

**TERMS AND CONDITIONS FOR G & V CAPITAL PTY LTD (ACN 667 557 182) trading as MTM
INDUSTRIAL CLEANING SOLUTIONS and AAA QUARANTINE SERVICES**

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1. Definitions and Interpretation

1.1 Definitions

In these Terms and Conditions:

Additional Charge means:

- (a) fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with the Supplier's then current prices and
- (b) expenses incurred by the Supplier, at the Customer's request or reasonably required as a result of the Customer's conduct.

Biosecurity Officer means a person appointed by DPIRD or Quarantine WA to conduct biosecurity inspections of "Potential Carriers" as defined by section 6 of the Biosecurity and Agriculture Management Act 2007 (WA) and permit them to be removed from the Premises.

Business Day means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods provided.

Contractor means any entity engaged by the Customer other than the Supplier to conduct works to the Customer's equipment at the Premises.

Customer means the person identified on a Quote or Order as the customer and includes the Customer's agents and permitted assigns.

DAFF means the Australian Department of Agriculture Fisheries and Forestry or such other Department of the Australian Government as shall succeed or carry on the duties formerly carried on by the Australian Department of Agriculture Fisheries and Forestry.

DAWE means the Australian Department of Agriculture Water and the Environment or such other Department of the Australian Government as shall succeed or carry on the duties formerly carried on by

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the Australian Department of Agriculture Water and the Environment.

DPIRD means the Western Australian Department of Primary Industries and Regional Development or such other Department of the Western Australian Government as shall succeed or carry on the duties formerly carried on by the Western Australian Department of Primary Industries and Regional Development.

Estimate means a non-binding estimate provided by the Supplier to the Customer of the price and time frame for the Supplier to provide the Services which is subject to change at the direction of a Biosecurity Officer to undertake further work in order for the Biosecurity Officer to provide their approval that the Customer's equipment has been adequately cleaned.

Goods means any goods supplied by the Supplier including those supplied in the course of providing Services.

Intellectual Property Rights means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.

Subject to payment of all invoices due in respect of the Goods or Services, the Supplier grants to the Customer a perpetual, non-exclusive licence to use the works created or produced by the Supplier in connection with the provision of Goods or Services under these Terms and Conditions for the purposes contemplated by the Order.

Loss includes, but is not limited to, costs (including, but not limited to, party to party legal costs and the Supplier's legal costs), expenses, lost profits, award of damages, personal injury and property damage.

Order means a purchase order for Goods or Services placed by a Customer in response to a Quote and as varied in writing from time to time by the parties.

PPS Law means:

- (a) the Personal Property Security Act 2009 (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a PPS Law.

Premises means 11 – 13 Bulbey Street, Bellevue, Western Australia.

Quote means a written description of the Goods or Services to be provided, an estimate of the Supplier's charges for the performance of the required work and an estimate of the time frame for the performance of the work.

Services means the services to be provided by the Supplier to the Customer in accordance with a Quote and these Terms and Conditions.

Supplier means G & V CAPITAL PTY LTD (ACN 667 557 182) trading MTM Industrial Cleaning Solutions and AAA Quarantine Services of 11 – 13 Bulbey Street, Bellevue, Western Australia whose phone number is 08 6248 9305 and whose email address is admin@mtmcleaning.com.au.

1.2 Interpretation

In these Terms and Conditions, unless the context otherwise requires:

- (a) a reference to writing includes email and other communication established through the Supplier's website (if any);
- (b) the singular includes the plural and vice versa;
- (c) a reference to a clause or paragraph is a reference to a clause or paragraph of these Terms and Conditions;
- (d) a reference to a party to these Terms and Conditions or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings are for ease of reference only and do not affect the meaning or interpretation of these Terms and Conditions; and
- (g) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:

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- (i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
- (ii) in all other cases, must be done on the next Business Day.

2. General

2.1 Engagement of the Writer

- (a) These Terms and Conditions apply to all transactions between the Customer and the Supplier relating to the provision of Goods and Services, including all quotations, contracts and variations. These Terms and Conditions take precedence over Terms and Conditions contained in any document of the Customer or elsewhere.
- (b) The variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties.
- (c) The Supplier may amend any details in a Quote by notice in writing to the Customer. Such amended details supersede any relevant prior detail in dealings between the parties.

