

## 1. OUTLINE

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- 1.1 **Applicability of Terms:** These terms and conditions of sale (**Terms**) apply to the supply of all Goods and/or Services by us to you from the date that you accept these Terms.
- 1.2 **Acceptance:** You accept these Terms when:
- (a) you submit an Order;
  - (b) you accept a Quote given to you by us;
  - (c) you accept delivery of, or any part of, the Goods and/or Services of an Order;
  - (d) you make Payment, or partial Payment, for any Goods and/or Services supplied by us; or
  - (e) do any other act which shows an intention to be bound by these Terms,
- whichever occurs first.

## 2. SERVICES

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- 2.1 **Term:** Flagstaff will use its best endeavours to provide the Services to you for the Term of the Agreement.
- 2.2 **Scope of work:** The Services delivered will:
- (a) match the description of the Services in Schedule 3 of the Agreement or in any document including a scope of work which the parties agree; and
  - (b) be performed with due care and skill and in accordance with the degree of care, skill and diligence normally exercised by recognised professional persons or firms which supply Services of a similar nature.

## 3. FLAGSTAFF OBLIGATIONS

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- 3.1 **Laws/Policies & Procedures:** Flagstaff will use its best endeavours to:
- (a) deliver the Services in compliance with any of your policies and procedures which you inform Flagstaff of prior to signing the Agreement;
  - (b) keep and maintain all licences and qualifications required to perform the Services; and
  - (c) appoint a representative as the emergency contact and provide details of the representative's telephone number and email address to you.

## 4. PAYMENT

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- 4.1 **Invoice on delivery:** Unless Flagstaff otherwise agrees, we will issue you an Invoice upon delivery of the Goods and/or Services specified in your Order. You must pay Flagstaff the amount in the Invoice no later than 28 days after the date on the Invoice.
- 4.2 **Payment dispute:** Notwithstanding any amount payable in an Invoice which may in dispute, you must pay the full amount until resolution of any dispute in respect of that amount is reached pursuant to clause 18 of this Agreement.
- 4.3 **Full or part payment:** If you are in breach its obligations under the Agreement, Flagstaff may request payment in part or full prior to the completion/lodgement of any job.

## 5. DEFAULT

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- 5.1 **Default Interest:** If you fail to make a Payment in accordance with clause 4 (*Payment*), we may charge Default Interest at the rate of 3% per calendar month.
- 5.2 **Payment of Default Interest:** Default Interest pursuant to clause 5.1 shall be:
- (a) payable on demand; and
  - (b) calculated daily from the due date to the actual date the Payment is made in full.
- 5.3 **Costs of enforcement:** We may recover from you any costs we incur to collect any Payment.
- 5.4 **No set off:** You may not set off against any Payment any claims which you may have against us.
- 5.5 **Default Interest amount credited first:** Any Payment you make to us shall first be credited against any Default Interest accrued pursuant to this clause 5 to the actual date of Payment.
- 5.6 **Revocation of credit:** We reserve the right to revoke at any time any credit extended to you because of your failure to make any Payment when due or for any other reason.

## 6. DELIVERY, RISK + INSURANCE

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- 6.1 **Delivery:** Delivery of the Goods occurs when you pick up or we deliver the Goods to you, your agent or nominee or to a carrier commissioned on your behalf at the place specified by you, or as otherwise agreed. If not already provided in your Order, you shall provide to us any forwarding instructions at least 2 business days before the date set for Delivery of the Goods. If inspection by you or your agent is required at our premises, the inspection must be arranged by you at your cost.
- 6.2 **Cost of delivery:** We may charge you the cost of delivering the Goods to you, which will be included in the Quote. You must pay for any further costs after the Goods have been Delivered.
- 6.3 **Risk passes on delivery:** The risk in the Goods shall pass to you upon the delivery of the Goods in accordance with clause 6.1.
- 6.4 **Insurance over Goods:** If we request, you must from the delivery date until we have received Payment for all Goods in full have sufficient insurance in respect of the Goods to protect us against loss or damage by fire, theft, or any other cause whatsoever and provide to us upon our request evidence of such insurance.
- 6.5 **No liability for delay:** We will use reasonable efforts to deliver the Goods to you by the date and to the place specified by you. Without limiting clause 8 (*Exclusions + Limitations*), if the Delivery of the Goods is delayed:
- (a) we shall not be liable for late delivery or delay in delivery; and
  - (b) the delay does not give you the right to cancel an Order or terminate these Terms.

