

**SNOW FLAKE LAUNDRY SUPPLY AGREEMENT
TERMS AND CONDITIONS
("Agreement")**

1. Definitions and Interpretation

1.1. In this Agreement .

- 1.1.1. **%Claim+** means any claim by any third party for loss or damage to any property, injury to or death of any person or economic loss arising out of or relating to any or all of the Services, any delay or other failure in supplying the Services, in this Agreement.
- 1.1.2. **%Commencement Date+** means the date of this Agreement.
- 1.1.3. **%Confidential Information+** means all information disclosed by a party for or in connection with the Permitted Purpose, including:
- (a) Information that is designated or indicated as being proprietary or confidential information of the disclosing party or its related entities;
 - (b) Information derived partly or wholly from the information of the disclosing party including any calculation, opinion, conclusion, summary, computer modelling or other materials;
 - (c) Know-how, formulae, data, specifications, drawings, trade secrets and other information which is capable of protection at law or in equity as confidential information; and
 - (d) Information on the particular services either party supplies to its customers whether disclosed:
 - i. Orally, in writing or in electronic or machine readable form;
 - ii. Before, on or after the date of this Agreement; or
 - iii. As a result of discussions between the parties concerning or arising out of the Permitted Purpose.
- 1.1.4. **%Dispute+** means a dispute arising out of or relating to this Agreement.
- 1.1.5. **%Expiry Date** means the date under Item 2 of the Schedule Form.
- 1.1.6. **%Fair Wear and Tear+** means damage to the Products that occurs through either the ordinary day-to-day use of the Products by the Customer and/or the ordinary operation of natural forces (including but not limited to sunlight, rain and laundering).
- 1.1.7. **%Force Majeure+** means any act or occurrence beyond the reasonable control of the party liable to perform an obligation under this Agreement that has arisen through no fault or negligence of that party and includes without limitations, fire, flood, drought, storm, lightning, act of God, peril of sea, or air, explosion, sabotage, embargo, strike, labour dispute, civil commotion, act of war and war.

- 1.1.8. **Payment Event** means any damage to the Products by the Customer other than Fair Wear and Tear (as determined solely by the Supplier) that results in the replacement of the Products by the Supplier, as set out in clause 5.10.
- 1.1.9. **Performance Standards** means laundering of Products to an acceptable and usable standard.
- 1.1.10. **Permitted Purpose** means any purpose connected with the supply of Services under this Agreement.
- 1.1.11. **Present Value of the Product** means the residual value of the Products as set out in the Product Depreciation Table under Item 7 of the Schedule Form.
- 1.1.12. **Products** means the Products described under Item 4 of the Schedule Form.
- 1.1.13. **Product Fee** means the fee payable to the Supplier for providing the Products calculated in accordance with item 5 of the Schedule Form and which represents an amount payable upon a Payment Event for the Present Value of the Products.
- 1.1.14. **Representative** of a party means the representative of that party appointed under clause 8.1.
- 1.1.15. **Services** means the Services described under Item 3 of the Schedule Form.
- 1.1.16. **Service Fee** means the fee payable to the Supplier for providing the Services calculated in accordance with the Schedule Form.
- 1.1.17. **“Schedule Form”** means the Schedule Form signed by the Customer and the Supplier to be read in conjunction with this Agreement.
- 1.1.18. **Term** means the term of this Agreement or any renewal thereof as set out under 2 of the Schedule Form.

1.2. In this Agreement, unless the context otherwise indicates:

- 1.2.1. A word importing the singular includes the plural and via versa;
- 1.2.2. A word importing gender shall be taken to include both genders;
- 1.2.3. A reference to a person includes an individual or a firm, body corporate or an association (whether incorporated or not);
- 1.2.4. A reference to a person include a person's legal personal representative, successors, transferees and assigns;
- 1.2.5. A reference to a clause, party or schedule is a reference to a clause of or party or schedule to this Agreement; and
- 1.2.6. Headings are inserted for convenience and do not affect the interpretation of this Agreement.

