
Property Concierge Co. - General Conditions

1. Definitions and interpretation

Capitalised terms in these Terms have the meaning given to them in clause 16

2. Acceptance of Quote

- (a) If:
- (i) the Client signs the Quote;
 - (ii) the Client notifies in writing to PCC that the Client accepts or approves a Quote provided by PCC; or
 - (iii) the Client instructs or request that PCC carries out or performs the Services the subject of a Quote,

the Client will be deemed to have accepted these Terms (**Acceptance**), following which these Terms will apply to and govern the provisions of the Services.

- (b) The Client and PCC agree that the contract formed on Acceptance comprises:
- (i) the Quote; and
 - (ii) these Terms
- (c) Unless otherwise agreed, the term of these Terms commences on Acceptance and expires on the earlier of:
- (i) the termination of these Terms; or
 - (ii) completion of the Services.
- (d) Where there is more than one person that constitutes the Client, the persons constituting the Client are jointly and severally liable for all money payable under these Terms.
- (e) These Terms are irrevocable as between PCC and the Client, unless rescinded in writing or varied in accordance with these Terms or with the written consent of PCC.
- (f) These Terms apply to any supply of Services by PCC to the Client to the exclusion of any other terms put forward by the Client during the ordering or quotation process.
- (g) An agent or representative of PCC is not authorised to make any representation, statement, condition or agreement not expressed by PCC's manager in writing, nor is PCC bound by any unauthorised representation, statement, condition or agreement.

3. PCC's obligations

In consideration for the Service Fees, PCC agrees to provide the Services to the Client in accordance with these Terms.

3.1 Provide Services

- (a) PCC must provide the Services in accordance with these Terms.
- (b) PCC must provide the labour, materials, equipment and tools necessary to provide the Services.
- (c) PCC must perform the Services to the standard of professional care, skill, expertise, judgment and diligence expected of a competent builder experienced in providing services, which are similar to the Services.

3.2 Variations

- (a) If, during the performance of the Services, PCC considers that additional property maintenance services are required to be provided (**Additional Services**):
 - (i) PCC will notify the Client of the requirement for Additional Services and the additional Service Fees relating to those Additional Services; and
 - (ii) if requested by the Client, PCC may in its discretion, elect to perform all or part of the Additional Services, having regard to the nature and scope of the Additional Services.

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- (b) PCC is excluded from any liability to the Client in connection with any Loss or damage the Client suffers if they decide not to proceed with all of the Additional Services required, if applicable.
 - (c) If, during the performance of the Services, the Client requests that PCC provide Additional Services, then if PCC is willing to provide the Additional Services it must provide a new Quote for the Additional Services. If the new Quote is accepted by the Client in accordance with these Terms, these Terms apply to the Additional Services.

3.3 Subcontracting

PCC may subcontract the whole or part of the provision of the Services to any person.

4. Access to Property

The Client must:

- (a) to the extent required to complete the Services, ensure that PCC and its Authorised Persons have full and safe access to the Property;
- (b) provide PCC and its Authorised Persons with the information that PCC requires to access the Property and perform the Services (including keys and alarm security codes); and
- (c) provide PCC and its Authorised Persons with access to all services and utilities (including hot and cold water, electricity and rubbish bins) as required by PCC and its Authorised Persons to perform the Services.

5. Service Fees

5.1 Payment of Service Fees

The Client must pay PCC the Service Fees in accordance with these Terms and as specified in a Quote.

5.2 Deposit

- (a) PCC may require that the Client pays a deposit of 50% of the quoted Service Fees or such other amount specified in a Quote, for any Services (**Deposit**) and such Deposit must be paid within the earlier of the date specified in a Quote and 3 Business Days of the Seller making a request for the Deposit.
- (b) PCC is not under any obligation to commence or continue work in relation to the supply of Services unless a requested Deposit has been received.
- (c) PCC may use or apply the Deposit towards the costs associated with procuring materials, preparatory works or otherwise undertaking works involved in supplying the Goods or Services.
- (d) A Deposit is not refundable after PCC has commenced work and incurred costs in relation to the supply of the Services to which the Deposit pertains.

5.3 Quotes

- (a) The Client acknowledges that the Quote is provided on the basis that the Client has provided full and frank disclosure of the nature and extent of the Services required and given all material information to PCC, including about the Property (to the extent reasonably possible). A Quote is valid for 14 calendar days after it is given.
- (b) PCC is entitled to revoke a Quote before Acceptance.
- (c) PCC reserves the right to amend a Quote or the Service Fee in accordance with these Terms.

