

## GENERAL CONDITIONS

### TERMS AND CONDITIONS OF SALE AND SUPPLY

These general terms and conditions of sale and supply form part of the legal agreement under which Cobb Investments (WA) Pty Ltd (ACN 661 536 054) as trustee for the L & L Manenica Family Trust (ABN 12 438 610 273) trading as Home Perth (**Home Perth**) will supply goods and services to the Client, and applies to any works, services, goods, products or materials that Home Perth undertakes or supplies to Client.

#### 1. DEFINITIONS

Various terms are defined within these General Conditions using **bold** text. Other defined terms are set out in this clause 1. Underlined words are headings for convenience only.

**Agreement** has the meaning given in clause 2.1.

**Customer** means the company, individual, trust or entity purchasing Goods and/or Services from Home Perth, and includes Customer's Personnel according to the context.

**Deposit** means the amount of 50% of the Fees or such other amount specified in the Proposal and payable in accordance with clause 6.3.

**Fees** means the fees, charges and amounts stated in the tax invoice(s) issued by Home Perth in respect of Goods and/or Services supplied by Home Perth.

**General Conditions** means this document.

**Goods** means the goods, materials and items that Home Perth supplies to Customer, including items and materials in physical, digital or electronic format.

**Law** means Commonwealth, State, Territory, and local government legislation including regulations and by-laws.

**Non-Access Fee** means the amount of \$200 plus GST or such amount specified in the Proposal and payable in accordance with clause 5.4.

**Party** or **Parties** means Home Perth or Customer and each and both of them as the context requires.

**Personnel** means a Party's officers, employees, agents and contractors (except that a reference to Client's Personnel does not include Home Perth or its Personnel).

**Proposal** means the document issued by Home Perth in relation to Goods and/or Services to be supplied by Home Perth and the Fees payable to it.

**Services** means services that Home Perth supplies to Customer.

**Site** means the site in respect of which the Goods and/or Services are to be supplied, as specified in the Proposal.

**Supply Date** means the dates and times Goods and/or Services are to be supplied by Home Perth as stated in the Proposal or as otherwise agreed in writing with the Client.

#### 2. THE LEGAL AGREEMENT THAT APPLIES

2.1 The legal agreement between Client and Home Perth (the **Agreement**) is comprised of these General Conditions, the Proposal and any plans and specifications issued by Home Perth.

2.2 Those documents constitute the entire legal agreement between Client and Home Perth in relation to the Goods and/or Services. Those documents apply to the exclusion of all terms in the Client's documents, scope of works, terms and

conditions, purchase order or similar.

2.3 The Agreement can only be overridden by a written agreement of the Parties.

2.4 Unless otherwise stated in the Proposal, a Proposal is valid for 14 calendar days from and including the date of the Proposal.

2.5 Client is bound by the Agreement if it accepts the Proposal in any manner or requests Goods and/or Services be supplied to it or allows that to occur.

2.6 A Proposal may be revoked by Home Perth in writing before it has been accepted by the Client or deemed acceptance has occurred under clause 2.5. If Home Perth revokes the Proposal before it is accepted by the Client the Agreement is not binding on the parties.

#### 3. GOODS AND SERVICES TO BE PROVIDED

3.1 Home Perth agrees to provide the Goods and/or Services to Client on the basis as stated in the Proposal, including by the Supply Date, at the Site and for the duration as stated in the Proposal, in accordance with the Agreement.

3.2 Home Perth will determine the method of providing the Goods and/or Services in its discretion but in accordance with the Agreement.

3.3 Home Perth will supply all labour, materials and equipment required to supply the Goods and/or Services except as stated in the Proposal.

3.4 Home Perth will:

- (a) keep adequate records of work performed under the Agreement; and
- (b) provide to Client regular work progress and update reports from time to time.

3.5 If during the term of the Agreement, Home Perth considers or the Client notifies Home Perth that additional Goods and/or Services are required to be provided (**Additional Works**) Home Perth may notify the Client of the additional Fees applicable (**Additional Fees**).