2. Commencements and Term

This Agreement starts on the Commencement Date and continues for the Term until the Expiry Date or until it is terminated in accordance with clause 18, whichever is the earliest.

3. Scope

- 3.1. During this Agreement:
 - 3.1.1. The Supplier will supply the Products and Services to the Customer;
 - 3.1.2. The Customer shall exclusively engage the Supplier for the provision of Products and Services; and
 - 3.1.3. The Customer will provide the Supplier with the first right of refusal to provide the Customer with any Services outside the Services as set out in the Schedule Form.
 - 3.1.4. The Customer agrees to be bound by the terms and conditions set out under the Schedule Form in addition to this Agreement.

4. Obligations of Supplier

- 4.1. The Supplier shall supply the Products set out under Item 4 of the Schedule Form to the Customer.
- 4.2. The Supplier shall not charge the Customer the Products Fee unless a Payment Event occurs pursuant to clause 5.10 of this Agreement.
- 4.3. In exchange for being paid the Service Fee, the Supplier will supply the Services to the Customer:
 - 4.3.1. In accordance with the terms of this Agreement;
 - 4.3.2. In a safe and efficient manner, without negligence;
 - 4.3.3. In accordance with any reasonable directions given from time to time by the Customer; and
 - 4.3.4. In compliance with all applicable standards, laws and regulations (including without limitations, awards and laws applicable to the Supplier's employees).
- 4.4. The Supplier may subcontract the performance of part but not all of the Services to any person without the written consent of the Customer. The Supplier accepts all responsibility and liability for the performance of its contractors or subcontractors under this Agreement as if the Supplier itself had or should have performed those obligations.
- 4.5. The Supplier will ensure that:
 - 4.5.1. It has sufficient, suitable employees or subcontractors to perform its obligations under this Agreement; and
 - 4.5.2. Its employees and subcontractors perform in a manner that ensures the Supplier complies with this Agreement.

5. Obligations of The Customer

- 5.1. The Customer must for the entire Term exclusively purchase Products and engage the Services from the Supplier only.
- 5.2. The Customer must use only the Products and Services supplied by the Supplier and shall not use any other linen product at any time.
- 5.3. The Customer must not permit the Products to be used by anyone other than the Customer and in any event only at the Customer's sites, unless otherwise authorised by the Supplier in writing.
- 5.4. The Customer must not grant any person (other than the Supplier) a security interest in the Products.
- 5.5. The Customer acknowledges that should any Product require replacement and/or repair outside of the Supplier's usual business hours, and the Supplier is not otherwise obliged by any law to effect a replacement at that time, then the Customer is liable to pay for the costs of replacing and/or repairing the Product (including but not limited to labour costs required in order to restore the Products to good working order).
- 5.6. The Customer must pay all moneys due to the Supplier promptly upon the due date in accordance with Item 8 of the Schedule Form.
- 5.7. The Customer must pay any interest on outstanding amounts at the Default Rate, compounded daily.
- 5.8. The Customer must keep (at its own cost) the Products in good repair, in a safe operating state, and in a hygienic condition and further, not to materially alter the Products in any way.
- 5.9. The Customer must not obtain or use anything that is the same or similar to the Products from anyone other than the Supplier in circumstances where there is (or may become through use) a reasonable risk of the same being passed off as or confused by a consumer as originating from or otherwise being Products which have or are likely to have the sponsorship, approval, or affiliation of the Supplier, or are supplied, produced, or marketed by the Supplier.
- 5.10. The Customer shall pay the Supplier the Present Value of the Products within fourteen (14) days upon demand by the Supplier if:
 - 5.10.1. The Customer breaches any of its obligations to the Supplier under this Agreement in any way and the Supplier determines this Agreement pursuant to clause 18; or
 - 5.10.2. The Customer (or its employees, contractors, agents or clients) damages the Products to such an extent that they require replacement, other than by Fair Wear and Tear, which is to be determined solely by the Supplier.

(collectively a **"Payment Event"**)

6. Invoicing and Payment

- 6.1. Invoices are to be supplied and attended to by the parties in accordance with Item 8 of the Schedule Form.

