

# ACTIVATED

## SERVICE & MAINTENANCE

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### TERMS AND CONDITIONS

**These Terms and Conditions are to be read in conjunction with the details contained in your Quote. Once accepted, the Quote and these Terms and Conditions form the basis of a maintenance services agreement between you (the "Customer") and Activated Service and Maintenance (ABN 74 621 532 527, ACN 621 532 527) (the "Supplier").**

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1. Definitions In these Terms and Conditions:

**Agreement** means this Agreement and includes these Terms and Conditions and the Quote.

**Customer** is the party named as the Customer on the Quote and/or who places the Order.

**Goods** mean the products and/or related components provided by the Supplier.

**GST** means Goods and Services tax under the Goods and Services Act 1999 (Cth) (GST Act).

**Indirect, Special or Consequential** loss or damage includes, without limitation, any loss of income profit or business and any loss of good will or reputation.

**Invoices** include invoices for Goods supplied or for Services provided, or both.

**Major Failure** means a major failure within the meaning of major failure specified in the Competition and Consumer Act 2010 (Cth).

**Order** is any request for the provision of Goods and/or Services by the Customer in accordance with the Supplier's Quote.

**Parties** mean the Supplier and the Customer.

**PPSA** means the Personal Property Securities Act 2009 (Cth).

**PPSR** means the Personal Property Securities Register maintained pursuant to the PPSA.

**Premises** are the land and buildings where the Services are to be carried out.

**Price** is the amount invoiced for the Goods supplied or the Services provided.

**Quote** is any written or verbal quotation for Goods or Services provided by the Supplier.

**Services** means the delivery and/or supply of Goods as well as any installation, maintenance and repairs undertaken by the Supplier, including any advice or recommendations.

**Supplier** means Jason Loos trading as Activated Service and Maintenance (ABN 74 621 532 527, ACN 621 532 527).

**Terms and Conditions** means these Terms and Conditions.

##### 1.2. Interpretation

(a) These Terms and Conditions together with any Quote form the terms of an Agreement between the Customer and the Supplier.

(b) Any Order requested by the Customer is deemed to be an Order incorporating these Terms and Conditions and the terms of any Quote and may not be varied unless expressly agreed to by the

Parties in writing. In the event that an inconsistency exists and/ or arises between these terms, any Quote and the Order it is acknowledged between the parties that these Terms and Conditions and the Quote will prevail over the Order and the Quote will prevail over the Order and the Terms and Conditions.

(c) No subsequent correspondence or document or discussion shall modify or otherwise vary this Agreement unless such variation is in writing and signed by the Supplier.

(d) This Agreement is binding on the Customer, its heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.

(e) In this Agreement, the singular shall include the plural, the masculine shall include feminine and neuter and words importing persons shall apply to corporations and vice versa.

(f) Where more than one Customer completes this Agreement each shall be liable jointly and severally.

(g) If any provision of this Agreement is found to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired and the offending provision shall be deemed as severed from these Terms and Conditions.

(h) The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent but the Supplier acknowledges that it remains at all times liable to the Customer.

(i) The failure by the Parties to enforce any provision of this Agreement shall not be treated as a waiver of that provision, nor shall it affect each Party's right to subsequently enforce that provision.

(j) The Customer acknowledges that the Supplier has detailed these Terms and Conditions on its website and that the Customer has had an opportunity to seek advice as to their meaning and effect.

(k) The Customer covenants that he is either the owner of the Premises or is acting with the authority of the owner of the Premises.

## **2. QUOTES AND ORDERS**

**2.1.** A Quote provided by the Supplier is an offer to provide the goods and services specified in the Quote on these Terms and Conditions. Unless specified otherwise on the Quote, Quotes will remain open for acceptance for a period of thirty (30) days after it is given, after which time it cannot be accepted without the Supplier's prior written approval.

**2.2.** A Quote may be accepted by the Customer notifying the supplier that it wishes to place an Order by emailing a signed Quotation acceptance by and paying the deposit referred to in clause 3. The Customer acknowledges that the Supplier will not commence work until the deposit is received in cleared funds.

## **3. PRICE AND PAYMENT**

**3.1.** GST will be charged on the Goods and/or Services provided by the Supplier that attract GST at the applicable rate. All prices specified in the Quote are inclusive of GST. Subject to clause 3.3, the Price shall be the Supplier's quoted Price for the Order

**3.2.** Where the Customer pays the Price by credit card, an additional credit card charge fee will be charged on top of the Price which is equivalent to 1.9% of the Price.

