

# Unlimited Group Australia General Terms and Conditions

**BETWEEN**

**UNLIMITED GROUP AUSTRALIA PTY LTD (ACN 168 251 643)** of Unit 6/159 Chifley Street Wetherill Park NSW ("Unlimited");

**AND** "The Customer" specified in any Contract or Purchase Order.

## 1. DEFINITIONS

In these General Terms and Conditions unless the context indicates a contrary intention:

**"Agreement"** means these General Terms and Conditions and any other written agreement between the parties (including without limitation any purchase orders and invoices).

**"Commencement Date"** means the commencement of Services by Unlimited or the date of the signed agreement.

**"Contract"** means any written agreement between Unlimited and the Customer (including any Purchase Order agreed to and accepted by Unlimited), detailing the terms of Unlimited's engagement, combined with these General Terms and Conditions.

**"The Customer"** refers to the company that is engaging Unlimited to provide Products and services, pursuant to these General Terms and Conditions.

**"Parties"** means the parties to this Agreement and their respective successors and permitted assigns, and Party means any one of them;

**"Product"** means any metal fabrication or accessories provided by Unlimited including but not limited to any structural steel, frames and benches, stairs, platforms, handrails, barriers, caging, security fencing, automated gates, and architectural metal work.

**"Intellectual Property Rights"** means all copyright throughout the world, patents, trade marks, designs, trade secrets, know-how, ideas, concepts, technology and industrial knowledge relating to or developed in connection with or in support of the Products and Services.

**"Purchase Order"** means any written purchase order or email received from the Customer and agreed to and accepted by Unlimited at its absolute discretion, specifying the terms of the Customer's order, other than those set out in these General Terms and Conditions.

**"Services"** means the services provided by Unlimited, including but not limited to design, fabrication, installation, welding, maintenance work, powder coating and galvanising.

**"Warranty"** means the repair of manufacturing defects during the manufacturer's stated warranty period.

## 2. INTERPRETATION

2.1 In these General Terms and Conditions:

- a) clause headings are inserted for convenience of reference only and shall be ignored in the interpretation of these General Terms and Conditions;
  - b) references to a clause shall be construed as references to a clause of these General Terms and Conditions;
  - c) references to any statute, ordinance or other law include all regulations and other enactments there under and all consolidations, amendments, re-enactments or replacements thereof;
  - d) words importing the singular include the plural and vice versa, words importing a gender include other genders and references to a person shall be construed as including an individual, the estate of an individual, firm, body corporate, association (whether incorporated or not), government and governmental, semi-governmental and local authority or agency; and
- 2.2 If there is any inconsistency between the terms of these General Terms and Conditions and the terms of any Contract or Purchase Order, then the terms of these General Terms and Conditions shall prevail to the extent of any inconsistency.

### **3. PRODUCTS AND SERVICES**

- 3.1 Unlimited shall provide the Products and Services to the Customer during the Term specified in the Contract or the Purchase Order and subject to these General terms and Conditions.
- 3.2 The Customer acknowledges that Unlimited will not be responsible for any failure to meet a level of service to the extent specified in the Contract or Purchase Order, to the extent the failure is a result of the customer not observing its obligations.
- 3.3 By entering into any Contract or sending any Purchase Order (or correspondence purporting to be a Purchase Order), the Customer accepts that it is bound by these General Terms and Conditions; and agrees to take and pay for the Products and/or Services.

### **4. TERM OF THE AGREEMENT**

- 4.1 The Services shall commence with effect from the "Commencement Date", as specified in the Contract or Purchase Order or as varied between parties.
- 4.2 Subject to the right of either party to terminate the Agreement, the term of the Agreement shall be as specified in the Contract or Purchase Order.
- 4.3 Additions to the Products and/or Services will initiate a new Agreement applicable to the modified Services on the same terms of the existing Agreement.

### **5. LEVEL OF SERVICE**

- 5.1 Unlimited shall provide the Products and/or Services in accordance with the service levels detailed in the Contract or Purchase Order.
- 5.2 Where Unlimited is required or requested to provide Out of Hours Services, it may do so in accordance with the Out of Hours Service rates in the Contract or Purchase Order.
- 5.3 The Customer may at any time request in writing to Unlimited to increase the scope of the Services being provided. If Unlimited agrees to do so, those additional Services will be provided in accordance with the rates specified in the Contract or Purchase Order.

