The Giant Trust Group ATF Express Contracting Services T/A Golden Brown Cleaning Services – Terms & Conditions of Trade

1. Definitions

1.1 "Seller" shall mean The Giant Trust Group ATF Express Contracting Services T/A Golden Brown Cleaning Services and its successors and assigns.

1.2 "Customer" shall mean the Customer or any person acting on behalf of and with the authority of the Customer.

1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer on a principal debtor basis.

1.4 "Services" shall mean all services supplied by the Seller to the Customer and includes any advice or recommendations.

1.5 "Price" shall mean the cost of the Services as agreed between the Seller and the Customer subject to clause 4 of this contract.

2. Acceptance

2.1 Any instructions received by the Seller from the Customer for the supply of Services and/or the Customer's acceptance Services supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.

2.2 Where more than one Customer has entered into this agreement, the Customer's shall be jointly and severally liable for all payments of the Price.

2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.

2.4 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.

2.5 The Customer undertakes to give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice).

3. Services

3.1 The Services are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Seller to the Customer.

4. Price And Payment

4.1 At the Seller's sole discretion;

(a) The Price shall be as indicated on invoices provided by the Seller to the Customer in respect of Services supplied; or

(b) The Price shall be the Seller's current Price, at the date of delivery of the Services, according to the Seller's current Price list; or

(c) The Price of the Services shall (subject to clause 4.2) be the Seller's quoted Price which shall be binding upon the Seller provided that the Customer shall accept in writing the Seller's quotation within thirty (30) days.

4.2 Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.

4.3 Time for payment for the Services shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on completion of the Services.

4.4 The Seller may withhold delivery of the Services until the Customer has paid for them, in which event payment shall be made before the commencement date.

4.5 At the Seller's sole discretion, for certain approved Customers payment will be due twenty eight (28) days following the date of the invoice.

4.6 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and the Seller.

4.7 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller.

5. Delivery Of Services

5.1 Delivery of the Services shall be made to the Customer's nominated address. The Customer shall make all arrangements necessary to take delivery of the Services whenever they are tendered for delivery.

5.2 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.

5.3 The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Services (or any of them) promptly or at all.

6. Risk

6.1 If the Seller retains property in the Services nonetheless, all risk for the Services passes to the Customer on delivery.

7. Errors and Omissions

7.1 The Customer shall inspect the Services on delivery and shall within two (2) days of delivery notify the Seller of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Customer shall afford the Seller an opportunity to inspect the Services within a reasonable time following delivery if the Customer believes the Services are defective in any way. If the Customer shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

7.2 For defective Services, which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to (at the Seller's discretion) replacing the Services provided that the Customer has complied with the provisions of clause 7.1.

8. Customer's Disclaimer

8.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Customer acknowledges that he buys the Services relying solely upon his own skill and judgement.

9. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

9.1 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

10. Intellectual Property

10.1 Where any designs or specifications have been supplied by the Customer for manufacture, by or to the order of the Seller then the Customer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Services shall not infringe the rights of any third party.

11. Default & Consequences Of Default

11.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.

11.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's nominees costs of collection.

11.3 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Services to the Customer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller exercised its rights under this clause.

11.4 If any account remains unpaid at the end of the second month after supply of the Services or services the following shall apply: An immediate amount of the greater of $20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.

11.5 In the event that:

(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to meet its payments as they fall due; or

(b) 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

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer;

then without prejudice to the Seller's other remedies at law

(i) the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and

(ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable.

12. Title

12.1 It is the intention of the seller and agreed by the Customer that property in the Services shall not pass until the Customer has paid all amounts owing for the particular Services.

12.2 It is further agreed that:

(a) Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership of rights in respect of the Services shall continue.

(b) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Customer to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due and the Price.

13. Security And Charge

13.1 Notwithstanding anything to the contrary contained herein or any other rights which the Seller may have howsoever:

(a) Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

(b) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.

(c) To give effect to the provisions of clause [13.1 (a) and (b)] inclusive hereof the Customer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Customer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as the Seller and/or the Seller's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Customer and/or the Guarantor in any land, realty or asset in favour of the Seller and in the Customer's and/or Guarantor's name as may be necessary to secure the said Customer's and/or Guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

14. Cancellation

14.1 The Seller may cancel these terms and conditions or cancel delivery of Services at any time before the Services are delivered by giving written notice. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

14.2 At the Sellers sole discretion the Customer may cancel delivery of Services. In the event that the Customer cancels delivery of Goods Services the Customer shall be liable for any costs incurred by the Seller up to the time of cancellation.

