
Hire A Butler Pty Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 "Supplier" means Hire A Butler Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Hire A Butler Pty Ltd.
- 1.2 "Client" means the person/s requesting the Supplier to provide the Services as specified in any invoice, document or order, and if there more than one person requesting the Services is a reference to each person jointly and severally.
- 1.3 "Services" means all Services supplied by the Supplier to the Client at the Client's request from time to time.
- 1.4 "Price" means the price payable for the Services as agreed between the Supplier and the Client in accordance with clause 4 of this contract.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by the Supplier.
- 2.2 These terms and conditions may only be amended with the Supplier's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Supplier.

3. Change in Control

- 3.1 The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.

4. Price and Payment

- 4.1 At the Supplier's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by the Supplier to the Client; or
 - (b) the Supplier's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of seven (7) days.
- 4.2 The Supplier reserves the right to change the Price if a variation to the Supplier's quotation is requested.
- 4.3 The Client acknowledges and agrees that the Supplier reserves the right to increase any Price due to annual Consumer Price Index (CPI) increases.
- 4.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be:
 - (a) the date specified on any invoice or other form as being the date for payment; or
 - (b) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Supplier.
- 4.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and one half percent (2.5%) of the Price), or by any other method as agreed to between the Client and the Supplier.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for providing the Supplier's Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of Services

- 5.1 At the Supplier's sole discretion delivery of the Services shall take place when the Services are supplied to the Client at the Client's nominated address.
- 5.2 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.
- 5.3 The Supplier may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 5.4 Any time specified by the Supplier for delivery of the Services is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Services as agreed solely due to any action or inaction of the Client then the Supplier shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.

6. Risk

- 6.1 The Client acknowledges and agrees that in the event that the Supplier is required to provide additional Services (including but not limited to cleaning or repairs), then the Supplier reserves the right to charge the Client for such additional Services.

7. Personal Property Securities Act 2009 ("PPSA")

- 7.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 7.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest relevant to all Services that have previously been supplied and that will be supplied in the future by the Supplier to the Client.
- 7.3 The Client undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

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- (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 7.3(a)(i) or 7.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Services provided without the prior written consent of the Supplier.
- 7.4 The Supplier and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 7.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 7.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 7.7 Unless otherwise agreed to in writing by the Supplier, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 7.8 The Client must unconditionally ratify any actions taken by the Supplier under clauses 7.3 to 7.5.
- 7.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

8. Security and Charge

- 8.1 In consideration of the Supplier agreeing to supply Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 8.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- 8.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 8 including, but not limited to, signing any document on the Client's behalf.

9. Defects, Warranties and the Competition and Consumer Act 2010 (CCA)

- 9.1 The Client must inspect the Supplier's Services on completion of the Services and must within two (2) days notify the Supplier in writing of any evident defect in the Services provided (including the Supplier's workmanship) or of any other failure by the Supplier to comply with the description of, or quote for, the Services which the Supplier was to supply. The Client must notify any other alleged defect in the Supplier's Services as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Supplier to review the Services that were provided.
- 9.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 9.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 9.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 9.5 If the Client is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.
- 9.6 If the Supplier is required to rectify, re-supply, or pay the cost of re-supplying the Services under this clause or the CCA, but is unable to do so, then the Supplier may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.
- 9.7 If the Client is not a consumer within the meaning of the CCA, the Supplier's liability for any defective Services is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by the Supplier at the Supplier's sole discretion;
 - (b) otherwise negated absolutely.
- 9.8 Notwithstanding clauses 9.1 to 9.7 but subject to the CCA, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) interference with the Services by the Client or any third party without the Supplier's prior approval;
 - (b) the Client failing to follow any instructions or guidelines provided by the Supplier;
 - (c) any accident, or act of God.

10. Default and 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 a half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 10.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).
- 10.3 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the

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supply of Services to the Client. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.

- 10.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to make a payment when it falls due;
 - (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. Cancellation

- 11.1 The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any money paid by the Client for the Services. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 11.2 The Client shall be required to give thirty (30) days written notice of termination of the Services.
- 11.3 The Client shall remain liable to pay the Supplier for all Services which were booked to take place during the required notice period. This shall include, but is not limited to carpet steam cleaning and window cleaning.

12. Privacy Act 1988

- 12.1 The Client agrees for the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the Supplier.
- 12.2 The Client agrees that the Supplier may exchange information about the Client 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 creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 12.3 The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 12.4 The Client agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other purposes as shall be agreed between the Client and Supplier or required by law from time to time):
- (a) the provision of Services; and/or
 - (b) the marketing of Services by the Supplier, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the 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.
- 12.5 The Supplier 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;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 12.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that the Supplier is a current credit provider to the Client;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of the Supplier, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Client by the Supplier has been paid or otherwise discharged.

13. General

- 13.1 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision. 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.
- 13.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which the Supplier has its principal place of business, and are subject to the jurisdiction of the courts of Victoria.

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- 13.3 Subject to clause 9 the Supplier 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 Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 13.4 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 Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 13.5 The Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 13.6 The Client agrees that the Supplier may amend these terms and conditions at any time. If the Supplier makes a change to these terms and conditions, then that change will take effect from the date on which the Supplier notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Supplier to provide Services to the Client.
- 13.7 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.
- 13.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.