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## TRADING TERMS AND CONDITIONS

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### 1. DEFINITIONS

- 1.1. The Supplier is GARY J MCCLUSKEY trading as GARY J MCCLUSKEY & ASSOCIATES.
- 1.2. The Client is the party or any person acting on behalf of and with the authority of the Client that the Order is provided for.
- 1.3. The Guarantor is the person(s), or entity, who agrees to be liable for the debts of the Client.
- 1.4. The Engagement shall be defined as any request for the provision of Services by the Client which has been accepted by the Supplier and constituted by the documents referred to in Clause 2.1.
- 1.5. The Services include the accounting and taxation services provided by the Supplier, including advice or recommendations, and as described in tax invoices from the Supplier to the Client, and includes any documentation that is created, produced, amended or varied as a result of the Engagement.
- 1.6. The Price is the amount invoiced for Services provided.
- 1.7. Indirect, Special or Consequential loss or damage includes i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.

### 2. GENERAL

- 2.1. The Engagement is constituted by these Terms and Conditions together with the Supplier's Letter of Engagement, Quote or other document as the case may be.
- 2.2. Any Engagement is deemed to be an Engagement incorporating these Terms and Conditions and may not be varied unless expressly agreed to by the Supplier in writing. In the event that an inconsistency exists and/or arises between these terms and the Engagement it is acknowledged between the parties that these Terms and Conditions will prevail.
- 2.3. No subsequent correspondence or document or discussion shall modify or otherwise vary these Terms and Conditions unless such variation is in writing and signed by the Supplier.
- 2.4. These Terms and Conditions are binding on the Client, his heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 2.5. In these Terms and Conditions, the singular shall include the plural, the masculine shall include feminine and neuter and words importing persons shall apply to corporations.
- 2.6. Where more than one Client completes this Agreement each shall be liable jointly and severally.
- 2.7. 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 and the offending provision shall be deemed as severed from these Terms and Conditions.
- 2.8. The Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent but the Supplier acknowledges that it remains at all times liable to the Client.
- 2.9. The failure by the Supplier to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.
- 2.10. The Client acknowledges that the Supplier may detail these Terms and Conditions on its website. In this event, the Terms and Conditions on the Supplier's website shall apply to any future dealings as between the parties and the Client is deemed to have notice of any such Terms and Conditions and/or amendments.

### 3. PRICE

- 3.1. At the Supplier's sole discretion the Price shall be either:
  - 3.1.1. As detailed on invoices provided by the Supplier to the Client in respect of Services provided; or
  - 3.1.2. The Supplier's quoted Price as for the Engagement (subject to clause 3.2).

- 3.2. The Supplier reserves the right to change the Price in the event that the Engagement commenced beyond thirty (30) days from the date of quote and notice will be provided in writing by the Supplier within a reasonable time.
- 3.3. All prices are based on taxes and statutory charges current at the time the Engagement commenced. Should these vary during the period from the date of the Engagement to the date of the invoice, the difference will become the responsibility of the Client and the Client will be invoiced for the extra charge by the Supplier

#### **4. PAYMENT**

- 4.1. The Supplier's tax invoices must be paid within seven (7) days from the date of issue without deduction or set-off.
- 4.2. Time for payment of the Supplier's tax invoices shall be of the essence.
- 4.3. The Client acknowledges and agrees that the Supplier shall be entitled to apply a Tax Refund or Credit issued by the Australian Tax Office in respect of the Client's tax affairs to amounts due and payable by the Client to the Supplier.

#### **5. LIEN**

- 5.1. If the Client fails to make payment of the Price to the Supplier within the terms for payment or at all:
  - 5.1.1. The Supplier shall hold a general lien over the Client's books, records, documents and other chattels ("the documentation") that have come into the possession of the Supplier for the purpose of providing the services to the Client;
  - 5.1.2. The Supplier shall be entitled to retain the documentation pursuant to the lien until such time as payment of any amount outstanding is made to the Supplier;
  - 5.1.3. The lien of the Supplier shall continue notwithstanding the commencement of proceedings, or judgment for the Price or other amount outstanding having been obtained;
  - 5.1.4. The Supplier shall be under no obligation to release the documentation to the Client if the Client is in default of payment except as may be required under any law or statute.

#### **6. PROVISION OF SERVICES**

- 6.1. The Supplier reserves their right to:
  - 6.1.1. Decline requests for any Services requested by the Client.
  - 6.1.2. Cancel or postpone appointments at their discretion, upon the provision of reasonable notice.
- 6.2. If the Client fails to attend any appointment, the Client shall, at the discretion of the Supplier, be liable for a \$33.00 No Show Fee.
- 6.3. Unless specified by the Supplier to the contrary in the Engagement, the Supplier does not warrant that it will be capable of providing the Services at specific times requested by the Client during the term of this Agreement.
- 6.4. Subject to otherwise complying with its obligations under this Agreement, the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of providing the Services and of satisfying the Client's expectations of those Services.
- 6.5. In the discharge of its duties, the Supplier shall comply with all reasonable directions of the Client as to the nature and scope of the Services provided.
- 6.6. Nothing in the above clause shall effect the Supplier's right to exercise its own judgment and to utilise its skills as it considers most appropriate in order to achieve compliance with the said resolutions, regulations and directions or otherwise with its obligations under this Agreement.
- 6.7. The Supplier may agree to provide, on request from the Client, additional Services not included or specifically excluded in the Quote or Letter of Engagement. In this event, the Supplier shall be entitled to make an additional charge and will provide details to the Client as soon as is practicable.

