Loss to the Supplier;

(ii) storage costs for Goods not collected from the Supplier within 3 weeks of the date on which the Goods are manufactured, fabricated, created or formed;

(iii) photocopying, courier, packing or handling charges not included in the Quote;

(iv) Government or council taxes or charges not included in the Quote; or

(v) additional work required by the Customer or any other occurrence which causes the Supplier to incur costs in respect of the Customer's Order additional to the quoted cost.

9. GST

9.1 Interpretation

Expressions used in this clause have the same meanings as when used in the GST Act.

9.2 Payment of GST

(a) Except where these Terms & Conditions state otherwise, the Quote, any amounts agreed to be paid by the Customer to the Supplier, being the consideration for the supply expressed in the Quote or these Terms & Conditions, are (unless expressed to be otherwise) **exclusive of GST**.

(b) If the Supplier is entitled to an input tax credit in relation to any amount recoverable from the Customer under clause 9.2(a), the amount payable by the Customer will be reduced by the amount of the input tax credit that the Supplier has received or claims and is entitled to receive.

10. ACCEPTANCE OF GOODS

If the Customer fails to advise the Supplier in writing of any fault in Goods or failure of Goods to accord with the Customer's Order within **48 hours of delivery**, the Customer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Customer's Order. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the ACL.

11. TITLE AND RISK

(a) Risk in Goods passes to the Customer immediately upon delivery.

(b) Property and title in any Goods supplied to the



Customer under these Terms & Conditions do not pass to the Customer until all money (including money owing in respect of other transactions between the Supplier and the Customer) due and payable to the Supplier by the Customer have been fully paid.

- (c) Where Goods are supplied by the Supplier to the Customer without payment in full, the Customer:
- (i) is a bailee of the Goods until property in them passes to the Customer;
 - (ii) irrevocably appoints the Supplier to be its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any Security Interest in favour of the Supplier with respect to the Goods under applicable Law;
 - (iii) must be able upon demand by the Supplier to separate and identify as belonging to the Supplier the Goods supplied by the Supplier from other goods which are held by the Customer;
 - (iv) must not allow any person to have or acquire any Security Interest in the Goods;
 - (v) agrees that the Supplier may repossess the Goods if payment is not made within 30 days (or such longer time as the Supplier may, in its complete discretion, approve in writing) of the supply of the Goods; and
 - (vi) the Customer grants an irrevocable licence to the Supplier or its agents to enter the Customer's premises in order to recover possession of Goods pursuant to this clause 10. The Customer indemnifies the Supplier for any Claims arising as a result of or in connection to the Supplier entering the Customer's premises.
- (d) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and/or Services provided by the Supplier in respect of those Goods and/or Services and:
- (i) the Customer makes a new object from the Goods, whether finished or not;
 - (ii) the Customer mixes the Goods with other goods; or
 - (iii) the Goods become part of other goods (**New Goods**),
- the Customer agrees with the Supplier that the ownership of the New Goods immediately passes to the Supplier. The Customer will hold the New Goods on trust for the Supplier until payment of all sums owing to the Supplier whether under these Terms & Conditions or any other contract have been made. The Supplier may require the Customer to store the New Goods in a manner that clearly shows the ownership of the Supplier.
- (e) For the avoidance of doubt, under paragraph 11(d), the ownership of the New Goods passes to the Supplier at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.
- (f) Despite paragraph 11(c), the Customer may transfer, sell or dispose of Goods, including new Goods, to a third party in the ordinary course of business. This is provided that:
- (i) where the Customer is paid by a third party in

respect of Goods including New Goods, the Customer holds the whole of the proceeds of sale, less any GST, on trust for the Supplier in a separate account, until all amounts owned by the Customer to the Supplier have been paid; or

- (ii) where the Customer is not paid by a third party, the Customer agrees to assign all of its rights against the third party to the Supplier upon the Supplier giving the Customer notice in writing to that effect and for the purpose of giving effect to that assignment, the Customer irrevocably appoints the Supplier as its attorney.

