

# TERMS AND CONDITIONS

## Payment terms

1. The terms of payment are strictly seven (7) days (or such other period as nominated by the supplier herein) from the date of invoice. Subzero Group Pty Ltd ABN 76 677 903 347 and its related bodies corporate (as that term is defined in the *Corporations Act 2001*) (**Supplier**) may, at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion.
2. Should the Applicant not pay for the goods or services supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier from time to time, the Supplier will be entitled to charge an administration fee of:
  - (a) 10 percent of the amount of the invoice payable; and
  - (b) a further 10 percent per annum payable per year, or part thereof, until payment by the Applicant.
3. Each Payment Claim, Payment Summary and/or Remittance Advice must be given in writing, emailed to [accounts@subzerogroup.com.au](mailto:accounts@subzerogroup.com.au).
4. Payments made to the Supplier are to be paid into bank account BSB: 034-080 (Westpac), Account No: 648426.

## Jurisdiction

5. The Applicant acknowledges and agrees that this agreement will be governed by the laws of Queensland, and the laws of the Commonwealth of Australia which are in force in Queensland.
6. The Applicant acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Applicant is formed at the address of the Supplier.
7. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of Queensland and the relevant federal courts and courts competent to hear appeals from those courts.

## Supplier's representative

8. The Supplier shall superintend the whole of the work and shall keep upon the works a competent representative authorised by them to receive instructions from the Applicant.

## Progress of works

9. Completion by the date for completion is subject to the Applicant making available full information including all critical dimensions. Failure by the Applicant to comply with this provision shall be deemed to be a matter 'beyond the control of the Supplier' for the purposes of clauses 15 to 17 hereof.

## Completion

10. The works shall have reached the stage of completion when they are reasonable fit for use or occupation by the Applicant save for the existence of minor defects which do not significantly inconvenience the Applicant or cause a legal impediment to the use and occupation of the Applicant and the Supplier has given the Applicant written notice that the works have been so completed.
11. Notwithstanding the provision of clause 8, completion shall be deemed to have taken place when the Applicant occupies the premises where the works have been executed and commences trading.
12. The Supplier shall bring the works to completion on or before the date for completion stated in item B the Appendix.
13. Where the contract specifies that separable portions of the works shall be executed to completion within a period or by a date different from the period or date fixed by the Supplier for the completion of works the Supplier shall execute the separable portions of the works to completion by the date or dates specified in item C of the Appendix.
14. If a part of the works has reached completion but another part of the works has not reached completion and the parties cannot agree upon the creation of separable portions, the representative referred to in clause 6 hereof may determine that the respective parts shall be separable portions.
15. In using the separable portion that has reached completion, the Applicant shall not hinder the Supplier in the performance of the work under the Agreement.

## Defects liability period

16. The Supplier shall, after completion, make good any defects of the works in materials or workmanship and undertake to replace faulty materials or rectify faulty workmanship as agreed between the Supplier and Applicant for a period as specified in item C of the Appendix from the date of completion. Material and/or processes that are not a manufacture of the Supplier and are specified for use by the Applicant are covered by warranty to the extent of such warranty obtainable from the suppliers of such materials and or process. Apart from such warranty as mentioned, no other warranty either express or implied (to the extent permitted to be excluded at law) is given by the Supplier to the Applicant.

## Extensions of time

17. Should the progress of the works be delayed by a cause or causes beyond the control of the Supplier then the Applicant shall allow the Supplier an extension of time to the date or dates for completion specified in clauses 9 and 11.
18. The Supplier shall notify the Applicant of any delays where an extension of time is sought within a reasonable time of the occurrence of the delay and with the notification, state the period of time for which the extension of time is sought. Should the Applicant not dissent in writing within five (5) days of the giving of the notice then the time for reaching completion is deemed extended.
19. The Supplier does not accept liability for any damages (either direct or indirect) for failure to deliver in the estimated time, unless specifically accepted by the Supplier in this contract.

