

**TERMS AND CONDITIONS****1. Definitions**

**Agreement** means the terms and conditions contained herein this agreement, the Application Form and the Quote;

**Customer** means the applicant named on the Application Form;

**Goods** means any and all goods supplied by the Supplier to the Customer from time to time pursuant to the Quote, Tax Invoice or any variation thereof;

**Purchase Price** means the costs of the Services as at the date of this Agreement and stated on the Quote as varied from time to time by the Supplier;

**Supplier** means Alpha PMS Pty Ltd ACN 145575337;

**Quote** means the Supplier's quote provided to the Customer for the Services and/or Goods related to the work/supply;

**Services** means any goods or services supplied by the Supplier to the Customer from time to time that relate to any work or service contemplated by this Agreement and the Quote;

**Substantial Change** means any variation to Quote that may in any way effect the scope of Services and/or Goods to be provided as determined by the Supplier; and

**Tax Invoice** means the tax invoice supplied by the Supplier to the Customer.

**2. Acceptance of Terms and Conditions**

2.1. These terms and conditions and the Quote are deemed to be accepted by the Customer upon the Customer instructing the Supplier to supply the Services and/or Goods.

**3. Price**

3.1. The price payable for the Services and/or Goods is the Purchase Price.

3.2. Prices are subject to change from time to time by the Supplier with no notice being required to be given to the Customer.

3.3. Prices are current as at the date of the Quote and Purchase Price remains valid for a period of 30 days from the date that it is provided to the Customer.

**4. Terms of Payment**

4.1. All payments to the Supplier:

(a) must be made by either direct deposit into the Supplier's nominated bank account or credit card within 14 days of the date as noted on the Tax Invoice or as otherwise directed by the Supplier; or

(b) must be made in the manner as stated on the Tax Invoice.

4.2. The Supplier reserves the right at any time to withhold or cancel the supply of the Services and/or Goods any time, without notice, if the Customer fails to comply with the terms of this Agreement.

**5. Delivery of Services & Goods and Variation**

5.1. The Services and/or Goods that the Supplier is to supply are limited to the Services and/or Goods as noted on the Quote.

5.2. The Supplier may refuse to supply Services and/or Goods to the Customer in the event that monies owed to the Supplier by the Customer are outstanding.

5.3. At the Supplier's sole discretion, the costs of delivery of any Goods are in addition to the Purchase Price or for the Customer's account.

5.4. The delivery times made known to the Customer are estimates only and the Supplier will not be liable for later delivery or non-delivery of the Goods or Services.

5.5. The Customer must make all arrangements necessary to take delivery of the Goods or Services whenever they are tendered for delivery.

5.6. In the event that the Customer is unable to take delivery of the Goods or Services as arranged then the Supplier shall be entitled to charge a reasonable fee for re-delivery.

5.7. The Supplier may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in this Agreement.

5.8. The Customer must examine the Goods delivered at the time of delivery and sign the delivery docket to accept the Goods delivered.

5.9. The Supplier is not liable to the Customer for Goods that have been examined and accepted by the Customer or for shortages of Goods.

5.10. The Customer agrees that once the Goods have been delivered then the Customer is deemed to have examined the Goods and is satisfied.

5.11. Despite any negligence on the part of the Supplier, or its agents, the Supplier will not be liable for any loss, damage, delay, cost or expense occasioned to the Customer or any third parties arising from late or non-delivery or late installation of the Goods or Services caused by the delivery carrier, or its agents.

5.12. The Services and/or Goods that the Supplier will provide to the Customer are limited to those Services and/or Goods as contained in the Quote and any additional Services and/or Goods or variations thereof that may be required may incur an additional fee which shall be determined by the Supplier upon assessment.

5.13. The Customer must notify the Supplier of any Substantial Change and acknowledges that any Substantial Change may affect the scope of Services and/or Goods to be provided and may incur an additional fee.

5.14. The Supplier will, on becoming aware of any actual or potential delay in providing any Services and/or Goods, provide the Customer with notice as to the nature and cause of the delay and provide an amended timeframe for the Services and/or Goods to be supplied.

5.15. The Supplier is not liable to the Customer for any failure to perform or supply the Services and/or Goods, or delay for performing of supplying the Services and/or Goods.

5.16. The Customer further agrees to indemnify the Supplier for any additional cost incurred by the Supplier in the event that the Services and/or Goods to be provided fall outside the scope of work to be performed or supplied pursuant to the Quote.

**6. Defective Goods**

6.1. The Customer will, within seven (7) days of delivery of the Goods, notify the Supplier, in writing, of any defects.

6.2. Upon it notifying the Supplier of such defect, the Customer, within a reasonable time, will afford the Supplier an opportunity to inquire in regards to the defect.