## 7. GST

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- 7.1 Unless expressly stated otherwise, any amount which must be paid in connection with the Agreement is exclusive of GST.
- 7.2 Flagstaff will issue a tax invoice for any taxable supply to you, which will enable you, if permitted by the GST Law, to claim a credit for GST paid by you.

## 8. EXCLUSIONS + LIMITATIONS

- 8.1 **ACL exception:** The exclusions and limitations in this clause 8 are subject to clause 9 (*Statutory Rights*).
- 8.2 **Excluded rights:** All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to these Terms, that are not contained in it, are excluded to the fullest extent permitted by law.
- 8.3 **Limitations:** No warranty is given and we will not be liable for:
- In the case of Goods*
- (a) alterations to Goods for which we are not responsible;
  - (b) defects or depreciation caused by wear and tear, accidents, corrosion, dampness, abnormal conditions or effects;
  - (c) damage or failure caused by unusual or non-recommended use, misuse or application of the Goods; or
  - (d) Loss caused by any factors beyond our control; and
- In the case of Services*
- (a) interference with our Services for which we are not responsible;
  - (b) damage or Loss caused by unusual or non-recommended use of our Services; or
  - (c) Loss caused by any factors beyond our control.
- 8.4 **Indirect loss:** We will not be liable for any special, indirect, consequential or economic loss or damage or loss of profits (in contract or tort or arising from any other cause of action) suffered by you or any other person resulting from any act or omission by us (including breach, termination or non-observance of the terms of an Order or agreement which incorporates these Terms).
- 8.5 **Total liability:** Our total liability for breach of these Terms or breach of our contractual obligations or duties at law or in equity (however arising) is limited at our option to:
- In the case of Goods*
- (a) the replacement of the Goods or the supply of equivalent goods;
  - (b) the repair or rectification of the Goods;
  - (c) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
  - (d) the payment of the cost of the repair or rectification of the Goods; and
- In the case of Services*
- (a) the supply of the Services again; or
  - (b) the payment of the cost of having the Services supplied again.
- 8.6 **No reliance:** You agree that:
- (a) you have and will make your own assessment of the fitness for purpose and suitability of any Goods and/or Services supplied to you;
  - (b) you do not and will not rely on our skill or judgment nor that of any person by whom any prior arrangements regarding the acquisition of any Goods and/or Services were or will be made; and
  - (c) you have not made nor will make known to us or a manufacturer of goods (directly or indirectly) the particular purpose for which you acquire Goods and/or Services.

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- 8.7 **Third party work:** If we obtain goods or services from a third party to carry out your instructions or complete an Order:
- we will not be liable for any breach of these Terms if that breach is as a result of or is connected with the supply by a third party of such goods or services;
  - we acquire such goods or services as agent for you not as principal and will have no liability to regarding the supply of these goods or services;
  - any claim by you regarding the supply of such goods or services must be made directly against that third party; and
  - you must pay for such goods or services from the third party plus the cost of or relevant fee for us performing such services as agent for you (whether separately identified or not). You do not require us to account to you for any commissions or benefits we may receive from such a third party supplier in connection with the supply of such goods or services to you and authorise us to contract on your behalf as we think fit.
- 8.8 We give no warranty in respect of any goods or services that are supplied or carried out or provided to you by a third party even where forming part of an Order. Any warranties or other rights will be governed by the terms of supply by that provider to you and relevant laws.

## 9. STATUTORY RIGHTS

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- 9.1 **Statutory rights:** Certain statutory guarantees, warranties and rights may apply to your purchase of Goods and Services from us as provided by relevant laws but subject to these Terms as applicable and where permitted by relevant laws.
- 9.2 **No restriction:** Nothing in these Terms excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified.
- 9.3 **Unfair contract:** If section 23 of the ACL applies to any provisions in these Terms, any such provision(s) shall be void to the extent it is unfair within the meaning of section 24 of the ACL.

## 10. WORK HEALTH AND SAFETY

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- 10.1 Flagstaff will use its best endeavours to comply with all Laws pertaining to WHS.

