



The Buckner Group Terms & Conditions

1. Introduction

1.1 Application of these Terms and Conditions

These Terms and Conditions are incorporated into any contract between Buckner and the Customer for the supply of goods or services (or both) by Buckner to the Customer.

1.2 Acceptance of these Terms and Conditions

The Customer will be bound by these Terms and Conditions if the Customer:

- (a) signs and returns a copy of the Terms and Conditions; or
- (b) orally agrees to be bound by the Terms and Conditions; or
- (c) provides instructions to, or orders goods or services (or both) from, Buckner after receiving these Terms and Conditions.

1.3 Acknowledgement by the Customer

By accepting these Terms and Conditions, the Customer acknowledges and agrees that:

- (a) the supply of goods or services (or both) by Buckner will be subject to these Terms and Conditions;
- (b) the Customer will be bound by these Terms and Conditions; and
- (c) the Customer has read, understood and agreed to these Terms and Conditions.

2. Definitions and Interpretation

2.1 Definitions

In these Terms and Conditions:

Additional Work includes all work undertaken by Buckner as a consequence of the Customer's variation, alteration or modification of the Customer's instructions in relation to the work to be performed for the Customer.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Background IP means all Intellectual Property Rights which:

- (a) exist prior to the date of acceptance of these Terms and Conditions; or
- (b) are brought into existence after the date of acceptance of these Terms and Conditions but independently of the performance of these Terms and Conditions; and



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- (c) in the case of Buckner, includes all Intellectual Property Rights in any amendments, modifications or developments of any materials which record or describe Buckner's processes and practices.

Buckner means The Buckner Group Pty Ltd (ABN 47 009 739 422).

Business Day means a day on which banking institutions generally are open in Brisbane but excluding Saturdays, Sundays and public holidays.

Customer means a person that has received these Terms and Conditions as a customer of Buckner.

Force Majeure Event means any circumstance which:

- (a) is beyond the reasonable control of the party affected by it; and
- (b) causes or results in a default or delay in the performance by that party of any of its obligations under this agreement where the occurrence of the circumstance and the effects of it could not be avoided or remedied by the exercise by that party of a standard of foresight, care and diligence consistent with the operations of a reasonable, prudent and competent person under the circumstances,

and includes any of the following circumstances if they meet the requirements of paragraphs (a) and (b):

- (c) explosion, earthquake, landslide, fire, cyclone, flood or other natural disaster declared by the relevant government body;
- (d) war, invasion, act of foreign enemy, hostilities (whether or not war has been declared) and any other unlawful act against public order or authority;
- (e) acts or omissions of a government body;
- (f) governmental restraint and adverse changes in government regulations that directly affect a party or render unlawful the performance of the party's obligations under this agreement;
- (g) ionizing radiation or contamination, radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear waste or from the combustion of nuclear, radioactive, toxic, explosive or other hazardous properties of any explosive assembly or nuclear component;
- (h) pandemic;
- (i) except to the extent instigated by the affected party, a strike, lockout, blockade, picketing action or industrial action, dispute or disturbance of any kind; and
- (j) breakdown of plant or machinery and the loss of supply of services or the unavailability of services.

Freight Costs and Charge includes all costs and expenses incurred by Buckner in removing the goods from its premises, whether by way of actual or attempted delivery to the Customer or otherwise.

GST has the meaning given in the GST Law.



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GST Law has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all intellectual property rights including all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

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

New IP means all Intellectual Property Rights:

- (a) brought into existence in the performance of these Terms and Conditions;
- (b) created, discovered or coming into existence as a result of utilising rights or carrying out tasks or obligations in connection with these Terms and Conditions,
- (c) but excludes Background IP.

Personal Information has the meaning in Privacy Law.

Preliminary Work means all and any work performed by Buckner at the Customer's express or implied request, the performance of which work was necessary to enable the work to be performed for the Customer to be commenced and which work was not within the reasonable contemplation of Buckner at the time when Buckner supplied the Quote (if any).

PPS Act means *Personal Property Securities Act 2009* (Cth).

Price means the price for the goods and services provided by Buckner in accordance with clause 5.1.

Privacy Law means the *Privacy Act 1988* (Cth).