3.6 If the Client is notified of the Additional Works and does not respond within 48 hours of being notified by Home Perth and continues to instruct Home Perth in respect of this Agreement, the Client is deemed to have accepted the terms of the Additional Works and the Additional Fees.

3.7 If within 48 hours of being notified by Home Perth, the Client notifies Home Perth to not provide the Additional Works, Home Perth is excluded from

any liability to the Client in connection with any loss or damage the Client suffers.

- 3.8 Any Additional Works carried out by Home Perth will be carried out in accordance these General Conditions and these General Conditions apply to the Additional Works.

#### 4. INFORMATION TO BE SUPPLIED BY AND ASSISTANCE FROM CLIENT

- 4.1 Client acknowledges that the Proposal is provided on the basis that Client has provided full and frank disclosure of the nature and extent of the goods and services it requires and has given all material information to Home Perth about the Site.
- 4.2 Client accepts full responsibility for the accuracy and completeness of all information and documents Client provides to Home Perth, including in relation to Client's requirements in relation to Goods and Services required by Client.
- 4.3 Client must give Home Perth such assistance as Home Perth reasonably requires to ensure the satisfactory supply of the Goods and/or Services, including providing timely information as required by Home Perth.
- 4.4 Client must obtain and maintain, at its own cost, all authorisations, licences, approvals, permits or consents necessary for supply to, or use of, the Goods and/or Services by Client.

#### 5. ACCESS TO SITE

- 5.1 Client must allow Home Perth and its Personnel to access the Site when reasonably required for the supply of the Goods and/or Services, subject to compliance with Client's reasonable site and security requirements.
- 5.2 Client must provide to Home Perth keys and access codes as needed to access the Site.
- 5.3 Client must allow Home Perth free use of all services and utilities and bins at the Site as reasonably required to provide the Goods and/or Services.
- 5.4 Client must pay a Non-Access Fee as if Home Perth attends the Site on the Supply Date but is unable to access the Site.

#### 6. FEES, INVOICING, PAYMENT AND GST

- 6.1 In these General Conditions
- (a) **GST** means goods and services tax levied pursuant to the GST Act and the expressions "supply" and "tax invoice" have the meanings given in the GST Act; and
- (b) **GST Act** means *A New Tax System (Goods & Services Tax) Act 1999 (Cth)*.
- 6.2 **Fees:** Unless otherwise stated in the Proposal or a tax invoice issued by Home Perth, the Fees exclude GST.
- 6.3 Client must pay the Deposit on acceptance of the

Proposal. The Deposit may be applied by Home Perth towards costs associated with preparatory works and procuring materials and goods involved in supplying the Goods and/or Services. Home Perth is not under any obligation to commence or continue work in relation to the supply of Goods and/or Services unless the Deposit has been received.

- 6.4 Fees estimated or quoted in a Proposal are subject to the information provided by the Client and the description of the Goods and Services to be supplied to the Client. Home Perth has the right to adjust the Fees in accordance with clause 2.6 including if the information provided is incorrect or if Client changes its requirements.
- 6.5 All Fees assume that Goods and/or Services are delivered between 8:30am and 5:00pm in Perth, West Australia on business days. Additional charges apply for supply outside of those hours.
- 6.6 Home Perth may grant or withdraw provision of credit to Client at any time.
- 6.7 **Third party costs:** Unless expressly stated in the Proposal or Home Perth's tax invoice, the Fees do not include third party costs incurred by Home Perth in providing the Goods and/or Services. These costs must be paid by Client in addition to the Fees and will be invoiced to Client by Home Perth. Client agrees that Home Perth is entitled to invoice these costs in advance if required by Home Perth.
- 6.8 **Taxes:** Client must pay all GST, taxes, levies, duties and other amounts imposed by any authority or government department in relation to Goods and/or Services (excluding income tax).
- 6.9 Home Perth will ensure that all tax invoices comply with the GST Act.
- 6.10 **Timing of invoices:** Home Perth will issue tax invoices to Client at times as stated in the Proposal, at the completion of the supply of Goods and/or Services or as otherwise agreed with the Client.
- 6.11 **Payment terms:** Home Perth prefers that its client pays tax invoices on the date the invoices are issued but must pay them in full within 14 days of the date of the invoice. Clients provided credit terms must pay Home Perth's tax invoices within the payment period stated on the tax invoice supplied to Client (or 14 days from date of invoice if no period is stated).
- 6.12 If any tax invoice issued by Home Perth to Client is overdue and unpaid, Home Perth is entitled to withhold supply of any Goods and/or Services until overdue amounts are paid in full.
- 6.13 Home Perth is entitled to charge compound interest in respect of any overdue amounts, calculated daily at 12% per annum, from the due

