

SMEDLEY'S ENGINEERS PTY LTD

TERMS & CONDITIONS OF TRADE

1. Definitions

Account Terms means the terms agreed between Smedley's and the Client and noted by Smedley's on the Client's Credit Account Application. The various Account Terms are detailed in Schedule 1.

Applicable Laws means any laws or regulations including any mandatory codes of practice or standards which are (i) applicable to the provision or receipt of the Services; (ii) applicable to acts undertaken or required to be undertaken in connection with this Contract; or (iii) referred to in this Contract, in each case solely as applicable to the referenced Party.

Client means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Smedley's to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:

- (i) if there is more than one Client, is a reference to each Client jointly and severally; and
- (ii) if the Client is a partnership, it shall bind each partner jointly and severally; and
- (iii) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
- (iv) includes the Client's executors, administrators, successors and permitted assigns.

Confidential Information means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.

Contract means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed by Smedley's to be supplemental to this Contract.

Credit Application means a written request in the form provided by Smedley's for an extension of credit in relation to the Services.

Deliverables means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited by Smedley's in the course of it conducting, or supplying to the Client, any Services.

GST means Goods and Services Tax as defined within the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in any territory in or in relation to copyright and related rights, moral rights, trade marks, designs, patents, database rights, circuit layouts, business and domain names, inventions and rights in goodwill or to sue for passing off or equivalent rights or forms of protection (whether or not registered or capable of registration) and all applications (and rights to apply) for that, and for renewals and extensions of, any such rights as may now or in the future exist anywhere in the world.

Party or Parties means Client and/or Smedley's as the context permits.



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

Pre-existing Intellectual Property means all Intellectual Property Rights owned or used by a Party before the commencement of this Agreement.

Price means the price payable (plus any GST where applicable) for the Services as agreed between Smedley's and the Client in accordance with clause 6 of this Contract.

Services mean all Services (including but not limited to consultation and manufacturing etc) supplied by Smedley's to the Client at the Client's request from time to time.

Smedley's means Smedley's Engineers Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Smedley's Engineers Pty Ltd.

Term means the period commencing on the date on which Smedley's starts providing Services and ending when this Contract is terminated in accordance with its terms.

Variations means any variation to the Deliverables which are to be supplied or any variation to the Services originally agreed or scheduled.

2. Order and Acceptance

- 2.1 Orders for Services must be placed by the Client in the manner prescribed by Smedley's, including but not limited to written, electronic, or verbal communication.
- 2.2 Smedley's reserves the right to accept or reject any order placed by the Client at its sole discretion.
- 2.3 Once an order is accepted by Smedley's, it becomes binding on both parties and cannot be cancelled except by mutual written agreement.
- 2.4 Any changes to an order must be communicated in writing and are subject to acceptance by Smedley's.
- 2.5 Smedley's uses standard industry terms to refer to the Services. The Client is responsible for ensuring the accuracy of any order submitted to Smedley's and for giving Smedley's any necessary information relating to the Services within a sufficient time to enable Smedley's to perform the Contract in accordance with its terms.
- 2.6 The Client is taken to have accepted and is immediately bound, by the terms of this Contract if the Client places an order for or accepts Services provided by Smedley's.
- 2.7 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.8 The Client acknowledges that the supply of Services on credit shall not take effect until the Client has completed a Credit Application and submitted it to Smedley's and it has been approved by Smedley's with a credit limit established for the account.
- 2.9 Smedley's may refuse to provide Services to a client where:
 - (a) the provision of those Services would result in the Client exceeding its credit limit; or
 - (b) the Client has failed to comply with any term of this Contract.

3. Smedley's Responsibilities

- 3.1 Smedley's will, at all times during the Term:
 - (a) have the necessary licenses, permits, or registrations required for it to be able to provide the Services;
 - (b) provide the Services:
 - (i) with reasonable care and skill;
 - (ii) in accordance with the terms of this Contract; and
 - (iii) in accordance with the Client's instructions received from time to time; and



- (c) comply with Applicable Laws.