Terms and Conditions means these terms and conditions.

Quote means the quote for goods or services (or both) provided by Buckner and to which these Terms and Conditions are attached.

Warehousing Costs means \$20 per pallet per month or such price as amended by Buckner from time to time.

2.2 Interpretation

- (a) Unless the contrary intention appears, a reference in these Terms and Conditions to:
 - (1) the singular includes the plural and the plural includes the singular;
 - (2) a person, partnership, corporation, trust, association, joint venture, unincorporated body, government body or other entity includes any other of them;
 - (3) a party includes the party's executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;



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- (4) any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them;
- (5) money is to Australian dollars, unless otherwise stated; and
- (6) a time is a reference to Brisbane time unless otherwise specified.
- (b) The words include, including, such as, for example and similar expressions are not to be construed as words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) Headings and any table of contents or index are for convenience only and do not affect the interpretation of these Terms and Conditions.
- (e) A reference to a period of time (including, without limitation, a year, a quarter, a month and a day) is to a calendar period.
- (f) A provision of these Terms and Conditions must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of these Terms and Conditions or the inclusion of the provision in these Terms and Conditions.
- (g) If an act must be done on a specified day which is not a Business Day then:
 - (1) If it involves a payment other than a payment which is due on demand, must be done on the preceding Business Day; or
 - (2) In all other cases, it must be done instead on the next Business Day.
- (h) If an act is required to be done on a particular day it must be done before 5.00pm on that day or it will be considered to have been done on the following day.

3. Engagement

3.1 Engagement

The Customer engages Buckner to provide the goods or services (or both) as set out in the Quote on these Terms and Conditions.

3.2 Provision of goods and services

Buckner agrees to provide to the Customer the goods or services (or both) as set out in the Quote on these Terms and Conditions.

3.3 Scope of Quote

- (a) The parties agree that the precise scope of the goods and services provided by Buckner is set out in the Quote.



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- (b) If the Customer wishes to add any additional goods and services it must enter into a separate order in relation to those goods and services.

3.4 Outside Scope

Any goods or services provided to the Customer by Buckner which are not expressly included in the Quote will be charged to the Customer in accordance with Buckner's pricing policies as determined from time to time, unless otherwise agreed to by the parties in writing.

4. Quote

4.1 Acceptance by the Customer

The Customer will have accepted the Quote if it:

- (a) signs and returns a copy of the Quote; or
- (b) orally agrees to the Quote; or
- (c) provides instructions (orally or in writing) to Buckner to commence work after receiving the Quote,

and acceptance by the Customer of:

- (d) the Quote will constitute acceptance by the Customer of these Terms and Conditions; and
- (e) these Terms and Conditions will constitute acceptance by the Customer of the Quote.

4.2 Commencement of Work

Buckner need not commence work until the Quote has been accepted by the Customer in accordance with clause 4.1.

4.3 Quote evidence of instructions

If the Quote is accepted by the Customer, the work the subject of the Quote shall be carried out and the Customer shall pay for the work in accordance with these Terms and Conditions.

4.4 Buckner may revise Quote

At any time prior to the delivery of the goods or services the subject of the Quote, Buckner may provide notice in writing to the Customer requesting an amendment to the Quote and the Customer may either:

- (a) accept the amendment to the Quote in the same manner as set out in clause 4.1; or
- (b) reject the amendment by providing written notice to Buckner in which case Buckner may (at its option) advise the Customer by notice in writing that it either:
 - (1) terminates the arrangement between the parties; or



- (2) agrees to proceed with the Quote on these Terms and Conditions without the requested amendment.

5. Price and Payment

5.1 Price

The Price for the goods or services (or both) shall be:

- (a) the amount set out in the Quote (as amended); or
- (b) where no amount is set out in the Quote, the price determined by Buckner in accordance with its pricing policies as determined from time to time,

plus any of the additional charges set out in clause 5.2.

