

# Terms & Conditions

The parties enter into a contract on the following provisions:

## 1. Definitions

“**Agreement**” consists of these terms and conditions, the Quote for Services and any other material which effects a variation or amendment to the agreement between the parties.

“**Business Day**” means any day that MFM is open for business except any public holiday in Victoria and in any other place where MFM is to do anything under this Agreement.

“**Charges**” means the amount quoted by MFM in the Quote for Services.

“**CPI**” means the consumer price index published by the Australian Government Statistician under the heading All Groups, Melbourne.

“**Equipment**” means any items that MFM does not sell to You but leaves in Your custody or control.

“**Force Majeure**” means acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of electricity or telephone service.

“**Goods**” mean any good, hardware, material, supply, equipment or other item specified in the Quote for Services.

“**GST**” means the tax imposed by the provisions of *A New Tax System (Goods and Services Tax) Act 1999* and any substantially similar law in force at any time during the Term.

“**Liabilities**” includes damages, claims, losses, liabilities, costs and expenses of any kind.

“**MFM**” means Enzel Pty Ltd T/A Melbourne Facilities Management ABN 33 108 531 808

“**Month**” means calendar month.

“**Notice**” means any notice, request, claim, demand or other written communication given under this Agreement.

“**Party**” means a party to this Agreement.

“**Premises**” means the premises as described in the Quote for Services where a Service is to be provided.

“**Quote for Services**” means each individual:

1. quote for services issued by MFM in respect of any Supply or Service MFM is to provide under this Agreement; and
2. proposal for services issued by MFM to the Client provided that the Client has:
  - a. signed and returned the proposal for services to MFM; and
  - b. clearly indicated its election between any alternatives set out in the proposal for services.

“**Records**” means any document, record or media the subject of this Agreement.

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“**Service**” includes any Good or Service or Good and Service specified in the Quote for Services to be performed or procured by MFM under this Agreement.

“**Working Hours**” means between 8:30am to 5:00pm on each Business Day.

“**You**” means the party to which or to whom the Quote for Services is addressed.

## 2. Agreement

- 2.1. If there is any conflict or inconsistency between the documents constituting the Agreement, unless otherwise provided, the documents will rank in the following order of priority, with the earlier document ranked ahead of any subsequent document:
  - 2.1.1. any material which effects a variation or amendment to the Agreement;
  - 2.1.2. the Quote for Services; and
  - 2.1.3. these terms and conditions.
- 2.2. Should any part of the Agreement be held in law to be invalid, that part may be severed from the Agreement and the remainder of the Agreement will have full force and effect.
- 2.3. No amendment or variation of the Agreement is valid or binding on a Party unless written confirmation of that amendment or variation is provided to the other Party.
- 2.4. In the event that MFM procures a third party to carry out any Service or provide any Good, You agree that You commission MFM as your agent to procure the carrying out of that Service or the provision of that Good and the relationship between the Parties becomes one of Principal and Agent in respect of the provision by MFM of that Service.
- 2.5. The Quote for Services is open for acceptance by You for 30 days from the date MFM issues it.

## 3. Term

- 3.1. This Agreement commences on the date MFM receives Your acceptance of the Quote for Services and remains in force, unless terminated earlier in accordance with the Agreement, until the completion of all obligations under the Agreement.
- 3.2. There is no right for any Party to terminate this Agreement for convenience and You agree that if You purport to do so and MFM agrees to accept that termination, You must pay to MFM a sum equal to 75% of the money that would have been payable by You under this Agreement had the Agreement continued without incident and all Services and Supplies had been satisfactorily made by MFM and You agree that that sum is a genuine pre-estimate of the likely loss and damage MFM would suffer as a result of Your termination of this Agreement.
- 3.3. Termination of any Services at the end of the term requires 30 days advance notice in writing to MFM.
- 3.4. At the end of the Term and unless terminated pursuant to clause 3.3 the Agreement will be renewed for a further term on the same conditions as this Agreement unless agreed otherwise in writing.

