Blackman Constructions Pty Ltd T/A Blackman Fabrications – Terms & Conditions of Trade

1. Definitions

1.1 "Supplier" means Blackman Constructions Pty Ltd ATF Blackman Trust T/A Blackman Fabrications, its successors and assigns or any person acting on behalf of and with the authority of Blackman Constructions Pty Ltd ATF Blackman Trust T/A Blackman Fabrications.

1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Client, is a reference to each Client jointly and severally; and
(b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
(c) includes the Client's executors, administrators, successors and permitted assigns.

1.3 "Goods" means all Goods or Services supplied by the Supplier to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).

1.4 "Labour" or "Candidate" shall mean any individual sent by the Supplier to the Client for employment by the Client on a temporary, casual, or part time basis.

1.5 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between the Supplier and the Client in accordance with clause 5 below.

1.6 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Acceptance

2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.

2.2 Where the Supplier gives advice or recommendations to the Client in regards to repairs, or the Client's agent, with specific instructions regarding the repair or use of the Services and such advice or recommendations are not acted upon then the Supplier shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the repairs. These repairs will be completed at the risk and liability of the Client.

2.3 These terms and conditions may only be amended with both parties consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Supplier.

2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2003 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

3.1 The Client acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
(a) resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this contract; and/or
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Services.

3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Supplier; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

4.1 The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.

5. Price and Payment

5.1 At the Supplier's sole discretion the Price shall be either:
(a) as indicated on any invoice provided by the Supplier to the Client; or
(b) the Price as at the date of delivery of the Goods according to the Supplier's current price list; or
(c) the Supplier's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

5.2 The Supplier reserves the right to change the Price:
(a) if a variation to the Goods which are to be supplied is requested; or
(b) if a variation to the Services originally scheduled is requested; or
(c) where additional Services are required as a result of insufficient or incorrect information being supplied by the Client or due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, availability of machinery, safety considerations, hidden faults, vehicle relocation) which are only discovered on commencement of the Services; or
(d) in the event of increases to the Supplier in the cost of labour or materials (including but not limited to freight and insurance charges) which are beyond the Supplier's control.

5.3 Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Client shall be required to respond to any variation submitted by the Supplier within five (5) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

5.4 At the Supplier's sole discretion a deposit may be required.

5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be:
(a) on delivery of the Goods/Services;
(b) by way of instalments/progress payments in accordance with the Supplier's payment schedule;
(c) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
(d) the date specified on any invoice or other form as being the date for payment; or
(e) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by the Supplier.

5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Supplier.

5.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.

5.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery of Goods

6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
(a) the Client or the Client's nominated carrier takes possession of the Goods at the Supplier's address; or
(b) the Supplier (or the Supplier's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.

6.2 At the Supplier's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.

6.3 The Supplier may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

6.4 Any time specified by the Supplier for delivery of the Goods is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.

7. Risk

7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.

7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.

7.3 If the Client requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.

7.4 Where the Client is to supply the Supplier with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. The Supplier shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Client.

7.5 The Client acknowledges and agrees that where the Supplier has performed temporary repairs that:
(a) the Supplier offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
(b) the Supplier will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair required.

7.6 The Client acknowledges and accepts that:
(a) stainless steel is a textured material and can be of a porous nature. The Client accepts that products made from this material can rust and mark easily. The Client accepts that care should be taken to maintain the finish of and longevity of stainless steel products;
(b) where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims used due to the difference in aluminium alloys available and manufacturing standards and tolerances shall not deemed to be a defect in the Goods; and
(c) it is the Clients' responsibility to remove all personal/valuable items from the vehicle prior to the Supplier carrying out their Services. The Supplier shall not liable in the event of any apparent loss or damage to personal/valuable items left in the vehicle;
(d) the Supplier is only responsible for parts that are replaced by the Supplier and that in the event that other parts/Goods, subsequently fail, the Client agrees to indemnify the Supplier against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising;
(e) where the Client has left a vehicle with the Supplier for repair, restoration, or modification or for the Supplier to perform any other Service in relation to the item, it shall be at the sole risk of the Client. The Supplier shall not be liable for any loss or damage to any vehicle whilst in the care of the Supplier, it shall be the responsibility of the Client to ensure the vehicle is adequately insured, or at all (including but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst stored on the Supplier premises.
(f) Goods supplied may:
(i) exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. The Supplier will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur; and
(ii) expand, contract or distort as a result of exposure to heat, cold, weather; and
(iii) mark or stain if exposed to certain substances; and
(iv) be damaged or disfigured by impact or scratching.