5.4 Failure to provide access

The Client will be required to pay the Non-Access Fee if PCC attends the Property at the agreed date and time to perform the Services (and regardless of whether any work is performed by PCC) and is unable to for whatsoever reason.

5.5 Review and adjustment of Service Fees

PCC may by written notice to the Client, make reasonable adjustments to the Service Fees at any time to account for:

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- (a) any increase in operation and service costs or liabilities incurred by it performing the Services, including if the charge results from a change to applicable laws or regulations; and
 - (b) any increase in operation and service costs charged by third parties for or relating to the performance of such Services.

5.6 Invoice for Service Fee

- (a) PCC will give the Client a Tax Invoice for the Service Fees on completion of the Services or at such other time specified on a Quote.
- (b) The Client must pay PCC the amount shown on a Tax Invoice within 14 days of the Tax Invoice issue date. After 14 days, that amount is due and payable to PCC.

5.7 Default in payment

- (a) The Client must pay to PCC interest of 15% on:
 - (i) any unpaid portion of any amount payable to PCC under this Agreement which is overdue; and
 - (ii) any other sum, which PCC is entitled to charge under this Agreement.
- (b) If the Client does not pay an amount because the amount is in dispute and the dispute is resolved in favour of PCC, the interest at the rate of 15% per annum (calculated daily) accrues, and must be paid by the Client to PCC on that amount, from the date when payment becomes due until the earlier of payment of judgment.
- (c) The Client charges all of his right, title and interest held now or in the future in the Property with the due and punctual payment of all moneys payable to PCC under this Agreement. The Client authorises PCC to register a caveat on the Property owned by the Client.

5.8 Disputed invoices

- (a) If the Client disputes an amount shown on a Tax Invoice, it must:
 - (i) notify PCC within 5 Business Days of receipt of the Tax Invoice that it disputes the invoice; and
 - (ii) pay the amount not in dispute.
- (b) If the Client does not give the notice referred to in clause 5.8(a), the Tax Invoice is deemed not to be disputed.

6. GST

- (a) Unless otherwise indicated, the Service Fee includes an amount for GST.
- (b) Subject to this Agreement, any other amount payable under this Agreement does not include an amount for GST.
- (c) GST is payable on a taxable supply made under this Agreement.
- (d) Subject to this clause, if a supply under this Agreement is subject to GST, then the recipient must pay to the supplier an additional amount equal to the GST exclusive consideration multiplied by the GST rate.
- (e) Subject to this clause, the recipient must pay the additional amount at the same time as it pays the consideration for the supply.
- (f) The recipient is obliged to pay the additional amount only after it receives a Tax Invoice from the supplier.
- (g) If the additional amount differs from the amount of GST payable by the supplier, then the parties must adjust the additional amount.
- (h) If a party is entitled to be reimbursed or indemnified under this Agreement, then the amount to be reimbursed or indemnified does not include an amount for GST for which the party is entitled to an Input Tax Credit.
- (i) The supplier must issue:
 - (i) a tax invoice to the recipient for a taxable supply; and

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- (ii) an adjustment note to the recipient of a taxable supply for an adjustment that arises in relation to a taxable supply.
 - (j) A review or adjustment of consideration payable for a taxable supply must take into account:
 - (i) that this clause requires an adjustment of that consideration; and
 - (ii) an adjustment to that consideration which has already been or is required to be determined, under this clause.

7. Privacy

- (a) PCC may collect the Client's personal information (as defined in the *Privacy Act 1988 (Cth)*) to provide the Services.
- (b) PCC may have to disclose the Client's personal information to third parties who assist with the provision of the Services.
- (c) The Client may request to access the information collected by contacting PCC on 08 9387 7333. To read the relevant privacy policy please visit www.propertyconciergeco.com.au

8. Latent and design defects

The Client acknowledges that the Services are being carried out by PCC on the Property, in the Property's present state and condition at the time the Services are being provided, including all latent, design or physical defects (whether or not known to the Client). PCC is not liable for, and no Claim can be made against PCC in respect of, any Loss which relates to or arises from the Property's present state and condition, including all latent, design or physical defects.