4. The Client's Obligations

4.1 The Client acknowledges and agrees that:

- (a) it must promptly provide Smedley's with all reasonable and necessary information or instructions required for Smedley's to provide the Services. The Client must update information provided where there has been a material change to that information which affects the scope or performance by Smedley's of the Services;
- (b) Smedley's is entitled to rely on the accuracy of the information provided by the Client or others on the Client's behalf and is under no obligation to investigate or verify the accuracy or completeness of any information provided by the Client or others on the Client's behalf;
- (c) it must provide access to files, records and information technology systems, premises and people (whether management or staff) with relevant skills and experiences relevant to the provision of the Services where reasonably requested by Smedley's;
- (d) it must provide (and designate to the Services) all resources that are reasonably necessary to ensure timely approval, development and sign-off of all Services, plans, specifications and accounts; and
- (e) it will at all times during the Term, comply with Applicable Laws.

5. Change in Control

5.1 In this clause, 'change of control' has the meaning given in the *Corporations Act 2001* (Cth).

5.2 The Client shall give Smedley's not less than fourteen (14) days prior written notice of any proposed change of control of the Client or a proposed assignment of its business or substantially all of its assets, any rights under this Contract, and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice).

5.3 The Client shall be liable for any loss incurred by Smedley's as a result of the Client's failure to comply with this clause.

6. Price and Payment

6.1 The Price may be either:

- (a) if a quote is provided by Smedley's, then the quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days; or
- (b) if no quote was provided, then as may be agreed between the parties in writing or as otherwise indicated on any invoice provided by Smedley's to the Client.

6.2 Smedley's may change the Price:

- (a) if the Client requests a variation to the Deliverables which are to be supplied; or
- (b) if the Client requests a variation to the Services originally agreed or scheduled (including any applicable plans or specifications); or
- (c) in the event of increases to Smedley's in the cost of labour or materials which are beyond Smedley's control.

6.3 Variations will be detailed in writing and shown as variations on Smedley's' invoice. If the Client wishes to dispute any Variation submitted by Smedley's it must do so in writing within ten (10) business days. If the Client fails to dispute a Variation within ten (10) business days it is deemed to accept the Variation. Payment for all variations must be made in accordance with this Contract.

6.4 A non-refundable deposit of 50% of the Price is required to be paid by the Client prior to commencement of the Services.

6.5 Subject to clause 6.7 and the relevant Account Terms, the Price, less any deposit paid in accordance with clause 6.4, is payable by the Client in full without set-off, counterclaim or deduction, within 7 days of receipt of any invoice given to the Client by Smedley's.



- 6.6** Smedley's may issue the Client with an invoice at any time subject to the applicable Account Terms.
- 6.7** Payment must be made in clear funds and may be made by cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed between the Client and Smedley's.
- 6.8** Smedley's may in its discretion allocate any payment received from the Client towards any invoice that Smedley's determines or towards any unpaid interest or balance owing or costs of addressing a default or breach by the Client.
- 6.9** Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Smedley's an amount equal to any GST Smedley's must pay for any supply by Smedley's under this or any other agreement for providing Smedley's' Services. The Client must pay GST at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Delivery of Services

- 7.1** Unless otherwise agreed in a quotation or by the parties in writing, Smedley's may determine whether the Services and Deliverables will be delivered or supplied:
- (a) to the Client at Smedley's' address; or
 - (b) to the Client at the Client's nominated address,
- and the Services and Deliverables will be deemed to have been delivered at that time.
- 7.2** Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this Contract.
- 7.3** Any time specified by Smedley's for delivery of the Services is an estimate only and Smedley's will not be liable for any loss or damage incurred by the Client as a result of delivery being late due to a Force Majeure Event. The Parties agree that they shall take all reasonable steps to ensure the Services are supplied at the time and place as was arranged between both parties.
- 7.4** In the event that Smedley's is unable to supply the Services as agreed solely due to any action or inaction of the Client then Smedley's shall be entitled to charge a reasonable fee for resupplying the Services at a different time and date.

