

SEAL-A-FRIDGE TERMS AND CONDITIONS

Definitions

"ACL" means the Australian Consumer Law Schedule of the Competition and Consumer Act;

Agreement or **Terms** means these general terms and conditions including the Quote.

Competition and Consumer Act means that Competition and Consumer Act 2010 (Cth).

Corporations Act means the Corporations Act 2001 (Cth), as amended.

GST has the meaning given to that term in the GST Law.

GST Law has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Insolvency Event means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

Premises means the place where the Services are to be provided.

Price means the amount payable by the Customer to the Supplier as stated in the Quote or varied pursuant to this Agreement.

Quote means the written document provided by the Supplier to the Customer, containing the description of the Services to be performed and the price for the Services.

Service Date means the date that the Services are to be provided by the Supplier.

Services means the services purchased by the Customer from the Supplier as specified by Supplier in the Quote.

State means the state in which the Premises are located.

1. Supply of Services

1.1.The Customer agrees to engage the Supplier to supply the Services in accordance with this Agreement.

1.2.This Agreement shall apply to all Services supplied by the Supplier to the Customer unless otherwise agreed in writing by the Customer and the Supplier.

2. Quote becomes Agreement

2.1.By accepting the Quote or agreeing to engage the Supplier at any time after the provision of the Quote, the Customer makes an offer to the Supplier to enter into this Agreement on the conditions contained in the Quote and these terms.

2.2.This Agreement is made upon acceptance by the Supplier in writing of the offer made by the Customer or by the Supplier performing the Services.

3. Payment

3.1.Unless otherwise agreed, the full Price is due immediately upon completion of the Services.

3.2.The Customer must pay to the Supplier interest at the rate 4% above the rate prescribed pursuant to the Penalty Interest Rates Act 1983 (Vic).

4. GST

4.1.Unless otherwise stated, the Price is exclusive of GST.

4.2.In addition to the Price, the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier pursuant to this Agreement.

4.3.The Customer must pay the GST amount at the same time and on the same basis as the Customer pays the Price.

5. Delivery of the Services

5.1.Any period or date for the provision of the Services by the Supplier is an estimate only and not a contractual commitment.

5.2. The Supplier will use its reasonable endeavours to meet any estimated date(s) for the provision of the Services but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

5.3.If the Supplier cannot complete the Services by any estimated date, the Supplier will complete the Services within a reasonable time.

5.4.The costs of attending the Premises in order to provide the Services will be at the Supplier's cost unless otherwise stated in the Quote.

6. Warranties

6.1.The Supplier acknowledges that where the supply of Services are "consumer" supplies, under applicable State, Territory or Commonwealth laws (including, without limitation, the ACL) certain statutory express or implied guarantees and warranties will be implied into this Agreement (Non-Excluded Guarantees).

6.2.The Supplier acknowledges that nothing in this Agreement purports to modify or exclude the Non-Excluded Guarantees.

6.3.In addition to the Non-Excluded Guarantees, the Supplier hereby agrees that the Services will be provided:

6.3.1.in compliance with any applicable laws;

6.3.2.to the same standard to which a prudent and experienced provider would normally provide the Services;

6.3.3.diligently, competently, with care and skill and in a proper and professional manner; and

6.3.4.in compliance with the Customer' reasonable directions, standards, policies, procedures and methodologies notified to the Supplier by the Customer.

6.4.The Supplier warrants the Services in relation to any domestic application for a period of 12 months and 3 months in relation to commercial applications.

6.5.If the Customer is a consumer within the meaning of the ACL, the liability of the Supplier and its employees or agents for a breach of any warranty or liability in respect of the Services, is limited, at the Customer's option, to the re-supplying of the Services or the payment of the costs of having the Services supplied by a third party.

6.6.Subject to clause 6.5, the Supplier shall not become liable to the Customer for any loss or damage suffered by the Customer where such loss or damage is caused in whole or in part by:

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- 6.6.1.failure by the Customer to comply with the Supplier's instructions in relation to the Services or any goods the subject of the Services;
- 6.6.2.misuse, neglect, alteration by the Customer, its agents, employees or any third party in connection with the goods the subject of the Services; or
- 6.6.3.fair wear and tear of the goods the subject of the Services.

7. Default and termination

7.1.**Event of Default:** Any of the following shall constitute an event of default by the Customer under this Agreement:

- 7.1.1.the Customer becomes affected by one or more Insolvency Event;
- 7.1.2.the Customer violates any term of this Agreement and fails to correct such violation within 7 days after written notice from the Supplier; or
- 7.1.3.the Customer consolidates with or merges with or into any entity, or sells or otherwise transfers a majority of its assets or stock to any entity, or incurs a substantial amount of indebtedness other than in the ordinary course of its business, unless in each case and before the event in question, the Customer's obligations are assumed or guaranteed in a manner satisfactory to the Supplier (in the Supplier's reasonable opinion).

7.2.Upon the occurrence of an event of default by the Customer, in addition to any other remedies the Supplier has under this Agreement, the Customer agrees that the Supplier may terminate this Agreement immediately.

7.3.Without prejudice to any other rights or remedies of Supplier, the Customer shall pay to the Supplier on demand any costs and expenses incurred by the Supplier in relation to a default and/or termination of this Agreement, including legal costs on a full indemnity basis.

7.4.Termination of this Agreement shall be without prejudice to the rights and obligations of the parties accrued up to the date of termination.

8. Severability

Any provision of these terms which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make the remaining terms enforceable, unless this would materially change the intended effect of this Agreement.

9. Assignment

9.1.The Supplier may sub-contract, assign, transfer or otherwise deal with its rights, interests or obligations under this Agreement without the Customer's prior written consent.

9.2.In the event that the Supplier does sub-contract, assign, transfer or otherwise deal with its rights or obligations under this Agreement in accordance with clause 9.1, the Supplier must ensure that the third party assignee supplies the Services to Customer in accordance with the terms of this Agreement.

9.3.The Supplier acknowledges and agrees that any sub-contracting, assignment or transfer of its rights, interests or obligations does not discharge the Supplier from its obligations and/or liabilities under this Agreement.

9.4.The Customer may not assign, transfer, novate or otherwise deal with its rights, interests and obligations under this Agreement, or any document entered into pursuant to it without the consent of, and notice to, the Supplier.

10. Variation

In the event that the Customer requests any variation to the Services, such variation (including any variation in the Price) becomes part of this Agreement upon acceptance of the requested variation by the Supplier.

11. Entire agreement

Subject to clause 10, these terms constitute the entire agreement between the Supplier and the Customer concerning the subject matter and supersede all prior representations, contracts, statements and understandings, whether verbal or in writing. All other terms are excluded to the fullest extent permitted by law.

12. Waiver

12.1.A single or partial exercise or waiver of a right relating to this Agreement will not prevent any other exercise of that right or the exercise of any other right.

12.2.A party will not be liable for any loss, cost or expense of any other party caused or contributed to by any waiver, exercise, attempted exercise or failure to exercise, or any delay in the exercise of, a right.

13. Governing law

13.1.These terms will be governed by and construed in accordance with the laws in force in the State.

13.2.Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State, and any court that may hear appeals from any of those courts, for any proceedings in connection with these terms, and waives any right it might have to claim that those courts are an inconvenient forum.

14. Force Majeure

14.1.The Supplier is not liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of nature, acts or threats of terrorism or war. If an event of force majeure occurs, the Supplier may suspend or terminate the Agreement by written notice to the Customer.