## 11. INTELLECTUAL PROPERTY RIGHTS

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- 11.1 **Your intellectual property:** If you provide us with Material to be used in the supply of the Goods and/or Services:
- you warrant and represent to us that our use of any Materials will not infringe the Intellectual Property Rights of any third party; and
  - you indemnify and will keep us indemnified from and against any and all claims, liabilities, obligations, expenses or damages which we may incur if clause 11.1(a) is untrue or breached.
- 11.2 **Licence over Materials:** You grant to us a non-exclusive royalty-free license to use all Intellectual Property Rights in all Materials for so long as necessary or convenient for the production of the Goods and/or Services and the matters contemplated regarding the delivery of the relevant Goods and/or Services.
- 11.3 **Our intellectual property:** All of our Intellectual Property Rights in and relating to the production, development and supply of the Goods and/or Services, including but not limited to drawing, illustrations, specifications, and other related literature (excluding Materials licensed to us pursuant to clause 11.2 remains our property and shall not be transferred, assigned, licensed, reproduced, disclosed or otherwise given to any other person by you without our prior written consent.

**12. CONFIDENTIALITY**

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- 12.1 You must keep confidential and shall not use any of our confidential information without our prior written consent.
- 12.2 Flagstaff will use its best endeavours not to, and will ensure that its Associates use their best endeavours not to, disclose to any person any Confidential Information of or relating to you.
- 12.3 Nothing in the Agreement prohibits disclosure of information which:
- (a) is in the public domain;
  - (b) after disclosure to us becomes part of the public domain otherwise than as a result of the wrongful act on our part;
  - (c) is received from a third party provided it was not acquired directly or indirectly by that third party from a Party;
  - (d) is required to be disclosed by Law or by a government authority; or
  - (e) is disclosed to our legal or financial adviser or auditor, provided that those persons have professional obligations of confidentiality.

**13. REPORTING AND RECORDS**

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- 13.1 Flagstaff will use its best endeavours to provide to you on reasonable written request:
- (a) copies of Materials relating to the Services; and
  - (b) progress reports in such detail to reasonably enable you to ascertain whether the Services are being performed in accordance with the Agreement.

**14. INSURANCE**

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- 14.1 Flagstaff will use its best endeavours to maintain for the Term:
- (a) public and products liability insurance with a limit specified in the Specifics per claim and in the aggregate;
  - (b) insurance in respect of all claims and liabilities relating to workers compensation or employer's liability; and
  - (c) other insurance, including comprehensive motor vehicle insurance and third-party liability, required by Law or reasonably required by you, for the period specified, with a reputable insurer.
- 14.2 Flagstaff will use its best endeavours to provide on request certificates of currency or other reasonable evidence of the insurances required under clause 14.1 on request by you.

**15. TERMINATION**

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- 15.1 Either Party may terminate the Agreement immediately by giving written notice if:
- (a) the other Party breaches the Agreement and fails to rectify the breach within 14 days of receiving written notice to do so;
  - (b) the other Party breaches the Agreement and such breach is not capable of being rectified;
  - (c) a Party becomes bankrupt; or
  - (d) a Party is incorporated, and they are insolvent (as defined in the Corporations Act), a controller, receiver, administrator or similar person is appointed to them or an order is made for their winding up.
- 15.2 You may terminate the Agreement by giving 28 day's written notice to Flagstaff.

- 15.3 On termination Flagstaff will:
- (a) stop work to the extent required by you;
  - (b) take all reasonable steps to minimise the cost of termination to you; and
  - (c) where notice is given under clause 15.2, serve on you a tax invoice within 30 days of termination.
- 15.4 The tax invoice will include:
- (a) a claim only for the part of the Fees payable for Services provided by the Contractor up to the date of termination and not included in any previous tax invoice; and
  - (b) where you have terminated the Agreement within the first 12 months of the Term under clause 15.2, a claim for 30% of the average monthly Fees (excluding GST) paid by you (based on the 3 months prior to termination) for each month remaining of the 12 month period.
- 15.5 Termination of the Agreement does not affect any other rights accrued of the Parties.

## **16. CHANGE OF CONTROL**

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- 16.1 You must, in the event of there being any change in ownership of the business, notify Flagstaff immediately and authorises Flagstaff to enter the premises for the purpose of stocktaking any property of Flagstaff within the premises and shall, at least 2 weeks prior to such completion pay all accounts outstanding by you plus an average invoice value for the remaining two weeks.