7.7 The Supplier shall not be liable for any defect, deterioration and/or damage to the Goods:
(a) if the Client does not follow the Supplier's recommendations;
(b) where Goods are stored off site for extended periods of time as a result of any action/inaction by the Client;
(c) resulting from incorrect use and/or installation of the Goods by the Client or any other third party.

7.8 where welding, galvanising (or any other heat related process) has caused distortion or any other damage.

8. Testing of Vehicles

8.1 The Supplier or its employees may test drive or carry out tests on the vehicles at the Supplier's discretion and may if requested by the Client collect or re-deliver the vehicles when nominated by the Client. The Supplier will not be liable for (and the Client indemnifies the Supplier against) any damages caused to, or by, the vehicle during such tests, collecting or delivery unless it arises from the recklessness or wilful misconduct of the Supplier or its employees.

9. Title

9.1 The Supplier and the Client agree that ownership of the Goods shall not pass until:
(a) the Client has paid the Supplier all amounts owing to the Supplier; and
(b) the Client has met all of its other obligations to the Supplier.

9.2 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

9.3 It is further agreed that:
(a) until ownership of the Goods passes to the Client in accordance with clause 9.1 that the Client is only a bailee of the Goods and must return the Goods to the Supplier on request.
(b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
(c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.
(d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.
(e) the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods.
(f) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred.
(g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier.
(h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

10. Personal Property Securities Act 2009 ("PPSA")

10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

10.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Supplier to the Client.

10.3 The Client undertakes to:
(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to;
(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities 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 10.3(a)(i) or 10.3(a)(ii);
(b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
(c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Supplier;
(e) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

10.4 The Supplier and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

10.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

10.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

10.7 Unless otherwise agreed to in writing by the Supplier, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

10.8 The Client must unconditionally ratify any actions taken by the Supplier under clauses 10.3 to 10.5.

10.9 Subject to any express provisions to the contrary (including those contained in this clause 10) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

11. Security and Charge

11.1 In consideration of the Supplier agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

11.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.

11.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

12.1 The Client must inspect the Goods on delivery and must within fourteen (14) days of delivery notify the Supplier in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Supplier to inspect the Goods.

12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).

12.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.

12.5 If the Client is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.

12.6 If the Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Client has paid for the Goods.

12.7 If the Client is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Goods is:
(a) limited to the value of any express warranty or warranty card provided to the Client by the Supplier at the Supplier's sole discretion;
(b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Goods;
(c) otherwise negated absolutely.

12.8 Subject to this clause 12, returns will only be accepted provided that:
(a) the Client has complied with the provisions of clause 12.1; and
(b) the Supplier has agreed that the Goods are defective; and
(c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
(a) the Client failing to properly maintain or store any Goods;
(b) the Client using the Goods for any purpose other than that for which they were designed;
(c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
(d) the Client failing to follow any instructions or guidelines provided by the Supplier;
(e) fair wear and tear, any accident, or act of God.

12.10 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.

13. Intellectual Property

13.1 Where the Supplier has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Supplier.

13.2 The Client warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

14. Default and Consequences of Default

14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

14.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's contract default fee, and bank dishonour fees).

14.3 Further to any other rights or remedies the Supplier may have under this contract, if a Client has made payment to the Supplier, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.

14.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
(a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to make a payment when it falls due;
(b) the Client has exceeded any applicable credit limit provided by the Supplier;
(c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

15. Cancellation

15.1 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Goods to the Client. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.