3. Quotes and Estimates

- (a) The Supplier may provide the Customer with a Quote or Estimate. Any Quote issued by the Supplier is valid for 14 days from the date of issue.
- (b) Unless otherwise expressly agreed in writing, a Quote or Estimate does not include delivery and/or installation of the Goods.
- (c) Quotes and Estimates are based upon the cost of materials available at the time of preparation of the Quote or Estimate and assume the timely supply by the Customer of necessary material and instructions to the Supplier.
- (d) Following provision of a Quote or Estimate to the Customer, the Supplier is not obliged to commence work until the Supplier receives:
 - (i) a written request from the Customer to commence the quoted works; and
 - (ii) a Receipt Of Procedure form signed by or on behalf of the Customer containing the Customers' acknowledgement of and consent to be bound by these Terms and Conditions.
- (e) The Supplier reserves the right to amend any Quote or Estimate before the Order has been completed to take into account any rise or fall in the cost of completing the Order. The Supplier will notify the Customer of any amendment as soon as practicable, at which point the amended Quote or Estimate will be the Estimate or Quote for the purposes of these Terms and Conditions.
- (f) An indication in a Quote of the time frame for the provision of the Goods or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding upon the Supplier.
- (g) When stated by the Supplier, Estimates take precedent over Quotes.
- (h) Unless expressly stated otherwise by the Customer and acknowledged by the Supplier, Quotes and Estimates provided by the Supplier are based on the Customer's equipment having been cleaned in accordance with relevant guidelines issued by DAFF, DAWE and any equivalent governing body at the point of origin to DPIRD prior to departing their point of origin.

4. Orders

- (a) Every Order by the Customer for the provision of Goods or Services must be submitted in writing on the Supplier's standard Order form.
- (b) An Order will not be placed by the Customer unless the Order clearly identifies the Goods or Services ordered and the Supplier's Quote. Any costs incurred by the Supplier in reliance on incorrect or inadequate information may result in the imposition of an Additional Charge.
- (c) The Supplier is not obligated to assign a time to provide their Services to the Customer, nor an estimated time for completion of the Services, until such time as the Customer's equipment on which the Services will be conducted is delivered to the Premises.
- (d) Orders must be signed by an authorised representative of the Customer and must specify the required date of delivery.
- (e) Placement of an Order by the Customer signifies acceptance by the Customer of these Terms and

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Conditions and the most recent Quote.

- (f) The Supplier may in its absolute discretion refuse to provide Goods or Services where:
 - (i) Goods are unavailable for any reason whatsoever;
 - (ii) credit limits cannot be agreed upon or have been exceeded; or
 - (iii) payment for Goods or Services previously provided to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Supplier, associated with the Customer under the same or another supply contract, has not been received by the Supplier.
- (g) An Order cannot be cancelled without the prior written consent of the Supplier. Where an Order is cancelled, the Customer indemnifies the Supplier against any Losses incurred by the Supplier as a result of the cancellation, including, but not limited to loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.

5. Variations

- (a) The Customer may request that its Order be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier in order to have effect.
- (b) If the Customer wishes to vary its requirements after a Quote has been prepared or after the placement of an Order, the Supplier reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Supplier in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods and/or Services.
- (c) The Supplier has an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation.
- (d) Where additional Services will be required to fulfill the Customer's Order that were not accounted for in the Supplier's initial Quote or Estimate, the Supplier will notify the Customer immediately upon becoming aware of the additional Services required and provide as much detail as the Supplier deems reasonably required to allow the Customer to make an informed decision as to whether to engage the Supplier to deliver additional Services.
- (e) Prior to engaging the Supplier to carry out additional Services, the Customer is entitled to attend the Premises to inspect their equipment and be provided with further information regarding the additional Services required.

