

1 Background and Acceptance

- (a) This Document is between us, Tufwrap Australia Pty Ltd (ABN 61 163 159 144) (**we, us and our**) and you, the person or entity set out in the Quote (**you and your**) together the **Parties** and each a **Party** to this Document.
- (b) You acknowledge and agree that the Quote has been provided subject to, and is governed by, these Terms (which, together form this Document).
- (c) The Quote is valid for [30] days. We have no obligation or liability in connection with the Goods and/or Services (including the Quote) until you accept this Document. You will be deemed to have accepted this Document if you:
 - (1) confirm your acceptance of this Document (or the provision of the Goods and/or Services) via email to us;
 - (2) pay the Price (in full or in part); and/or
 - (3) instruct us (whether in writing or orally) to proceed with the provision of the Goods and/or Services.

2 Commencement

- (a) This Document takes effect on and from the Effective Date. You may not make any cancellations after the Effective Date (other than in accordance with clause 7).
- (b) We will proceed with the provision of the Goods and/or Services within a reasonable time after the later of:
 - (1) the Effective Date;
 - (2) receipt of full payment of the Deposit from you (if applicable); and
 - (3) the satisfaction of any other conditions precedent contemplated by this Document.

3 Our obligations

3.1 Goods and/or Services

- (a) In consideration of your payment of the Price, we will provide the Goods and/or Services in accordance with this Document (or as otherwise agreed between the Parties), whether by ourselves or by using our Personnel.
- (b) If this Document expresses a time within which the Goods and/or Services are to be provided, you acknowledge and agree that any such time is an estimate only and creates no obligation on us to provide the Goods and/or Services by that time.
- (c) You acknowledge and agree that there may be additional costs associated with providing the Goods and/or Services (including payment of standby rates) as set out in the Quote and any such additional costs will be due and payable by you.
- (d) Despite anything to the contrary, to the maximum extent permitted by law, we will not be responsible, and will have no Liability, for any works, services, goods, materials or items which:
 - (1) do not form part of the Goods and/or Services, as expressed in the Quote (or as otherwise agreed between the Parties); or
 - (2) have not been provided by us.

This clause 3.1(d) will survive the termination or expiry of this Document.

- (e) You may request a change to the Goods and/or Services by providing written notice to us (**Variation Request**). We will not be obliged to comply with the Variation Request until:
 - (1) we have confirmed our acceptance of the Variation Request in writing, including any required variation to the Price to perform the Variation Request (**Price Variation**);
 - (2) the Price has been adjusted to reflect the Price Variation; and
 - (3) you have paid us the Price (or accepted the Price in writing) (as adjusted by the Price Variation) in accordance with the Payment Terms.

3.2 Third parties

- (a) You acknowledge and agree that:
 - (1) the provision of the Goods and/or Services may be contingent on, or impacted by, third parties, including customers, end users, suppliers, transportation or logistics providers or other subcontractors (**Third Party Inputs**); and
 - (2) despite anything to the contrary, to the maximum extent permitted by law, we will not be responsible, and will have no Liability, for any default or breach of this Document or law, if such default or breach was caused or contributed to by any Third Party Inputs or Force Majeure Event.
- (b) This clause 3.2 will survive the termination or expiry of this Document.

3.3 Title and risk

- (a) Title in the Goods will remain with us until you have paid us the Price in full in accordance with this Document. Until title passes, you must not do anything which seeks to create an encumbrance, lien, charge or other interest on or over the Goods.
 - (b) Risk in the Goods will pass to you:
 - (1) (if we are providing you with Goods only) immediately upon the commencement of the dispatch of the Goods from our premises; or
 - (2) (if we are providing you with Goods and Services) upon commencement of the Services.
- Once risk in the Goods passes, you will be solely responsible for the Goods.
- (c) This clause 3.3 will survive the termination or expiry of this Document.