15.2 The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any money paid by the Client for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.

15.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).

16. Privacy Act 1988

16.1 The Client agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by the Supplier.

16.2 The Client agrees that the Supplier may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
(a) to assess an application by the Client; and/or
(b) to notify other credit providers of a default by the Client; and/or
(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
(d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.

16.3 The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.

16.4 The Client agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):
(a) the provision of Goods; and/or
(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
(d) enabling the collection of amounts outstanding in relation to the Goods.

16.5 The Supplier may give information about the Client to a CRB for the following purposes:
(a) to obtain a consumer credit report;
(b) allow the CRB to create or maintain a credit information file about the Client including credit history.

16.6 The information given to the CRB may include:
(a) personal information as outlined in 16.1 above;
(b) name of the credit provider and that the Supplier is a current credit provider to the Client;
(c) whether the credit provider is a licensee;
(d) type of consumer credit;
(e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Supplier has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
(g) information that, in the opinion of the Supplier, the Client has committed a serious credit infringement;
(h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars ($150).

16.7 The Client shall have the right to request (by e-mail) from the Supplier:
(a) a copy of the information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect information; and
(b) that the Supplier does not disclose any personal information about the Client for the purpose of direct marketing.

16.8 The Supplier will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.

16.9 The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

17. Confidentiality

17.1 The Supplier and the Client agree to keep confidential any information in relation to the other party which is not in the public domain (including, but not limited to, trade secrets, processes, formulae, accounts, marketing, designs, databases and all other information held in any form).

18. Service of Notices

18.1 Any written notice given under this contract shall be deemed to have been given and received:
(a) by handing the notice to the other party, in person;
(b) by leaving it at the address of the other party as stated in this contract;
(c) by sending it by registered post to the address of the other party as stated in this contract;
(d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
(e) if sent by email to the other party's last known email address.

18.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

19. Trusts

19.1 If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Client covenants with the Supplier as follows:
(a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
(b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
(c) the Client will not without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
(i) the removal, replacement or retirement of the Client as trustee of the Trust;
(ii) any alteration to or variation of the terms of the Trust;
(iii) any advancement or distribution of capital of the Trust; or
(iv) any resettlement of the trust property.

20. General

20.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia in which the Supplier has its principal place of business, and are subject to the jurisdiction of the courts in Western Australia.

20.3 Subject to clause 12 the Supplier shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

20.4 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.

20.5 The Client cannot licence or assign without the written approval of the Supplier.

20.6 The Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.

20.7 The Client agrees that the Supplier may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Supplier to provide Goods to the Client.

20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

20.9 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.

Additional Terms & Conditions Applicable Labour Hire Only

21. Services

21.1 The Supplier undertakes to:
(a) use its best endeavours to provide suitably qualified Candidates to undertake work duties in compliance with the Client's requirements; and
(b) make the payment of all amounts due to the Candidate under the terms of any relevant industrial instrument or contract; and
(c) make the payment of all leave entitlements (including, but not limited to, annual leave, sick leave, parental leave and long service leave) if the Candidate is a fulltime employee; and
(d) deduct the requisite amounts of income tax, fringe benefits tax, pay roll tax and all other applicable deductions as required by Australian law; and
(e) ensure payment of any other statutory taxes, superannuation contributions and/or levies as required by Australian law; and
(f) maintain workers compensation insurance for all Candidates, except where state laws specify otherwise.

21.2 The Supplier's quotation shall specify:
(a) the Services to be provided by each Candidate;
(b) the job description of each Candidate;
(c) the commencement and termination dates of the Services, unless agreed upon prior to the commencement of the same;
(d) the location where Services shall be performed;
(e) the Price payable by the Client for the Services.

21.3 The Supplier must be advised by the Client of any specific site or project allowances which may be applicable. All such allowances (including, but not limited to, meal, travel or tool allowances) shall be on-charged to the Client accordingly.

21.4 Unless otherwise specified the Client acknowledges that only lunch breaks shall be deducted from total hours charged by the Supplier to the Client.