## **6. UNLIMITED'S OBLIGATIONS**

- 6.1 During the term of the Agreement, Unlimited shall maintain insurance coverage for public liability for at least ten million dollars (\$10,000,000.00) for any one claim and in the aggregate.
- 6.2 Unlimited will, upon request, provide The Customer with current certificate(s) of insurance evidencing the above provision, at any time and from time to time during the Term of the Agreement.
- 6.3 Unlimited warrants that the Products and Services provided within the scope of this Agreement will be performed to a reasonable standard of care and skill and will be fit for which they are intended, and result in outcomes which are fit for their intended purpose, subject to the Customer's cooperation and provision of access. In the event that the Services are not performed to the required standard as agreed by both parties, Unlimited shall correct such non-compliance at its own cost within sixty (60) days of notification.

## **7. CUSTOMER'S OBLIGATIONS**

- 7.1 The Customer must comply with all reasonable directions issued by Unlimited in relation to the use of the Products and Services.
- 7.2 The customer acknowledges that all Products remain the property of Unlimited until all monies owing by the customer to Unlimited for the Products and Services have been paid.

## **8. DELIVERY**

- 8.1 Unlimited shall not be liable for consequences of any delays or inability to perform caused by circumstances or events beyond the reasonable control of Unlimited or its suppliers.
- 8.2 The Products are at the Customer's risk at all times and Unlimited is excluded from all liability to the Customer or any other person, and the Customer indemnifies Unlimited against any claim by any person about any loss, damage, mis-delivery or delay in relation to the delivery of the Products.
- 8.3 Unlimited may deviate from any usual route or method used to provide the Services.
- 8.4 Unlimited claims a general or particular lien over the Products for all charges under the contract and may set-off or deduct from any payment to Unlimited.

## **9. SUB-CONTRACT**

- 9.1 Unlimited may sub-contract for the performance of this Agreement or any part of this Agreement provided that Unlimited has obtained the Customer's prior written consent.

## **10. COSTS**

- 10.1 In addition to the charges set out in any Contract or Purchase Order, Unlimited reserves the right to charge the Customer for any extraordinary items, not included in Contract or Purchase Order. In that event, Unlimited will provide the Customer with prior written notice of those extraordinary items.

10.2 If the Customer wishes to vary any of the terms in Contract or Purchase Order, Unlimited will use its reasonable endeavours to comply, subject to the parties signing an amended Contract or Purchase Order that takes into account such variations that are agreed.

## **11. COST INCREASE**

11.1 The costs detailed in the Contract or Purchase Order will increase in accordance with annual CPI and Statutory Superannuation increases.

11.2 Products supplied as part of the Services are subject to exchange rate fluctuation. Unlimited may (if the Products or Services have not yet been delivered to you) vary its price to take into account the changes in exchange rate as at invoice date.

## **12. TERMS OF PAYMENT**

12.1 The Customer shall pay the costs and any other charges payable under the Agreement within thirty (30) days of receipt of Unlimited's invoice.

12.2 Where the Customer is in breach of Clause 12.1 above and continues to be in breach fourteen (14) days after receiving notice in writing of this fact from Unlimited, Unlimited may withhold the any outstanding Products or Services until such breach is remedied. Interest shall apply on all overdue invoices in the sum of 2% per month until all outstanding invoices are paid in full. Where the provisions of Clause 17 have been invoked this Clause 12.2 shall not apply until the issue has been resolved in accordance with the provision in Clause 17.

12.3 Until all invoices rendered by Unlimited to the Customer in respect of any goods or services have been paid in full, the Customer accepts that Unlimited shall have a general possessory lien over all products, goods and inventory of the Customer that are in the custody or control of Unlimited.

## **13. GST**

13.1 If GST is imposed on any supply made by Unlimited under the Agreement, the Customer must pay, in addition to any fees (unless those fees already include GST), an additional amount equivalent to the GST payable. In this clause: "GST" means the goods and services tax as provided for by the GST Law; and "GST law" means the tax imposed by the New Tax System (Goods and Services) Tax Act 1999 (Cth) and related impositions of the Commonwealth.

## **14. WARRANTY**

14.1 The Customer will have the benefit of any warranties from vendors, manufacturers or suppliers for the benefit of Unlimited in to the extent that they cover the Services and Products provided to the Customer under this Agreement.

## **15. CONFIDENTIALITY**

15.1 Each party agrees to keep the other's information confidential and use it only for the purposes of the Agreement. This obligation will not apply to any information that a recipient already knew before disclosure or information that comes into the public domain (except by breach of confidentiality). If required by law a party may disclose the confidential information of the other party.