6. Invoicing and payment

- (a) The Supplier may in its absolute discretion, issue an invoice to the Customer in any one or more of the following ways:
 - (i) prior to commencing the provision of the Goods or Services, for an amount equal to the Quote and Additional Charges where the Supplier has not previously carried out work for the Customer or where the Supplier chooses to do so;
 - (ii) at the end of each week before the Order is completed, the Supplier may issue one or more invoices for a proportion or the whole of the amount of the Quote (the proportion to be calculated at the Supplier's discretion either for work done to that point, work in the future or both) and require that proportion of the Quote be paid in advance of any further Goods or Services being provided; or
 - (iii) upon completion of the provision of the Goods or Services or any time thereafter, for an amount equal to the Quote or the balance of the Quote outstanding, any Additional Charges and any amount not previously invoiced, or if no Quote was provided, for an amount representing the Supplier's charge for the work performed in completing the Order and for any Additional Charges.
- (b) If a Quote issued by the Supplier contains a requirement for the Customer to pay a deposit prior to the Supplier commencing work, the Supplier is not obliged to commence work until the Quote has been accepted by the Customer in accordance with clause 3(d) and the stipulated deposit is received by the Supplier.
- (c) The Supplier reserves the right to determine the deposit payable on a Quote at their absolute and

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unfettered discretion.

- (d) The amount payable in an invoice is as per the Quote and any Additional Charges.
- (e) A Customer that has been approved for a credit account with the Supplier must pay an invoice issued by the Supplier to the Supplier before collection of the Customer's vehicle or equipment/machinery and no later than 14 days.
- (f) A Customer that has not been approved for a credit account with the Supplier must pay an invoice issued by the Supplier to the Supplier upon the Services being completed and the Customer being notified that the Customer's equipment is available to be recollected from the Premises by the Customer.
- (g) If any invoice is due but unpaid, the Supplier may withhold the provision of any further Goods or Services until overdue amounts are paid in full.
- (h) If any invoice is due but unpaid, the Supplier may retain possession, pursuant to clause 9(j), of any and all equipment provided by the Customer to the Supplier, regardless of whether that equipment is in the Supplier's possession in connection with the provision of Services or not, until such time as any invoice amounts are paid in full.
- (i) The Supplier may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to the Supplier.
- (j) The Customer is not entitled to retain any money owing to the Supplier notwithstanding any default or alleged default by the Supplier of these Terms and Conditions, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods or Services. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.
- (k) The Customer is to pay the Supplier on demand interest at the rate of 10% per month on all overdue amounts owed by the Customer to the Supplier, calculated daily.
- (l) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Supplier, are to be paid by the Customer as a debt due and payable under the Terms and Conditions.
- (m) The Customer and the Supplier agree to comply with their obligations in relation to Goods and Services Tax (GST) under the A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.

7. Additional Charges

- (a) The Supplier may require the Customer to pay Additional Charges in respect of Costs incurred by the Supplier as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by the Supplier in order for it to provide the Goods or Services within the specified time frame (if any).
- (b) The imposition of Additional Charges may also occur as a result of cancellation by the Customer of an Order where cancellation results in Loss of the Supplier, storage costs for goods not collected from the Supplier within 48 hours of the date on which the Goods are manufactured, fabricated, created or formed at the rate set out in the Quote, photocopying, communication costs, couriers, packing and handling, Government or council taxes or charges, additional work required by the Customer or any other occurrence which causes the Supplier to incur costs in respect of the Customer's Order additional to the quoted cost.
- (c) The Supplier is entitled to charge Additional Charges to the Customer for storage costs of Customers equipment not collected from the Supplier within 48 hours of the Customer being notified that their equipment is available to be recollected from the Premises.
- (d) The Supplier is entitled to charge Additional Charges to the Customer for storage costs of Customers equipment for time in which the Supplier retains possession of the Customer's equipment as a result of an invoice being due and payable by the Customer but remaining unpaid.
- (e) The Supplier is entitled to charge Additional Charges to the Customer for storage costs of Customers equipment not collected from the Supplier within 48 hours of the Customer being notified that their equipment is available to be recollected from the Premises due to works being conducted on the Customer's equipment at the Premises by contractors other than the Supplier engaged by the Customer in accordance with clause 10.
- (f) The Supplier is entitled to charge Additional Charges to the Customer for storage costs of Customers

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equipment being stored at the Premises without the Customer having complied with clause 3(d).