## Arbitration

20. Should any dispute or difference arise between the Applicant and the Supplier which has not been resolved or settled within seven (7) calendar days from the date of such dispute or difference, the matter shall be referred to the arbitration of the nominee of the chairperson of the chapter for the time being of the Institute of Arbitrators and Mediators Australia in the State or Territory where the works are situated and his/her findings shall be final and binding on both parties. At any hearing of such arbitration neither party shall be legally represented without the consent in writing of the other party.

## Security/charges

21. The Applicant charges in favour of the Supplier all of its estate and interest in any real property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
22. The Applicant charges in favour of the Supplier all of its estate and interest in any personal property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
23. The Applicant appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Applicant's name and as the Applicant's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Applicant may own in any Land Titles Office in any state or territory of Australia, even though the Applicant may not have defaulted in carrying out its obligations hereunder.
24. Where the Applicant has previously entered into an agreement with the Supplier by which the Applicant has granted a charge, mortgage or other security interest (including a security interest as defined in the *Personal Property Securities Act 2009 (PPSA)*) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this agreement and will secure all indebtedness and obligations of the Applicant under this agreement. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

## Purpose of credit

25. The Applicant acknowledges and agrees that the credit to be provided to the Applicant by the Supplier is to be applied wholly or predominantly for commercial purposes.

## Formation of contract

26. Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it. Only written acceptance by the Supplier of the Applicant's offer will complete a contract.
27. Placement of an order, either verbally or in writing, will imply acceptance of the Supplier's offer and of these terms and conditions.

## Retention of title

28. Title in the goods does not pass to the Applicant until the Applicant has made payment in full for the goods and, further, until the Applicant has made payment in full of all the other money owing by the Applicant to the Supplier (whether in respect of money payable under a specific contract or on any other account whatsoever).
29. Whilst the Applicant has not paid for the goods supplied in full at any time, the Applicant agrees that property and title in the goods will not pass to the Applicant and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.
30. Until payment in full has been made to the Supplier, the Applicant will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods.
31. The Applicant will be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Applicant will sell as agent and bailee for the Supplier and the proceeds of sale of the goods will be held by the Applicant on trust for the Supplier absolutely.
32. The Applicant's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 29 hereof unless and until the funds held on trust are remitted to the Supplier.
33. The Applicant agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Applicant, to enter upon any premises occupied by the Applicant (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the goods of the Supplier and to repossess the goods which may be in the Applicant's possession, custody or control when payment is overdue.
34. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 31. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.
35. The Applicant agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Applicant on those goods, and the Applicant hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Applicant.
36. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the PPSA.

## Cancellation of terms of credit

37. The Supplier reserves the right to withdraw credit at any time, whether the Applicant is in default under the terms of this agreement or not.
38. Upon cancellation with or without notice all liabilities incurred by the Applicant become immediately due and payable to the Supplier.

## Indemnity

39. The Applicant agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

## Insurances

40. Public liability  
The Supplier shall effect a policy which shall cover liability to the public for an amount not less than that stated in item I of the Appendix in respect of all accidents arising out of or in the course of or caused by the execution of the works in the event of:
  - (a) death or bodily injury (including illness) to any person not being a person who at the time of the accident is engaged in or upon the service of the insured under a contract of service or apprenticeship; and
  - (b) damage to property not belonging to nor held in trust by nor in the custody or control of the insured.
41. The existing structures including the works together with all the contents thereof will be at the sole risk of the Applicant who shall keep the works adequately insured against loss and if requested by the Supplier, produce evidence of the fact that such insurance has been effected.
42. The Supplier shall insure for Workers' Compensation and Employers' Liability in accordance with the laws of the appropriate State or Territory of Australia.
43. The insurances referred to in clause 40 shall be effected before the works are commenced and shall be maintained effective until contract completion and either party shall if required by the other produce evidence of the currency of such insurance.

## P.C. and provisional sums

44. Where the prime cost or provisional sums are included in the contract, such sums shall be expended in favour of such persons as the Applicant shall direct. The whole or any portion of such sums remaining unexpended at Completion shall be deducted from the contract sum. Where the expenditure exceeds the allowance, the difference shall be added to the contract sum.