3.4 Omissions and Defects

- (a) If, within [24 hours] after the completion of the Services, you have notified us in writing of any

Omission in the Services, which is caused by a breach of this Document by us, along with a photo and description of the relevant Omission, we will, at our own cost:

- (1) repair or remedy the Omission; or
 - (2) if we are unable to repair or remedy the Omission, offer you a choice of a credit or a refund with respect to that part of the Price applicable to the Omission.
- (b) We agree to provide a voluntary manufacturer's warranty for:
- (1) any Defect in any component of the Goods that are flame retardant, for a period of 3 months from the Effective Date; and
 - (2) any Defect in any other component of the Goods, for a period of 12 months from the Effective Date.
- (c) Despite anything to the contrary, to the maximum extent permitted by law, our aggregate Liability for any fault, defect, error, omission or lack of functionality or suitability with respect to the Goods and/or Services will be limited to, and must not exceed, the costs we incur in complying with clauses 3.4(a) or 3.4(b) (as applicable). This clause 3.4(c) will survive the termination or expiry of this Document.
- (d) In Australia, the Goods may come with guarantees which cannot be excluded under the Australian Consumer Law. Nothing in this Document attempts to modify or exclude the conditions, warranties and undertakings, and other legal rights, under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

4 Your obligations

4.1 General

- (a) You must comply with:
 - (1) this Document;
 - (2) all of our reasonable requests or requirements; and
 - (3) all laws.
- (b) You must:
 - (1) obtain, and provide to us, any access, consents, approvals, licences and permissions necessary to enable us to provide the Goods and/or Services;
 - (2) not on-sell, re-supply, re-distribute or otherwise provide the Goods and/or Services to any third party (whether for commercial profit or gain or otherwise) without our prior and express written consent;
 - (3) ensure that any objects, items or equipment being the subject of the performance of the Services are provided as a clean, workable

canvas (including being free from any loose debris and being of a quality that is suitable for the installation of the Goods);

- (4) store, use and install (as applicable) the Goods properly, and in accordance with any instructions or documentation provided to you by us; and
- (5) not at any time represent yourself, or act, as a contractor, employee, agent or representative of us (including by entering any agreements or contractual arrangements on our behalf).

4.2 Payment

- (a) You must pay us:
 - (1) the Price; and
 - (2) any other amount payable to us under this Document,
 in accordance with the Payment Terms.
- (b) If any payment has not been made in accordance with the Payment Terms, we may (at our absolute discretion):
 - (1) immediately cease providing the Goods and/or Services, and recover as a debt due and immediately payable from you our Additional Costs of doing so;
 - (2) charge interest as per the payment terms;
 - (3) engage debt collection services and/or commence legal proceedings in relation to any such amounts; and/or
 - (4) report you to any independent credit data agencies.
- (c) If the Price or any amount due under this Document (including by way of indemnity) are unpaid by the time specified in this Document, we reserve our rights to recover our costs or expenses or to enter any place where the Goods are held for the purposes of recovering and repossessing the Goods. You acknowledge and agree that:
 - (1) we hold a general lien over any Goods held in your possession under this Document, for the satisfactory performance of your obligations under this Document;
 - (2) this Document and your obligations under this Document creates a registrable security interest in our favour, and you consent to the security interest (and any other registrable interest created in connection with this Document) being registered on any relevant securities register (and you must do all things to enable us to do so).

This clause 4.2(c) will survive the termination or expiry of this Document.

4.3 Premises

- (a) If the Goods are being picked-up from our premises by you or your Personnel, you must (and must ensure that your Personnel):
 - (1) arrive at our premises at the time, and on the date, nominated or notified by us (whether orally or in writing); and

- (2) comply with all of our (and our Personnel's) requirements, protocols, policies, procedures and directions.
- (b) Except where clause 4.3(a) applies, you must:
 - (1) provide to us (and our Personnel) unfettered access to your premises, free from harm or risk to health or safety:
 - (A) at the times and on the dates requested by us; or
 - (B) to enable us to comply with our obligations under this Document or at law; and
 - (2) ensure that you or your Personnel do not cause or contribute to any:
 - (A) injury or death to us or our Personnel; or
 - (B) loss of, or damage to, any of our (or our Personnel's) property.
- (c) If:
 - (1) you do not comply with any obligation under this clause 4.3; and
 - (2) this causes or contributes to Additional Costs, then:
 - (3) you must pay us the Additional Costs as a debt due and immediately payable to us; and
 - (4) despite anything to the contrary, to the maximum extent permitted by law, we will have no Liability, and you release and discharge us from all Liability, arising from or in connection with the storage of any uncollected or undelivered Goods and/or Services, including any Liability for any loss, damage or theft to those stored Goods and/or Services.