**3.3.** In the event that there is a variation in the cost of supplying Goods and/or Services which was previously unknown or unforeseen by the Parties at the time the Quote was given, the Supplier may, on the provision of notice to the Customer, increase the cost of the Goods and/or Services to be supplied in order to reflect the increased cost of supply, provided that such notice is provided in writing within a reasonable time and that the Customer may elect to accept the increase in cost or to cancel the Order without penalty.

**3.4.** Subject to receipt of an Invoice, the Customer must pay 50% of the Price as a deposit, prior to the commencement of work, and the balance of the Price on completion on the date the Invoice is issued by the Supplier (Due Date).

- 3.5. If the Supplier does not receive full payment of the Price on the Due Date, the Supplier may, without prejudice to any other remedy it may have, take legal action to recover all amounts owing, including without limitation engaging a law firm or debt collection agency for further action.
- 3.6. The Customer acknowledges and agrees that after the Due Date:
  - (a) The Supplier may, in its discretion, charge interest on any amounts owing at the rate of 10% for all monies due by Customer to the Supplier; and
  - (b) The Customer indemnifies the Supplier against all expenses, losses, damages or costs incurred by the Supplier as a direct or indirect result of the Customer failing to pay the Price by the Due Date and that in the event that legal action is taken to recover the Price or the overdue account is then referred to a debt collection agency, and/or law firm for collection, the Customer shall be liable for the full recover

#### **4. PROVISION OF SERVICES AND/OR THE SUPPLY AND DELIVERY OF GOODS**

- 4.1. At any time before payment is made by the Customer, the Supplier reserves its right to:
  - (a) Decline requests for any Goods and/or Services requested by the Customer; and/or
  - (b) Cancel or postpone the delivery of Goods and/or Services at its discretion.
- 4.2. Delivery of the Goods shall be deemed to be complete when the Goods are collected by the Customer or are delivered to the Customer or to the carrier as nominated by the Supplier and/or Customer.
- 4.3. Unless specified by the Supplier to the contrary in the Order, the Supplier does not warrant that it will be capable of providing the Goods and/or Services at specific times requested by the Customer during the term of this Agreement.
- 4.4. Subject to otherwise complying with its obligations under this Agreement, the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of providing the Goods and/or Services and of satisfying the Customer's expectations of those Goods.
- 4.5. The Customer is responsible to obtain all necessary permits and to mark out the site at the Premises for the provision of the Services.
- 4.6. The Customer is responsible for ensuring that the Goods are secured at the Premises and will be responsible for any loss, damage or theft of the Goods delivered by the Supplier to the Premises.

#### **5. RISK AND LIABILITY**

- 5.1. The Customer will ensure it provides sufficient information to enable the Supplier to supply the Goods or provide the Services.
- 5.2. The Supplier takes no responsibility if the specifications provided by the Customer are misleading, wrong or inaccurate, or for the suitability, quality or fitness for purpose of Goods supplied or provided by the Customer or for pre-existing faults which are not communicated to the Supplier, and the Customer will be liable for any expenses incurred by the Supplier for any work required to rectify Goods or Services it supplies as a result of the above.
- 5.3. The Supplier is not liable for and takes no responsibility for the work undertaken or goods supplied by third parties engaged or acquired by the Customer.
- 5.4. The Customer is responsible for ensuring that the Supplier is made aware of any special requirements pertaining to the Order and the Supplier relies upon the integrity of the information supplied to it.
- 5.5. The Supplier takes no responsibility and will not be liable for any damages or costs resulting in the Goods being faulty as a consequence of insufficient information provided by the Customer.
- 5.6. The Supplier takes no responsibility for representations made in relation to the Goods or any delay in the delivery of the Goods made by a third party or third party manufacturer which was organised by the Customer.
- 5.7. The Customer acknowledges that the Supplier shall not be liable for and the Customer releases the Supplier from any loss incurred as a result of delay, or failure to provide the Goods or to observe any

of these conditions due to an event of Force Majeure, being any cause or circumstance beyond the Supplier's reasonable control.

