
TERMS AND CONDITIONS OF TRADE AGREEMENT

1. Interpretations

- (i) "the Act" means the *Competition & Consumer Act 2010*
- (ii) "Agreement" means this Terms and Conditions of Trade Agreement between ASSA and the Client
- (iii) "ASSA" means All Stars Services Australia Pty Ltd A.C.N 625 815 796 including its officers, directors, employees and representatives from time to time.
- (iv) "Claim" means any claim, demand, action or proceeding.
- (v) "Client" means the person or corporation who has agreed to use the Services of ASSA.
- (vi) "Goods" means Goods supplied by ASSA to the Client and are as described on the invoices, quotation, work, authorisation, or any other forms as provided by ASSA to the Client.
- (vii) "Invoice" means any invoice or statement given by ASSA to the Client for the Services.
- (viii) "PPSA" means Personal Property Securities Act 2009 (Cth).
- (iv) "Price" means our fixed and published price or the amount agreed between ASSA and the Client or the amount established by a course of dealing between the parties.
- (v) "Security Interest" has the meaning in the PPSA.
- (vi) "Services" means any service provided by ASSA to the Client.

2. General

- (a) These general agreed terms apply to all transactions between the parties. Other documents relating to the transactions between the parties will include any specific terms and conditions. This document will supersede all other conditions and agreements between the parties, unless expressly amended by ASSA.
- (b) ASSA may, at any time, vary these terms of trade for future Services by giving notice to the Client. Notice may be given by email or otherwise in writing. ASSA will not change any terms for an existing order that has been accepted by it.
- (c) Where more than one Client has entered into this Agreement, the Clients shall be jointly and severally liable for all payments.
- (d) No variation of these terms and conditions will be deemed effective unless it is expressly agreed in writing and signed by ASSA.

3. Services

- (a) The Client acknowledges that the Services are limited to the works described and annexed in a schedule marked with the letter "A" (Annexure A).
- (b) Any Services not listed in Annexure A, and are requested by the Client following the execution of this agreement or the commencement of work, will be subject to a variation on costs.

4. Payment

- (a) The Client agrees that any deposit requested by ASSA and subsequently paid for by the Client is non-refundable.
- (b) Unless otherwise agreed by the parties in writing, payment shall be made by the Client within 7 days from the date in which the Invoice is dated.
- (c) Unless otherwise agreed, normally payment is a condition precedent to the delivery of Services provided to the Client.
- (d) The Client's right, as against ASSA to retain or dispose of the Services provided to the Client is conditional upon the Client honouring the payment arrangement between the parties.
- (e) By accepting payment of any sum after its due date, ASSA will not waive its right either to require payments as they fall due to or to suspend or end the Services provided or arrangements between the parties.
- (f) The Client is not entitled to withhold any payment by way of retention unless the terms and conditions of the retention are agreed to in writing by ASSA prior to the supply of the Services.
- (g) Time for payment of the price of the Services shall be of the essence and if the Client fails to pay the Price (as set out in the Invoice) when due, ASSA may treat this Agreement as repudiated by the Client or may, unless payment in full is made, suspend the provision of its Services with the Client, without incurring any liability whatsoever to the Client. In addition, without prejudice to such rights of ASSA, the Client shall (if required by ASSA) pay interest to ASSA on the outstanding amount of the price at the rate of 15% per annum until the amount owed is paid in full.

5. Default

- (a) If the Client is in default under this Agreement, ASSA may send the Client a default notice. The notice will tell the Client what the default is and what the Client is required to do to correct the default. The Client will have 14 days to rectify the default.
- (b) If the Client does not comply with the default notice, the Client become immediately liable to pay to ASSA all of the money owing under the Invoice with interest on that amount from the due date until payment at the rate of 15% per annum.
- (c) The Client also agrees to pay on default all costs and expenses incurred in exercising ASSA's rights of recovery from the Client and the guarantor (if any) and indemnify ASSA against any losses resulting from the default or any future losses in relation to the default.
- (d) The Client agrees to sign documents or do all things necessary to perfect ASSA's rights under this Agreement and appoint ASSA as the Client's attorney to sign any document or do anything that may reasonably be required to enforce ASSA's rights on default.
- (e) Any expenses, costs or disbursements incurred by ASSA in recovering any outstanding monies owing by the Client (including solicitor's costs and debt recovery fees) shall be paid by the Client.

6. PPSA

- (a) To protect ASSA's security interest in the Services provided until payment, ASSA may choose to register this Agreement between the parties under the Personal Properties Securities Act 2009 "PPSA". The Client agrees to do all things necessary to facilitate such registration including providing consent to ASSA to record details of this Agreement on the Personal Property Securities Register ("PPSR") and agrees to do all things necessary and reasonably required by ASSA to effect such registration on the PPSR.
- (b) The Client waives any right or entitlement to receive notice of the registration of any security interest (s) created by this instrument on the PPSR.
- (c) The Client acknowledges and agrees that by accepting the terms and conditions of this Agreement, it will constitute a Security Agreement that covers the Collateral for the purposes of the PPSA.
- (d) The Client acknowledges and agrees that ASSA (as Secured Party) holds a Security Interest over all of the present and after acquired goods supplied by ASSA to the Client and any proceeds from the sale of those goods ("Collateral"). In the event that no goods are supplied (and the provision of for Services only), the Client charges all present and after acquired property (which it owns or may own in the future) as security for the obligation of the Client to pay for the Services provided by ASSA to the Client.
- (e) The Client also acknowledges and agrees that services provided to the Client on credit terms from ASSA will constitute a purchase money security interest under section 14 of the PPSA ("PMSI"). The PMSI granted will continue to apply to any goods coming into existence or proceeds of sale of goods coming into existence at a future date.
- (f) Any ASSA Security Interest will be a continuing and subsisting interest with the priority to the fullest extent permitted by law over all registered or unregistered Security Interest.