## Site conditions

45. The Applicant, or where appropriate (with the knowledge of the Applicant) the building owner, is responsible for:
  - (a) the provision of electric light, power, water and other necessary facilities at the work area;
  - (b) any damage caused to the Suppliers materials by other than the employees of the Supplier and their agents or sub-Suppliers; and
  - (c) accessibility to the site and provision of required clear space around the work area.
46. No allowance has been made for electrical, plumbing or any other work that may become necessary due to demolition or to meet the requirements of local authorities and such additional work shall be dealt with as a variation pursuant to clauses 84 and 85 of this contract.
47. Unless specifically referred to in the description of the works, the contract price does not include scaffolding or demolition and should these items of work become necessary for the proper execution of the works then the contract shall be adjusted pursuant to clauses 84 and 85 hereof.

## Special conditions

48. Conditions detailed on quotation as attached form part of this contract.
49. The Supplier is not responsible for the suitability for purposes of the designs, plans, goods, works and/or services for which the Applicant intends to use them. It is the Applicant's responsibility to ensure that the designs, plans, goods, works and/or services offered under this contract meet the intention and suitability for use for which the Applicant intends to use them.

## Provision of further information

50. The Applicant undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application.

51. If the Applicant is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity.
- Corporations**
52. If the Applicant is a corporation, the Applicant warrants that all of its directors have signed this agreement and that all of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.
- Trustee capacity**
53. If the Applicant is the trustee of a trust (whether disclosed to the Supplier or not), the Applicant warrants to the Supplier that:
- the Applicant enters into this agreement in both its capacity as trustee and in its personal capacity;
  - the Applicant has the right to be indemnified out of trust assets;
  - the Applicant has the power under the trust deed to sign this agreement; and
  - the Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.
54. The Applicant must give the Supplier a copy of the trust deed upon request.
- Partnership**
55. If the Applicant enters into this agreement as partners, the Applicant warrants that all of the partners have signed this agreement and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.
56. If the Applicant is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.
- Insolvency**
57. If the Applicant becomes insolvent, the Applicant remains liable under this agreement for payment of all liabilities incurred hereunder. The Applicant remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Applicant being insolvent.
58. If [Applicant's Company Name] becomes insolvent, enters administration, or is otherwise unable to meet its financial obligations, the directors or principal stakeholders, by signing this agreement, personally guarantee the payment of all outstanding amounts, fees, and associated recovery costs. This guarantee is a primary obligation, meaning each guarantor shall be personally liable to Managed Collection Services (Subzero Group Pty Ltd) for the full outstanding balance, including accrued interest, debt recovery costs, and any applicable legal fees, without requiring Subzero Group to pursue [Applicant's Company Name] first.
59. Each guarantor waives any rights to be released from this guarantee due to any actions or delays on Subzero Group's part, including but not limited to extensions, payment plans, or adjustments made to [Applicant's Company Name]'s obligations. This personal guarantee shall remain enforceable until all debts and obligations are fully satisfied, regardless of changes in the guarantor's directorship or association with [Applicant's Company Name].
- Waiver**
60. A waiver of any provision or breach of this agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this agreement by the Applicant must be made by the Applicant's authorised officer in writing.
61. Until ownership of the goods passes, the Applicant waives its rights it would otherwise have under the PPSA:
- under section 95 to receive notice of intention to remove an accession;
  - under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law;
  - under section 121(4) to receive a notice of enforcement action against liquid assets;
  - under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods;
  - under section 130 to receive a notice to dispose of goods;
  - under section 132(2) to receive a statement of account following disposal of goods;
  - under section 132(4) to receive a statement of account if no disposal of goods for each 6 month period;
  - under section 135 to receive notice of any proposal of the Supplier to retain goods;
  - under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods;
  - under section 142 to redeem the goods;
  - under section 143 to reinstate the security agreement; and
  - under section 157(1) and 157(3) to receive a notice of any verification statement.
- Costs**
62. The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant. The Applicant must also pay for all stamp duty and other taxes payable on this agreement (if any).