- (g) The Supplier is entitled to charge Additional Charges to the Customer for equipment stored at the Premises without the Supplier being engaged to conduct any work in relation to that equipment.
- (h) The Supplier is entitled to charge Additional Charges to the Customer for allowing Contractors to be present on the Premises and for any use of the tools, equipment or consumables of the Supplier by Contractors.
- (i) Storage costs are determined at the discretion of the Supplier based on the size of the relevant piece of the Customer's equipment but will be a minimum of \$65.00 + GST per day or part thereof including weekends and public holidays.
- (j) The Supplier is entitled to charge Additional Charges to the Customer for allowing Contractors to be present on the Premises and for any use of the tools, equipment or consumables of the Supplier by Contractors.
- (k) The Supplier is entitled to charge Additional Charges to the Customer for damage caused to any property of the Supplier by Contractors.
- (l) The Supplier is entitled to charge Additional Charges to the Customer where the Supplier must relocate Customer's equipment not collected from the Supplier within 48 hours of the Customer being notified that their equipment is available to be recollected from the Premises. Work involved in relocating the Customer's equipment will be charged to the Customer at the following rates per 15 minutes or part thereof:
 - (i) Labour per person: \$26.00 + GST;
 - (ii) Use of 2-4t forklift: \$110.00 + GST;
 - (iii) Use of 7-20t forklift: \$230.00 + GST; and
 - (iv) Third party crane hire: Amount charged to the Supplier + 25%.

8. Acceptance of Goods

If the Customer fails to advise the Supplier in writing of any fault in the Services or failure of the Services to accord with the Customer's Order within 72 hours of collection of the Customer's equipment by the Customer, the Customer is deemed to have accepted the Services and to have accepted that the Services are not faulty and accord with the Customer's Order. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

9. Title and Risk

- (a) Risk in Goods passes to the Customer immediately upon delivery.
- (b) Property in Goods supplied to the Customer pursuant to these Terms and Conditions does not pass to the Customer until all money (including money owing in respect of other transactions between the Supplier and the Customer) due and payable to the Supplier by the Customer have been fully paid.
- (c) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, the Customer:
 - (i) is a bailee of the Goods until property in them passes to the Customer;
 - (ii) irrevocably appoints the Supplier its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in favour of the Supplier with respect to the Goods under applicable law;
 - (iii) must be able upon demand by the Supplier to separate and identify as belonging to the Supplier Goods supplied by the Supplier from other goods which are held by the Customer;
 - (iv) must not allow any person to have or acquire any security interest in the Goods;
 - (v) agrees that the Supplier may repossess the Goods if payment is not made within 14 days (or such longer time as the Supplier may, in its complete discretion, approve in writing) of the supply of the Goods; and
 - (vi) the Customer grants an irrevocable licence to the Supplier or its agent to enter the Customer's premises in order to recover possession of Goods pursuant to this paragraph. The Customer

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indemnifies the Supplier in respect of any damage to property or personal injury which occurs as a result of the Supplier entering the Customer's premises.

- (d) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, and the Customer makes a new object from the Goods, whether finished or not, or the Customer mixes the Goods with other goods or the Goods become part of other goods (**New Goods**), the Customer agrees with the Supplier that the ownership of the New Goods immediately passes to the Supplier. The Customer will hold the New Goods on trust for the Supplier until payment of all sums owing to the Supplier whether under these Terms and Conditions or any other contract have been made and the Supplier may require the Customer to store the New Goods in a manner that clearly shows the ownership of the Supplier.
- (e) For the avoidance of doubt, under paragraph (d), the ownership of the New Goods passes to the Supplier at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.
- (f) Notwithstanding paragraph (c) the Customer may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business provided that:
 - (i) where the Customer is paid by a third party in respect of Goods including New Goods, the Customer holds the whole of the proceeds of sale less any GST on trust for the Supplier - in a separate account - until all amounts owed by the Customer to the Supplier have been paid; or
 - (ii) where the Customer is not paid by a third party, the Customer agrees to assign all of its rights against the third party to the Supplier upon the Supplier giving the Customer notice in writing to that effect and for the purpose of giving effect to that assignment the Customer irrevocably appoints the Supplier as its attorney.
- (g) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, the Customer acknowledges that the Supplier has a right to register and perfect a personal property security interest.
- (h) If:
 - (i) a PPS Law applies or commences to apply to these Terms and Conditions or any transaction contemplated by them, or the Supplier determines (based on legal advice) that this is the case; and
 - (ii) in the Supplier's opinion, the PPS Law:
 - (A) does or will adversely affect the Supplier's security position or obligations; or
 - (B) enables or would enable the Supplier's security position to be improved without adversely affecting the Customer,

