

# TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES BY THE SERVICES PROVIDER

The Services Provider agrees to render the Services and the Customer agrees pay the Services Provider all Outstanding Amounts, on the terms of this Agreement.

## 1. Definitions and interpretation

### 1.1 Definitions.

In this Agreement:

- (a) **Amended Cost Estimate** means a Cost Estimate that is amended by the Services Provider in accordance with clause 4.4.
- (b) **Business Day** means a day which is not a Saturday, Sunday, public holiday or bank holiday in Victoria.
- (c) **Cost Estimate** means a cost estimate issued by the Services Provider to the Customer in accordance with clause 4.
- (d) **Customer** means the Customer that is specified in the Cost Estimate or (if applicable) in any Amended Cost Estimate, to whom the Services Provider renders the Services.
- (e) **Commencement Date** means the date that is agreed to be the Commencement Date between the Services Provider and the Customer or the date that the Services Provider commences rendering Services to the Customer, whichever is earlier.
- (f) **Completion Date** means the date that is agreed to be the Completion Date between the Customer and the Services Provider.
- (g) **Controller** has the meaning given in the Corporations Act.
- (h) **Corporations Act** means the *Corporations Act 2001* (Cth).
- (i) **Expenses and Disbursements** means the Expenses and Disbursements that are referred to in the Cost Estimate or (if applicable) in any Amended Cost Estimate.
- (j) **Fees** means the fees that are referred to in the Cost Estimate or (if applicable) in any Amended Cost Estimate.
- (k) **GST** means the tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related tax imposition Acts of the Commonwealth of Australia.
- (l) **Insolvent** means, in relation to any party:
  - (i) if a corporation:

- (A) it is unable to pay its debts when they fall due;
  - (B) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
  - (C) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property;
  - (D) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any Law or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Services Provider);
  - (E) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within five (5) Business Days), a resolution is passed, proposal put forward, or any other action taken, in each case relating to that person, which is preparatory to or could result in any of the events described in sub-clauses (i) (A) to (D) above;
  - (F) it is taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
  - (G) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act;
  - (H) it takes any steps or omits to take any steps or ASIC takes steps that result in or will result in the corporation being 'deregistered' as that term is defined in the Corporations Act;
  - (I) any expropriation, attachment, sequestration, distress or execution affects any assets of the corporation; or
  - (J) anything analogous or having a substantially similar effect to any of the events described above happens relating to that corporation under the Law of any applicable jurisdiction; or
- (ii) if a natural person:
- (A) anything analogous or having a substantially similar effect to any of the events described above happens relating to that corporation under the law of any applicable jurisdiction;
  - (B) the person authorises a registered trustee or lawyer to call a meeting of their creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of their creditors;

- (C) a person holding a Security Interest in assets of the person enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets;
  - (D) the person commits an act of bankruptcy; or
  - (E) anything analogous or having a substantially similar effect to any of the events described above happens relating to that person under the Law of any applicable jurisdiction.
- (m) **Interest** means any right or interest of any nature, including any and all rights, benefits and privileges which the holder of such a right or interest may be entitled.
- (n) **Law** means:
  - (i) the applicable law; and
  - (ii) any law or legal requirement, including at common law, in equity, under any statute, rule, regulation, code of practice, national standard, proclamation, order in council, ordinance, by-law, interim development order, planning scheme or environmental planning scheme whether commonwealth, state, territorial or local.
- (o) **Losses** includes but is not limited to, costs (including party to party legal costs and the Services Provider's legal costs on an indemnity basis), expenses, lost profits, award of damages, personal injury and property damage.
- (p) **Outstanding Amount** means the following amounts owing to the Services Provider by the Customer in respect of the Services:
  - (i) all Fees;
  - (ii) all Expenses and Disbursements;
  - (iii) all other amounts of any other nature that are payable to the Services Provider pursuant to, or out of and in connection with, this Agreement.
- (q) **Payment** means payment by the Customer to the Services Provider of all Outstanding Amounts owing to the Services Provider in accordance with this Agreement.
- (r) **Security Interest** means any:
  - (i) security interest under section 12 (1) or (2) of the *Personal Property and Securities Act 2009* (Cth) or security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power of title retention arrangement, right of sell-off, assignment of income,