63. The Applicant agrees to bear full responsibility for any and all costs incurred by the Supplier in recovering overdue payments, which include, but are not limited to, collection agency fees, debt recovery expenses, and legal costs on an indemnity basis. Once a payment is overdue, a late fee will be applied to the outstanding amount. If payment remains unsettled for fourteen days past the due date, the debt will be transferred to a debt collection agency. All additional recovery costs incurred by this transfer will be added to the Applicant's outstanding balance, and they will be responsible for prompt payment of the total amount due.
64. Subject to clauses 63 and 65, payments by, or on behalf of, the Applicant will be applied by the Supplier as follows:
- Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 31 and 61.
  - Secondly, in payment of any interest incurred in accordance with clause 68.
  - Thirdly, in payment of the outstanding invoice(s).
65. The Supplier may apply and allocate payments received by, or on behalf of, the Applicant in a manner in the Supplier's absolute and unfettered discretion, including so as to attribute the payments to satisfy obligations which are or are not secured by a purchase money security interest or otherwise.
66. To the extent that payments have been allocated to invoices by the Supplier in its business records, the Supplier may, in its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at any time whatsoever.
67. Payments allocated (and/or reallocated) under clause 63 and/or 64 will be treated as though they were allocated or reallocated, respectively, in the manner determined by the Supplier on the date of receipt of payment.
- Taxes and duty**
68. The Applicant must pay GST on any taxable supply made by the Supplier to the Applicant under this agreement. The payment of GST is in addition to any other consideration payable by the Applicant for a taxable supply.
69. If as a result of:
- any legislation becoming applicable to the subject matter of this agreement; or
  - any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;
- the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Applicant, then the Applicant must pay the Supplier these additional amounts on demand.
- Interest rates**
70. The interest rate on any outstanding debts is a fixed rate of 15 percent per annum.
- Set-off**
71. All payments required to be made by the Applicant under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.
72. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Applicant by the Supplier.
- Miscellaneous**
73. The Supplier is not liable for any loss caused to the Applicant by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.
74. In relation to the supply of goods, the Supplier's liability is limited to:
- replacing the goods or supplying similar goods;
  - repairing the goods;
  - providing the cost for replacing the goods or for acquiring equivalent goods; and
  - providing the cost for having the goods repaired.
75. In relation to the supply of services, the Supplier's liability is limited to:
- supplying the service again; or
  - providing for the cost of having the services supplied again.
76. The Supplier is not liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Applicant.
77. The Applicant will, at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to register the security interest granted by the Applicant under the PPSA.
78. The Applicant agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Applicant or the Applicant's authorised representative.
79. The Applicant further agrees that where we have rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
80. The Applicant irrevocably grants to the Supplier the right to enter upon the Applicant's property or premises, without notice, and without being in any way liable to the Applicant or to any third party, if the Supplier has cause to exercise any of their rights under sections 123 and/or 128 of the PPSA, and the Applicant shall indemnify the Supplier from any claims made by any third party as a result of such exercise.
81. Where the Supplier enters into any construction contract in respect of a particular job or site (**Construction Agreement**), this agreement continues to be binding notwithstanding entry into the Construction Agreement by the Supplier. Any Construction Agreement is subject to the continued operation of this agreement and, to the extent of any inconsistencies, the terms of this agreement shall prevail.
82. Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and/or services pursuant to this agreement of all or any of the provisions the *Competition and Consumer Act 2010* or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.
83. The Supplier may, at its absolute and unfettered discretion, render its final invoice(s) prior to completion of the subject work(s) and may withhold performance of the final portion of the work(s) until all invoices have been paid in full.
- Severance**
84. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
85. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.
- Variation**
86. The Applicant agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Applicant.
87. Any proposed variation to these terms and conditions by the Applicant must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.
88. Variations requested by the Applicant will only be binding upon the Supplier if they are accepted in writing.
- Consent to register**
89. The Applicant hereby consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.
90. The Applicant waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.
- Entire agreement**
91. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.
92. Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (**Original Agreement**) between the Applicant and the Supplier, these terms and this agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.
- Privacy Act**
93. The Applicant agrees to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* contained in this document.