8. Risk

- 8.1** Irrespective of whether Smedley's retains ownership of any Deliverables, all risk for such items shall pass to the Client as soon as such items are delivered to the Client.
- 8.2** The Client must insure all Deliverables in its possession or control that are either owned by Smedley's or have not been paid for by the Client on or before delivery and maintain such insurance until such time as the Deliverables have either been returned to Smedley's or title to such Deliverables has passed to Client in accordance with clause 8.1. Smedley's reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to such Deliverables that arises as a result of the Client's failure to insure in accordance with this clause.
- 8.3** The Client acknowledges that Smedley's is only responsible for parts that are replaced/provided by Smedley's and Smedley's does not at any stage accept any liability in respect of components supplied by any other third party that subsequently fail and are found to be the source of the failure, the Client agrees to indemnify Smedley's against any loss or damage thereto, or caused thereby, or any part thereof howsoever arising.
- 8.4** Where the Client has supplied materials for Smedley's to complete the Services, the Client acknowledges that it accepts responsibility for the suitability of purpose, quality and any faults inherent in those materials. Smedley's shall not be responsible for any defects in the Services, any loss or damage howsoever arising from the use of materials supplied by the Client.



9. Title to Deliverables

- 9.1** Smedley's and the Client agree that, where it is intended that the ownership of Deliverables is to pass to the Client, that such ownership shall not pass until the Client has paid Smedley's the Price and any other amounts owing for the Services in accordance with clause 6.
- 9.2** It is further agreed that, until ownership of the Deliverables passes to the Client in accordance with clause 9.1:
- (a) the Client is only a bailee of the Deliverables and must return the Deliverables to Smedley's immediately upon request by Smedley's;
 - (b) the Client holds the benefit of the Client's insurance of the Deliverables on trust for Smedley's and must pay to Smedley's the proceeds of any insurance in the event of the Deliverables being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Deliverables. If the Client sells, disposes or parts with possession of the Deliverables then the Client must hold the proceeds of sale of the Deliverables or an amount equal to the value of the Deliverables, whichever is greater, on trust for Smedley's and must pay or deliver that amount to Smedley's on demand;
 - (d) the Client should not convert or process the Deliverables or combine them with other goods, but if the Client does so then the Client holds the resulting product on trust for the benefit of Smedley's and must dispose of or return the resulting product to Smedley's as Smedley's so directs;
 - (e) the Client shall not charge or grant an encumbrance over the Deliverables nor grant nor otherwise give away any interest in the Deliverables while they remain the property of Smedley's;
 - (f) Smedley's may enter the Client's premises and remove any Deliverables without providing notice and without incurring any liability to the Client. Smedley's will act reasonably and minimise any disturbance to the Client's land or business in exercising its rights under this clause.
- 9.3** Unless Smedley's consent in writing, the Client agrees not to sell or otherwise dispose of Deliverables that Smedley's have not received payment for if any of the following things happen:
- (a) a receiver or administrator is appointed over any of the Client's assets;
 - (b) a winding up order is made against the Client;
 - (c) the Client goes into voluntary liquidation;
 - (d) a bankruptcy order is made against the Client, or the Client commits an act of bankruptcy (if the Client is an individual)

10. Security and Charge

- 10.1** If the Client leaves property in Smedley's possession then the Client:
- (a) grants Smedley's a lien over that property to secure any unpaid amounts that the Client might owe Smedley's from time to time while the property is in Smedley's possession;
 - (b) agrees that if they refuse to pay any amount due to Smedley's then Smedley's can sell or otherwise dispose of the property that has been left in their possession, subject to any applicable law. The Client authorises Smedley's to apply the proceeds of sale against the amounts that they owe to Smedley's, as well as to any costs of storage, transport, auction or sale;
 - (c) acknowledges and agrees that, to the extent permitted by law, the repairer's lien that Smedley's holds takes precedence and priority over any other security interest in the property.
- 10.2** Unless Smedley's consent in writing, the Client agrees not to sell or otherwise dispose of Deliverables that Smedley's have not received payment for if any of the following things happen:
- (a) a receiver or administrator is appointed over any of the Client's assets;
 - (b) a winding up order is made against the Client;
 - (c) the Client goes into voluntary liquidation;
 - (d) a bankruptcy order is made against the Client, or the Client commits an act of bankruptcy (if the Client is an individual)
- 10.3** The Client indemnifies Smedley's from and against all Smedley's' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Smedley's' rights under this clause.