#### **7. GOODS AND SERVICES TAX**

- 7.1. GST refers to Goods and Services tax under the *Goods and Services Act 1999* ("GST Act") and terms used herein have the meanings contained within the *GST Act*.

7.2. It is agreed between the Client and the Supplier that the consideration for the Supplier expressed in this Agreement is exclusive of the Supplier's liability of GST.

7.2.1. On sale:

7.2.1.1. The Client will pay to the Supplier, in addition to the total purchase Price, the amount payable by the Supplier of GST on the taxable supply made by the Supplier under this Agreement;

7.2.1.2. The Supplier shall deliver to the Client a Tax Invoice for the supply in a form which complies with the GST Act and Regulations.

## 8. DISHONOUR OF CHEQUE

8.1. If any cheque issued by the Client or by any third party in payment of the Price is dishonoured:

8.1.1. The Supplier may refuse to supply any further Goods until satisfactory payment is received in full, including bank fees and charges;

8.1.2. The Supplier is entitled to treat the dishonour of the Client's cheque as a repudiation of this Agreement and to elect between terminating this Agreement or affirming this Agreement, and in each case claiming and recovering compensation for loss or damage suffered from the Client.

8.1.3. The Client may be liable for a dishonoured cheque fee of \$40.00.

## 9. DEFAULT

### Events of default

9.1. The Client shall be considered in default of the Agreement if:

9.1.1. The Client fails to pay the Price in accordance with Clause 3 and 4;

9.1.2. The Client fails to perform any of its obligations under the agreement;

9.1.3. The Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an a scheme of arrangement, administration, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them or makes an assignment for the benefit of its creditors;

9.1.4. The Client dies, becomes incapacitated or indicates (expressly or by conduct) that it is about to cease to carry on business;

9.1.5. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

9.1.6. Execution or other process issued on a judgment, decree or Order of a Court in favour of a creditor against the Client, or another party authorised to be sued as nominal Defendant on behalf of the Client, is returned wholly or partly unsatisfied, or the Client makes a statement from which it may be reasonably deduced that such an event has occurred;

9.2. Upon the happening of any of the events in Clause 9.1, any money then due by the Client to the Supplier shall become immediately due and payable.

### Client's liability on default

9.3. If the Supplier does not receive payment of the Price on or before the due date of the tax invoices issued by the Supplier or the Price becomes payable as a result of the operation of Clause 9.2 ("**the Default Date**"), the Supplier may, without prejudice to any other remedy it may have, forward the Client's outstanding account to a debt collection agency for further action. The Client acknowledges and agrees that:

9.3.1. After the Default Date, the outstanding balance shall include, but not limited to, all applicable fees and charges under this Agreement;

- 9.3.2. The Supplier may, in its discretion, calculate interest at the rate of two percentum (2%) higher than the cash rate target as set from time to time by the Reserve Bank of Australia for all monies due by the Client to the Supplier. Interest shall not be charged on monthly account keeping fees as set out in Clause 9.3.3.
- 9.3.3. Without prejudice to any other rights of the Supplier, the Client may be charged a monthly account keeping fee of \$25.00 on any payment in arrears and the Client agrees that the account keeping fee is a genuine pre-estimate of the actual loss and damage suffered by the Supplier as a result of the Client's late payment and shall be regarded as liquidated damages.
- 9.3.4. In the event of the Client being in default of the obligation to pay and the overdue account is then referred to a debt collection agency, or law firm for collection the commission payable and legal costs incurred on an indemnity basis shall be added to the amount outstanding and form part of the debt and in the event where the collection agency charges commission on a contingency basis the commission which would be charged if it achieved 100% recovery shall be added to the debt and the total shall be treated as a liquidated sum.

## **10. RISK AND LIABILITY**

- 10.1. The Client is responsible for providing appropriate and sufficient information to the Supplier to enable it to provide the services and the Client acknowledges that the Supplier will rely upon the accuracy, completeness and integrity of that information in the provision of the services.
- 10.2. The Client must ensure that the Supplier is made aware of special requirements pertaining to the Engagement.
- 10.3. The Client acknowledges that unless specified expressly in the Engagement, time shall not be of the essence in the Supplier's performance of its obligations under this agreement.
- 10.4. The Supplier shall be held liable for and the Client will release the Supplier from any loss of damage (including consequential loss or damage) arising from:
  - 10.4.1. The Client's provision of incomplete or inaccurate information;
  - 10.4.2. Services and/or information, documentation or specifications performed or provided by a third party;
  - 10.4.3. Any delay in the Supplier's performance of its obligations or delivery of services where that delay is attributable to the action or inaction of a third party;
  - 10.4.4. Acts of God including, but not limited to, fire, flood, war or other like occurrences.