## 4. Notices

- 4.1. Any Notice may be given by:
  - 4.1.1. ordinary, pre-paid post; or
  - 4.1.2. facsimile; or
  - 4.1.3. hand delivery; or,
  - 4.1.4. Email,  
to the Party's last known address or in the case of corporations, registered office.
- 4.2. Posted notices are taken to have been received 72 hours after posting unless proved otherwise.
- 4.3. Notices delivered by hand after 5.00pm or sent by facsimile or email after 5.00pm will be taken to have been received at 9.00am on the next Business Day.

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## 5. **Claims**

- 5.1. MFM gives no warranty in respect of Goods or Services which MFM provides using the services of a third party.
- 5.2. Any claim against MFM for faulty workmanship must be notified to MFM in writing within seven days of the date on which the relevant work was carried out and that notice must be accompanied by reasonably specific details of the defect in the works and the nature and quantum of the claim.

## 6. **Delivery and Title**

- 6.1. Goods will be delivered to the Premises.
- 6.2. Full unencumbered title to all items MFM supplies to You will pass to You upon receipt by MFM of full payment for those items.

## 7. **Invoicing and Payment**

- 7.1. All invoices will be rendered monthly in advance or as MFM from time to time otherwise determines.
- 7.2. You must pay MFM for the Goods and Services You have requested it to provide to or procure for You under this Agreement and You must make that payment on or before any due date for payment and in any manner set out in any tax invoice MFM renders to You from time to time or as MFM otherwise determines.
- 7.3. MFM is entitled to require payment before Goods or Services are provided to You or procured for You.
- 7.4. You must pay MFM the GST on the cost of supplies MFM makes to You under this Agreement in the same manner and at the same time as paying the principal amount to MFM.
- 7.5. The supply of Goods or Services to You under this Agreement is deemed to have commenced on the first day of the first month in which those Goods or Services were scheduled to have commenced being supplied to You regardless of the first date on which they were actually supplied to You.
- 7.6. You have no right of set off and must pay each tax invoice rendered to You by MFM in full even if You dispute the tax invoice or an entry on the tax invoice.
- 7.7. If You dispute any tax invoice or any entry on a tax invoice, You must notify MFM within 7 days of the date MFM provides the tax invoice to You and must supply reasonably specific details about what You dispute and why. MFM will subsequently investigate Your dispute and if it agrees with You, issue You with a credit note or reverse the original tax invoice and render a replacement. If MFM does not agree with You, it will notify You of its reasons.
- 7.8. On 1 July each year the price You must pay MFM for any Good or Service under this Agreement is adjusted by reference to the CPI using the following formula:

$$AP = P \times \frac{CPIB}{CPIA}$$

Where: "AP" means the adjusted price,

"P" means price before adjustment,

"CPIB" means the CPI number for the quarter immediately preceding 1 July in the review year, and

"CPIA" means the CPI number for the quarter immediately preceding 1 July in the year before the review year.

- 7.9. MFM will provide You 7 days' notice in writing prior to effect of any price increase other than an increase effected in accordance with clause 7.8.
- 7.10. As the consideration for MFM providing or procuring Services to You relates to the term this Agreement applies to, no credit or billing abeyance applies in respect of any particular shutdown period or period during which Services are provided at a reduced frequency (for example, Easter, Christmas and New Year) unless agreed in writing.
- 7.11. If You provide an authorisation for MFM to direct debit money in relation to the Agreement and any direct debit attempt is dishonoured and You do not pay to MFM the amount it attempted to direct debit plus its reasonable costs incurred in

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relation to the dishonouring and reprocessing of Your payment, MFM is entitled to determine this Agreement by written notice to You..

