

LMTJ Constructions Pty Ltd T/A My SOS – Terms & Conditions of Trade

- 1. Definitions**
 - 1.1 "SOS" shall mean LMTJ Constructions Pty Ltd T/A My SOS, its successors and assigns or any person acting on behalf of and with the authority of LMTJ Constructions Pty Ltd T/A My SOS.
 - 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by SOS to the Client.
 - 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
 - 1.4 "Services" shall mean all services performed by SOS at the request of the Client (and where the context so permits shall include any supply of Goods as hereinafter defined), as described on the invoices, quotation, work authorisation or any other forms as provided by SOS to the Client, and includes any advice or recommendations.
 - 1.5 "Goods" shall mean all software, hardware and all other products supplied by SOS to the Client (and where the context so permits shall include any supply of Services as defined above) and are as described on the invoices, quotation, order or any other forms as provided by SOS to the Client.
 - 1.6 "Confidential Information" shall mean all information (including information supplied to SOS by the Client) which relates to the business affairs, financial records, personnel, professional partners, customers and suppliers of the Client.
 - 1.7 "Price" shall mean the Price payable for the Services as agreed between SOS and the Client in accordance with clause 4 of this contract.
- 2. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")**
 - 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 3. Acceptance**
 - 3.1 Any instructions received by SOS from the Client for the performance of Services and/or the Client's acceptance of Services performed by SOS shall constitute acceptance of the terms and conditions contained herein.
 - 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
 - 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of SOS.
 - 3.4 The Client shall give SOS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by SOS as a result of the Client's failure to comply with this clause.
 - 3.5 Services are performed by SOS only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
 - 3.6 The Client acknowledges that, in the course of providing Services to the Client, SOS shall not offer any advice or recommendations regarding taxation, and Services provided expressly excludes the preparation of income tax returns.
 - 3.7 On completion of any Services, SOS will retain any documents for a period of seven (7) years, after which the documents will be destroyed unless otherwise requested by the Client.
- 4. Price and Payment**
 - 4.1 At SOS's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by SOS to the Client in respect of Services performed; or
 - (b) SOS's quoted Price (subject to clause 4.2) which shall be binding upon SOS provided that the Client shall accept SOS's quotation in writing within fourteen (14) days; or
 - (c) the Price of the Services shall be charged in relation to SOS's appropriate hourly rates.
 - 4.2 SOS reserves the right to change the Price in the event of a variation to SOS's quotation. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of increases to SOS in the cost of Goods and labour) will be charged for on the basis of SOS's quotation and will be shown as variations on the invoice.
 - 4.3 At SOS's sole discretion:
 - (a) a non-refundable deposit of up to fifty percent (50%) may be required for all Goods ordered; and
 - (b) payment shall be due before delivery of the Goods.
 - 4.4 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
 - 4.5 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and SOS.
 - 4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 5. Delivery**
 - 5.1 At SOS's sole discretion delivery of the Goods shall take place when the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by SOS or SOS's nominated carrier).
 - 5.2 At SOS's sole discretion the costs of delivery are included in the Price.
 - 5.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then SOS shall be entitled to charge a reasonable fee for redelivery.
 - 5.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
 - 5.5 SOS may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
 - 5.6 The failure of SOS to deliver shall not entitle either party to treat this contract as repudiated.
 - 5.7 SOS shall not be liable for any loss or damage whatsoever due to failure by SOS to deliver the Services (or any part of them) promptly or at all, where due to circumstances beyond the control of SOS.
- 6. Risk**
 - 6.1 If SOS retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
 - 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, SOS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by SOS is sufficient evidence of SOS's rights to receive the insurance proceeds without the need for any person dealing with SOS to make further enquiries.
- 7. Title**
 - 7.1 SOS and the Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid SOS all amounts owing for the particular Goods; and
 - (b) the Client has met all other obligations due by the Client to SOS in respect of all contracts between SOS and the Client.
 - 7.2 Receipt by SOS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then SOS's ownership or rights in respect of the Goods shall continue.
 - 7.3 It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until SOS shall have received payment and all other obligations of the Client are met; and
 - (b) until such time as ownership of the Goods shall pass from SOS to the Client SOS may give notice in writing to the Client to return the Goods or any of them to SOS. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
 - (c) SOS shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - (d) if the Client fails to return the Goods to SOS then SOS or SOS's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
 - (e) the Client is only a bailee of the Goods and until such time as SOS has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to SOS for the Goods, on trust for SOS; and
 - (f) the Client shall not deal with the money of SOS in any way which may be adverse to SOS; and
 - (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of SOS; and
 - (h) SOS can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
 - (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that SOS will be the owner of the end products.
- 8. Defects, Errors and Omissions**
 - 8.1 The Client shall inspect the Services on delivery and shall within seven (7) days of delivery (time being of the essence) notify SOS of any alleged defect, error or omission, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford SOS an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client fails to comply with these provisions the Services shall be presumed to be free from any defect or damage. For defective Services, which SOS has agreed in writing that the Client is entitled to reject, SOS's liability is limited to either (at SOS's discretion) replacing the Services or rectifying the Services, except where the Client has acquired Services as a consumer within the meaning of the Trade Practices Act 1974 (Cwth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Services, or rectification of the Services, or replacement of the Services.
 - 8.2 Goods will not be accepted for return other than in accordance with 8.1 above.
- 9. Software Warranty**
 - 9.1 For Goods not manufactured by SOS, the warranty shall be the current warranty provided by the manufacturer of the Goods. The conditions applicable to the manufacturer's warranty may be contained on a "Warranty Card" that will be supplied with the Goods. SOS shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
 - 9.2 The Client shall use any third-party software supplied by SOS, and identified as such, strictly in terms of the licence under which it is supplied.
- 10. Default and Consequences of Default**