4.4 Assistance

You must provide all assistance (including information or documentation) which we request, to enable us to comply with our obligations under this Document or at law.

4.5 Warranty

You warrant that you have not relied upon any warranty, representation, statement, offer or documentation made or provided by or on behalf of us, whether before or after the Effective Date.

4.6 Survival

This clause 4 will survive the termination or expiry of this Document.

5 Intellectual Property

- (a) As between the Parties, all intellectual property rights (including copyright) developed, adapted, modified or created by us or our Personnel (including in connection with this Document or the provision of the Goods and/or Services) will at all times vest, or remain vested, in us.
- (b) On the Effective Date, you grant us a perpetual, royalty-free, world-wide, unconditional, transferable and irrevocable licence to use, develop, adapt and modify (**Use**) all intellectual property

(including copyright) in any materials that you provide to us in connection with this Document, and you will ensure that any such Use does not infringe any intellectual property rights of any person.

- (c) If you or any of your Personnel has any Moral Rights in any materials provided, used or prepared in connection with this Document, you (and you will ensure that your Personnel) consent to the infringement of those Moral Rights by us or our Personnel.
- (d) This clause 5 will survive the termination or expiry of this Document.

6 Limitations

- (a) Despite anything to the contrary, to the maximum extent permitted by law:
 - (1) our maximum aggregate Liability arising from or in connection with this Document (including the Goods and/or Services and/or the subject matter of this Document) will be limited to, and must not exceed, the portion of the Price paid by you to us for the Goods and/or Services the subject of the relevant claim; and
 - (2) we will not be liable to you for any loss of profit (including anticipated profit), loss of benefit (including anticipated benefit), loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings (including anticipated savings), loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.
- (b) Despite anything to the contrary, to the maximum extent permitted by law, we will have no Liability, and you release and discharge us from all Liability, arising from or in connection with any:
 - (1) loss of, or damage to, any property, the Goods or Services (or any item used in the provision of the Goods or Services), or any injury or loss to any person;
 - (2) failure or delay in providing the Goods or Services;
 - (3) breach of this Document or any law, where caused or contributed to by any:
 - (4) event or circumstance beyond our reasonable control (including Force Majeure Event); or
 - (5) act or omission of you (including your use of the Goods and our intellectual property), your Personnel, or any third party permitted on the premises where we will provide the Services, and, in any event, any defect, error, omission or lack of functionality or suitability (or the absence of, or reduction in, any anticipated result, outcome or benefit) with respect to the Goods or Services.
- (c) You agree that, to the maximum extent permitted by law, this Document excludes all terms, conditions and warranties implied by statute, in fact

or on any other basis, except to the extent such terms, conditions and warranties are fully expressed in this Document.

- (d) This clause 6 will survive the termination or expiry of this Document.

7 Termination

- (a) This Document will terminate immediately upon written notice by:
- (1) either Party, if mutually agreed in writing between the Parties;
 - (2) us, if you breach this Document and that breach has not been remedied within five working days of being notified by us or you are otherwise the subject of an insolvency event; or
 - (3) you, if we breach a material term of this Document and that breach has not been remedied or overcome within 15 working days of being notified by you.
- (b) On termination of this Document, you will:
- (1) where this Document is terminated under clauses or 7(a)(2), immediately pay to us the Price and all of our additional costs resulting from the termination;
 - (2) where this Document is terminated under clauses 7(a)(1) or 7(a)(3), immediately pay to us the Price for the Goods and/or Services provided up to the date of termination (and all other amounts due and payable to us under this Document);
 - (3) immediately return to us all property, including Confidential Information, belonging to us or our Personnel;
 - (4) not disparage or otherwise make any unfavourable statements or comments regarding us or our Personnel, either directly or by implication, verbally or in writing; and
 - (5) not use any intellectual property rights (including copyright) belonging to us or our Personnel.
- (c) Termination of this Document will not affect any rights or liabilities which a Party has accrued under it.