5.2 The Additional Charges

Buckner may charge to the Customer:

- (a) fees for any Preliminary Work performed at the Customer's request;
- (b) fees for any Additional Work required to be done as a result of the Customer changing their instructions;
- (c) fees for having to work from poor copy;
- (d) fees for work which involves tables or foreign language and which was not notified to Buckner before the Quote was prepared;
- (e) fees for Additional Work required to be done as a result of author's corrections, including repagination or reformatting;
- (f) fees and other charges for work required to be done urgently, including any overtime costs;
- (g) fees for handling or storing material or equipment supplied by the Customer for the purposes of the work to be performed;
- (h) fees for changing or correcting, in order to ensure that the goods are properly produced, any plates, film, bromides, artwork or any document including computer files supplied for the purposes of the work performed for the Customer;
- (i) Freight Costs and Charges;
- (j) the Warehousing Costs as set out in clause 8.4;
- (k) other charges, fees or disbursements referred to in these Terms and Conditions and not specified in this clause; and
- (l) any other costs reasonably incurred by Buckner in performing the work for the Customer.



5.3 Invoicing

Buckner will render an invoice to the Customer from time to time as it sees fit.

5.4 Time for payment

The Customer must pay the amount invoiced by Buckner:

- (a) in accordance with the terms set out in the invoice; or
- (b) if no time for payment is set out in the invoice, within 30 days of the date of the invoice.

5.5 Failure to pay

If the Customer fails to pay amounts due to and invoiced by Buckner then Buckner shall be entitled to:

- (a) charge interest on the amount outstanding at a rate equal to the maximum overdraft rate fixed by the Commonwealth Bank of Australia plus 2.5% on a daily basis from the due date for payment until the amount outstanding (including the interest payable) has been paid in full; or
- (b) suspend performance of any work until such time as all amounts owing have been paid in full; or
- (c) vary the Price to include additional charges incurred by Buckner as a result of the failure to make payment when due; or
- (d) do all or any of the above.

5.6 Damages

Without limiting the rights of Buckner in clause 5.5, the Customer must pay to Buckner on demand any costs, expenses or losses incurred by Buckner as a result of the Customer's failure to pay to Buckner any amounts owing when due including, without limiting the generality of the obligation set out in this clause, any debt collection and legal costs (on an indemnity basis).

6. Title

6.1 Retention of Title

Until the Customer has paid all sums owing to Buckner:

- (a) title in any goods delivered shall not pass from Buckner to the Customer;
- (b) if the goods are in the Customer's possession, the Customer shall hold the goods as trustee for Buckner and must store the goods so that they are clearly identifiable as the property of Buckner;
- (c) Buckner may call for and recover possession of the goods (for which purposes Buckner's employees or agents may enter the Customer's premises and take



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possession of the goods without liability to the Customer) and the Customer must deliver the goods to Buckner if so directed by Buckner;

- (d) Buckner may keep or resell any of the goods repossessed pursuant to clause 6.1(c). In the event that any of the Customer's property held by Buckner enjoys copyright protection in favour of the Customer, the Customer grants to Buckner a licence to exercise the rights conferred on Buckner under this clause;
- (e) Buckner will within 30 days of retaking the goods under clause 6.1(c) and being satisfied that those items are in good order and condition free from encumbrances do the following:
 - (1) firstly, give credit to the Customer against any debt owing by the Customer to Buckner (including any debt in respect of any unpaid portion of the original purchase price of the goods); and
 - (2) secondly, reimburse the Customer for any amount that Buckner receives in relation to the returned goods that exceeds the debt owed by the Customer to Buckner.

6.2 PPS Act provisions

- (a) For the purposes of this clause 6.2 of these Terms and Conditions, the terms accession, account, amendment demand, commingled, control, financing change statement, financing statement, perfected, possession, proceeds, purchase money security interest, security interest and verification statement have the meanings given to them in the PPS Act.
- (b) The Customer acknowledges and agrees that any security interest created by these Terms and Conditions, or the transactions contemplated by them:
 - (1) extends to, and acts as a security interest in respect of, any:
 - (A) proceeds (including any account) derived from, or from a dealing with, any goods provided under these Terms and Conditions;
 - (B) accession to any goods provided under these Terms and Conditions or any goods to which a good provided under these Terms and Conditions is commingled; and
 - (2) continues in any goods provided under these Terms and Conditions if the goods provided under these Terms and Conditions becomes an accession or is commingled with other goods.
- (c) The Customer agrees to do, or procure anyone else who has an interest in any goods provided under these Terms and Conditions or any good created from goods provided under these Terms and Conditions, or who claims under or as trustee for the Customer to do, anything which Buckner requires from time to time to:
 - (1) ensure that any security interest which is purported to be reserved or created under or in connection with these Terms and Conditions is a first ranking perfected security interest and, if applicable, recorded as a purchase money security interest for the purposes of the PPS Act;