- date until the date of actual payment.
- 6.14 Client agrees to pay Home Perth's legal costs on a full indemnity basis if Client defaults under the Agreement and Home Perth requires legal assistance to enforce it.
- 7. DEFECTS**
- 7.1 Client must within 48 hours after completion of supply of Goods and/or Services notify Home Perth of any defects or unsatisfactory items. If the Client fails to notify Home Perth of any unsatisfactory Goods and/or Services in this time frame, it is deemed to have accepted the Goods and/or Services in full and to the extent permitted by law, waives any right to make a claim in respect of the Goods and/or Services.
- 7.2 Client must provide Home Perth a reasonable opportunity to inspect all alleged unsatisfactory or defective items soon as practicable following the issue of the notice to Home Perth.
- 7.3 If Home Perth acting reasonably and in good faith, determines that the Goods and/or Services are unsatisfactory, Home Perth's liability is limited in accordance with clause 8 provided that Home Perth is not liable:
- (a) to the extent that any damage is caused, directly or indirectly, by any act or omission on the part of the Client; and
  - (b) for any workmanship provided by a person who is not authorised by Home Perth.
- 7.4 If Client disputes any amount claimed by Home Perth to be payable, Client must pay all undisputed parts of the relevant invoice in accordance with clause 6.11.
- 8. HOME PERTH WARRANTIES**
- 8.1 Home Perth will provide the Goods and/or Services with care and skill and in a proper and professional manner in compliance with all Laws.
- 8.2 All Goods and Services supplied will be of acceptable quality and fit for their usual purpose.
- 8.3 Other than as expressly stated set out in these General Conditions, to the maximum extent permitted by Law no warranties or representations, whether express or implied, are made by Home Perth about the Goods and/or Services.
- 8.4 Goods and/or Services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with a service, Customer is entitled:
- (a) to cancel the Agreement with Home Perth; and
  - (b) to a refund for the unused portion, or to compensation for its reduced value.
- 8.5 Customer is also entitled to choose a refund or replacement for major failures with goods. If a

failure with the goods or a service does not amount to a major failure, Customer is entitled to have the failure rectified in a reasonable time. If this is not done, Customer is entitled to a refund for the goods and to cancel the Agreement and obtain a refund of any unused portion. Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

## **9. PASSING OF TITLE AND RISK IN GOODS**

- 9.1 **Physical Goods:** If Home Perth is responsible for supplying physical Goods to Client, supply of the Goods will be deemed to have taken place, and risk in the Goods will pass to Client, at the earliest of the following:
- (a) when a document has been signed by Client or its Personnel at the Site; or
  - (b) when the Goods are left in a reasonably secure state at the Site; or
  - (c) if Client is responsible for collecting the Goods from the supplier, when the Goods are placed in the possession or control of Client or their freight or delivery provider.
- 9.2 **Passing of title:** Title in all Goods supplied to Client does not pass to Client until and upon payment of the Fees has been received in full by Home Perth.
- 9.3 **Retrieval of Goods:** Client grants to Home Perth and its Personnel an irrevocable license to enter the Site at any reasonable time to retrieve and take possession of all physical Goods that have not been paid for in full.