 - 10.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at SOS's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
 - 10.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by SOS.
 - 10.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify SOS from and against all costs and disbursements incurred by SOS in pursuing the debt including legal costs on a solicitor and own client basis and SOS's collection agency costs.
 - 10.4 Without prejudice to any other remedies SOS may have, if at any time the Client is in breach of any obligation (including those relating to payment) SOS may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. SOS will not be liable to the Client for any loss or damage the Client suffers because SOS has exercised its rights under this clause.
 - 10.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
 - 10.6 Without prejudice to SOS's other remedies at law SOS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to SOS shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to SOS becomes overdue, or in SOS's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 11. Security and Charge**
 - 11.1 Despite anything to the contrary contained herein or any other rights which SOS may have howsoever:
 - (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to SOS or SOS's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that SOS (or SOS's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should SOS elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify SOS from and against all SOS's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint SOS or SOS's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 11.1.
- 12. Cancellation**
 - 12.1 SOS may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice SOS shall repay to the Client any sums paid in respect of the Price (less any amounts owing for Services already performed). SOS shall not be liable for any loss or damage whatsoever arising from such cancellation.
 - 12.2 In the event that the Client cancels delivery of Services, then the Client shall be liable for any loss incurred by SOS (including, but not limited to, any amounts owing for Services already performed and any loss of profits) up to the time of cancellation.
- 13. Privacy Act 1988**
 - 13.1 The Client and/or the Guarantor/s agree for SOS to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by SOS.
 - 13.2 The Client and/or the Guarantor/s agree that SOS may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with one or more credit providers; and/or
 - (d) to assess the creditworthiness of Client and/or Guarantor/s.
 - 13.3 The Client consents to SOS being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
 - 13.4 The Client agrees that personal credit information provided may be used and retained by SOS for the following purposes and for other purposes as shall be agreed between the Client and SOS or required by law from time to time:
 - (a) provision of Services; and/or
 - (b) marketing of Services by SOS, its agents or distributors in relation to the Services; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
 - (e) enabling the generation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
 - 13.5 SOS may give information about the Client to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Client; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 14. Confidentiality**
 - 14.1 SOS shall (subject to clause 13 or as required by law) undertake to keep all business and financial information entrusted to them by the Client for the purpose of maintaining the Client's general account records confidential.
 - 14.2 All sensitive and restricted information pertaining to the Client and matters relating to their account books entered by SOS, its employees or sub-contractors in the course of supplying the Services, shall remain confidential for the entire duration of the contract between SOS and the Client. This commitment shall be continued indefinitely after the termination or completion of the Services.
 - 14.3 SOS, its employees and sub-contractors shall be required to sign confidentially and non-disclosure agreements on behalf of the Client.
 - 14.4 SOS shall keep electronic data file entrusted by the Client clearly tagged, logged and properly stored in a secure environment. Adequate electronic data procedures will be maintained. Hardcopy documentation shall be securely protected while in SOS's possession and adequately shredded when no longer required.
- 15. Indemnity**
 - 15.1 The Client agrees to indemnify SOS, its partners, associates, employees, contractors and any other person who may be sought to be made liable in respect of any activity arising from or connected with these terms in respect of any claim of whatever kind, including negligence, that may be made by any person and any costs and expenses that may be incurred by SOS.
- 16. Lien**
 - 16.1 Where the Client has left any of the Client's documentation with SOS for SOS to provide any Services in relation to that documentation and SOS has not received or been tendered the whole of the Price, or the payment has been dishonoured, SOS shall have:
 - (a) a lien on the documentation; and
 - (b) the right to retain the documentation whilst SOS is in possession of the item until such time as payment has been made in full; and
 - (c) the lien of SOS shall continue despite the commencement of proceedings, or judgment for the Price having been obtained; and
 - (d) SOS shall be under no obligation to release the documentation to the Client if the Client is in default of payment except as may be required by any law or statute.
- 17. Disclaimer**
 - 17.1 SOS's obligation shall be limited to the compilation of records of financial accounts and general purpose reports generated from the Client's accounting software and using information supplied by the Client.
 - 17.2 Services provided by SOS shall not include the verification of the information provided by the Client, and the Client acknowledges that no audit or review has been performed by SOS. Accordingly, no assurances are given by SOS as to the accuracy of the information supplied by the Client and the Client shall be solely responsible and liable for the information contained in the report.
 - 17.3 To the extent permitted by law, SOS shall not be liable or responsible for any loss or damage which any third party may suffer arising from any negligence on the part of SOS.
 - 17.4 General purpose reports supplied to the Client by SOS are exclusively prepared for the benefit of the Client. SOS disclaims any responsibility to any other person or third party for the contents of these general purpose reports, and it is acknowledged by the Client that reports shall not be relied upon without having an audit or review conducted.
- 18. General**
 - 18.1 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.
 - 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Brisbane.
 - 18.3 SOS shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by SOS of these terms and conditions.
 - 18.4 In the event of any breach of this contract by SOS the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Services.
 - 18.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by SOS nor to withhold payment of any invoice because part of that invoice is in dispute.
 - 18.6 SOS may license or sub-contract all or any part of its rights and obligations without the Client's consent.
 - 18.7 The Client agrees that SOS may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which SOS notifies the Client of such change.
 - 18.8 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.
 - 18.9 The failure by SOS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect SOS's right to subsequently enforce that provision.

Please note that a larger print version of these terms and conditions is available from SOS on request.