11. Defects

- 11.1** The Client must inspect Smedley's' Services on delivery or completion of the Services and must, within seven (7) days, notify Smedley's in writing of any evident defect in the Services or Deliverables provided (including Smedley's' workmanship) or of any other failure by Smedley's to comply with the description of, or quote for, the Services which Smedley's was to supply.
- 11.2** The Client must notify any other alleged defect in Smedley's' Services or Deliverables as soon as is reasonably possible after any such defect becomes evident, and in any case, within 7 days of delivery. Upon such notification the Client must allow Smedley's to review the Services or Deliverables that were provided.
- 11.3** Except as expressly set out in these terms and conditions or as otherwise provided for at law, Smedley's makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services. Smedley's' liability in respect of these warranties is limited to the fullest extent permitted by law.

12. Australian Consumer Law

- 12.1** This clause 12 only applies if the Client is a consumer within the meaning of the Australian Consumer Law (ACL).
- 12.2** Smedley's Services and Deliverables come with guarantees that cannot be excluded under the ACL.
- 12.3** If the Services or Deliverables are not of a kind ordinarily acquired for personal, domestic, or household use or consumption, our liability for breach of a consumer guarantee given in respect of the Services or Deliverables under the ACL is limited, at our option, to:
- (a) In the case of Services: supplying the Services again, or paying the cost of having the Services supplied again;
 - (b) In the case of Deliverables: replacing the Deliverables, repairing the Deliverables, or paying the cost of replacing or repairing the Deliverables.
- 12.4** If there is a failure with the Services or Deliverables, the Client is entitled to have the failure rectified in a reasonable time. If this is not done, the Client is entitled to cancel this Contract and obtain a refund of any unused portion, taking into account the value of the Services and Deliverables which have been provided to the Client that were not defective.
- 12.5** For major failures with the Services or Deliverables, the Client is entitled:
- (a) to cancel the Contract with Smedley's and pay a reasonable amount for the work done or seek a partial refund of money already paid; or
 - (b) to keep the Contract and negotiate with Smedley's for a refund of the unused portion, or compensation for its reduced value.

13. Limitation of Liability

- 13.1** Nothing in these Terms and Conditions exclude or limit any of the Client's Statutory Rights.
- 13.2** If the Client is a Consumer within the meaning of the Australian Consumer Law, Smedley's liability will be limited to the extent of the remedies available to the Client under the Australian Consumer Law.
- 13.3** If the Client is not a Consumer within the meaning of the Australian Consumer Law, Smedley's liability will be limited to the resupply of Services, or payment of the cost of having the services supplied again, at Smedley's election.
- 13.4** In any event, Smedley's total liability for any claim by the Client and / or any claim by a third party in respect of the Services is limited to one hundred percent (100%) of the amount that the Client paid to Smedley's for the relevant Services.
- 13.5** Subject to Applicable Laws, Smedley's will not be held liable for any claims arising from any of the following circumstances:
- (a) the Client failing to properly maintain or store any Deliverables;
 - (b) the Client's use of the Deliverables for any purpose other than that for which they were designed;
 - (c) interference with the Services by the Client or any third party without Smedley's' prior approval;



- (d) the Client's failure to adhere to any instructions or guidelines provided by Smedley's;
- (e) the Client's provision of false, misleading, inaccurate or incomplete information, or any failure by the Client to update such information;
- (f) instances of fair wear and tear, any accident, or act of God;
- (g) fraud, wilful misconduct or negligence on the part of the Client; or
- (g) any error, omission of the Client.