garnishee order or monetary claim and flawed deposit arrangements);  
and

- (ii) thing or preferential interest or arrangement of any kind giving a person priority or preference over claims of other persons or creditors with respect to any property or asset.
- (s) **Services** means any services which the Services Provider agrees to render to the Customer.
- (t) **Services Provider** means S. M. Pames Pty Ltd (ACN 113 568 684) t/as Lilydale Service Group of 15 - 17 John Street, Lilydale VICTORIA 3140.
- (u) **Services Request** means a request by the Customer that the Services Provider render the Services to it, made in accordance with clause 5.
- (v) **Tax Invoice** means a tax invoice rendered by the Services Provider to the Customer for any Outstanding Amount in respect of the Services.
- (w) **Up Front Payment** has the meaning given to this term in clause 6.1.
- (x) **Website** means <https://lilydaleservicegroup.com.au/>, or such other website that is current for the Services Provider from time to time.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect interpretation;
- (b) words importing the singular include the plural and vice versa;
- (c) a word importing a gender includes the other gender;
- (d) a reference to a person includes an individual, a partnership, a body corporate, a joint venture, an association (whether incorporated or not), a government and a government authority or agency;
- (e) a reference to a party or a person includes the party's or the person's executors, legal personal representatives, successors, transferees and assigns;
- (f) a reference to a section, schedule, part, clause or party is a reference to a part, clause of, or a party to, this Agreement;
- (g) A reference to this Agreement includes the recitals and any schedules, annexures, exhibits or attachments to this Agreement;
- (h) A reference to legislation includes any statutory modification or replacement and any subordinate or delegated legislation issued under such legislation;

- (i) If the day on which anything is to be done is not a Business Day it shall be done on the next Business Day;
- (j) A reference to "\$" or dollars means Australian dollars and a reference to payment means payment in Australian dollars;

## **2. Services**

- 2.1 The Customer engages the Services Provider to render the Services to it.
- 2.2 The Services Provider must render the Services to the Customer in accordance with the terms of this Agreement.
- 2.3 The Services Provider must perform the Services with a high standard of care and diligence, and in accordance with all applicable Laws.

## **3. Payment of the Outstanding Amounts**

- 3.1 The Services Provider will render a Tax Invoice to the Customer in relation to all Services rendered by the Services Provider.
- 3.2 The Customer must make Payment of all Outstanding Amounts owing to the Services Provider upon the Services Provider completing the Services, and prior to the Customer collecting from the Services Provider their vehicle/s in respect of which the Services have been rendered.
- 3.3 The Services Provider will exercise a retaining lien over the Customer's vehicle/s in respect of which the Services have been rendered until the Customer pays all Outstanding Amounts that are owing to the Services Provider in full.
- 3.4 Unless otherwise stated, all Outstanding Amounts do not include an amount for GST. If a supply by the Services Provider to the Customer is subject to GST, the Customer must pay the applicable GST as a separate amount.
- 3.5 Until the Customer pays the Services Provider any Outstanding Amount in full the Services Provider shall be entitled to maintain an action against the Customer for the full Outstanding Amount at its absolute discretion.
- 3.6 The Customer acknowledges that the Services Provider's entitlement to Payment of all Outstanding Amounts is not conditional upon the completion or success of the Services rendered.

## **4. Cost Estimate**

- 4.1 The Services Provider will provide the Customer with a Cost Estimate before rendering the Services. The Customer acknowledges and agrees that the Cost Estimate is an estimate of the costs to be charged by the Services Provider for rendering the Services, and not a quote.
- 4.2 Unless previously withdrawn, any Cost Estimate issued by the Services Provider is valid for the period stated in them or where no period is so stated, for thirty (30) days from the date of issue.
- 4.3 The Services Provider reserves the right to issue an Amended Cost Estimate to the Customer at any time before it commences rendering the Services to the Customer, in the event that the changes are required as a result of:
- (a) any change to the scope of the Services to be rendered to the Customer;
  - (b) there is a rise or fall in the cost of any parts and/or materials to be used in the course of rendering the Services;
  - (c) there is a rise or fall of any other nature in the cost of rendering the Services; and/or
  - (d) any fluctuation in the rate of exchange between any currency and the Australian Dollar if such foreign currency is used in the process of determining the Cost Estimate.
- 4.4 In the event that the Services Provider amends a Cost Estimate pursuant to clause 4.3, the Services Provider will notify the Customer of the Amended Cost Estimate as soon as practicable, at which point the amended Cost Estimate will be the Cost Estimate in respect of the Services.
- 4.5 Prices in the Cost Estimate refer to the entirety of the Services to be rendered to the Customer by the Services Provider, and are subject to change by the Services Provider if only part of the Services in a Cost Estimate are later sought by the Customer.
- 4.6 An indication of the time frame for the rendering of the Services in a Cost Estimate is an estimate only, and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding upon the Services Provider.