## **10. INTELLECTUAL PROPERTY**

- 10.1 **Intellectual Property Rights** means all current and future, registered and unregistered rights in respect of all forms of intellectual and industrial property, including copyright, design rights, trademarks, logos, brands, trade secrets, know-how, patents, inventions and discoveries
- 10.2 **Ownership of IP:** Client agrees that Home Perth owns all Intellectual Property Rights in Goods and/or Services created by Home Perth or its Personnel.
- 10.3 Home Perth agrees that Client owns all Intellectual Property Rights in Client's proprietary information and materials that existed prior to entering into the Agreement.
- 10.4 Neither Party transfers any right, title or interest in its Intellectual Property Rights to the other Party.

## **11. INSURANCE**

- 11.1 Home Perth will maintain its own public liability insurance and workers compensation insurance for its employees.
- 11.2 Client must maintain all insurances necessary to

enable it to perform its obligations under the Agreement.

## 12. LIABILITY, INDEMNITY AND LIMITATION

12.1 In these General Conditions **Claim** means any claim, action, demand, suit, proceeding, cause of action, cost, damages, loss and liability whatsoever, including claims by a third party.

12.2 **Indemnity:** Subject to clause 13, each Party is liable for and must indemnify the other Party and their respective Personnel from and against any Claim arising out of or in connection with:

- (a) a negligent, reckless or wilful act or omission by the Party or its Personnel; or
- (b) a breach of Law or the Agreement by the Party or its Personnel,

12.3 Subject to clause 13, Client is liable for and must indemnify Home Perth and its Personnel from and against any liability and any Claim arising out of or in connection with an action brought or threatened against Home Perth by any third party which arises directly or indirectly from Client's purchase or use of Goods or Services, except where Home Perth is liable to indemnify Client under clause 12.2.

12.4 Home Perth is not liable in way whatsoever in relation to latent, design or physical defects at the Site or any building on it, whether or not known to the Client, including for loss or failure (partly or wholly) to supply Goods and/or Services due to such matters.

12.5 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the Parties.

12.6 **Limitation:** To the maximum extent permitted by Law, the aggregate liability of Home Perth for breach of the Agreement or in connection with the supply of any Goods and/or Services is limited to the Fees paid by Client.

12.7 A Party's liability under the Agreement will be reduced proportionally to the extent that any act or omission of the other Party or its Personnel have caused or contributed the liability.

## 13. CONSEQUENTIAL LOSS

13.1 Notwithstanding anything else in the Agreement, a Party will not be liable for any special or consequential loss suffered by the other Party or its Personnel, including any loss of revenue or profits, loss of contracts, loss of production, increased cost of capital or business interruption, whether or not the possibility or extent of the loss or damage was known or foreseeable, and whether arising from a claim under an indemnity, in contract, in tort (including negligence), under statute or otherwise.

## 14. PPSA AND SECURITY

14.1 **PPSA** means the *Personal Property Securities Act 2009* and all regulations pursuant to it.

14.2 **PPSR** means the register created by the PPSA.

14.3 **Security Interest** has the meaning given in the PPSA.

14.4 Client charges in favour of Home Perth all Goods provided by Home Perth to secure the obligations owed by Client to Home Perth under the Agreement.

14.5 Client agrees that these General Conditions constitute a security agreement under the PPSA and create a Security Interest in:

- (a) all Goods supplied by Home Perth to Client; and
- (b) the retention of title arrangement described in clause 9 constitutes a purchase money security interest (PMSI) in favour of Home Perth in respect of all Goods and any proceeds of sale of the Goods.

14.6 Client must not do or allow anything that may result in the PMSI ranking in priority behind any other Security Interest in respect of the Goods.

14.7 Client consents to Home Perth making a registration on the PPSR in any manner reasonably appropriate in relation to any Security Interest granted in or arising under the Agreement.

14.8 To the extent permitted by the PPSA, Client waives its right to receive notices where waiver of notice from Home Perth is permitted by the PPSA.

14.9 To the extent permitted by section 115(1) of the PPSA, the Parties agree that sections 95, 96, 126, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA do not apply to the Agreement.

14.10 The Client charges in favour of Home Perth all of its right, title and interest held now or in the future in the Site and grants to Home Perth a fixed charge over the Site and any other property owned by the Client. The Client authorises Home Perth to register a caveat on the Site or any other property owned by the Client.