the Supplier may give notice to the Customer requiring the Customer to do anything (including amending these Terms and Conditions or execute any new Terms and Conditions) that in the Supplier's opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated in paragraph (ii)(A) or improve the security position as contemplated in paragraph (ii)(B). The Customer must comply with the requirements of that notice within the time specified in the notice. If having completed everything reasonably practicable as required under this paragraph, in the Supplier's opinion the Supplier's security position or obligations under or in connection with these Terms and Conditions has been or will be materially adversely affected, the Supplier may by further notice to the Customer cancel these Terms and Conditions, in which case the Customer must pay to the Supplier any money owed to the Supplier by the Customer immediately.

- (i) Where the Customer is the owner of land, realty or any other asset capable of being charged, the Customer agrees to mortgage and/or charge all of the Customer's joint and/or several interest in the said land, realty or any other asset to the Supplier or the Supplier's nominee to secure all amounts and other monetary obligations payable under these Terms and Conditions. The Customer acknowledges and agrees that the Supplier (or the Supplier's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary and non-monetary obligations payable hereunder have been met.
- (j) The Customer grants a lien to the Supplier over any and all goods, equipment, or any other tangible item provided by the Customer to the Supplier. The lien is a general lien for all monies owing, or

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alleged by the Supplier to be owing, by the Customer to the Supplier including those incurred by the Supplier in connection with the enforcement of the lien.

10. Uncollected Goods

- (a) The Supplier will retain possession of the Customer's equipment for up to 30 days following the Supplier:
 - (i) notifying the Customer that the relevant equipment is available to be collected from the Premises;
 - (ii) issuing an invoice to the Customer;
 - (iii) requesting authorisation from the Customer to commence work.
- (b) If after the period of storage noted in clause 10(a), the Customer has:
 - (i) not collected their equipment from the Premises; or
 - (ii) has not paid all amounts owing to the Supplier; or
 - (iii) authorised the Supplier to commence work in accordance with clause 3(d);the Customer authorises the Supplier to dispose of any of the Customer's equipment remaining in the Supplier's possession by way of public auction.
- (c) The Supplier will apply the proceeds of sale of the Customer's equipment firstly in payment of any outstanding amounts payable by the Customer pursuant to any invoice issued to the Customer by the Supplier or these Terms and Conditions and secondly in reimbursement for any costs incurred by the Supplier in connection with the disposal of the Customer's equipment. The balance will be paid to the Treasury under the applicable legislation of the State where the Supplier's registered office is situated.
- (d) Following the disposal of the Customer's equipment and the application of the proceeds of sale of the Customer's equipment to outstanding amounts payable by the Customer to the Supplier, the Supplier reserves all rights to sue the Customer for any amount that remains owing to the Supplier.

11. Contractors Engaged by the Customer

- (a) The Customer must obtain the prior consent of the Supplier before engaging Contractors other than the Supplier to conduct works to the Customer's equipment at the Premises.
- (b) It is the responsibility of the Customer to ensure that any Contractor it engages is informed of and agrees to be bound by the Supplier's safe work practices and the Supplier's rules of the Premises.
- (c) The Customer accepts that any Contractor it engages will be dismissed and prohibited from re-entering the Premises in the event that the Contractor or any of its agents or employee are deemed by the Supplier to be in breach of the Supplier's safe work practices and the Supplier's rules of the Premises.
- (d) The Supplier is not liable for any loss or damage suffered by the Customer as a result of works conducted by a Contractor at the Premises.