- 5.8. The Supplier does not represent that it will provide and/or deliver any Goods unless it is included in the Quote.
- 5.9. Subject to Clauses 5.11, the Customer accepts risk in relation to the Goods when Goods pass to his care and/or control.
- 5.10. The Supplier will not be liable to the Customer in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the Customer of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill.
- 5.11. Not with standing any other provision within this Agreement, the Supplier does not purport to restrict, modify or exclude any liability that cannot be excluded under the Competition and Consumer Act 2010 (Cth) or the Fair Trading Acts in each of the States and Territories of Australia.
- 5.12. Without limiting the foregoing, to the extent permitted by law, the liability of the Supplier for any claim will at all times be limited to one or more of the following at the Supplier's election:
  - A. If the breach relates to goods:
    - a. Replacing the goods or supplying equivalent goods;
    - b. Repairing of goods;
    - c. Paying the costs of replacing goods or of acquiring equivalent goods ; or
    - d. Paying the costs of having the goods repaired, or
  - A. If the breach relates to services:
    - a. Supplying the services again; or
    - b. Paying the cost of having the services supplied again.

## 6. INDEMNITIES

- 6.1. The Customer indemnifies the Supplier and its employees, contractors, agents and workers and shall keep them indemnified against all actions, costs, charges, claims and demands in respect of:
  - (a) Any breach of this Agreement by the Customer including without limitation the enforcement or the attempted enforcement of this Agreement;
  - (b) Any act or omission by the Customer or its employees, contractors, workers or agents; (c) liability for all loss, damage or injury to any person or property caused by the Customer, its employees, contractors, workers or agents in the course of the Supplier supplying Goods or Services to the Customer.

## 7. TERMINATION AND CANCELLATION

- 7.1. Cancellation by Supplier
  - (a) The Supplier may cancel any Order to which this Agreement applies or cancel delivery of Goods at any time before payment is made by the Customer by giving written notice to the Customer. The Supplier shall not be liable for any loss or damage or consequential loss or damage whatever arising from such cancellation.
  - (b) 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 Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
    - i. Any money payable to the Supplier becomes overdue; or
    - ii. The Customer 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
    - iii. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 7.2. Cancellation by Customer
  - (a) Any Order cannot be cancelled by the Customer unless expressly agreed to by the Supplier in writing.
  - (b) In the event that the Customer cancels delivery of the Goods the Customer shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.
  - (c) If the Customer places an Order with the Supplier and the Supplier places an Order with a third

party supplier to meet the Customer's request, the Customer shall be liable for the Price of the Goods ordered if the Customer cancels the Order and the Goods have already been dispatched.  
(d) The Supplier acknowledges that in the event the Supplier contravenes any of the terms in this Agreement, then this clause 7.2 will not apply.

## **8. TITLE**

- 8.1. Subject to clauses 9.1 and 9.3, the risk in the Goods shall pass on delivery and/or supply (including all risks associated with unloading). Legal and equitable title in the Goods shall remain with the Supplier until full payment of all Goods supplied by the Supplier to the Customer is made. Pending such payment the Customer:
- (a) shall hold the Goods as Bailee for the Supplier and shall return the Goods to the Supplier if so requested;
  - (b) Agrees to hold the Goods at the Customer's own risk and is liable to compensate the Supplier for all loss or damage sustained to the Goods whilst they are in the Customer's possession;
  - (c) The Customer should store the Goods separately and in such a manner that it is clearly identified as the property of the Supplier and keep the Goods insured to full replacement value;
  - (d) The Customer must not allow any person to have or acquire a Security Interest in the Goods whilst the Goods are in the Customer's possession;
  - (e) The Customer may sell and/or use the Goods in the ordinary course of business; and
  - (f) If the Goods are resold before all monies are paid to the Supplier, the Customer shall hold 7 the proceeds of sale in a separate identifiable account on trust for the Supplier and promptly account the Supplier for those proceeds in payment of the Price for the Goods.
- 8.2. The Supplier is authorised to enter the Premises or the premises where the Customer stores the Goods without liability for trespass or any resulting damage in retaking possession of the Goods until the accounts owed to the Supplier by the Customer are fully paid.
- 8.3. Notwithstanding the provisions above, the Supplier shall be entitled to issue legal proceedings to recover the Price of the Goods.