- 6.2. The Supplier will provide the Customer with a tax invoice for the Services and if required, for the Products, for the period set out in the tax invoice.
- 6.3. The Customer will make payment in full for each invoicing period in accordance with Item 8 of the Schedule Form.
- 6.4. The Service Fee charged by the Supplier to the Customer for the Services will be as listed under Item 5 of the Schedule Form.
- 6.5. The Supplier will be paid additional fees on an hourly rate for services referred to as not being included in the Service Fee as set out in the Schedule Form provided such services have been requested in writing by the Customer.

7. Service/Product Fee and Contract Review

- 7.1. The Customer and the Supplier shall conduct an annual review of the pricing of the Services Fee and Product Fee on the dates and as set out under Item 2 of the Schedule Form.
- 7.2. The parties agree that the Supplier will be entitled to adjust the Service Fee payable by the Customer to the Supplier, at the Supplier's sole discretion which will not adversely affect the Customer for any worked conducted prior to the adjustment.

8. Performance Standards and Relationship

- 8.1. Each party will:
 - 8.1.1. Appoint and maintain a suitable full time employee to represent it and to supervise its obligations;
 - 8.1.2. Ensure its representative meets regularly with the other party's representatives to discuss the progress of this Agreement.
 - 8.1.3. The Supplier and the Customer have established reasonable and applicable Performance Standards to apply to the Services.
- 8.2. The Supplier and the Customer will respectively keep adequate records in sufficient detail to enable their compliance with this Agreement to be verified.

9. Risk and Title

- 9.1. For the avoidance of doubt and purpose of this clause 9 and clause 10, the parties agree that the term "goods" also refers to the Products.
- 9.2. The Supplier retains ownership of, or title in, all goods supplied by it and reserves the right to dispose of the Products until such time as payment in full is made for all amounts owing by the Customer to the Supplier under this Agreement.
- 9.3. The risk in all goods sold or supplied under this Agreement passes to the Customer on delivery to the Customer or collection by the Customer's agent or to a carrier commissioned by the Customer.

10. Security Interest

- 10.1. For value received or to be received the Customer grants to the Supplier a security interest in all Products supplied or any after-acquired goods (inventory) and their proceeds. The security interest secures the due and punctual payment of all moneys payable under this Agreement. Any account arising by virtue of a sale of any goods supplied takes effect as a transfer.
- 10.2. The security interest created by this Agreement is a continuing security and is a first ranking purchase money security interest in respect of the Products as inventory.
- 10.3. This Agreement takes effect from the date of signing of the Schedule Form as a security interest and are a security agreement within the meaning of the Act.
- 10.4. The Customer agrees that the Supplier may register a financing statement including any financing change statement on the register.
- 10.5. The Customer waives its rights to receive a copy of any verification statement in respect of the security interest provided for by this Agreement.
- 10.6. The Customer agrees to immediately reimburse the Supplier for all costs (including legal costs), expenses and other charges incurred, expended or payable by the Supplier in relation to the filing of a financing statement, or a financing change statement or releasing the security interest created by this Agreement.
- 10.7. The Customer acknowledges that it is not the owner of the goods and as such if chapter 4 of the Act applies to this Agreement, the Supplier and the Customer contract out of the enforcement provisions in section 115(1) of the Act.
- 10.8. The Customer irrevocably authorises the Supplier and any of its lawful agents, at any reasonable time, to enter into its premises or any premises occupied by the Customer and re-take any goods sold and/or supplied under this Agreement and then re-sell those goods and retain the proceeds of the sale without prejudice to its rights to claim the balance of all moneys due under this Agreement. The Customer indemnifies and agrees to keep the Supplier indemnified in respect of any such entry.
- 10.9. The provisions of this clause survive the termination of this Agreement and shall carry on for the benefit of the Supplier.
- 10.10. For the purposes of this clause:
 - 10.10.1. Act meaning the Personal Property Securities Act 2009 (Cth).
 - 10.10.2. Account, financing statement, financing change statement; inventory, proceeds, purchase money security interest, register, security interest and verification statement have the meanings given to them in the Act.
- 10.11. Despite clause 9.1, the Customer may sell the goods to a third party in the ordinary course of its business of selling goods of the kind supplied by the Supplier and deliver them to that party provided that:

- 10.11.1. where the Customer is paid by the third party and the Supplier has not been paid by the Customer for the goods pursuant to this Agreement, the Customer holds the whole of the proceeds of sale on trust for the Supplier and must pay such proceeds into a special bank account into which no other moneys other than proceeds of sale by the Customer of the Supplier goods are to be deposited and which shall incorporate as part of the title of the account the proceeds of sale of the Supplier Products;
- 10.11.2. where the Customer is not paid by that third party, and the Supplier has not been paid by the Customer for those goods the Customer agrees, at the option of the Supplier, that the Supplier may collect that account on giving the Customer notice in writing to that effect. The Supplier shall be entitled to issue proceedings in the name of the Customer against the third party for recovery of that account for the benefit of the Supplier;
- 10.11.3. The Customer shall keep full and complete records of goods it has purchased from the Supplier including details of the date, price and identity of the goods; and
- 10.11.4. For the purpose of giving effect to clause 10 of this Agreement, the Customer irrevocably appoints the Supplier as its attorney to act and sign any necessary documentation.

11. Service Problems

- 11.1. Each party will notify the other promptly after becoming aware of anything that is likely to, or will, result in a delay in, or failure of, any Services, specifying at least:
 - 11.1.1. The nature and expected duration of the problem;
 - 11.1.2. The steps being taken to minimise the impact of the problem;
 - 11.1.3. The cause of the problem; and
 - 11.1.4. Whether the problem is caused by Force Majeure.
- 11.2. If either party considers that the problem will result in a failure to meet Performance Standards, then the Representatives:
 - 11.2.1. Will discuss the problem promptly (and if possible within 5 working days) after receipt of notice under clause 11.1;
 - 11.2.2. Will use their reasonable efforts to resolve the problem as quickly as possible; and
 - 11.2.3. Will, if the problem is unable to be resolved by the Representatives within 15 working days of notice under clause 11.1, treat the problem as a Dispute under clause 17.

12. Indemnity

- 12.1. The Customer indemnifies the Supplier, its directors, employees, servants, and agents (**the Indemnified Parties**) from and against all loss, damage, injury, claim, demand or expense (including all legal fees

and expenses) incurred by the Indemnified Parties arising from or connected with:

12.1.1. Any breach or non-compliance by the Customer of its obligations under this Agreement, including any cost incurred as a consequence of or in seeking to remedy the same, without limitation their actual reasonable legal costs on a full indemnity basis;

12.1.2. Any unlawful or negligent act or omission of the Customer, its employees, contractors or agents; and

12.1.3. Any Force Majeure involving the Products.

13. Confidential Information and Privacy

13.1. Each party:

13.1.1. May use Confidential Information of the other party solely for the purposes of this Agreement;

13.1.2. Except as permitted under clause 13.1.4, will keep confidential all Confidential Information of the other party; and

13.1.3. May disclose Confidential Information of the other party only:

13.1.4. To a person who:

- i. Is aware and agrees that the Confidential Information of the other party will be kept confidential by written agreement acceptable to the disclosing entity; and
- ii. Has a need to know (and only to the extent that each has a need to know); and
- iii. Has been specifically approved in writing by the other party; or
- iv. As required by law.

13.1.5. Neither party is required to comply with clause 13.1 if:

- i. The Confidential Information becomes public knowledge during this Agreement except arising from a breach by a party to this Agreement,
- ii. The other party becomes aware of the Confidential Information from a third person; or
- iii. In circumstances where there is no breach of any obligations of confidence.

14. Liability

14.1. To the extent permitted by law, the Supplier assumes no liability whatsoever for any consequential loss, including damage or loss arising from or as a consequence of either late delivery, mis-delivery or non-

delivery of the Products or Services or any other act or default on the part of the Supplier or of any servant, agent or contractor of the Supplier in relation to this Agreement unless the same occurs because of the wilful act or default or negligence of the Supplier, its servants, agents or contractors in which case liability is limited to the payment of the cost of having the Products or Services supplied again.