## **17. NOTICES**

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- 17.1 All notices in connection with the Agreement must be in writing addressed to the Party at the address notified in the Agreement or as later advised in writing and:
- (a) personally delivered or sent by pre-paid post to that Party's address; or
  - (b) sent by email to that Party's address.
- 17.2 Any notice given in terms of the Agreement must be in writing and shall be deemed to be received:
- (a) if delivered by hand on the date of delivery if that day is a Business Day;
  - (b) if sent by mail within Australia, on the third Business Day after posting;
  - (c) if sent by facsimile, on the date shown on the transmission receipt (unless notice of interruption or incomplete transmission is received); and
  - (d) if sent by email, at the earlier of the time that a read receipt is issued by the receiving party or written receipt is otherwise acknowledged by the receiving party (and the parties agree that they must promptly issue a read receipt on receipt of any email in respect of the Services).

## **18. DISPUTES**

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- 18.1 If a dispute arises under the Agreement, a Party must not commence court proceedings unless this clause 18 has been complied with.
- 18.2 If a Party claims that a dispute has arisen in relation to the Agreement, the Party claiming a dispute must give to the other Party a notice specifying the nature of the dispute.
- 18.3 Following receipt of the notice, the Parties must each appoint a representative with appropriate authority to resolve the dispute and those representatives must meet and endeavour to resolve the dispute within 14 business days.

- 18.4 If the dispute is not resolved under clause 18.3 or a longer period as agreed, the dispute must be referred for mediation at the request of any Party to:
- (a) a mediator agreed by the parties; or
  - (b) if the parties are unable to agree, a mediator nominated by the President of the Law Society of NSW or the President's authorised nominee,
- in accordance with the mediation guidelines of the Law Society of NSW at the time (except as specifically varied by this clause).
- 18.5 Each Party must bear their own costs of complying with this clause and the parties must bear the costs of the mediator equally.
- 18.6 If the dispute is not resolved within 60 days after the appointment of a mediator, any Party who is not in breach of this clause may terminate the mediation process by serving notice on the other parties and the mediator.
- 18.7 This clause 18 does not apply to termination by a Party under clause 15.

## 19. FORCE MAJEURE

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- 19.1 If a Force Majeure Event occurs, we may:
- (a) totally or partially suspend any Order or any deliveries relating to an Order during any period in which we may be hindered due to that Force Majeure Event; and
  - (b) elect to extend at our discretion the period for performance of an obligation under these Terms as is reasonable in all the circumstances.

## 20. GENERAL

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- 20.1 You agree to indemnify and keep us indemnified in respect of all damages, Losses, costs and expenses (including legal costs) that we may incur as a result of your breach or alleged breach of these Terms.
- 20.2 The Agreement supersedes any prior negotiations or representations and cannot be changed unless the parties agree in writing.
- 20.3 You must not engage providers for the same Service at a Site where Flagstaff operates under this Agreement due to operational issues that could result due to mixed linen and process issues.
- 20.4 Flagstaff will not assign, subcontract or deal with any rights or obligations under the Agreement without your prior written consent (consent to be given, withheld or conditioned at your absolute discretion).
- 20.5 The Agreement is governed by the laws of New South Wales, Australia, and the parties agree to submit to the non-exclusive jurisdiction of the courts of that State.

## 21. INTERPRETATION + DEFINITIONS

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- 21.1 Except where the context otherwise provides or requires:
- (a) the terms **we**, **us** or **our** refers to **Flagstaff**; and
  - (b) the terms **you** or **your** refers to the Customer (as defined in the Specifics) or any person or entity that places an Order with us and/or otherwise agrees (by conduct, notice or otherwise) to be bound by these Terms, including any related company, related party, officer and authorised person of the relevant person.
- 21.2 A reference to \$ or dollars means Australian dollars and a reference to payment means payment in Australian dollars.

21.3 A reference to a Law or legislation includes any statutory amendments or replacement and any subordinate or delegated legislation.

21.4 **Defined terms:** In these Terms, unless otherwise provided, the following terms shall have their meaning as specified:

**ACL** means the Australian Consumer Law under the Consumer and Competition Act 2010 (Cth) as amended.

**Agreement** means the Specifics, any documents referred to in the Specifics, these Terms and any attached Schedules.

**Associates** includes employees and subcontractors.

**Business Day** has the meaning given to it in the Building and Construction Industry Security of Payment Act 1999 (NSW).