8 General

- (a) **Disputes:** A Party may not commence court proceedings relating to any dispute arising from, or in connection with, this Document (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute (unless that Party is seeking urgent interlocutory relief, or the Dispute relates to compliance with this clause).
- (b) **Confidentiality:** You will (and will ensure your Personnel) keep confidential, and not use or permit any unauthorised use of, any Confidential Information without our prior written consent, except where the disclosure is required by law.

- (c) **Force Majeure Event:** If we are affected, or likely to be affected, in performing an obligation by a Force Majeure Event and we give you notice of the Force Majeure Event and its effect, then our obligations under this Document are suspended to the extent to which they are affected by the relevant Force Majeure Event, for as long as the Force Majeure Event continues.
- (d) **Notices:** Any notice given under this Document must be in writing addressed to the relevant address in this Document. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- (e) **Relationship of Parties:** This Document is not intended to create a partnership, joint venture or agency relationship between the Parties.
- (f) **Severance:** If a provision of this Document is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this Document without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Document.
- (g) **Entire agreement:** This Document contains the entire understanding and agreement between the Parties in respect of its subject matter.
- (h) **Amendment:** This Document may only be amended by written instrument executed by all Parties.
- (i) **Governing law:** This Document is governed by the laws of Victoria.

9 Definitions

In this Document, unless the context otherwise requires, capitalised terms have the meaning given to them below:

Additional Costs means any additional costs, expenses, damages or losses suffered or incurred by us.

Business Day means a day on which banks are open for general banking business in Victoria, excluding Saturdays, Sundays and public holidays.

Confidential Information includes information which:

- (a) is disclosed to you in connection with this Document at any time;
- (b) is prepared or produced under or in connection with this Document at any time;
- (c) relates to our business, assets or affairs; or
- (d) relates to the subject matter of, the terms of and/or any transactions contemplated by this Document,

whether or not such information or documentation is reduced to a tangible form or marked in writing as "confidential", and howsoever you receive that information.

Defect means any defects, errors, omissions, faults, issues, problems or flaws in the Goods, which is caused by our breach of this Document.

Deposit means the deposit required to be paid by you to us, as set out in the Quote.

Dispute has the meaning given in clause 8(a).

Document means the Quote, these Terms and any documents attached to, or refer to in, them.

Effective Date means the earlier of the date on which this Document is accepted in accordance with its terms.

Goods means the products to be provided to you by us, as set out in the Quote.

Force Majeure Event means an event beyond the reasonable control of, and without the fault or negligence of us, and which results in us being unable to observe or perform an obligation under this Document, including due to strike, lockout, riot, industrial action, fire, weather conditions (including wind and storm), tempest, material shortage, or government law or regulation.

Liability means any expense, cost, liability, loss, damage, claim, demand or proceeding (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent.

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth).

Omission means any mean any errors, omissions, faults, issues, problems or flaws in the Services, which is caused by our breach of this Document.

Payment Terms means the payment of the Price by you to us, in accordance with the Quote and the terms set out in our invoice, and:

- (a) for any Services that have the value of \$10,000 or more, payment of 50% of the relevant portion of the Price is to be made prior to the commencement of the Services and as a precondition to the supply of the Services by us to you. The payment of the balance of the relevant portion of the Price to be made on completion of the Services;
- (b) for any Services that have a value of less than \$10,000, payment of the relevant portion of the Price is to be made within 7 days of completion of the Services; and
- (c) for any Goods, payment of the Price (or the relevant portion thereof) is to be made within 30 days from the date of our dispatch of the Goods from our premises for those with a credit account, and 7 days for those without.
- (d) Late Payment Fees are to be charged as follows. Overdue by 14 days or more is charged at the Reserve Bank of Australia's cash rate. Overdue by 30 days or more is to be charged at 4.8% p.a. compounded monthly. Overdue by 60 days or more is to be charged at 17.3% p.a. compounded monthly.

Personnel means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents.

Price is as set out in the Quote attached to these Terms, which may be adjusted in accordance with these Terms.

Price Variation has the meaning given in clause 3.1(e).

Quote means the quote attached to these Terms and forming part of this Document.

Services means the installation of the Goods by us, for you, as set out in the Quote.

Terms means the terms and conditions contained within this Document.

Third Party Inputs has the meaning given in clause 3.2(a)(1).

Use has the meaning given in clause 5(b).

Variation Request has the meaning given in clause 3.1(e).