15.2 When Unlimited is on the premises of the Customer it will endeavour to comply with those work place policies and security regulations which the Customer notifies them of in writing prior to entry onto the premises.

## **16. ASSIGNMENT AND CHANGE OF CONTROL**

16.1 The Customer may assign its rights and obligations under the Agreement with the prior written consent of Unlimited. Such consent shall not be unreasonably withheld.

16.2 Unlimited may assign its rights and obligations under this Agreement to a Related Body Corporate with the consent of the Customer. Such consent shall not be unreasonably withheld.

16.3 But for the assignment above, Unlimited agrees not to appoint any subcontractors to perform any part or parts of the Services, without the prior consent of the Customer.

16.4 The Customer may terminate the Agreement by 30 days written notice to Unlimited if, without the written consent of the Customer, there has been a change of control of Unlimited. In this clause, "control" has the meaning given in section 50AA of the Corporations Act

## **17. DISPUTE RESOLUTION**

17.1 If any dispute or disagreement arises between the parties in respect of the Agreement they must follow the following procedures in an attempt to resolve that dispute or disagreement:

- (a) The party claiming that such a dispute exists must give notice in writing ("**Notice of Dispute**") to the other party of the nature of the dispute.
- (b) Within five (5) Business Days of receipt of the Notice of Dispute, a nominee or nominees of the Customer and a nominee or nominees of Unlimited must use their reasonable endeavours to resolve the dispute.
- (c) If, within a further period of five (5) Business Days, the dispute has not been resolved, the matter in dispute must be referred to the Finance Director (or equivalent) of the Customer and the Managing Director (or equivalent) of Unlimited for resolution.
- (d) If the Dispute is not resolved, or a process for resolution of the Dispute has not been agreed, within 5 Business Days of the process referred to in clause 17.1 (c), either party may commence legal proceedings.

17.3 The party that raised the Dispute may withdraw the Dispute at any time by giving written notice (Notice of Dispute Withdrawal).

17.4 If the parties resolve the Dispute, a countersigned declaration of the Dispute's resolution must be delivered to each party (Notice of Dispute Resolution).

17.5 Subject to clause 17, notwithstanding any Dispute or difference, the parties must continue to perform their obligations under the Agreement.

## **18. TERMINATION FOR BREACH OR INSOLVENCY**

18.1 Either party may terminate the Agreement:

- (a) Immediately if the other party is in material breach of the Agreement and does not remedy or commence to remedy the breach within 14 days written notice or if the other becomes or is in jeopardy of becoming subject to any form of insolvency administration (including receivership,

administration or liquidation). Without prejudice to our other rights, the Customer will immediately pay Unlimited all amounts due on termination, including 100% of all outstanding capital costs and liabilities incurred by Unlimited for the benefit of the Customer; and all fees for the Services that Unlimited has provided up to the date of termination;

- (b) immediately if a receiver, receiver and manager, official manager, trustee, administrator or similar official is appointed, or steps are taken for such appointment, over any of the assets or undertakings of a party; or if there is an application made for the winding up of that party.

## **19. OBLIGATIONS UPON TERMINATION**

- 19.1 If the Agreement is terminated, Unlimited shall hand over all information reasonably requested by the Customer, in return for payment by the Customer of Unlimited's costs in doing so, calculated at Unlimited's standard hourly rate as provided in the Contract or Purchase Order.
- 19.2 If the Agreement is terminated, both parties agree to cooperate with one another and communicate in a diligent and professional manner.

## **20. LIABILITY**

- 20.1 The only terms implied into the Agreement are those which cannot be lawfully excluded. Where the Agreement involves the supply of goods or services which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, Unlimited's breach of those terms (other than section 53 of the Competition and Consumer Act 2010) will be limited, at Unlimited's option as the case may be, to any one or more of: the replacement, repair or payment of the cost of replacement or repair of the Products; and supplying the Services again or payment of the cost of the services being supplied again.
- 20.2 Subject to clause 20.1 and otherwise to the maximum extent permitted by law, Unlimited's liability to the Customer for all loss or damage suffered or incurred by the Customer in connection with the Agreement, or the Services (including all loss arising from any breach by Unlimited of the Agreement, Unlimited's negligence or any breach of statute) is limited as follows:
  - (a) Unlimited will not be liable to the Customer for any indirect or consequential loss (including but not limited to loss of profit)
  - (b) Unlimited will be liable to the Customer for other types of loss or damage but their liability is limited to the Fees paid by the Customer to Unlimited under the Agreement in the 6 months prior to the date the cause of the loss or damage occurred, less all GST paid in relation to those Fees.
- 20.3 The Customer acknowledges that they have not relied on any representations made by Unlimited which are not specifically set out in the Agreement.
- 20.4 The Customer indemnifies Unlimited and its related bodies corporate and their offices and employees from and against all losses, damages, claims, actions, expenses and other liability arising from the Customer's non-performance or breach of the Agreement.