12. Intellectual Property Rights

- (a) The Customer warrants that it owns all Intellectual Property Rights pertaining to its Order for Goods or Services or has a licence to authorise the Supplier to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied by the Customer to the Supplier for the purposes of the Order. Further, the Customer indemnifies and agrees to keep indemnified the Supplier against all Losses incurred by the Supplier in relation to or in any way directly or indirectly connected with any breach of any other Intellectual Property Rights in relation to any material supplied by the Customer.
- (b) Unless specifically agreed in writing between the Supplier and the Customer, all Intellectual Property Rights in any works created by the Supplier on behalf of the Customer vest in and remain the property of the Supplier.
- (c) Subject to payment of all invoices due in respect of the Goods or Services, the Supplier grants to the Customer a perpetual, non-exclusive licence to use the works created or produced by the Supplier in connection with the provision of Goods or Services under these Terms and Conditions for the purposes contemplated by the Order.

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13. Agency and assignment

- (a) The Customer agrees that the Supplier may at any time appoint or engage an agent to perform an obligation of the Supplier arising out of or pursuant to these Terms and Conditions.
- (b) The Supplier has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these Terms and Conditions provided that the assignee agrees to assume any duties and obligations of the Supplier owed to the Customer under these Terms and Conditions.
- (c) The Customer is not to assign, or purport to assign, any of its obligations or rights under these Terms and Conditions without the prior written consent of the Supplier.

14. Default by Customer

- (a) Each of the following occurrences constitutes an event of default:
 - (i) the Customer breaches or is alleged to have breached these Terms and Conditions for any reason (including, but not limited to, defaulting on any payment due under these Terms and Conditions) and fails to remedy that breach within 14 days of being given notice by the Supplier to do so;
 - (ii) the Customer, being a natural person, commits an act of bankruptcy;
 - (iii) the Customer, being a corporation, is subject to:
 - (A) a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
 - (B) a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of the Customer's property and undertaking;
 - (C) the entering of a scheme of arrangement (other than for the purpose of restructuring);
 - (D) any assignment for the benefit of creditors;
 - (iv) the Customer purports to assign its rights under these Terms and Conditions without the Supplier's prior written consent;
 - (v) the Customer ceases or threatens to cease conduct of its business in the normal manner.
- (b) Where an event of default occurs, except where payment in full has been received by the Supplier, the Supplier may:
 - (i) terminate these Terms and Conditions;
 - (ii) terminate any or all Orders and credit arrangements (if any) with the Customer;
 - (iii) refuse to deliver Goods or provide further Services;
 - (iv) pursuant to clause 99(c), repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; or
 - (v) retain (where applicable) all money paid on account of Goods or Services or otherwise.
- (c) In addition to any action permitted to be taken by the Supplier under paragraph (b), on the occurrence of an event of default all invoices will become immediately due and payable.

15. Termination

In addition to the express rights of termination provided in these Terms and Conditions, a party may terminate these Terms and Conditions by giving 14 days written notice to the other party.

16. Exclusions and limitation of liability

- (a) The Customer expressly agrees that use of the Goods and Services is at the Customer's risk. To the full extent allowed by law, the Supplier's liability for breach of any term implied into these Terms and Conditions by any law is excluded.
- (b) All information, specifications and samples provided by the Supplier in relation to the Goods or Services are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods or Services will not entitle the Customer to reject the Goods upon delivery, or to make any claim in respect of them.