## **9. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH) (PPSA)**

- 9.1. Any term used in this clause which is defined meaning in the PPSA shall have the same meaning in this clause as ascribed to that term in the PPSA.
- 9.2. The Customer acknowledges that this Agreement will constitute a Security Agreement which creates a Security Interest in favour of the Supplier over all present and after acquired Goods and/or Services supplied by the Supplier to the Customer to secure the payment of the Price or any other amount owing under this Agreement from time to time including future advances.
- 9.3. The Customer acknowledges that by accepting this Agreement and by virtue of the retention of title clause as provided for in clause 8, the Security Interest is a Purchase Money Security Interest (PMSI) as defined under Section 14 of the PPSA for all present and after acquired Goods and/or Services including any Commingled Goods.
- 9.4. The Security Interest will continue to apply as an interest in the Collateral for the purposes of PPSA with priority over any registered or unregistered Security Interest.
- 9.5. The Supplier may register the Security Interest as PMSI on the PPSR under the PPSA without providing further notice to the Customer.
- 9.6. The Customer agrees the Supplier is not required to disclose information pertaining to the Supplier's Security Interest to an interested party unless required to do so pursuant to PPSA or under the general law.
- 9.7. The Customer agrees and undertakes:
- (a) To sign any documents and/or provide further information reasonably required by the Supplier to register any Financing Statement or Financing Change Statement on the PPSR;
  - (b) To indemnify the Supplier for all expenses and/or costs incurred by the Supplier in registering a Financing Statement or Financing Change Statement on PPSR including the costs of amending, maintaining, releasing and enforcing any Security Interests in the Goods;
  - (c) Not to register and/or make a demand to alter a Financing Statement in the Collateral without prior written consent of the Supplier;
  - (d) To provide the Supplier with 7 days written notice of any change or proposed change to the Customer's business name, address, contact details or other changes in the Customer's details registered on the PPSR;
  - (e) To waive any rights of enforcement under Section 115 of the PPSA for Collateral not used

predominantly for personal, domestic or household purposes;

(f) To waive any rights to receive a Verification Statement in respect of any Financial Statement or Financing Charge Statement under Section 157 of the PPSA.

#### **10. SET-OFF**

10.1. The Customer shall have no right of set-off in any suit, claim or proceeding brought by the Supplier against the Customer for default in payment.

10.2. The Customer acknowledges that the Supplier can produce this clause in bar of any proceeding for set-off.

#### **11. INSURANCE**

11.1. The Supplier is not liable to provide any insurance cover in relation to the provision of the Goods and Services. The Customer is responsible to effect whatever insurance cover the Customer requires at the Customer's own expense.

#### **12. ACCESS**

12.1. The Customer shall, where relevant, ensure the Supplier has full and safe access to the Premises and any necessary essential services, resources, equipment, materials and information.

12.2. The Customer will ensure that the Supplier's work is not interfered with.

12.3. The Customer will be charged an additional fee which is equivalent to the call out fee if the Supplier's work is interfered with or no proper or safe access is provided to the Supplier.

12.4. The Supplier will not be held responsible for any delay due to inclement weather, failure of the Customer to provide required Items or changes requested to be made by the Customer and/or in any circumstances beyond the Supplier's reasonable control.

12.5. The Customer shall supply water and/or electricity to the Supplier to carry out the Order at no costs to the Supplier.

#### **13. AGREED USE**

13.1. The Customer acknowledges that the Customer may forfeit any rights if any, it may have against the Supplier if:

(a) the Goods are applied for any other use to which the Goods are not intended for or not in accordance with the instructions provided by the Supplier; or

(b) any alteration to the Goods is carried out other than in accordance with intended alterations and/or the Goods are not repaired by a qualified authorised repairer.

13.2. The Customer further acknowledges sole responsibility for any damage or injury to property or person caused by using the Goods in any way and shall indemnify in full the Supplier, its servants and/or agents in relation to all such claims.

#### **14. JURISDICTION**

14.1. This Agreement is deemed to be made in the State of Western Australia and all disputes hereunder shall be determined by the appropriate courts of Western Australia.

#### **15. ENTIRE AGREEMENT**

15.1. These Terms and Conditions constitute the whole Agreement made between the Customer and the Supplier.

15.2. This Agreement can only be amended in writing signed by each of the parties.

15.3. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by him or on his behalf that are in conflict with any clauses in this document in any way.