**Child** means a person under 18 years of age.

**Conditions** means this document.

**Confidential Information** means all information identified as being confidential, which is obtained from you by Flagstaff in connection with this Agreement and includes:

- a) the terms and content of the Agreement;
- b) any information relating to any person which is protected by legislation relating to privacy;
- c) financial information or internal management information relating to you;
- d) marketing information including your customer and supplier details and marketing plans;
- e) your trade secrets, know-how, plans, strategic plans or business operations and systems; and
- f) information which is capable of protection at law or equity as confidential information.

**Default Event** means any one of the following events:

- a) you fail to make any payment when due, whether for the Goods and/or Services or otherwise;
- b) breach of contract;
- c) if you are a person – you become an insolvent under administration;
- d) if you are a body corporate – you become an externally administered body corporate;
- e) proceedings or applications are commenced or made for the appointment of any persons listed in items (b) or (c) above; or
- f) a mortgagee or their agent enters into possession of your assets.

**Delivery** means the delivery of the Goods and/or Services in accordance with clause 6.1.

**Equipment** includes plant, equipment, tools, appliances or other property required to deliver the applicable Services.

**Fees** are specified in the Specifics.

**Flagstaff** means The Flagstaff Group Limited (ABN 53 000 551 575) of 254 Nolan Street, Unanderra, New South Wales 2526.



**Force Majeure Event** means circumstances beyond our reasonable control, which shall include, but not be limited to compliance with any laws, regulations, orders, acts, instructions or priority request of any government, or any department or agency, civil or military authority, acts of God, acts of the public enemy, your acts or omissions, fires, floods, strikes, lockouts, embargoes, wars, epidemic, labour or material shortages, riots, insurrections, defaults of our suppliers or subcontractors, delays in transportation, loss or damage to Goods in transit or instructions or lack of instructions from you.

**Goods** means Fine Food frozen meals, Flagstaff's Box of Destruction, coffee, heavy duty toolbags and safety equipment, metal tags, promotional merchandise, printed marketing and sales collateral, printed commercial operations/product collateral, a range of rural fencing products and carpet tiles and any other products we may offer from time to time.

**GST and GST Law** have the meanings given to them in the Tax Act.

**Intellectual Property Rights** means all forms of intellectual property rights (whether registered or unregistered) in copyright, designs, patents, trade marks, domain names, trade secrets, know-how, confidential information, and all other similar proprietary rights which currently exist and/or are recognised in the future.

**Invoice** unless otherwise agreed means the invoice issued upon the delivery of the Goods and/or Services specified in your Order.

**Laws** include Acts, Ordinances, regulations, by-laws, orders, awards, and proclamations in the Jurisdiction where the Services are being carried out, certificates, licences, consents, permits, approvals, industry codes of practice published by recognised industry bodies, Standards Australia and requirements of relevant governmental bodies;

**Loss** includes loss, liability, claim, cost, injury, death, demand, threat, damage, penalty or expense (including legal costs in connection with same on a full indemnity basis).

**Material** means any material (including but not limited to spreadsheets, drawings, data, specifications, reports and accounts) in which you have Intellectual Property Rights provided by you for use by us in the production and development of the Services to you.

**Notifiable Incident** has the meaning in the Work Health and Safety Act 2011 (NSW).

**Order** means an order received by us, whether in writing or otherwise, for any Goods or Services including the quantity of Goods and/or details of the Services required.

**Party** means a party to the Agreement and their permitted assignees and successors.

**Payment** means payment of any amount relating to Goods and/or Services in accordance with these Terms.

**Quote** means a quotation provided by us on our letterhead or otherwise provided by us in writing.

**Schedule** means a schedule which is part of the Agreement detailing certain information (ie on fees/prices, special conditions/scope of services/work, specifications) the Parties agree.

**Services** means the services included in any scope of work the parties agree to in writing which may include commercial laundry, glove laundering, print, mail and digital agency services, paper and cardboard recycling, frozen meals and industrial services including commercial cleaning and garden maintenance, NDIS funded supports and/or services and any other services we offer from time to time.

**Site** is where the Services are to be carried out, specified in the Specifics.

**Specifics** means the document to which these Conditions are attached.

**Tax Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Tax Invoice** has the meaning given to it in the Tax Act.

**Term** is the period specified in the Specifics.

**WHS** means work, health and safety.

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