7. Risk and Indemnity

The Client indemnifies ASSA against all costs, claims, demands, expenses and liabilities of whatsoever nature, including, without prejudice to any claims of death, personal injury, damage to property and consequential loss (including loss of profit) which may be made against the Client or which the Client may sustain, pay or incur in connection of or as a result of the Services provided by ASSA, unless such claim or breach shall be directly and solely attributable to any breach of contract or negligence by ASSA or its duly authorised employee or agent. If the ASSA retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, then ASSA is entitled to

receive all insurance proceeds payable for the Goods. The production of these terms and conditions by ASSA is sufficient evidence of the ASSA's rights to receive the insurance proceeds without the need for any person dealing with ASSA to make further enquiries.

8. **Warranties**

ASSA warrants that if any defect in any workmanship of ASSA becomes apparent and is reported to ASSA within three (3) months of the date of delivery (time being of the essence) then ASSA will either (at the ASSA's sole discretion) replace or remedy the workmanship.

The conditions applicable to this warranty given are:

- (a) The conditions applicable to this warranty given are:
 - (i) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (1) failure on the part of the Client to properly maintain any Goods; or
 - (2) failure on the part of the Client to follow any instructions or guidelines provided by ASSA; or
 - (3) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (4) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (5) fair wear and tear, any accident or act of God.
 - (ii) the warranty shall cease and ASSA shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the ASSA's consent.
 - (iii) in respect of all claims ASSA shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- (b) For Goods not manufactured by ASSA, the warranty shall be the current warranty provided by the manufacturer of the Goods. ASSA shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

9. **Disclosure**

The Client represents and warrants to ASSA that all information and representations that the Client, or any person acting on the Client's behalf has given in connection with the transactions between the parties are true and correct and that the Client has not failed to disclose to ASSA anything relevant to ASSA's decision to have dealings with the Client and that no court proceedings or dispute is current that may have an adverse effect on performing the Client's obligations under this Agreement.

10. **Building and Construction Industry Security of Payments Act 1999**

At ASSA's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

11. **Compliance with Laws**

The Client and ASSA shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works. The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the works. The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

12. **Dispute Resolution**

When a dispute arises between the parties, the Client agrees to comply with ASSA's dispute resolution process. To this end a party with a complaint against the other is first required to notify the other of the dispute by giving written notice specifying the nature of the dispute, the outcome required and the action believed necessary under the circumstances that will assist both in settling the dispute.

13. **GST**

Goods and Services Tax (GST) will be charged on those Services or goods provided that attract GST at the applicable rate. If a Service or goods constitutes a taxable supply, the Client must pay the GST applicable to that Service, subject to ASSA providing a tax invoice to the Client. The payment of GST is in addition to any other consideration payable by the Client.

14. **Confidentiality**

(a) The Client acknowledges that all information relating to this Agreement and any other commercially sensitive confidential and information relating to this Agreement is strictly confidential.

(b) The Client must not, without the prior written consent of ASSA, disclose confidential information to any other person or entity nor use any confidential information for any reason other than the furtherance of the business relationship between ASSA and the Client.

15. **Jurisdiction**

This Agreement and any other contract or agreement between the parties is governed by the laws of the State of New South Wales, Australia. The Client agreed to submit to the non-exclusive jurisdiction of the New South Wales Courts and courts of appeal therefrom for all purposes of or in connection with such Agreement or contracts between the parties.

16. **Individual Guarantee**

If the Client is a company, at least two directors must provide a personal guarantee wherein they personally guarantee the punctual performance of any payments (as set out in this Agreement) and/or all the obligations of the company Client. Further, all guarantors shall be jointly and severally liable for the performance of all terms, covenants, and conditions of this Agreement and/or any other agreement or contract between the parties. The guarantors jointly and severally authorise ASSA to exchange information about the creditworthiness of either the Client or the guarantors with any credit reporting agency at any time during the term of the Agreement.

17. **Assignment**

The Client may not transfer or assign or purport to transfer or assign of its obligations or rights under or in connection with this Agreement to any other corporation or person under any circumstance. This is an essential term of this Agreement.

18. **Intellectual Property**

The Client must not transfer, or attempt to transfer, alter or remove any right, title or interest in any intellectual property rights (including but not limited to trademarks, patents or any other rights held at common law) of ASSA.

19. **Notices**

Notice Any notice to be given to the Client shall be deemed to be given upon its being posted or sent by facsimile to the address or facsimile number of the Client or to the Client's registered office or to the Client's last known address.