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- (2) if requested by Buckner, ensure that any security interest which is purported to be reserved or created under or in connection with these Terms and Conditions is perfected by possession or control;
 - (3) enable Buckner to register and maintain (including to renew before expiry) fully valid and effective financing statements or financing change statements with respect to any security interest which is purported to be reserved or created under or in connection with these Terms and Conditions;
 - (4) remove any financing statement which is registered in respect of any goods provided under these Terms and Conditions; and
 - (5) otherwise protect Buckner's position as the holder of security interests under or in connection with these Terms and Conditions.
- (d) Without limiting any other provision of these Terms and Condition, the Customer waives its right to receive any verification statement (or notice of any verification statement) in respect of any financing statement or financing change statement relating to any security interest created under or in connection with these Terms and Conditions.
- (e) The Customer undertakes and agrees:
- (1) to not, without first giving Buckner 10 Business Days' written notice, change its name, ABN, address, email address, facsimile number or any other details that have been, or are required to be, recorded on the register maintained under the PPS Act in relation to any security interest created under or in connection with these Terms and Conditions;
 - (2) to pay all costs in connection with the registration, discharge or amendment of any financing statement or financing change statement;
 - (3) to not, without the prior written consent of Buckner, lodge or serve a financing change statement or an amendment demand in relation to any security interest created under or in connection with these Terms and Conditions; and
 - (4) that the goods provided under these Terms and Conditions are not intended, and shall not be used, for personal, household or domestic purposes.
- (f) The Customer and Buckner agree that:
- (1) to the extent that section 115(1) of the PPS Act allows them to be excluded, sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143; and
 - (2) to the extent that section 115(7) of the PPS Act allows them to be excluded, sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137,
- do not apply to any enforcement by Buckner of any security interest created under or in connection with these Terms and Conditions.
- (g) The Customer waives its right to receive anything from Buckner under section 275 of the PPS Act and agrees not to make a request of Buckner under that section. The Customer and Buckner agree for the purposes of section 275(6) of the PPS Act that



neither the Customer nor Buckner will disclose any information in the nature of that mentioned in section 275(1) of the PPS Act.

7. Obligations of the Customer

7.1 Proofs

If Buckner submits to the Customer a proof of the goods, Buckner will not be responsible for any errors in the goods which appeared in the proof and which were not corrected by the Customer before Buckner commences work on the Order by the Customer.

7.2 Alterations to style

If, before the Quote is prepared, the Customer does not give Buckner specific instructions in relation to style, type or layout:

- (a) Buckner may use any style, type and layout which, in Buckner's opinion, is appropriate; and
- (b) Buckner may charge an additional amount for any Additional Work required to be done (including the production of additional proofs) as a result of the Customer subsequently altering the style, type or layout used by Buckner.

7.3 Overset

If Buckner is instructed by the Customer to prepare overset matter (being matter produced on the Customer's instructions but not used in a publication for which it was intended), the Customer must pay for such overset matter. The Customer may instruct Buckner to retain overset matter for future issues of the publication or to discard the overset matter.

7.4 Supply Chain Partners

The Customer acknowledges that Buckner will utilise its supply chain partners to fulfil the Order and may delegate all or any part its obligations to provide and perform the goods and services set out in the Order in its discretion.

7.5 Material supplied by the Customer

If Buckner and the Customer agree that the Customer is responsible for supplying materials or equipment for the purposes of Buckner producing goods for the Customer:

- (a) the Customer must supply (at its own cost) sufficient quantities of materials to allow for spoilage, such quantity to be specified by Buckner;
- (b) Buckner will not normally count or check the materials and if requested by the Customer to do so, may charge for counting or checking;
- (c) Buckner will not be responsible for any defects in the goods which are caused by defects in or the unsuitability of materials or equipment supplied by the Customer;
- (d) property in any materials supplied by the Customer and incorporated into the goods passes to Buckner at the time of incorporation in the goods.