### **Force majeure**

- 10.5. If the Supplier's ability to perform its obligations is adversely affected by any cause beyond the Supplier's control, the Supplier may terminate the agreement by giving the Client verbal or written notice.

## **11. ERRORS OR OMISSIONS**

- 11.1. The Supplier warrants that the services provided under this Agreement shall be provided and/or produced using reasonable skill and care and of and of a quality conforming to generally accepted industry standards and practices and in compliance with any Act and/or Regulation.
- 11.2. The Client shall notify the Supplier, within thirty (30) days of delivery of the Services (including the delivery of documentation connected with the Services), of any error, omission, defect and/or alleged failure to satisfy the terms of the Engagement or any description or quote.
- 11.3. Upon receiving notification, the Supplier shall be afforded a reasonable opportunity to inspect and review the Services. If the Supplier determines that it is liable for the defect, the Supplier shall be entitled to rectify the defective service by resupplying the Services to the Client.
- 11.4. In respect of all claims the Supplier shall not be liable to compensate the Client for any reasonable delay in the redelivery of the Services.
- 11.5. If the Client does not notify the Supplier of a defect in accordance with Clause 11.2, the Client shall be deemed to have accepted the Services and shall be liable to pay the Price.

- 11.6. To the extent permitted by law, damages for breaches of warranties implied by law are limited to the resupply of the services or damages which under no circumstances shall exceed the Price.
- 11.7. If the Client is in default of any payment to the Supplier after a tax invoice has been issued or payment is otherwise requested in writing, all warranties for the Services will be withdrawn and the Supplier shall under no circumstances be liable under the terms of Clause 11.

## **12. TERMINATION**

### **Termination by Supplier**

- 12.1. The Supplier may cancel any Engagement to which these Terms and Conditions apply by giving written notice to the Client. The Supplier shall not be liable for any loss or damage or consequential loss or damage whatever arising from such cancellation.
- 12.2. 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 the Client has committed an act of default under Clause 9.1 of the Agreement.

### **Termination by Client**

- 12.3. In the event that the Client terminates the Engagement, the Client shall be liable for the costs incurred by the Supplier up to the date of Termination

### **Limitation of damage**

- 12.4. The Client acknowledges that in the event of any breach of this Agreement/Order by the Supplier resulting in indirect, special or consequential loss, the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price.

## **13. SET-OFF**

- 13.1. The Client shall have no right of set-off in any suit, claim or proceeding brought by the Supplier against the Client for default in payment.
- 13.2. The Client acknowledges that the Supplier can produce this clause in bar of any proceeding for set-off.

## **14. INSURANCE**

- 14.1. The Supplier is not liable to provide any insurance cover in relation to the provision of Services. The Client is responsible to effect whatever insurance cover he requires at his own expense.

## **15. JURISDICTION**

- 15.1. This Agreement is deemed to be made in the State of Victoria and all disputes hereunder shall be determined by an appropriate Court in that State.

## **16. PRIVACY ACT 1988**

- 16.1. The Client and/or the Guarantor/s agrees;
- 21.1.1 For the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Supplier.
- 21.1.2 That the Supplier may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency.
- 21.1.3 The Client consent to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) *Privacy Act 1988*).

## **17. ENTIRE AGREEMENT**

- 17.1. The Engagement as described in Clause 2.1 constitutes the whole agreement between the parties.
- 17.2. This Agreement can only be amended in writing signed by each of the parties.

17.3. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by him or on his behalf that are in conflict with any clauses in this document in any way.

17.4. Nothing in these Terms and Conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia.

I/We understand and agree to be bound by the Terms and Conditions set out herein.

NAME: .....

POSITION HELD:.....

SIGNATURE: .....

DATE: ...../...../200...

NAME: .....

POSITION HELD:.....

SIGNATURE: .....

DATE: ...../...../200...

WITNESS NAME: .....

ADDRESS:.....

.....

SIGNATURE: .....

DATE: ...../...../200...



.....  
SIGNATURE: .....

**SIGNED SEALED AND DELIVERED BY:**

Guarantor 2:

Name: .....

Address: .....

.....

Contact Number (H) .....

Contact Number (M) .....

SIGNATURE: .....

**IN THE PRESENCE OF:**

Witness Name: .....

Address: .....

.....

SIGNATURE: .....

**SIGNED SEALED AND DELIVERED BY:**

Guarantor 3:

Name: .....

Address: .....

.....

Contact Number (H) .....

Contact Number (M) .....

SIGNATURE: .....

**IN THE PRESENCE OF:**

Witness Name: .....

Address: .....

.....

SIGNATURE: .....