## **5. Services Request**

- 5.1 Following the provision of a Cost Estimate by the Services Provider, the Customer may make a Services Request to the Services Provider.

- 5.2 The Services Provider reserves the right to refuse a Services Request within seven (7) days of receipt of the Services Request, for any reason.
- 5.3 Every Services Request must:
- (a) be submitted in writing by the Customer;
  - (b) be made by way of the Customer (or an authorised representative of the Customer in the event that the Customer is a corporation) signing the required place on the Cost Estimate to signify that the Customer has accepted the Cost Estimate;
  - (c) specify the date on which the Customer requires the Services Provider to render the Services.
- 5.4 Placement of a Services Request by the Customer signifies acceptance by the Customer of the Cost Estimate and this Agreement.
- 5.5 The Services Provider may in its absolute discretion refuse to render the Services where:
- (a) any relevant parts and/or materials are unavailable for any reason whatsoever;
  - (b) credit limits cannot be agreed upon or have been exceeded; or
  - (c) payment for any Services previously rendered by the Services Provider to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Services Provider, associated with the Customer under the same or another Agreement, has not been received by the Services Provider.
- 5.6 The Customer may not cancel a Services Request without the prior written consent of the Services Provider. Where a Services Request is cancelled, the Customer indemnifies the Services Provider against any Losses incurred by the Services Provider as a result of the cancellation.

## **6. Up front payment by the Customer**

- 6.1 In cases where the estimated cost of the Services to be rendered by the Services Provider is \$2,000 (two thousand dollars) or more, before the Services Provider commences rendering the Services to the Customer, the Customer must pay the Services Provider 50% of the amount of the Cost Estimate or (if applicable) of any Amended Cost Estimate up front (hereinafter referred to as **Up Front Payment**).
- 6.2 The Services Provider reserves the right to not commence rendering the Services to the Customer until it has received the Up Front Payment in full in cleared funds.

## **7. Tax Invoices and suspension of Services**

- 7.1 The Services Provider will submit a Tax Invoice for any Outstanding Amount to the Customer upon the Services Provider completing the Services, and prior to the Customer collecting from the Services Provider their vehicle/s in respect of which the Services have been rendered.
- 7.2 The Services Provider will exercise a retaining lien over the Customer's vehicle/s in respect of which the Services have been rendered until the Customer pays all Outstanding Amounts that are owing to the Services Provider in full.

## **8. Warranties, indemnity and insurance**

- 8.1 The Services Provider warrants that:
- (a) it will perform the Services with a high standard of care and diligence and in accordance with all applicable Laws;
  - (b) it has the necessary skills, experience, qualifications, resources, capacity and know-how to supply the Services in accordance with this Agreement;
  - (c) in undertaking the obligations under this Agreement it will not be in breach of any obligation owed to any other person.
- 8.2 The Services Provider must during the term of this Agreement at its cost take out and maintain all necessary or prudent insurances in relation to the Services.

## **9. Consumer Guarantees**

- 9.1 Except as provided in this Agreement, all express and implied warranties under statute or general law as to merchantability, description, quality, suitability or fitness of the Services for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded to the fullest extent permitted by the applicable Law.
- 9.2 All other conditions and warranties, statutory or otherwise and whether express or implied, are hereby excluded to the fullest extent permitted by the applicable Law, and no guarantee, other than that expressly herein contained and the statutory guarantee that cannot be excluded or limited under the applicable Law, applies to the Services to which the guarantee relates, or any accessory or part thereof.
- 9.3 In respect of the Services, the Services Provider's liability for a breach of or failure to comply with a guarantee under the Australian Consumer Law for the supply of services is expressly limited to:



- (a) the supplying of the Services again; or
- (b) the payment of the cost of having the Services supplied again.