7.6 Property left with Buckner

- (a) If the Customer leaves property in Buckner's possession without specific instructions as to what is to be done with it, Buckner may, 12 months after gaining possession of the property, dispose of or sell the property and retain any proceeds of sale as compensation for holding and handling the property.
- (b) Buckner has no obligation to insure any property of the Customer in Buckner's possession. The Customer must pay the cost of any insurance arranged by Buckner at the request of the Customer.

8. Delivery

8.1 Notification

Buckner shall notify the Customer when the goods are ready for collection.

8.2 Collection

The Customer must collect the goods from Buckner's premises upon being notified by Buckner that the goods are ready for collection. If Buckner agrees to deliver the goods the Customer shall bear all freight costs and charges of such delivery.

8.3 Risk

- (a) The risk in the goods passes to the Customer when Buckner notifies the Customer that the goods are ready for collection.
- (b) The Customer shall be responsible for insuring the goods from when Buckner notifies the Customer that the goods are ready for collection.

8.4 Over-aged stock and Warehousing costs

- (a) Buckner shall be entitled to charge the Customer the Warehousing Costs for stock of the Customer that has been kept by Buckner for the Customer for more than three (3) months.
- (b) Without limiting clause 8.4(a), Buckner may notify the Customer one (1) month prior to the three (3) month warehousing expiry date to arrange delivery, destruction or continued warehousing of the goods.

8.5 Acceptance

Without limiting clause 9, the Customer shall be deemed to have accepted the goods if the Customer has not provided written notice to Buckner that it considered the goods are not in accordance with the agreement between the parties within the following timeframes:

- (a) if Buckner agrees to deliver the goods to the Customer's premises – within 7 days of delivery;
- (b) otherwise – within 7 days of notification that the goods are ready for collection.



8.6 Under/Over supplies

- (a) The Customer acknowledges that whilst Buckner will make every endeavour to produce the exact number of items as requested by the Customer, owing to human and/or machine/computer error the number of items actually produced may be 10% over or under the number as agreed by the parties.
- (b) The parties agree that where there is a discrepancy in the nature referred to in clause 8.6(a), Buckner may pro-rata an amount of the Price payable for the goods to reflect the actual number of items produced.

9. Liability of Buckner

9.1 Application of clause 9.2

- (a) The Customer acknowledges that it does not acquire the Goods for personal, domestic or household use or consumption.
- (b) The parties agree that clause 9.2 only applies if the customer is a natural person or a corporation acquiring the Products at a price not exceeding \$40,000 or such other amount specific in the definition of 'Consumer' under the Australian Consumer Law.

9.2 Customer guarantees

- (a) The goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Customer is 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.
- (b) The goods will not be of acceptable quality if such goods:
 - (1) are not fit for all the purposes for which goods of that kind are commonly supplied;
 - (2) are not acceptable in appearance and finish;
 - (3) have defects;
 - (4) are unsafe; or
 - (5) are not durable.

9.3 Exclusion of other warranties

Buckner does not give any warranty nor accept any liability in relation to performance or non-performance of its obligations under these terms and conditions except to the extent, if any, required by law (in particular the Australian Consumer Law) or specifically provided for in these Terms and Conditions.



9.4 Acknowledgement by Customer

Without limitation to the Customer's rights under the Australian Consumer Law, the Customer acknowledges that:

- (a) Buckner has not made any representations or warranties in relation to the goods or the Customer's order;
- (b) it is the Customer's responsibility to satisfy itself in relation to the price, quality or otherwise of the goods prior to delivery by Buckner;
- (c) Buckner shall not be liable for any loss or damage to the products or any loss or damage caused, directly or indirectly, in relation to the goods or the Customer's order;
- (d) to the extent permitted by law, the liability of Buckner is limited, at Buckner's option, to the supplying of the goods or services (or both) again or payment of the cost of having the goods or services (or both) supplied again.

9.5 Limitation of liability

- (a) To the extent permitted by law including, in particular, the Australian Consumer Law, the total liability of Buckner arising in connection with the subject matter of these Terms and Conditions is limited to the amount of the Fees paid to Buckner at the time of the claim.
- (b) This limitation shall continue to apply notwithstanding fundamental breach, breach of a fundamental term, rescission, repudiation or termination for any reason or frustration, whether unintentional or by operation of law.