13.6 If a third party makes a claim or demand against Smedley's in respect of the Services and that claim or demand exceeds the liability set out in these terms and conditions, then the Client must indemnify Smedley's to the extent that it does so.

13.7 To the fullest extent permitted by law, in no event will either Party (including any and all representatives of that Party) be liable to the other Party for consequential loss, including but not limited to loss of goodwill, loss of profit, loss of revenue, loss of expected savings, opportunity costs, loss of business, loss of reputation and business interruption.

13.8 The Client agrees to inform Smedley's immediately of any damage or loss that might result in liability on Smedley's part so that Smedley's can act quickly to preserve its rights and inspect the damage or loss.

14. Intellectual Property

14.1 The Parties retain all title and rights in their Pre-existing Intellectual Property.

14.2 Unless otherwise agreed by Smedley's in writing, the rights in all Intellectual Property created in connection with the provision of the Services including the Deliverables (the **Developed IP**), will automatically upon creation vest in and become Smedley's exclusive property throughout the world in perpetuity.

14.3 Upon full payment by the Client of all amounts owing to Smedley's under this Contract, Smedley's will assign to the Client all right, title and interest in and to any Intellectual Property rights subsisting in the final version of the Deliverables.

14.4 The Client warrants that all designs, specifications or instructions given to Smedley's will not cause Smedley's to infringe any patent, registered design or trademark or other intellectual property right in the performance of the Services and the Client agrees to indemnify Smedley's for all costs and liability incurred in relation to any action taken by a third party against Smedley's in respect of any such infringement.

15. Default and Consequences of Default

15.1 If the Client breaches any term of this Contract, including any obligation to pay money, then Smedley's may:

- (a) change the Client's Account Terms to 'cash on delivery' or require payment in advance for any further Services that Smedley's provides to the Client, including Services that the Client has already ordered but have not yet been delivered;
- (b) charge the Client interest on all overdue amounts (including any dishonour fees and other administrative charges) at the rate of two and a half percent (2.5%) per month, calculated daily;
- (c) charge the Client for any costs, expenses and charges that Smedley's incurs in relation to the overdue amounts, or in relation to the recovery of Deliverables from the Client, including but not limited to any mercantile agent's costs and legal costs on a solicitor-client basis;
- (d) suspend or cancel any further supply of Services or Deliverables, and terminate any agreement in relation to Services or Deliverables that have not yet been delivered or supplied;
- (e) preclude the Client from participating in any special deals, discounts, bonus payments, redemptions, rebates or other incentive programs until all overdue amounts have been paid.

16. Suspension or termination

16.1 Without prejudice to Smedley's' other remedies at law and under this Contract, Smedley's shall be entitled to cancel or suspend all or any part of the Services which remains unfulfilled, or terminate this Contract, and all amounts owing to Smedley's shall, whether or not due for payment, become immediately payable if:

- (a) the Client has breached any obligation (including those relating to payment) under this contract;
- (b) the Client has exceeded any applicable credit limit provided by Smedley's;



- (c) the Client 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
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

16.2 Smedley's will not be liable to the Client for any loss or damage the Client suffers because Smedley's has exercised its rights under this clause. This clause applies without prejudice to any other rights or remedies Smedley's may have in respect of the Client's breach of any obligation under this Contract.

16.3 Smedley's may cancel any contract to which this Contract applies or cancel delivery of Services at any time at its discretion and before the Services are commenced by giving 10 business days written notice to the Client. On giving such notice Smedley's shall repay to the Client any money paid by the Client for the Services. Smedley's shall not be liable for any damage arising from such cancellation.

17. Privacy Policy

17.1 The parties agree to comply with the Privacy Act and any other applicable privacy or data protection laws regulating the collection, storage, use and disclosure of Personal Information, including the Spam Act 2003 (Cth) and Do Not Call Register Act 2006 (Cth), and do all that is reasonably needed to enable the other party to comply with them.

17.2 The Client acknowledges and agrees that any Personal Information that the Client will disclose to Smedley's has been collected in accordance with the Privacy Act and that Smedley's is authorised to collect such information from the Client.