## 15. ASSIGNMENT AND SUBCONTRACTING

15.1 Except as set out below, neither Party may assign, novate or subcontract any right, benefit, obligation or interest under the Agreement without the prior written approval of the other Party, which approval must not be withheld or delayed unreasonably.

15.2 Client agrees that Home Perth may subcontract provision of parts of the Goods/and or Services, provided always that Home Perth remains liable for all acts and omissions by its subcontractors as if those acts or omissions are those of Home Perth.

15.3 Client and Home Perth must ensure compliance with the Agreement by their respective Personnel.

## 16. TERMINATION

- 16.1 Either Party may terminate the Agreement by giving written notice to the other Party:
- (a) to the extent permitted by law, if the other party becomes bankrupt, insolvent or is under external administration;
  - (b) if the other Party acts in a way that is illegal or endangers the safety of any person; or
  - (c) the other Party breaches this Agreement and fails to remedy such breach within 14 days after receiving written notice of the breach from the first Party.
- 16.2 All Goods and/or Services provided by Home Perth in accordance with this Agreement prior to termination must be paid for in full by Client without set-off.
- 16.3 A Party's right to terminate is without prejudice to any other rights or remedies it may have in respect of a default under this Agreement.
- 16.4 Clauses 6, 8.4, 8.5, 9, 10, 12, 13, 16.2, 16.3 and 17 and 19 survive termination of the Agreement.

## 17. CONFIDENTIALITY

- 17.1 A Party must not disclose or use for an improper purpose any confidential information received from the other Party.
- 17.2 Each Party can disclose such confidential information if:
- (a) required by Law;
  - (b) the information is disclosed to professional advisers or bankers; or
  - (c) the information is disclosed to an officer or employee of the Party.

## 18. FORCE MAJEURE

- 18.1 If a Party (the **Restricted Party**) is prevented from performing obligations under the Agreement due to act of god, industrial action, boycott, flood, fire, war, delay or failure of carrier, adverse weather, civil unrest, epidemic, pandemic or government intervention, the Restricted Party may give notice of such cause to the other Party and the time for performance of the Restricted Party's obligations (other than to pay money) shall be extended by the period the cause continues. If the cause continues for more than 60 days either Party may terminate the Agreement.
- 18.2 Where a Party terminates the Agreement under clause 18.1, Home Perth is entitled to supply to Client any part of the Goods and/or Services that Home Perth is able to, and Home Perth is entitled to invoice Client for those Goods and/or Services.

## 19. GENERAL

- 19.1 Nothing in the Agreement shall be taken to constitute a relationship of partnership, employment or joint venture between the Parties.

- 19.2 Notice to either Party as required under these General Conditions may be given by either Party by prepaid post or emailing notice to the other Party. Notice by pre-paid post will be deemed given on the third business day following posting. Notices by email will be deemed given 3 hours after sending (provided a non-delivery notice is not generated or received), provided that if sent after 5:00pm on any day notice will be deemed given at 9:00am on the next business day.
- 19.3 These General Conditions are subject to the law of Western Australia and the Parties consent to the non-exclusive jurisdiction of the courts of Western Australia.
- 19.4 Each Party will bear its own costs in relation to the performance of the Agreement.
- 19.5 Home Perth will collect information from Client in accordance with its Privacy Policy, which can be found on its website.
- 19.6 A power, right or remedy may only be waived in writing signed by the Party to be bound by the waiver. The non-exercise of, or delay in exercising, any power, right or remedy is not a waiver.
- 19.7 If any provision of the Agreement is void, voidable, unenforceable or illegal it shall be read down to the extent necessary to make it valid or, if this is not possible, it will be severed from the Agreement without affecting the validity of the remainder.
- 19.8 In this Agreement the singular includes the plural and vice versa; where two or more entities are named as Customer, then the obligations on each bind them jointly and severally; "include" and derivatives thereof are not words of limitation; a reference to a person includes that person's legal personal representatives, successors and assigns.

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