

Definitions

- 1.1 "Seller" shall mean Luke Anthony Moylan T/A Cool Hand Lukes Window Cleaning its successors and assigns or any person acting on behalf of and with the authority of Luke Anthony Moylan T/A Cool Hand Lukes Window Cleaning.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Seller to the Client.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Services" shall mean all Services supplied by the Seller to the Client and includes any advice or recommendations.
- 1.5 "Price" shall mean the price payable for the Services as agreed between the Seller and the Client in accordance with clause 4 of this contract.

2. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

3. Acceptance

- 3.1 Any instructions received by the Seller from the Client for the supply of Services and/or the Client's acceptance of Services supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Seller.
- 3.4 The Client shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client's failure to comply with this clause.
- 3.5 Services are supplied by the Seller only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

4. Price And Payment

- 4.1 At the Seller's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by the Seller to the Client in respect of Services supplied; or
- (b) the Seller's quoted Price (subject to clause 5) which shall be binding upon the Seller provided that the Client shall accept the Seller's quotation in writing within thirty (30) days.
- 4.2 At the Seller's sole discretion a deposit may be required.
- 4.3 At the Seller's sole discretion payment for approved Clients shall be due thirty (30) days following the date of the invoice.
- 4.4 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.5 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Seller.
- 4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Variation to the Price

- 5.1 Unless specified by the Seller, the quotation is inclusive of a single Service only and any additional Services shall be treated as a variation to the Price.
- 5.2 The Seller's quotation shall be based on the cleanliness of the nominated site at the time of inspection by the Seller for quotation purposes. Any variation to the nominated site in this state will be treated as a variation to the Price.
- 5.3 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation. Any variation as a result of increases to the Seller in the cost of materials and labour will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice.

6. Delivery Of Services

- 6.1 At the Seller's sole discretion delivery of the Services shall take place when the Client takes possession of the Services at the Client's nominated address (in the event that the Services are delivered by the Seller or the Seller's nominated carrier).
- 6.2 At the Seller's sole discretion the costs of delivery are included in the Price.
- 6.3 It shall be the Client's responsibility to ensure that the nominated site is reasonably ready for the Seller to commence the Services, with minimal tradespersons and works in progress.
- 6.4 The Client shall make all arrangements necessary to take delivery of the Services whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Services as arranged (including, but not limited to, the Seller being unable to commence the Services as per clause 6.3) then the Seller shall be entitled to charge a reasonable fee for redelivery (outlined in clause 12.2).
- 6.5 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 6.6 It shall be the Client's responsibility to ensure the requested completion date is realistic and truthful in order for the Seller to provide the Services by the requested deadline. The Seller shall not be liable for any loss suffered by the Client where the requested completion date is inaccurate, unattainable or unreasonable.
- 6.7 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 6.8 The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Services (or any of them) promptly or at all where due to circumstances beyond the control of the Seller.

7. Risk

- 7.1 If the Seller retains ownership of the Services nonetheless, all risk for the Services passes to the Client on delivery.
- 7.2 The Seller shall not be liable for any defects in glass, frames, fixtures, fittings and joinery revealed during the performance of the Services by the Seller. Any defects revealed shall be reported to the Client by the Seller on completion of the Services.
- 7.3 The Seller shall not be liable for any loss or damage whatsoever caused by water entering the premises due to faulty workmanship by third parties or electrical faults. The Seller shall take due care where required.

8. Title

- 8.1 The Seller and the Client agree that ownership of the Services shall not pass until:
- (a) the Client has paid the Seller all amounts owing for the particular Services; and
- (b) the Client has met all other obligations due by the Client to the Seller in respect of all contracts between the Seller and the Client.
- 8.2 Receipt by the Seller 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 Seller's ownership or rights in respect of the Services shall continue.

9. Errors and Omissions

- 9.1 The Client shall inspect the Services on completion and shall within forty-eight (48) hours of completion (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford the Seller an opportunity to inspect the Services within a reasonable time following completion if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage. For defective Services, which the Seller has agreed in writing that the Client is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Services or rectifying the Services, except where the Client has acquired Services as a consumer within the meaning of the Trade Practices Act 1974 (Cwlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase Price of the Services, or rectification of the Services, or replacement of the Services.

10. Default & Consequences of Default

- 10.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 10.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Seller.
- 10.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
- 10.4 Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.
- 10.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 10.6 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

11. Security And Charge

- 11.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 11.1.

12. Cancellation

- 12.1 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice the Seller shall repay to the Client any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 12.2 In the event that the Client cancels delivery of Services, the Client must ensure the Seller is provided with at least forty-eight (48) hours notification from the intended delivery date or the Client shall be liable for a late notice fee (which shall be a minimum of four hundred and fifty dollars (\$450.00) per day) and any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.

13. Privacy Act 1988

- 13.1 The Client and/or the Guarantor/s agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Seller.
- 13.2 The Client and/or the Guarantor/s agree that the Seller may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Client and/or Guarantor/s.
- 13.3 The Client consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 13.4 The Client agrees that personal credit information provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Client and Seller or required by law from time to time:
- (a) provision of Services; and/or
 - (b) marketing of Services by the Seller, its agents or distributors in relation to the Services; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 13.5 The Seller may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

14. Intellectual Property

- 14.1 All copyright, data, text, images, graphics, imbedded videos, trademarks, photographs, and other intellectual property (Content) on the Website is owned, controlled by The Seller. Except for viewing the Content for your own personal non-commercial use, The Seller does not grant you any rights to use the Website or Content for any other purpose unless it expressly consents in writing.

15. General

- 15.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
- 15.3 The Seller shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Seller of these terms and conditions.
- 15.4 In the event of any breach of this contract by the Seller the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Services.
- 15.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 15.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 15.7 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Client of such change.
- 15.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party. The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.