9.6 Limitations to apply to employees and agents of Buckner

All limitations of liability under these terms and conditions shall apply for the benefit of the employees and agents of Buckner to the same extent as they apply for the benefit of Buckner against the Customer or anyone claiming through or under the Customer.

9.7 Customer's Property and Electronic data

Without limiting the generality of the foregoing clauses, although Buckner will use reasonable endeavours to avoid loss, Buckner will not be liable to the Customer for damage, loss or destruction of any of the Customer's Property in Buckner's possession or any data stored on disks, tapes, compact disks or other media supplied by the Customer to Buckner unless the loss or damage is due to the failure of Buckner to exercise due care and skill in handling or storing the property.

10. Intellectual Property Rights

10.1 Background IP

Nothing in this agreement affects the ownership of any Background IP.



10.2 New IP

- (a) Unless otherwise expressly provided in this agreement, all New IP vests in Buckner on and from creation.
- (b) The Customer agrees to promptly disclose any New IP created by it (or its personnel) to Buckner.
- (c) Upon creation, the Customer absolutely and unconditionally assigns (and must procure the assignment by its personnel) of all right, title and interest in and to the New IP to Buckner.

10.3 Moral Rights Consent

To the extent permitted by applicable laws, the Customer will use its best endeavours to ensure that any holder of Moral Rights in any New IP created by it (or its personnel) gives genuine consent to Buckner in writing to the specified acts in clause 10.4 in respect of the New IP, even if such use would otherwise be an infringement of their Moral Rights.

10.4 Specified Acts

The specified acts referred to in clause 10.3 include:

- (a) not attributing authorship;
- (b) materially altering the style, format, colours, content or layout;
- (c) reproducing, communicating, adapting, publishing or exhibiting; and
- (d) adding any additional content or information.

10.5 Use of items

Nothing in this agreement confers on the Customer any right to use any logo, name, trade mark, brand or other designation of Buckner or any contraction, abbreviation or simulation or sign similar to any of the foregoing.

10.6 No infringement

The Customer:

- (a) warrants that the provision by the Customer of any materials or other items to Buckner for incorporation in to any goods provided under these Terms and Conditions is not an infringement of any Intellectual Property Rights of any person; and
- (b) indemnifies and agrees to keep indemnified Buckner against all liability, losses and expenses incurred by Buckner in relation to or in any way directly or indirectly connected with any breach of the warranty provided by the Customer in clause 10.6(a).



11. Privacy acknowledgements

11.1 Customer's consent to transfer of personal information

- (a) The Customer consents, acknowledges and agrees that:
 - (1) any Personal Information provided to Buckner may be disclosed to, and stored at, a destination outside Australia, including but not limited to Asia or such other destination as agreed by the parties from time to time, in order for Buckner to provide all or part of the goods and services; and
 - (2) by accepting these Terms and Conditions and submitting Personal Information to Buckner, the Customer expressly agrees and consents to the disclosure, transfer, storing or processing of any Customer Personal Information outside of Australia in the manner permitted by clause 11.1(a)(1).
- (b) In providing this consent, the Customer understands and acknowledges that countries outside Australia do not always have the same privacy protection obligations as Australia in relation to Personal Information, however in order to ensure that all Personal Information is protected, Buckner has agreed to implement the protections set out in this clause.

11.2 Privacy protection obligations

- (a) Privacy Law requires Buckner to take such steps as are reasonable in the circumstances to ensure that any recipients of Personal Information outside of Australia do not breach the Australian privacy principles contained within Privacy Law.
- (b) By obtaining the Customer's consent, under Privacy Law, Australian privacy principle 8.1 in Privacy Law does not apply to disclosures referred to in clause 11.1(a).
- (c) Notwithstanding subclause 11.2(b), Buckner acknowledges the importance of protecting Personal Information and has taken reasonable steps to ensure that any Personal Information is used by third parties in accordance with these Terms and Conditions and Buckner's privacy policy.