21.5 The Client acknowledges and agrees that the Client's obligations to the Supplier for the supply of Services shall not cease until:
(a) the Client has paid the Supplier all amounts owing for the particular Services; and
(b) the Client has met all other obligations due by the Client to the Supplier in respect of all contracts between the Supplier and the Client.

22. Client's Responsibilities / Agreements

22.1 The Client agrees that they shall supply to the Supplier (on the day specified by the Supplier) a duly authorised timesheet to enable the Supplier to pay the Candidate when due.

22.2 It is the responsibility of the Client to:
(a) provide supervision of Candidates to ensure that work is carried out to a satisfactory standard; and
(b) provide Candidates with appropriate information, supervision and training to enable them to work safely; and
(c) provide Candidates with workplace specific and job specific induction if necessary. This induction is to be completed before the Candidate commences work with the Client; and
(d) familiarise the Candidate with the Client's operations, facilities, policies and procedures, and properly inform the Supplier of any specific requirements of the job which the Candidate will be required to undertake; and
(e) provide safe working conditions and to comply with all statutory and other obligations that are applicable pursuant to Australian law (including but not limited to, Work Health and Safety legislation) applicable to employers and otherwise to treat Candidates as if they were employed by the Client; and
(f) effect and maintain insurance cover in respect of any claims which may be made against the Client by a Candidate that arises as a result of the Client's occupation of premises, and otherwise in respect of any act or omission in respect of machinery, equipment or vehicle(s) used by the Candidate, and to indemnify the Supplier against any such claims; and
(g) properly maintain plant and equipment; and
(h) provide where a candidate may be required to 'stand down' because of adverse weather conditions a minimum 'stand down' payment of not less than four (4) hours per Candidate, unless an alternative minimum payment has been agreed between the Supplier and the Client in writing.

22.3 The Client agrees that the Client:
(a) will not request a Candidate to engage in any works or use any equipment that a Candidate is unfamiliar with, or unqualified to use or perform, or have not received adequate training for;
(b) will immediately notify the Supplier of any variation of duties given to a Candidate that may affect the remuneration payable to the Candidate or may involve additional risk to the Candidate;
(c) will immediately notify the Supplier of any injury sustained by the Candidate;
(d) shall remain responsible for controlling the manner, time and place in which the Candidate shall carry out their duties as assigned by the Client and that in doing so the Client shall be liable for all acts and omissions of the Candidate the same as they would be for any of their own employees.

22.4 In no circumstances shall the Supplier be liable for any personal injury resulting in injury or death, loss and/or damage or expense arising out of, or caused by, any act or omission of a Candidate whether or not any such act or omission is negligent, and the Client acknowledges and agrees to indemnify the Supplier against all such liability whether alleged or proved. The Client is to include all Candidates in the Client's own public liability insurance cover.

22.5 If any event arises which is likely to lead to any dispute or claim, the Client must notify the Supplier of the same within thirty (30) days of the event. If the Client shall fail to comply with this provision then all Services provided by the Supplier shall be deemed to have been provided in accordance with these terms and conditions, and free from any disputes or claims.

22.6 The Client acknowledges and agrees that:
(a) any working environment in which a Candidate is placed during the period of the engagement will comply with all applicable equal opportunity legislation or regulations. The Client agrees to immediately notify the Supplier if a Candidate is involved in a sexual harassment or discrimination claim during the performance of the Services; and
(b) the Supplier makes no representation or guarantee that any Candidate will achieve a certain level of performance, achieve a certain outcome, solve a particular problem or attain a specific goal.

23. Employees of Supplier

23.1 The Client agrees not to employ, contract, subcontract or utilise in any way an employee or past employee of the Supplier (other than through the Supplier) for a period of no less than twelve (12) months after that employee's last employment with the Supplier.

23.2 The Client agrees that if clause 23.1 is contravened the Supplier will be able to invoice the Client at its current hourly rate the hours that the employee has been employed, contracted, subcontracted or utilised in any way by the Client and agrees to pay said invoice in accordance with the standard payment terms contained in this contract.

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