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- (c) The Supplier gives no warranty in relation to the Services provided or supplied. Under no circumstances is the Supplier or any of its suppliers liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues), as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods or Services including in their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
 - (i) any Goods or Services supplied to the Customer;
 - (ii) any delay in supply of the Goods or Services; or
 - (iii) any failure to supply the Goods or Services.
- (d) Any advice, recommendation, information, assistance or service given by the Supplier in relation to Goods and/or Services is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty of accuracy, appropriateness or reliability. The Supplier does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- (e) To the fullest extent permissible at law, the Supplier is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods or Services, or otherwise arising out of the provision of Goods or the Services, whether based on Terms and Conditions, negligence, strict liability or otherwise, even if the Supplier has been advised of the possibility of damages.
- (f) The Customer acknowledges that the Goods or Services are not for personal, domestic or household purposes.
- (g) The Australian Consumer Law may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, the Supplier's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods or with respect to Services to the supply of Services again or cost of re-supplying the Services again.
- (h) The Supplier guarantees that all employees of the Supplier are appropriately trained, and all equipment used by the Supplier is suitable to carry out the Services.
- (i) Due to the licencing standards imposed by DPIRD, DAFF and DAWE on the Supplier as an accredited C1 quarantine facility and approved 4.3 biosecurity facility, the Supplier provides no guarantee that in delivering the Services the Supplier will be able to avoid damage to the Customer's equipment due to the ingress of liquid into moisture sensitive components of the Customer's equipment.
- (j) The Customer acknowledges that despite the security measures at the Premises detailed in clause 21 that the Customer's equipment is stored at the Premises at the Customer's sole risk and that the Supplier accepts no liability in tort or in contract for the loss or theft of or damage to any of the Customer's equipment howsoever arising. This applies whether or not such loss, damage or theft was occasioned wholly or in part by the negligence or alleged negligence of the Supplier or its servants, agents or sub-contractors or any act omission default neglect, breach of duty or breach of contract by the Supplier its servants, agents or sub-contractors. This exemption extends not only to loss or theft of or damage to the Goods themselves, but to any loss consequently arising from such loss, theft or damage. The provisions of this clause apply irrespective of the manner in which, or the time at which, or the reason by which any such loss, theft or damage may occur and despite that such loss or damage may be the fault of the Supplier.
- (k) The Customer therefore accepts that it is the responsibility of the Customer to maintain appropriate and sufficient insurance over any of the Customer's equipment which is provided to the Supplier.
- (l) The Customer acknowledges that the importer of any of the Customer's equipment is solely responsible in the event that the Customer's equipment is subjected to a quarantine notice and the Supplier bears no liability in regard to the Customer's equipment being subjected to a quarantine notice unless such notice is as a result of the quality of Services supplied by the Supplier.

17. Indemnity

- (a) The Customer indemnifies and keeps indemnified the Supplier, its servants and agents in respect of

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any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against the Supplier or, for which the Supplier is liable, in connection with any Loss arising from or incidental to the provision of Goods or Services, any Order or the subject matter of these Terms and Conditions including, but not limited to any legal costs incurred by the Supplier in relation to meeting any claim or demand or any party/party legal costs for which the Supplier is liable in connection with any such claim or demand. This provision remains in force after the termination of these Terms and Conditions.

18. Force majeure

- (a) If circumstances beyond the Supplier's control prevent or hinder its provision of the Goods or Services, the Supplier is free from any obligation to provide the Goods or Services while those circumstances continue. The Supplier may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
- (b) Circumstances beyond the Supplier's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

19. Dispute resolution

- (a) If a dispute arises between the Customer and the Supplier, the following procedure applies:
 - (i) A party may give the other party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this paragraph.
 - (ii) A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this paragraph.
 - (iii) A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this paragraph.
- (b) If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within 10 Business Days (or other period as agreed).
- (c) Unless otherwise agreed by the parties, any dispute that cannot be settled by negotiation between the parties or their representatives the parties expressly agree to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation which are operating at the time the matter is referred to ACDC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated into these Terms and Conditions. This paragraph survives termination of these Terms and Conditions.
- (d) Notwithstanding the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these Terms and Conditions.
- (e) The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

20. Scheduling

- (a) If the Customer has made a booking for a time at which the Supplier will render the Services the Supplier will commence the Services within 5 business days of the Customer's equipment being delivered to the Premises provided the Customer has complied with clause 3(d).
- (b) The Supplier will not provide the Customer with a booking unless the Customer provides the Supplier with documentation containing the following information regarding the relevant piece(s) of the Customer's equipment:
 - (i) manufacturer;