9. Incomplete or defective Services

- 9.1 The Client must within 2 days after completion of the Services notify PCC in writing of any unsatisfactory or incomplete Services performed by PCC.
- 9.2 The Client must provide PCC an opportunity to inspect all alleged unsatisfactory Services as soon as practicable following the issue of the notice.
- 9.3 Subject to clause 9.4, if PCC, acting reasonably and in good faith, determines that the Services provided are unsatisfactory, PCC's liability is limited (at PCC's discretion):
 - (a) either resupplying those Services again; or
 - (b) engaging a third party to resupply those Services.
- 9.4 PCC's obligation to take the actions in clause 9.3, are conditional upon the following:
 - (a) PCC does not have any liability to the extent that any damage is caused, directly or indirectly, by any act or omission on the part of the Client; and
 - (b) PCC is not liable for any workmanship provided by a non-Authorised Person.
- 9.5 If the Client fails to notify PCC of any unsatisfactory Services within 2 days after completion of the relevant Services, the Client is deemed to have accepted the Services in full and, to the extent permitted by law, waives any right to make a Claim in respect of the Services.

10. Indemnity and liability

10.1 Client's indemnity

- (a) The Client indemnifies PCC, its officers, employees, agents and contractors against any Loss suffered or incurred by them which relates directly or indirectly to:
 - (i) the Client's breach of this Agreement; or
 - (ii) the Client's negligent or unlawful acts or omissions or wilful misconduct relating to this Agreement; and
 - (iii) any injury or death of any person, to the extent such Loss is caused by the acts or omissions of the Client or the Client's representatives, agents or contractors in relation to this Agreement.
- (b) This indemnity does not apply to the extent that PCC or its representatives' negligent acts or omissions caused or contributed to the Loss.

10.2 Exclusion of warranties

- (a) To the extent permitted by law, these Terms and the Quote constitutes the entire agreement.
- (b) All terms, conditions, guarantees and warranties which otherwise might apply to, or arise out of, or be implied into this Agreement, are excluded to the extent permitted by law, other than
 - (i) as expressly stated in these Terms; and
 - (ii) terms, conditions, guarantees and warranties which by law cannot be excluded or modified by agreement, including those under the *Competition and Consumer Act 2010 (Cth)*, the *Fair Trading Act 2010 (WA)* and any other applicable similar legislation.
- (c) If a law implies a warranty, guarantee, condition or imposes an obligation or liability on PCC in respect of this Agreement that cannot be excluded, restricted or modified, PCC's liability is limited to, at PCC's option:
 - (i) supplying the Services again; or
 - (ii) paying for another party to supply the Services again.

10.3 Maximum Liability

Notwithstanding anything else in this Agreement, PCC's maximum aggregate liability for Loss in relation to this Agreement must not exceed the total amount of the Service Fees preceding the date of the Claim giving rise to that liability.

10.4 Apportionment of liability

PCC's liability under this Agreement will be reduced proportionally to the extent that any act or omission of the Client, its agents or its contractors have caused or contributed the liability.

11. Default and Termination

11.1 Termination for convenience

PCC may terminate this Agreement giving 5 Business Days' written notice to the Client.

11.2 Termination for Breach

- (a) If the Client is in breach of a material obligation under this Agreement, PCC may give notice to the Client which requires the Client to remedy the breach within 10 Business Days.
- (b) PCC may by further notice to the Client terminate or these Terms or suspend the provision of Services if the Client has not:
 - (i) remedied the breach within that 10 Business Day period; or
 - (ii) made arrangements within that 10 Business Day period, which satisfy PCC in respect of the breach.
- (c) PCC's right to terminate is without prejudice to any other rights or remedies it may have in respect of the default.

11.3 Insolvency event

If the Client becomes bankrupt, insolvent, under administration or an externally administered body corporate, then to the extent permitted by law, PCC may at its election:

- (a) suspend the performance of the Services; or
- (b) terminate this Agreement immediately.

11.4 Consequences of termination of this Agreement

- (a) On termination the Client must pay within 10 Business Days of the date of termination to PCC the portion of the Service Fee and any other amounts, which are payable but unpaid
- (b) Termination under this clause is without prejudice to any rights which have accrued to PCC before the date of termination.
- (c) If PCC terminates for convenience under clause 11.1, it must refund the Deposit to the Client, less any monies actually paid by PCC at the time of termination to PCC's contractors, suppliers and vendors that have supplied goods, services, material or labour relating to the Services.

12. Force Majeure

- (a) PCC is not liable for a delay or failure to perform its obligations during the time and to the extent that a Force Majeure prevents PCC from performing its obligations.
- (b) As soon as possible after the Force Majeure ends, PCC must notify the Client that the Force Majeure is over and resume performance of its obligations.
- (c) If PCC is unable to remove the Force Majeure within 60 days, PCC may terminate this Agreement by notice to the Client and clause 12.4 will apply.