- 7.12. You agree that a default by You under any arrangement with MFM including this Agreement is deemed to be a default by You under all arrangements with MFM (whether entered into prior to, contemporaneously with or subsequent to this Agreement) including this Agreement. Further, You agree that if You fail to pay MFM as provided for in this Agreement, MFM is entitled to:
- 7.12.1. suspend the provision of Goods or Services to You whether under this Agreement or any other arrangement with effect from 7 days after the due date for any tax invoice issued to You by MFM and which then remains wholly or partially unpaid; or
  - 7.12.2. terminate this Agreement; or
  - 7.12.3. both.
- 7.13. If MFM suspends the provision of Goods or Services to You under clause 7.12.17.12.1, MFM continues to be entitled to issue You with tax invoices and You must pay those tax invoices in accordance with this Agreement as if that suspension had not occurred.
- 7.14. If MFM terminates this Agreement under clause 7.12.2, You must pay MFM as if this Agreement had been terminated in accordance with clause 3.23.2.
- 7.15. You agree that if:
- 7.15.1. MFM has terminated an arrangement with You; and
  - 7.15.2. You request MFM to enter into a subsequent agreement with You, MFM is entitled to be paid by You a sum equal to:
  - 7.15.3. any amount then due and payable by You to MFM under any arrangement; plus
  - 7.15.4. \$50 being MFM's genuine pre-estimate of its administrative costs, as a condition of MFM agreeing to enter into any further arrangement with You.

## **8. Rights and Obligations**

- 8.1. If MFM is unable or not permitted to exercise a right under an agreement entered into in order to procure Goods or Services on Your behalf, You must not require MFM to exercise any such right under this Agreement.
- 8.2. If MFM has any obligations to or is unable to secure any abatement of an obligation to pay under an agreement entered into in order to procure Goods or Services on Your behalf, MFM has no obligation to grant You any abatement of any similar obligation in this Agreement.
- 8.3. You accept responsibility and liability for all Goods supplied under this Agreement and agree to compensate MFM or the owner of a Good for any loss or damage suffered in relation to that Good incurred before title passes to You under this Agreement.

## **9. Assignment**

- 9.1. Unless otherwise expressly agreed in writing by MFM, You must not assign your rights or obligations under this Agreement.
- 9.2. MFM is entitled to assign the benefit of this Agreement and to subcontract the provision of any Good or Service to any third party.

## **10. Waiver**

- 10.1. Except as is otherwise provided, no provision of this Agreement can be varied, waived, discharged or released without prior consent in writing by MFM, and no waiver or variation implies a release of Your obligations to comply with any other term or condition of the Agreement.
- 10.2. MFM is never deemed to have waived any of its rights under this Agreement by reason of neglect, forbearance or delay in the enforcement of its rights.

## **11. Force Majeure**

- 11.1. Neither MFM nor You are responsible to the other for any failure, or any delay, in performance of any obligation under this Agreement if such delay or failure is

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attributable to a Force Majeure but this does not apply to Your obligation to pay any money to MFM.

- 11.2. Within 14 days of the occurrence of a Force Majeure, MFM or You, as the case may be, must notify the other Party describing the nature of the Force Majeure and advising the likely effects of the Force Majeure on that Party's capacity to perform its obligations under this Agreement.
- 11.3. Either Party may terminate this Agreement without penalty if the Parties cannot reach a mutually satisfactory agreement for resolution of the circumstances presented by the Force Majeure within 14 days of the giving and receipt of the notice referred to in clause 11.2.
- 11.4. The consequences of termination pursuant to clause 11.3 are as for termination pursuant to clause 21.

## **12. Occupational Health, Safety and Welfare**

- 12.1. MFM is committed to ensuring the safety and welfare of all employees, agents, servants, contractors, suppliers and visitors.
- 12.2. You must ensure that You comply with all requirements under the law.
- 12.3. If MFM or a supplier to MFM deems the Premises are not reasonably accessible or are not safe to enter to deliver Goods or provide Services, MFM may demand that You rectify such conditions prior to undertaking the Services as per the Quote for Services. If You fail to do so to MFM's reasonable satisfaction within a reasonable period, MFM may terminate this Agreement and if it does so, You must pay MFM as if this Agreement had been terminated in accordance with clause 3.2.
- 12.4. It is Your responsibility to ensure that the Premises is clear and tidy for Services to be provided or procured under this Agreement. Moving any heavy objects will not be covered by MFM insurances.
- 12.5. Health & safety legislation dictates an obligation to safeguard the safety and welfare of all employees, agents, servants, contractors and suppliers whilst at work.
- 12.6. To protect MFM employees, agents, servants, contractors and suppliers, they are instructed not to enter an environment they may consider to be dangerous or hazardous or inoperable for any reason. They are instructed to report the problem immediately and will withdraw from the Premises. In such circumstances You will remain liable for all applicable Charges under the Agreement.