12. Force Majeure Event

12.1 Notice of Force Majeure Event

If a party is affected, or likely to be affected, by a Force Majeure Event, that party (**Affected Party**) must immediately give each other party notice of that fact specifying:

- (a) full particulars of the Force Majeure Event;
- (b) an estimate of its likely duration;
- (c) the obligations of the Affected Party affected by the Force Majeure Event and the extent of its effect on those obligations; and
- (d) any steps taken or proposed to be taken by the Affected Party to remove, remedy or minimise the effects of the Force Majeure Event.



12.2 Suspension of Obligations

On the giving of a notice under clause 12.1, the obligations under these Terms and Conditions of the Affected Party are suspended but only to the extent and for so long as those Obligations are affected by the Force Majeure Event.

12.3 Delay or failure to perform

The Affected Party is not liable for:

- (a) any delay or failure in the performance of the Affected Party's obligations under these Terms and Conditions; or
- (b) any loss suffered by any other party as a result of the delay or failure in the performance of the Affected Party's obligations under these Terms and Conditions,

to the extent that the Obligations of the Affected Party are suspended under clause 12.2.

12.4 Effort to overcome

The Affected Party must use reasonable endeavours to remove, remedy or minimise the effects of that Force Majeure Event as quickly as possible but this obligation does not require the Affected Party to settle any industrial dispute in any way that it considers inappropriate.

12.5 End of Force Majeure

On removal or resolution of the effects of the Force Majeure Event, the Affected Party must:

- (a) notify the other party within ten Business Days of such removal or resolution; and
- (b) promptly re-commence carrying out its obligations under these Terms and Conditions.

12.6 Termination for extensive Force Majeure Event

If a delay or failure by the Affected Party to perform its obligations due to a Force Majeure Event exceeds 30 Business Days, any party may immediately terminate these Terms and Conditions on providing written notice to each other party.

13. Termination

13.1 Termination on default

Buckner may, in addition to any other course of action available to it, elect to immediately terminate these Terms and Conditions if the Customer:

- (a) suffers an Insolvency Event; or
- (b) commits a breach of these terms and conditions and:
 - (1) such breach is not capable of remedy; or
 - (2) if such breach is capable of remedy, fails to remedy such breach after being given seven (7) days written notice by Buckner to do so.



13.2 Effect of termination

- (a) Upon termination, the Customer must pay to Buckner all amounts owing by the Customer to Buckner.
- (b) Upon termination, the parties must return to the relevant party any property owned by the other party.
- (c) Termination will be without prejudice to any rights of the parties which have accrued prior to termination.
- (d) Any obligations which are intended to continue to bind a party after this agreement is terminated in respect of it continue to bind that party notwithstanding termination.

14. Dispute Resolution

14.1 Dispute notice

If a dispute between the parties arises out of, or in connection with, these Terms and Conditions, either party may notify the other party, in writing, of the issues in dispute (**Dispute Notice**).

14.2 Parties to confer

Within seven (7) days of a party receiving a Dispute Notice, the parties must confer at least once to resolve the issues in dispute with, or without, the assistance of a mediator.

14.3 If dispute is not resolved

If the dispute has not been resolved within fourteen (14) days of service of the Dispute Notice, the parties must immediately refer the dispute to an expert appointed by:

- (a) agreement between the parties; or
- (b) the President of the Queensland Law Society,

for determination. The parties agree to be bound by the determination.

14.4 Expert and not arbitrator

In adjudicating the dispute, the expert must act as an expert and not as an arbitrator.

14.5 Rules to determine the dispute

The procedure to be followed by the expert is to be in accordance with the Expert Determination Rules of the Institute of Arbitrators and Mediators of Australia.



15. GST

15.1 GST exclusive amounts

Unless expressly stated to the contrary all amounts expressed in the Order and these Terms and Conditions are exclusive of GST.

15.2 Taxable supplies

If a party (**Supplier**) is obliged under the GST Law to pay an amount of GST for a taxable supply made by the Supplier to another party (**Recipient**) under these Terms and Conditions the Recipient must pay the Supplier an amount equal to the GST payable on the supply by the Supplier.

15.3 Time for payment

The Recipient must pay the amount referred to in clause 15.2 and any interest, penalty, fine or expense relating to the GST, in addition to and at the same time as the consideration otherwise payable by the Recipient for the supply.