6.3. Subsequent to the Supplier's inspection of the alleged defective Goods/ Services, the Supplier will notify the Customer in writing whether the Customer is entitled to reject the Goods as delivered. This does not constitute cancellation of the Agreement.

6.4. In the event that the Customer fails to comply with this clause, the Goods shall be deemed free from any defect or damage.

6.5. In the event that the Supplier agrees, in writing, that the Customer is entitled to reject the Goods provided, the Supplier's liability is limited to either replacing or rectifying the Goods or Services provided that the Customer has complied this clause.

6.6. For the purposes of clarity the Supplier:

(a) will not accept the return of Goods by the Customer and the Customer acknowledges that the Supplier is not required to accept the return of Goods; and

(b) has the sole discretion to accept return of defective Goods.

**7. Warranties and Indemnities**

7.1. The Customer warrants:

(a) that all information provided to the Supplier is accurate and acknowledges that the Supplier has placed reliance on the information provided and is not required to make any enquires to determine the validity of the information provided;

7.2. The Customer authorises the Supplier to:

(a) the extent permitted by law, to collect, retain and use any information about the Customer; and

(b) disclose any information obtained by any person for the purposes of delivering the Services and/or Goods.

7.3. The Customer indemnifies the Supplier against:

(a) any penalty or liability incurred by the Supplier for any breach by the Customer of this Agreement; and

(b) all actions, claims, demands, losses, damages, costs and expenses which the Supplier may sustain or incur or for which the Supplier may become liable whether during or after the term of this Agreement, by reason of any act or omission or negligence by the Supplier and its respective employees or any other authorised person.

7.4. The Supplier is not liable for any defect or damage caused by the Supplier providing or supplying the Services and/or Goods.

7.5. The Supplier is not liable to compensate the Customer for any losses incurred for failure or delay if such is due to fire, cyclone, earthquake, flood, tsunami, inclement weather, strike, labour dispute, war, government order, riot, revolution, pandemic, civil commotion or any other cause beyond its reasonable control.

**8. Risk**

8.1. All risk shall pass to the Customer upon receipt of the Goods by the delivery carrier or upon receipt of the Goods by the Customer, whichever is earlier.

8.2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods.

8.3. 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.

**9. Title**

9.1. Ownership of the Goods does not pass from the Supplier to the Customer until:

(a) full and complete payment of the Purchase Price has been received by the Supplier; and

(b) any other obligations under this Agreement have been fulfilled by the Customer.

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 and until then the Supplier's ownership or rights in respect of the Goods shall continue.

9.3. It is further agreed that:

(a) where practicable the Goods must be kept separate and identifiable until the Supplier has received full payment of the Purchase Price and all other obligations of the Customer are met;

(b) until such time as ownership of the Goods shall pass from the Supplier to the Customer the Supplier may give notice in writing to the Customer to return the Goods or any of them to the Supplier. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease;

(c) the Supplier shall have the right of stopping the Goods in transit whether or not delivery has been made;

(d) if the Customer fails to return the Goods to the Supplier then the Supplier or the Supplier's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods;

(e) the Customer is only a bailee of the Goods and until such time as the Supplier has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to the Supplier for the Goods, on trust for the Supplier;

(f) the Customer must not deal with the money of the Supplier in any way which may be adverse to the Supplier;

(g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest, including but not limited to a security interest, in the Goods while they remain the property of the Supplier;

(h) the Supplier can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and

(i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Supplier will be the owner of the end products.

9.4. The Customer hereby irrevocably grants to the Supplier the right, at its sole discretion, to remove or repossess any Goods from the Customer and sell or dispose of them, and the Supplier is not liable to the Customer or any person claiming through the Customer and the Supplier is entitled to retain the proceeds of any Goods sold and apply same towards the Customer's indebtedness to the Supplier. If the Customer commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this agreement, then the Supplier may without prejudice to any other remedies it may have, repossess any Goods delivered to the Customer on any account which has not been paid in accordance with the terms and conditions herein and commence proceedings to recover the balance of any monies owing the Supplier by the Customer.

**10. Liability**

10.1. The parties acknowledge that, under applicable State and Commonwealth law, certain conditions and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the Customer in relation to the provision of the Services and/or Goods which cannot be excluded, restricted or modified by the Agreement ("Non-excludable Rights").

10.2. The Supplier disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Customer, by statute, the common law, equity, trade, custom or usage or otherwise and all those

conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights. To the extent permitted by law, the liability of the Supplier for a breach of a Non-Excludable Right is limited, at the Supplier's option, to the supplying of the Services and/or Goods again or payment of the cost of having the Services and/or Goods supplied again.