## **13. Accessibility of Premises**

- 13.1. You must provide reasonable access to the Premises during Working Hours or another time agreed by MFM to enable MFM to provide Goods or Services under this Agreement.
- 13.2. Any particulars of entry and exit to and from the Premises and any security measures that MFM must observe must be provided to MFM within a reasonable time prior to the time MFM seeks access to the Premises.
- 13.3. Where required, You must provide MFM with access to power, running water and secure storage for materials.
- 13.4. In the event that MFM are unable to gain access to the Premises to provide Goods or Services under this Agreement due to circumstances beyond their control or Your failure to arrange reasonable alternative arrangements, applicable Charges under this Agreement will remain payable by You.

## **14. Indemnities**

- 14.1. You indemnify MFM and keep MFM indemnified against all claims, demands, damages and costs, including legal costs, made or ordered against MFM including liabilities arising from any loss, damage or injury to person or property caused by any performance of its obligations under this Agreement or any related conduct of MFM's employees, contractors, servants, agents or assigns.
- 14.2. Where the Quote for Services relates to Goods, delivery may take between 7 – 10 Business Days from the date MFM receives Your payment or such later time that MFM subsequently advises You.

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- 14.3. MFM will only undertake Services during Working Hours unless otherwise agreed in writing by MFM.
- 14.4. You grant MFM an extension of time in the provision of Goods and Services to the extent caused by circumstances beyond MFM's reasonable and direct control including variations, changes to instructions, latent conditions and circumstances not previously disclosed to MFM.

## **15. Permits and Fees**

- 15.1. You agree that unless specifically stated otherwise in writing, You are solely responsible in all things for obtaining any permits, consents or authorisations for and in relation to any Service and for paying any associated fee or charge to any third party.
- 15.2. MFM and if applicable its supplier will not commence Service until the required permits, consents and or authorisations have been obtained and copies provided to MFM and You agree that time for MFM to provide Services under this Agreement does not run until You have supplied all those materials and any additional material MFM reasonably requests to MFM.

## **16. Keys and Access Cards**

You agree that You may not procure the duplication of any key or access card MFM provides to You or procures for You except if You first secure the consent of:

- 16.1.1. the owner of the Premises or lot to which the key or access card relates, where the door, lock or other device that key or access card operates does not open directly onto common property on a plan of subdivision; and
- 16.1.2. otherwise, the owners corporation with responsibility for that common property.

## **17. Ownership**

You warrant to MFM that You are the legal owner or custodian of any and all items and or Records and You have full unrestricted authority to engage MFM to provide or procure Services for the removal and or destruction of those items and or Records under this Agreement and will not hold MFM liable for any act or omission.

## **18. Equipment**

- 18.1. You must ensure that any Equipment provided to You under this Agreement is maintained in good working order from the time of delivery until it is collected from the Premises by or on behalf of MFM.
- 18.2. You will be responsible for any damage, loss or destruction of the Equipment while the Equipment remains on the Premises or in Your possession however caused, excluding fair wear and tear and any damage, loss or destruction caused or contributed to by MFM.
- 18.3. If any Equipment requires replacement, repair or service as a result of any breach of clause 18.2 then You must cover the reasonable cost of replacing the Equipment or the reasonable cost of servicing, repairing or restoring the Equipment to its original condition.
- 18.4. You agree not to use the Equipment for any other purpose other than its intended purpose under this Agreement.
- 18.5. You must ensure all Equipment is accessible on any scheduled Service attempt as any additional Service required as a result of inaccessibility will incur additional Charges to be paid for in full by You.

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## **19. Cancellation Fees**

- 19.1 If You provide written approval of fitout works and subsequently wish to cancel or vary the scope of the approved fitout works, You are required to pay to MFM a cancellation fee consisting of:
  - 19.1.1 an amount equal to 20% of the quoted cost of the fitout works; and
  - 19.1.2 the full cost of any materials purchased to complete the fitout works (if applicable).
- 19.2 If You provide written approval for trade services and subsequently wish to cancel or vary the scope of such trade services, You are required to pay to MFM a cancellation fee consisting of:
  - 19.2.1 \$150.00; and
  - 19.2.2 the full cost of any materials purchased to perform the trade services (if applicable).
- 19.3 You must pay any cancellation fees within seven days of MFM providing you with an invoice for the cancellation fees.