12. DEFAULT AND TERMINATION

12.1 Termination

- (a) A Party may terminate this Agreement immediately by written notice if the other Party:
 - (i) commits a material breach of this Agreement and, where that breach is remediable, that breach is not remedied within 7 Business Days after the receipt of written notice to remedy the breach from the first Party; or
 - (ii) suffers an Insolvency Event.
- (b) Either Party may immediately terminate this Agreement for any reason by giving **7 Business Days** written notice to the other Party.
- (c) If the Customer terminates this Agreement pursuant to clause 12.1(a) or (b), the Supplier is entitled to be paid for the Services performed and/or Goods supplied before the date of termination.
- (d) If the Customer terminates this Agreement pursuant to clause 12.1(a) or 11.1(b), then in addition to clause 12.1(c), the Customer must reimburse the Supplier for any expenses reasonably incurred by the Supplier in anticipation of performing the Services and/or supplying any Goods.
- (e) On termination of this Agreement, each Party will return to the other Party any equipment, tools, documentation, Confidential Information or other materials belonging to the other Party within 7 Business Days of the date of termination.
- (f) Termination of this Agreement will not prejudice any rights or remedies already accrued to a Party under, or in respect of, any breach of this Agreement.

12.2 Default of Payment

- (a) Without prejudice to any other remedies the Supplier may have under these Terms & Conditions or at Law, if the Customer defaults in payment (including by way of a dishonoured cheque) of any invoice when due or other moneys due and payable under these Terms & Conditions, the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in pursuing the debt including legal costs (on a solicitor and own client basis) and any of the Supplier's collection agency costs.
- (b) the Supplier will not be liable to the Customer for any Claim by the Customer because the Supplier has exercised its rights under this clause 12.

13. FORCE MAJEURE

- (a) the Supplier shall not be liable for any delay or failure to perform its obligations under these Terms & Conditions if such delay is due to Force Majeure.
- (b) If a delay or failure of the Supplier to perform its obligations is caused or anticipated due to Force



Majeure, the performance of the Supplier's obligations will be suspended.

- (c) If a delay or failure by the Supplier to perform its obligations due to Force Majeure exceeds sixty (60) days, either Party may immediately terminate this Agreement by providing notice in writing to the other Party.
- (d) If this Agreement is terminated pursuant to clause 13(c), the Customer acknowledges and agrees it will not be entitled to compensation for loss or damage of any kind in relation to any Claim.

14. INDEMNITY

- (a) The Customer indemnifies the Supplier against any Claim which may be made against the Supplier by any person in respect of:
 - (i) a breach of these Terms & Conditions (including a representation or warranty); or
 - (ii) personal injury, death or loss of or damage to real property or Personal Property (including any dog belonging to the Customer which is subject of this Agreement, or the provision of any Services hereunder); and/ or
 - (iii) personal injury to, or death of, any person or any dog belonging to the Customer which is subject of this Agreement, or the provision of any Services hereunder,that is caused by any negligent act or omission of the Customer that is in any way related to the supply of any Goods or provision of any Services.
- (b) The Customer's liability to indemnify the Supplier will be reduced proportionally to the extent that a negligent act or omission of the Supplier or the Supplier's Personnel contributed to the Claim.
- (c) The Customer unconditionally agrees that:
 - (i) The Supplier is entitled at any time during the term of this Agreement and/or during the provision of the Services to have any dog belonging to the Customer which is subject of this Agreement, or the provision of any Services hereunder treated or assessed by a licensed veterinarian if the Supplier, in its absolute discretion, deems it necessary as a result of any unforeseen event, accident, emergency, injury or incident.
 - (ii) The customer must reimburse and unconditionally indemnify the Supplier for and against all veterinarian costs fees and expenses including expenses for any medications provided or administered.

15. LIMITATION OF LIABILITY

- (a) Notwithstanding anything contained in these Terms & Conditions and to the maximum extent permitted by Law, the Supplier shall not be liable for any indirect, special, exemplary, incidental or consequential loss suffered by the Customer arising from or in any way connected with the supply of any Goods and/or Services under these Terms & Conditions.
- (b) The Customer expressly agrees that use of the Goods and/or Services is at the Customer's risk. To the full extent allowed by law, the Supplier's liability for breach of any term implied into these Terms & Conditions by any Law is excluded.
- (c) All information, specifications and samples provided

by the Supplier in relation to the Goods and/or Services are approximations only and, subject to any guarantees under the ACL, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods and/or Services will not entitle the Customer to reject the Goods and/or Services upon delivery or to make any Claim in respect of them.