15.4 Tax invoice

If requested by the Recipient, the Supplier must provide the Recipient with a Tax Invoice on or before payment of the amounts required by this clause 15.

15.5 Adjustment events

If an adjustment event arises for a taxable supply under clause 15.2, the amounts required to be paid must be recalculated (**Recalculated Amount**) and the Recipient must pay the Supplier the Recalculated Amount.

15.6 Reimbursements

Where a party is required to pay for or reimburse an expense or outgoing of another party, the amount required to be paid or reimbursed is the amount of the expense or outgoing less any input tax credits to which the other party, or the representative member of a GST group to which they belong, is entitled.

16. Governing law and jurisdiction

16.1 Governing law

These Terms and Conditions are governed by and construed in accordance with the laws Queensland.

16.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Queensland and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to these Terms and Conditions; and



- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 16.2(a).

17. Miscellaneous

17.1 Indemnities

Subject to any other provision of these Terms and Conditions the indemnities in these Terms and Conditions are continuing obligations, independent from the other obligations of the parties under these Terms and Conditions and continue after these Terms and Conditions end. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under these Terms and Conditions.

17.2 Exercise rights

A single or partial exercise or waiver by a party of any right under or relating to these Terms and Conditions will not prevent any other exercise of that right or the exercise of any other right.

17.3 Merger

If the liability of a party to pay money under these Terms and Conditions becomes merged in any deed, judgment, order or other thing, the party liable must pay interest on the amount owing from time to time under that deed, judgment, order or other thing at the higher of the rate payable under these Terms and Conditions and that fixed by or payable under that deed, judgment, order or other thing.

17.4 Moratorium legislation

Any law which varies prevents or prejudicially affects the exercise by a party of any right, power or remedy conferred on it under these Terms and Conditions is excluded to the extent permitted by law.

17.5 No assignment

- (a) Buckner may assign, transfer or novate all or any part of its rights or obligations under or relating to these Terms and Conditions or grant, declare, create or dispose of any right or interest in it, without the prior written consent of the Customer.
- (b) The Customer must not assign, transfer or novate all or any part of its rights or obligations under or relating to these Terms and Conditions or grant, declare, create or dispose of any right or interest in it, without the prior written consent of Buckner.

17.6 Remedies cumulative

The rights and remedies under these Terms and Conditions are cumulative and not exclusive of any rights or remedies provided by law.



17.7 Severability

If anything in these Terms and Conditions is or is determined to be unenforceable, illegal, voidable or void in a jurisdiction then it is severed for that jurisdiction and the rest of these Terms and Conditions remains in full force and effect in all other jurisdictions.

17.8 Further assurance

Each party must promptly at its own cost do all things (including executing and delivering all documents) necessary or desirable to give full effect to these Terms and Conditions and the transactions contemplated by it.

17.9 Costs

Each party is responsible for all its own costs incurred in the negotiation of, and the performance of, these Terms and Conditions including, without limitation, legal costs.

17.10 Time

- (a) Time is of the essence of these Terms and Conditions.
- (b) If the parties agree to vary a time requirement, the time requirement so varied is of the essence of these Terms and Conditions.
- (c) An agreement to vary a time requirement must be in writing.

17.11 Waiver

- (a) A party's waiver of a right under or relating to these Terms and Conditions, whether prospectively or retrospectively, is not effective unless it is in writing and signed by that party.
- (b) No other act, omission or delay by a party will constitute a waiver of a right.

17.12 Counterparts

These Terms and Conditions may be executed in any number of counterparts each of which will be considered an original but all of which will constitute one and the same instrument. A party who has executed a counterpart of these Terms and Conditions may deliver it to, or exchange it with, another party by:

- (a) faxing; or
- (b) emailing a pdf (portable document format) copy of,

the executed counterpart to that other party.

17.13 Whole agreement

These Terms and Conditions:

- (a) is the entire agreement and understanding between the parties relating to the subject matter of these Terms and Conditions; and



THE BUCKNER GROUP

- (b) supersedes any prior agreement, representation (written or oral) or understanding on anything connected with that subject matter.

The Buckner Group Pty Ltd
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