## **20. Rescheduling Fees**

- 20.1 If You wish to reschedule the commencement date of any previously approved fitout works, You are required to pay to MFM a rescheduling fee equal to 20% of the quoted cost of the fitout works.
- 20.2 If You wish to reschedule the commencement date of any previously approved trade services, You are required to pay MFM a penalty fee of \$150.
- 20.3 You must pay the rescheduling fees set out above in clause 20.1 and 20.2 if You cause or contribute to any need to reschedule the commencement date of such fitout works or trade services.
- 20.4 You must pay any rescheduling fees within seven days of MFM providing you with an invoice for the rescheduling fees.

## **21 Termination**

MFM may terminate this Agreement if:

- 21.1.1 You breach the provisions of this Agreement and the breach has not been remedied within 14 days; or
- 21.1.2 You become insolvent, bankrupt or enter into any scheme of arrangement or any assignment or composition with or for the benefit of creditors or any class of creditors generally including but not limited to a receiver and manager being appointed, provisional liquidation, winding up or dissolution without winding up.

## **22 Secure Record Destruction Services**

- 22.1 If You commission MFM to procure a confidential secure Record destruction service on Your behalf, MFM does so as Your agent and the provisions of clauses 22 and 23 apply.
- 22.2 You will be provided with a confidential secure bin as reasonably required by You to accommodate the collection of all Records which You require to be destroyed.
- 22.3 The removal and transport of any bin contents from the Premises will occur on a permanent periodic schedule or permanent on request or ad hoc on call basis as described on the Quote for Services.

## **23 Records**

- 23.1 You may not submit for destruction or require MFM to submit for destruction any newspapers, magazines, cardboard, plastic sleeves, plastic casings, ring binders, folders, tissues, plastic of any kind, spoiled food and any other non-paper material.
- 23.2 You must take all reasonable steps to ensure that only paper Records are placed in the bin/s provided.
- 23.3 Failure to comply with clause 23.2 may result in the bin/s not being emptied or a further fee which MFM has to pay to its supplier being invoiced to You.

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## **24 Indoor Office Plant Services**

- 24.1 If You commission MFM to procure the provision of Indoor office plants on Your behalf, MFM does so as Your agent and the provisions of clauses 24, 25 and 26 apply.
- 24.2 Services may include the provision of plants, watering, cleaning, dusting and when necessary, fertilizing, pruning and disease inspection and treatment.
- 24.3 Plants may be removed and recovered by MFM or its supplier if You do not pay to MFM money due under this Agreement in relation to those plants.

## **25 Plant Replacement**

- 25.1 All plants subject to this Agreement are deemed replaceable with plants of a similar size and value and are subject to availability. Where certain plant species are unavailable, an alternative plant species may be necessary.
- 25.2 Notwithstanding Clause 25.1, all replacements are to be made at the discretion of MFM or its supplier.

## **26 Disclaimer of Responsibility and Liability**

- 26.1 MFM disclaims any responsibility and or liability for damage or loss occasioned by:
- 26.1.1 Plant maintenance undertaken by another party not the subject of this Agreement
  - 26.1.2 Temperatures below 10c or above 30c
  - 26.1.3 Unauthorised relocation of plants
  - 26.1.4 Interference with the plants by Animals
  - 26.1.5 Vandalism
  - 26.1.6 Theft
  - 26.1.7 Radical variation in light levels
  - 26.1.8 Introduction of toxic liquids and or chemicals
  - 26.1.9 Storm, tempest, terrorism or crowds
  - 26.1.10 Fire
  - 26.1.11 Failure to upkeep maintenance of plants due to lack of accessibility to plant or Premises.
- 26.2 If plants are required to be replaced for any reason specified in clause 26.1, the costs MFM must pay its supplier will be invoiced to You.