- (d) To the maximum extent permitted by Law, the Supplier gives no warranty in relation to any Goods and/or Services provided or supplied. Under no circumstances is the Supplier or any of its Personnel or suppliers liable or responsible in any way to the Customer or any other person for any Claims (including consequential damages and loss of profits or loss of revenues) as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods and/or Services. This includes their form, content and timeliness of deliveries, failure of performance, error, omission, or defect, including, without limitation, for and in relation to any of the following:
 - (i) any Goods and/or Services supplied to the Customer;
 - (ii) any delay in supply of the Goods and/or Services;
 - (iii) any failure to supply the Goods and/or Services; or
 - (iv) any advice, recommendation, information, assistance or service given by the Supplier in relation to Goods and/or Services, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability. The Supplier does not accept any liability or responsibility for any Loss suffered or Claim as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- (e) To the fullest extent permissible at Law, the Supplier is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods and/or Services, or otherwise arising out of the provision of Goods or the Services, whether based on Terms & Conditions, negligence, strict liability or otherwise, even if the Supplier has been advised of the possibility of damages.
- (f) Notwithstanding anything contained in this clause 15, the Supplier acknowledges that the ACL may give to the Customer certain consumer guarantees, which cannot be restricted, limited or varied.

16. SUBCONTRACTING

- (a) The Customer acknowledges and agrees that the Supplier may engage Subcontractors to provide the Goods and/or Services, or any part of the Goods and/or Services, under this Agreement.
- (b) the Supplier's obligations under this Agreement are not reduced or otherwise affected by subcontracting the performance of obligations under this Agreement.

17. RELATIONSHIP BETWEEN THE PARTIES

- (a) The relationship between the Parties is that of



principal and independent contractor. No Party is a partner, joint venturer, agent or employee of another Party.

- (b) Nothing in this Agreement shall render the Customer (or any of its Personnel) an employee or director of the Customer, and nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.
- (c) The Customer has no authority to incur, and will not incur any obligation on behalf of the Supplier except as expressly provided in this Agreement or with the prior written approval of the Supplier.
- (d) Neither the Customer nor any of the Customer's Personnel shall hold themselves out as having any status which conflicts with subclauses 18(a) or (b).
- (e) Each Party agrees to ensure and procure that its Related Bodies Corporate and Personnel comply with the terms of this Agreement as if they were parties to it (but only to the extent relevant to them).

18. PRIVACY ACT

The Supplier agrees to comply with all Privacy Laws in relation to Personal Information and Sensitive Information received or acquired from the Customer during the term of this Agreement in the course of carrying out the Services.

19. MISCELLANEOUS

19.1 Assignment

The Customer must not, at any time, assign or transfer any of its rights or obligations under this without the prior consent in writing of the Supplier.

19.2 Alterations

These Terms & Conditions may be altered or varied only in writing and signed by each Party.

19.3 Survival

Any obligation under these Terms & Conditions is independent and survives termination of these Terms & Conditions.

19.4 Remedies Cumulative

The rights and remedies provided under these Terms & Conditions are cumulative and not exclusive of any rights or remedies provided by Law or any other such right or remedy.

19.5 Severability

A term or part of a term of these Terms & Conditions that is illegal or unenforceable may be severed from these Terms & Conditions, and the remaining terms or parts of the term of these Terms & Conditions continue in force.

19.6 Waiver

- (a) Time is of the essence of this Agreement. However, no failure or delay by the Supplier to exercise any power, right or remedy under this Agreement will operate as a waiver of that power, right or remedy. Nor will any single or partial exercise of any power, right or remedy under this Agreement preclude any other or further exercise of that power, right or remedy.
- (b) A failure by the Supplier to exercise or a delay in exercising any right, power or remedy under this Agreement does not operate as a waiver.
- (c) No consent or waiver expressed or implied by the Supplier to or in respect of any particular breach of

Customer's obligations under this Agreement is to be construed as a consent to, or waiver of, any other breach of that obligation or any other term contained or implied in this Agreement.

- (d) A waiver is not valid or binding on the Supplier unless it is made in writing.
- (e) the Supplier will only be taken to have waived any power, right or remedy under this Agreement, including (without limitation) its rights in respect of any default, to the extent that the power, right or remedy has been expressly waived in writing by the Supplier. The powers, rights, and remedies provided under these Terms & Conditions to the Supplier are not exclusive of any powers, rights and remedies provided at Law or in equity.

19.7 Indemnities

Each indemnity in these Terms & Conditions is a continuing obligation, independent of the other obligations of the Customer, and survives the end or termination of any agreement between the Customer and the Supplier subject to these Terms & Conditions.

19.8 Time of Essence

- (a) Time is of the essence of these Terms & Conditions.
- (b) If the Parties agree to vary a time requirement, the time requirement so varied is of the essence of this.
- (c) An agreement to vary a time requirement must be in writing.

19.9 Governing Law

This Agreement will be governed by the Laws of Western Australia, and the Parties submit themselves to the exclusive jurisdiction of that State.