18. Dispute Resolution

18.1 If a dispute arises between the parties to this Contract, either party is required to formally notify the other party in writing, outlining the details of the dispute.

18.2 Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute.

18.3 In the event the dispute cannot be resolved, either party may, by further notice in writing to the other party, request such dispute be resolved in accordance with mediation or other commercial dispute resolution process.

19. Service of Notices

19.1 Any written notice given under this Contract shall be deemed to have been given and received:

- (a) by handing the notice to the other party, in person;
- (b) by sending it by registered post to the address of the other party as stated in this Contract;
- (c) if sent by email to:
 - (i) in respect of the Client, the Client's email as stated in the Credit Application or otherwise the Client's last known email address; and
 - (ii) in respect of Smedley's, engineers@smedleys.co or as otherwise notified from time to time.

19.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, on the day that is seven (7) business days after the notice was posted.

20. Trusts

20.1 If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust (**Trust**) then, whether or not Smedley's may have notice of the Trust, the Client covenants with Smedley's as follows:

- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;



- (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Client will not, without Smedley's consent in writing, cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

20.2 Smedley's shall not unreasonably withhold consent in respect of clause 20.1(c) above.

21. General

- 21.1** The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2** This Contract may only be amended by written agreement signed by both parties.
- 21.3** This Contract is governed by the laws of Victoria and is subject to the jurisdiction of the courts of Melbourne, Victoria.
- 21.4** The Parties may not license and/or assign all or any part of their rights or obligations under this Contract without the other Parties consent.
- 21.5** Smedley's may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by doing so.
- 21.6** Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party (Force Majeure Event).
- 21.7** Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 21.8** Part or all of a provision of this Contract that is illegal or unenforceable may be severed from this Contract and the remaining parts of the provision or provisions of this Contract continue in force.
- 21.9** The parties agree that any rule of construction that a document be construed against the drafting party, including without limitation the doctrine commonly known as contra proferentem, shall not be applicable to this Contract.



Schedule 1 – Account Terms

The Account Terms vary based on the type of Client and in accordance with the below terms:

Type of Client	Payment Terms	Payment Due Date
New Client	100% of initial transaction to be paid upfront up to the value of \$5,000.00. Any amount of the first transaction exceeding \$5,000.00 must be paid 50% upfront. Balance prior to delivery of the Services.	Upfront payment: due prior to commencement of Services or, in any event, within 7 days of receipt of invoice. Balance payment: within 30 days of receipt of invoice.
Existing Clients (Non-Account Client)	50% of all transactions to be paid upfront. Balance payable prior to delivery of the Services.	Upfront payment: prior to commencement of Services or within 7 days of receipt of invoice. Balance payment: within 30 days of receipt of invoice.
Account Clients	Invoice issued once per month.	Within 30 days of receipt of invoice.

1. Account Clients

- 1.1 For a client to become an Account Client they must apply by submitting a completed Credit Application to Smedley's.
- 1.2 To be eligible the Client must have traded with Smedley's for minimum 12 months and had at least 6 transactions in the 12-month period without breach of the Account Terms set out above.
- 1.3 Upon receipt of a Credit Application Smedley's may, in its discretion, open an account for a client and categorise that Client as an Account Client.
- 1.4 Smedley's reserves the right to re-categorise the Client as a Non-Account Client at any time.
- 1.5 If an Account Client does not adhere to the Account Terms for more than 3 transactions the Client's account will be deleted and the Client will be required to adhere to the Non-Account Client terms for any further payments.
- 1.6 If an Account Client does not use their account for 2 years the account will be deleted and the Client will be required to adhere to the Non-Account Client terms for any further payments until such time as a new account is applied for by the Client and approved by Smedley's.
- 1.7 If the relevant Account Terms are not noted on the Credit Application or a Client has not provided Smedley's with a signed Credit Application, the Account Terms for that Client will be in accordance with the New Client terms.

2. Progress Payments

- 2.1 Smedley's may in its discretion and regardless of the applicable Account Terms, require the Client to make a monthly progress payment.