## **21. PERSONAL PROPERTY AND SECURITIES ACT**

### **21.1 Definitions**

In this Clause:

PPS Law means:

- (a) the PPSA and any regulations made under the PPSA, as amended from time to time; and
  - (i) any amendment made to any other legislation as a consequence of the PPSA or any regulations made under the PPSA, including amendments to the Corporations Act 2001 (Cth);
  - (ii) PPSA means the Personal Property Securities Act 2009 (Cth).
- (b) A term defined in the PPS Law has the same meaning when used in this Clause.

## 21.2 **Registration of Interests**

The Customer agrees and acknowledges:

- (a) Unlimited may be entitled to register any relevant interest under this Agreement as a security interest or a purchase money security interest (at Unlimited's discretion) on the register established under the PPS Law;
- (b) the Customer has provided consideration for that security interest, by delivery of its promises under this Agreement;
- (c) Unlimited may, by Notice to the Customer at any time, require the Customer to take all steps, provide information (including serial numbers) or do any other thing that Unlimited considers necessary or desirable to:
  - i. ensure that this Agreement (or any related document) or any security interest arising under it, is enforceable against the Customer or any third party;
  - ii. protect, perfect, record or better secure, or obtain or preserve the priority of, the security position of Unlimited under this Agreement (or any related document); or
  - iii. overcome any defect or adverse effect arising from the PPS Law on Unlimited's security position or the rights or obligations of Unlimited under or in connection with this Agreement or any encumbrance or document contemplated by this Agreement.
- (d) the Customer must comply with the requirements of a Notice under this Clause 21.2 within the time stated in the Notice, at the Cost of the Customer;
- (e) if Unlimited is entitled to register a security interest in respect of any collateral under this Agreement and the PPSA entitles a provision to be excluded regarding disclosure of information, then that provision is excluded from this Agreement;
- (f) if Unlimited seizes any collateral, Unlimited may delay a decision to dispose of or retain any of the collateral seized by Unlimited for as long as Unlimited considers reasonable in the circumstances in accordance with Section 125(3)(a) of the PPSA;
- (g) the Customer agrees that it will not either redeem the collateral under Section 142 of the PPSA or reinstate the security agreement under Section 143 of the PPSA; and
- (h) in addition to any power granted by the Customer in favour of Unlimited otherwise in this Agreement, the Customer irrevocably appoints Unlimited and each authorised officer of Unlimited, as its attorney with the right at any time to:
  - i. comply with the obligations of the Customer under this Clause and the PPS Law; and

- ii. do everything that in the attorney's reasonable opinion is necessary or expedient to enable the exercise of any right of Unlimited in relation to this Clause and the PPS Law.

## **22. FORCE MAJEURE**

- 22.1 Notwithstanding any other provision of these General Terms and Conditions, neither party will be liable for any failure to fulfil any term of the Agreement if such fulfilment is delayed, prevented, restricted or interfered with for any reason outside that party's control.
- 22.2 The party unable to perform its obligations must:
- (a) notify the other party promptly of any delay; and
  - (b) use its best efforts to resume performance in accordance with the Agreement as soon as possible.
- 22.3 If any event continues for more than one month, then the Agreement may be terminated forthwith by either party giving notice to the other party.

## **23. GENERAL**

- 23.1 All notices or approvals required by or provided in accordance with these General Terms and Conditions shall be delivered to the persons nominated in the Contract or Purchase Order as varied from time to time by notice in writing at the address nominated in the Contract or Purchase Order as varied from time to time by written advice of the parties.
- 23.2 If any new tax or levy is introduced by the Government excluding income tax changes, the resultant variation in cost of providing the Services under the Agreement shall be taken into account by way of an adjustment to rates contained herein by the amount equal to the cost variation resultant from the new tax or levy.
- 23.3 These General Terms and Conditions and the Contract or Purchase Order together represent the entire Agreement between the parties who commit to abide by the terms and conditions contained herein.
- 23.4 A variation of any term of this Agreement must be in writing and signed by both parties.
- 23.5 The Agreement will be governed by and construed according to the law of the State of New South Wales and the parties agree to submit to the jurisdiction of the courts and tribunals of the State of New South Wales and courts hearing appeals therein