10.3. The Supplier's liability for any claim in relation to this Agreement or the supply or performance of the Services and/or Goods (whether under statute, contract, tort, negligence or otherwise) will be limited to the amount of the fee paid by the Customer to the Supplier.

10.4. The Supplier is not liable to the Customer for any claim of any kind arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any direct or consequential loss (including but not limited to any loss of actual or anticipated profits, revenue, savings, production, business, opportunity, access to markets, goodwill, reputation, publicity, or use) of any remote abnormal or unforeseeable loss or any similar loss whether or not in the reasonable contemplation of the parties, as a result of or in connection with the provision of the supply or performance of the Services and/or Goods.

10.5. The Customer agrees that they waive any claim, future or present, that they may have or may arise against the Supplier that is in any way connected directly or indirectly with the supply of the Services and/or Goods.

10.6. Notwithstanding any other provision of this Agreement, the Supplier is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Customer for:

(a) any increased costs or expenses;

(b) any loss of profit, revenue, business, contracts or anticipated savings;

(c) any loss or expense resulting from a claim by a third party; or

(d) any special, indirect or consequential loss or damage of any nature whatsoever caused by the Supplier's failure to complete or delay in supply of the Services and/or Goods.

10.7. The Customer further indemnifies the Supplier from any costs or charges that in anyway either directly or indirectly relate to the supply of the Services and/or Goods and further for any services or goods that the Supplier performs or supplies.

**11. Default**

11.1. If the Customer:

(a) makes default in any payment;

(b) breaches any terms contained herein this Agreement;

(c) commits any act of bankruptcy or goes into bankruptcy;

(d) is insolvent, or is likely to become insolvent, within the meaning of the Corporations Act 2001 (Cth);

(e) has an administrator, liquidator or provisional liquidator, receiver and manager, or controller appointed over the Customer;

(f) is subject to a winding up application under the Corporations Act 2001 (Cth); or

(g) has a judgment awarded against it by any court or tribunal;

(h) then Supplier may terminate this Agreement and all Tax Invoices and other monies owing to the Supplier become immediately due and payable.

11.2. In the event of default under this clause, the Supplier may, at its discretion:

(a) elect to apply an interest charge against the Customer's account at the rate of 5% of the outstanding monies per month or part thereof;

(b) charge an administration fee each month, or portion thereof, that an amount owing by the Customer is overdue;

(c) commence proceedings against the Customer or enforce any personal guarantee;

(d) call and act upon any security interest that the Supplier is entitled to enforce;

(e) recover against the Customer all monies that are owed to the Supplier including incidental costs that are incurred in relation to the Customer's default;

(f) list the default in payment with the appropriate credit reporting agency; and

(g) perform any other action that the Supplier deems appropriate to enforce this Agreement and recovery monies owed.

**12. Termination/Cancellation**

12.1. If the Customer wishes to cancel the supply of Services and/or Goods then they must give 14 days' notice in writing to the Supplier notifying them of termination.

12.2. In the event that the Customer wishes to terminate the agreement between the parties whereby the Supplier is providing Services and/or Goods for a fixed period of time, then the Customer must pay to the Supplier an amount equal to 75% of the remaining monetary obligation owed under the agreement to the Supplier in addition to payment for the Services and/or Goods already performed and/or supplied or part thereof.

12.3. The Supplier may terminate this Agreement at any time if the Customer breaches the terms and conditions contained herein without notice to the Customer.

**13. General**

13.1. Nothing in this Agreement shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by the law (including the Competition and Consumer Act 2010) and which by law cannot be excluded, restricted or modified.

13.2. These terms and conditions supersede all terms and conditions previously issued by the Supplier.

13.3. The parties acknowledge that this Agreement is intended as a contract for the supply of Services and/or Goods and not any other relationship and, in particular, not the relationship of employer and employee, principal and agent or the relationship of partnership.

13.4. This Agreement is personal to the Customer and must not be assigned without the prior written consent of the Supplier. Such consent must be reasonably given by the Supplier and must not be unreasonable withheld.

13.5. If any provision, or the application of any provision, of this Agreement is prohibited, invalid, void, illegal or unenforceable in any jurisdiction:

(a) this will not affect the validity and enforceability of the provision or part in other jurisdictions;

(b) the provision or part will only be ineffective to the extent of the prohibition, invalidity, voidness or illegality; and

(c) the provision or part will be severed and will not affect the validity or enforceability of the remaining provisions or parts of this Agreement.

13.6. Any failure, delay, forbearance or indulgence by a party in an exercise, or partial exercise, of a right arising under this Agreement will not result in a waiver of that right or prejudice or restrict the rights of the party.

13.7. Each party acknowledges that the party has received legal advice or has had the opportunity of obtaining legal advice in relation to this Agreement.

13.8. This Agreement will be governed by the laws of Queensland, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of Queensland.