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- (ii) model number;
- (iii) year of manufacture;
- (iv) engine hours/odometer reading;
- (v) serial number;
- (vi) arrival date at the Premises;
- (vii) confirmation as to whether the equipment was cleaned in accordance with relevant guidelines issued by DAFF at its point of origin.
- (viii) any other information requested by the Supplier.
- (c) The Customer agrees to immediately notify the Supplier regarding any circumstances that may lead to a delay in the arrival of the Customer's equipment to the Premises.
- (d) The Supplier is entitled to cancel any bookings (including future bookings) made by the Customer in the event that the Customer fails to immediately notify the Supplier regarding any potential or actual delays in the delivery of the Customer's equipment to the Premises.
- (e) The Customer acknowledges that a fee of \$950.00 + GST is payable by the Customer as a booking fee and that this fee is not refundable in the event that the Customer's equipment is:
 - (i) not delivered to the Premises by the date agreed by the parties;
 - (ii) diverted to a facility other than the Premises;
 - (iii) does not match the information provided by the Customer in accordance with clause 20(b); or
 - (iv) found to be unused and therefore does not require the Supplier's Services.
- (f) In the event that the Customer is found by the Supplier to have provided incorrect information in regard to clause 20(b)(vii) the Supplier reserves the right to retain possession of the equipment to be cleaned in accordance with:
 - (i) any guidelines, requirements or approved arrangements DAWE requires the Supplier to act in accordance with including but not limited to those required for the Supplier to maintain DAWE's approval pursuant to section 406 of the *Biosecurity Act 2015* (Cth); and
 - (ii) any requirements DPIRD requires the Supplier must act in accordance with when cleaning "Potential Carriers" as defined by section 6 of the *Biosecurity and Agriculture Management Act 2007* (WA);at a time convenient to the Supplier.
- (g) The Supplier reserves the right to refuse or grant a booking to the Customer at the Supplier's discretion.

21. Secure Premises and Customer's Insurance

- (a) The Supplier guarantees that while the Customer's equipment is in the Supplier's possession it will be stored at the Premises unless express consent otherwise has been granted by the Customer.
- (b) The Supplier guarantees that the Premises remains:
 - (i) secured by locked gates on non-Business Days and between the hours of 4:00pm and 7:00am on Business days; and
 - (ii) externally monitored by motion detecting CCTV cameras operating at all hours.

22. Other matters

- (a) The Customer irrevocably appoints the Supplier and each of the Supplier's partners, directors or officeholders as its attorney to do all acts and things necessary to give effect to these Terms and Conditions including but not limited to the registration of any security interest in favour of the Supplier with respect to the land, realty or any other asset of the Customer capable of being charged under applicable law.
- (b) The Customer acknowledges that no party including the Customer or any agents, employees, clients or contractors of the Customer are permitted to enter the restricted quarantine areas of the Premises without obtaining the prior consent of the Supplier and being accompanied at all times by an appropriately accredited employee of the Supplier. Fees for the accompaniment of an appropriately

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accredited employee of the Supplier are payable by the customer at a rate of \$130.00 + GST per hour.

- (c) The Customer acknowledges that it is the Customer's responsibility to remove personal effects from the Customer's equipment prior to its arrival at the Premises and that the Supplier takes no responsibility for the loss or theft of or damage to any personal effects not removed from the Customer's equipment prior to its arrival at the Premises.
- (d) These Terms and Conditions are governed by the laws of the state where the Supplier's registered office is situated and each party irrevocably submits to the non-exclusive jurisdiction of the courts of such state.
- (e) These Terms and Conditions and any Quotes and written variations agreed to in writing by the Supplier represent the whole agreement between the parties relating to the subject matter of these terms.
- (f) These Terms and Conditions supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (g) In entering into these Terms and Conditions, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its employees or agents relating to or in connection with the subject matter of these Terms and Conditions.
- (h) By engaging the Supplier to provide the Services the Customer is deemed to have read, understood, acknowledged and agreed to be bound by these Terms and Conditions.
- (i) If any provision of these Terms and Conditions at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- (j) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (k) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quote or in these Terms and Conditions (or as varied pursuant to this paragraph) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Quote; sent by facsimile transmission to the facsimile number of the addressee specified in the relevant Quote, with acknowledgment of receipt from the facsimile machine of the addressee or sent by e-mail to the e-mail address of the addressee specified in the relevant Quote with acknowledgement of delivery.
- (l) A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting; or if sent by facsimile or e-mail before 4 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- (m) A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.

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Receipt of Procedure Form

The undersigned acknowledges they have read and understand the above terms & conditions, including and not limited to the estimate email.

I _____ the owner or owners' representative
have read and accept the Terms & Conditions and estimate provided.

Company Name: _____

Position: _____

Dated _____

Signature of owner or representative _____

Printed Name of owner or representative _____

NOTE: we will not proceed until we receive a completed receipt of procedure form