13. Legal relationship

- (a) PCC is an independent contractor of the Client. This Agreement does not create a relationship, including a relationship of principal and agent, employer and employee, partnership or joint venture between the parties.
- (b) Neither party may:
 - (i) assume or create obligations of any kind for the other party;
 - (ii) make representations or warranties whether express or implied on behalf of the other party; nor
 - (iii) bind the other party in any way.

14. Assignment

- (a) The Client must obtain PCC's prior written consent before it transfers, assigns or novates a right or obligation to a third party.
- (b) PCC may assign its rights under this Agreement to a Related Entity (**Assignee**) without the consent of the Client.

15. Governing clauses

- (a) The law of Western Australia governs this Agreement. The parties submit to the exclusive jurisdiction of the courts of Western Australia, the Federal Circuit Court and the Federal Court of Australia.
- (b) The parties can vary this Agreement only if the variation is in writing signed by each party.
- (c) The Client must not deduct from any moneys due, or which becomes due, to PCC any moneys due to the Client or claimed to be due to the Client from PCC.
- (d) If a provision of this Agreement is invalid, illegal or unenforceable, then to the extent of the invalidity, illegality or unenforceability, that provision must be ignored in the interpretation of this Agreement. The remaining provisions of this Agreement remain in full force and effect.
- (e) Each indemnity survives the performance of obligations relating to this Agreement and the termination of this Agreement.
- (f) To the extent that a party has not satisfied an obligation or it is a continuing obligation, that obligation survives termination.

16. Definitions

Additional Services has the meaning given to that term in clause 4.2(a).

Agreement means the agreement, comprising these Terms and the Quote, arising on Acceptance.

Authorised Person means the PCC's employees, contractors and sub-contractors.

Business Day means a day, which is not a Saturday, Sunday, public holiday or bank holiday in the city of Perth, Western Australia.

Force Majeure means an extraordinary event or circumstance beyond the reasonable control of PCC including flooding, either natural or man-made; cyclone, earthquake or fire; act of God; industrial disturbance or civil services dispute; acts of vandalism or sabotage; failure of the electrical or telecommunications network; failure or breakdown of any equipment or war or terrorist act.

GST means a goods and services or similar tax imposed in Australia, together with an additional tax, interest, penalty, fine or other charge relating to GST.

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

Input Tax Credit has the meaning it has in the GST Act.

Loss means any loss, damage, cost, liability charge or expense of any kind and however arising (including as a result of any claim), including penalties, fines and interest and including any that are prospective or contingent and the amount of which for the time being are not ascertained or ascertainable.

Non-Access Fee means the amount of \$200 plus GST per non-access event as set out in clause 5.4.

PCC means Katrine Investments Pty Ltd (ACN 008 823 425) trading as Property Concierge Co.

Property means the property at which PCC must provide the Services, as specified in the Quote or as otherwise directed in writing by PCC.

Quote means a quotation provided by PCC to the customer in respect of services to be provided under these Terms, and any additional quote provided in respect of Additional Services.

Related Entity has the meaning given to it in the *Corporations Act 2001* (Cth).

Services means any services provided or supplied by PCC, as set out in a Quote or any other order or other request by the Client to provide property maintenance services, and includes the Additional Services.

Service Fee means the fees that the Client must pay to PCC for the Services, as set out in Quote and any other moneys payable by the Client to PCC under these Terms.

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

Terms means these terms and conditions.

17. Interpretation

In this Agreement, a heading is for convenience only and does not affect interpretation and unless inconsistent with the context:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a gender includes any gender;
- (c) a reference to a document, includes a variation or replacement of it;
- (d) a reference to a statute includes its subordinate legislation and a modification or re-enactment of either;
- (e) a reference to person, includes a reference to:
 - (i) an individual, a body corporate, a trust, a partnership, a joint venture, an unincorporated body or other entity, whether or not it is a separate legal entity;
 - (ii) if the person is an individual, the person's personal representatives and assigns; and
 - (iii) if the person is not an individual, the person's successors and assigns;
- (f) if the date on which a thing must be done is not a Business Day, then that thing must be done on the next Business Day;
- (g) a reference to a day is a reference to the period, which starts at midnight and ends 24 hours later; and
- (h) if a period of time runs from a given date, act or event, then the time is calculated exclusive of the date, act or event.