15. Privacy Act 1988

15.1 The Customer and/or the Guarantor/s agree for the Seller to obtain from a credit-reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Seller.

15.2 The Customer and/or the Guarantor/s agree that the Seller may exchange information about Customer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:

(a) To assess an application by Customer;

(b) To notify other credit providers of a default by the Customer;

(c) To exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and

(d) To assess the credit worthiness of Customer and/or Guarantor/s.

15.3 The Customer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

15.4 The Customer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Customer and Seller or required by law from time to time:

(a) provision of Services;

(b) marketing of Services by the Seller, its agents or distributors in relation to the Services;

(c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Services;

(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and

(e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services.

15.5 The Seller may give, information about the Customer to a credit reporting agency for the following purposes:

(a) to obtain a consumer credit report about the Customer; and or

(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

16. General

16.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

16.2 All Services supplied by the Seller are subject to the laws of Victoria and the Seller takes no responsibility for changes in the law which affect the Services supplied.

16.3 The Seller shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions.

16.4 In the event of any breach of this contract by the Seller the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Services.

16.5 The Customer shall not set off against the Price amounts due from the Seller.

16.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

16.7 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the seller notifies the Customer of such change.

16.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

17. Ownership & Tile of Cleaning Service

17.1 The Customer acknowledges and agrees that all rights, title and interest in any cleaning service & its employees and subcontractor will remain the exclusive property of the Golden Brown Cleaning Services. And customer has

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no right whatsoever and under any circumstance to hire any employees or subcontractors of the Express Contracting Services directly or indirectly as their employees or subcontractors of other contractor. Accordingly, the Golden Brown Cleaning Services employees and subcontractors specifically agrees and acknowledges that the Employee or Subcontractor will have no interest in the Confidential Information, including, without limitation, no interest in know-how, copyright, trade-marks, trade names or becoming a customer employees or subcontractors directly or indirectly. In the event of the Customer being in breach of this Agreement, the Golden Brown Cleaning Services "GBCS" shall be entitled to terminate this Agreement and retain all payment received & demand for damage up to 3 years of total contract value charged during this period, in advance if contract terminated or breached due to hiring Express Contracting Services's employees or subcontractors directly or indirectly.

17.2 In the event that this Agreement is terminated in any manner whatsoever the Customer or any of its directors, employees, sub-contractors, agents or servants shall not in any manner whatsoever either directly or indirectly for itself, on behalf of, or through, or in conjunction or partnership with any third party up to 5 years of termination date of contract;

- A. Hire and acquire or attempt to Hire and acquire for its own benefit or the benefits of any other third party, hire any employees or subcontractors of the Express Contracting Services;

- B. Accept any approach from any employees or subcontractors of the Express Contracting Services for which the Employees or subcontractors has acted to provide the contractual cleaning work;

- C. Interfere or attempt to interfere with the relationship between the Express Contracting Services and any of its clients, directors, employees, subcontractors, contractors agents, servants, associates or any related companies;

- D. Use or attempt to use for its own benefit or the benefit of any third party any employees or subcontractors of the Express Contracting Services;

- E. Do or perform any act that can be damage to the Express Contracting Services's goodwill, confidential information or intellectual property.

17.3 The parties agree that each of the foregoing covenants constitutes an independent and separate restraint of this Agreement. If any of those covenants is or will become unreasonable or enforceable, that shall not affect validity and enforceability of other covenants imposed under this section, which remain binding on by the Customer.

18. Payment Penalties

18.1 In the event that the Customer does not comply with the rates, amounts, or payment dates provided in this Agreement, a late payment penalty will be charged as follows:

- Note: Delinquency penalties apply for late payment.
  1. Pay to be made in full in 20 days net from date of invoice.
  2. 31-60 days - 10% delinquency penalty on the outstanding amount and possible application of 'Stop Credit'.
  3. 61-90 days - 19% delinquency penalty on the outstanding amount with 'Stop Credit' and debt recovery action being taken together with possible refusal of further supply & service plus $60.00 late payment fee (inc GST).
  4. Over 90 days - 19% delinquency penalty from date of purchase till date of payment made plus $350.00 Admin & Legal Fee.

19. Severability

19.1 In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

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