## **10. Indemnity**

10.1 To the extent permissible by Law, the Customer will indemnify the Services Provider against any unauthorised express or implied warranty or representation under statute or general law as to merchantability, description, quality, suitability or fitness of the Services for any purpose or as to design, assembly, installation, materials or workmanship or otherwise made by any agent, employee or representative of the Customer to a third party. For the avoidance of doubt, a warranty or representation will be unauthorised unless the warranty or representation has previously been made by the Services Provider or authorised by it.

## **11. Responsibilities of the Customer**

11.1 The Customer:

- (a) must work co-operatively with the Services Provider during the course of the Services Provider rendering the Services;
- (b) must provide the Services Provider with access to and/or copies of all books and records which the Services Provider reasonably requires in order to be able to render the Services;
- (c) must make decisions and provide all information and instructions required by the Services Provider as soon as practicable following a request during the course of the Services Provider rendering the Services, in order to ensure efficient and satisfactory progress in respect of delivery of the Services; and
- (d) permits the Services Provider to take photographs, videos or other media of the Services rendered by it at its absolute discretion, and to use those photographs, videos or other media at its absolute discretion (including, but not limited to, for marketing purposes).

## **12. Term and termination**

12.1 This Agreement commences on the Commencement Date and continues in force:

- (a) until the Completion Date;
- (b) where the Services Provider has not rendered all Services by the Completion Date, until all Services have been rendered; or
- (c) such further date that is agreed by the Services Provider and the Customer in

writing.

- 12.2 A party may terminate this Agreement immediately by giving written notice to the other party if at any time:
- (a) a party (**the Breaching Party**) commits a breach of any provision of this Agreement (other than a minor breach that causes no material harm) and, where the breach is capable of remedy, fails to remedy the breach within seven (7) days of receiving written notice to do so from the other party (**the Innocent Party**); or
  - (b) a party becomes Insolvent, enters into liquidation or receivership, becomes subject to any form of external administration, makes a composition or arrangement with its creditors generally, or takes advantage of any statute for the relief of insolvent debtors.
- 12.3 In the event that the Customer terminates this Agreement:
- (a) the Customer must pay to the Services Provider all amounts accrued or due pursuant to this Agreement but unpaid as at the date of termination; and
  - (b) the Customer will forfeit any amounts already paid to the Services Provider on account of amounts owing pursuant to this Agreement.

### 13. Liability

- 13.1 Nothing in this Agreement shall limit or exclude the liability of the Services Provider for any liability which cannot be limited or excluded by the applicable Law.
- 13.2 Subject to sub-clause 13.1, the Services Provider shall not in any circumstances have any liability to the Customer for any of the following types of loss or damage arising under or in relation to this Agreement:
- (a) any loss of profits, business, contracts, anticipated savings, goodwill, or revenue or any wasted expenditure (regardless of whether any of these types of loss or damage are direct, indirect or consequential); or
  - (b) any indirect or consequential loss or damage whatsoever.
- 13.3 Subject to clauses 13.1 and 13.2, the total liability of the Services Provider under or in connection with this Agreement whether in contract, tort (including negligence) or otherwise, shall be limited in aggregate for all claims to the amount equalling the sum paid or payable as consideration for the provision of the Services.
- 13.4 Subject to clause 13.1, the Services Provider shall not be liable for any claim under this Agreement unless the claim has been made by the Customer to the Services

Provider within 1 (one) month of the date on which such claim became known to the Customer.

#### 14. Force majeure

- 14.1 Each party shall be excused from liability for the failure or delay in performance of any obligation under this Agreement by reason of any event beyond such party's reasonable control (**force majeure**), including but not limited to, any Acts of God, fire, flood, explosion, earthquake, other natural forces, pandemic, epidemic, lockdown imposed as a result of any pandemic and/or epidemic, government restrictions imposed as a result of any pandemic and/or epidemic, war, civil unrest, strike or labour disturbance, provided that the party has not caused such event(s) to occur.
- 14.2 The excuse from liability that is referred to in clause 14.1 shall be effective only to the extent and duration of the force majeure event(s) causing the failure or delay in performance.
- 14.3 Notice of a party's failure or delay in performance due to force majeure must be given to the other party within five (5) calendar days after its occurrence. All Completion Dates under this Agreement that have been affected by force majeure shall be suspended for the duration of such force majeure.
- 14.4 In the event that a force majeure persists for thirty (30) days or more, either party may terminate this Agreement upon written notice to the other party.

#### 15. Dispute resolution

- 15.1 If a dispute arises between the parties under or in connection with this Agreement, the parties must negotiate in good faith for the purpose of attempting to resolve the dispute for the period of fourteen (14) days from the date of one party (**Aggrieved Party**) giving the other party (**Other Party**) written notice of the dispute (**Notice of Dispute**).
- 15.2 If the parties are unable to resolve the dispute within fourteen (14) days of the Aggrieved Party giving a Notice of Dispute to the Other Party, then either party may by notice in writing advise the other party that it seeks to have the dispute resolved by mediation (**Mediation Notice**).
- 15.3 Within twenty one (21) days of one party giving a Mediation Notice to the other party, the parties may refer the matter to a mutually agreed mediator. In the event that an agreement cannot be reached on an appropriate mediator, any party may refer the dispute to a mediator appointed by the Law Institute of Victoria.

- 15.4 Mediation must occur within thirty (30) days of the appointment of the mediator and the costs of the mediation are to be borne equally between the parties.
- 15.5 In the event that the dispute is not resolved at mediation, either party may take steps to resolve the dispute by way of litigation.
- 15.6 For the avoidance of doubt, nothing contained in this clause 15 shall deny a party the right to seek injunctive relief from an appropriate Court where failure to obtain such relief would cause irreparable damage to the party concerned.

## **16. General**

### **16.1 Entire agreement**

- (a) Subject to sub-clause (b), this Agreement contains the entire agreement between the parties as to its subject matter and may only be amended in writing signed by all parties.
- (b) The Services Provider may vary the terms of this Agreement from time to time in its absolute discretion without notice to the Customer by posting amended Terms and Conditions on the Website.

### **16.2 Application and priority**

- (a) This Agreement applies to all transactions between the Customer and the Services Provider relating to the provision of Goods and/or Services. Without limiting the generality of this clause, this includes all quotations, contracts and variations.
- (b) This Agreement takes precedence over terms of trade contained in any document of the Customer or elsewhere.

### **16.3 Notices**

In the case of the Services Provider, notices must be given to the address that is specified in the definition of Services Provider, or as otherwise notified by the Services Provider in writing.

In the case of the Customer, notices must be given to:

- (a) the last address which the Customer has advised to the Services Provider; or
- (b) alternatively, to the address of the Customer that is specified in any written Agreement between the Services Provider and the Customer; or
- (c) alternatively, as otherwise notified by the Customer to the Services Provider in

writing.

Notices must be delivered in person or sent by fax or prepaid post (airmail if international). Notices will be deemed to have been received:

- (a) if delivered in person, on the date of delivery;
- (b) if sent by prepaid post to or from a place within Australia, three (3) Business Days after posting; or
- (c) if sent by prepaid post to or from a place outside Australia, seven (7) Business Days after posting.

#### **16.4 No assignment**

The Customer must not assign any of its rights or obligations under this Agreement without the Services Provider's party's prior written consent.

#### **16.5 No waiver**

No delay or indulgence by the Services Provider in enforcing this Agreement will prejudice or restrict the rights of that party, nor will a waiver of those rights operate as a waiver of a subsequent breach.

#### **16.6 No disadvantage to party preparing section**

No part of this Agreement is to be construed to the disadvantage of a party because that party was responsible for its preparation.

#### **16.7 No relationship**

Nothing in this Agreement may be construed as creating a relationship of partnership, joint venture, employment, principal and agent or trustee and beneficiary.

#### **16.8 Parties must do all things and sign all documents**

A party, at the request of another party, must do all things and sign all documents necessary to give effect to this Agreement.

#### **16.9 Severability**

If any provision of this Agreement is or becomes invalid or unenforceable then, if the provision can be read down to make it valid and enforceable without materially changing its effect, it must be read down, and otherwise the offending provision must be severed and the remaining provisions will operate as if the provision had not been included.

#### **16.10 Jurisdiction**

This Agreement is governed by the laws of Victoria, Australia, and the parties submit to the non-exclusive jurisdiction of the courts of that state.

**16.11 Authority of parties**

Each signatory to the Cost Estimate and/or (if applicable) in any Amended Cost Estimate warrants that he or she has authority to bind the party that he or she is stated to represent.

**16.12 Counterparts**

The Cost Estimate and/or (if applicable) in any Amended Cost Estimate may be executed in any number of counterparts all of which taken together will constitute one agreement.