- 14.2. The Customer may have the benefit of consumer guarantees under the Australian Consumer Law. To the extent permissible by law, all terms, conditions and warranties that would have been, or may in the future be, implied into the Supplier's terms and conditions or in connection with the supply of any Products or services by the Supplier by law, custom or convention are hereby excluded.
- 14.3. To the extent that Products are not consumer Products and the customer is deemed to be a consumer because of the Australian Consumer Law, the customer agrees that the Supplier's liability for failure to comply with a consumer guarantee (other than title, quiet possession or undisclosed securities) is limited to the replacement or resupply of equivalent Products, repair of Products or the cost of replacing or acquiring replacement Products or the cost of repair of the Products.

15. Insurance and Indemnities

- 15.1. The Supplier has and will maintain the following insurances:
 - 15.1.1. Public Liability Insurance to the value of ten million dollars (\$10,000,000.00) per incident;
 - 15.1.2. Statutory Workers Compensation Insurance for the Supplier's workers.
- 15.2. The Supplier will provide to the Customer within seven (7) days written demand satisfactory evidence of all insurances required under this Agreement and provide currency of such insurances.
- 15.3. The Supplier indemnifies and keeps indemnified the Customer, its employees, agents and subcontractors against all costs, expenses, damages, liabilities and loss arising out of or in any way connected with:
 - 15.3.1. Any breach by the Supplier or any of its subcontractors, employees or agents of any provision of this Agreement; and
 - 15.3.2. Negligence on the part of the Supplier or any other person or subcontractor for whom the Supplier is responsible.

16. Force Majeure

- 16.1. If either party is wholly or particularly precluded from complying with its obligations under this Agreement by Force Majeure, the affected obligations will be suspended until the Force Majeure has ceased. Any party affected by a Force Majeure will promptly notify the other party of the circumstances and the likely duration of the Force Majeure.

17. Dispute Resolution

- 17.1. A party claiming that a dispute has arisen will immediately notify the other party and within 7 working days, after such notice is given, each party will nominate in writing an employee to settle the Dispute.
- 17.2. During the 21-day period after a notice is given under clause 17.1 (or if the parties agree to a longer period, then that longer period) each party's nominee will use his or her best efforts to resolve the Dispute
- 17.3. If a Dispute is not resolved within that time, the Dispute will be referred:
 - 17.3.1. For mediation in accordance with the Australian Commercial Dispute Centre ("**ACDC**") Mediation Guidelines; and
 - 17.3.2. To a Mediator agreed by the parties, or if the parties do not agree on a mediator, a mediator nominated by the then President of the Law Institute of Victoria).

18. Termination

- 18.1. Unless terminated earlier in accordance with this Agreement, this Agreement will terminate at the conclusion of the Term nominated in this Agreement unless it is renewed pursuant to Item 2 of the Schedule Form.
- 18.2. A party (~~first party~~) may terminate this Agreement with immediate effect by giving notice to the other party if:
 - 18.2.1. That other party breaches any material term of this Agreement capable of remedy (including without limitation an obligation to pay) and fails to remedy the breach within 30 days after receiving written notice; or
 - 18.2.2. That other party repeatedly breaches (being the same or similar breach on more than 3 occasions during any 6 month period) any term of this Agreement and fails to demonstrate, within 60 days after receiving written notice requiring it to do so, to the first party's reasonable satisfaction, that similar breaches will not occur.
- 18.3. In the event that the Customer elects to terminate this Agreement in accordance with this clause 18 for any reason, the Customer shall pay the Supplier the Present Value of the Products as at the date of termination.
- 18.4. A party ("**first party**") will notify the other party immediately if:
 - 18.4.1. any step is taken to enter into any arrangement between the first party and its creditors;
 - 18.4.2. the first party ceases to carry on business or any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of the first party's assets or business; or
 - 18.4.3. any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of the first party's assets or business.
- 18.5. Promptly after termination:

18.5.1. The Customer will pay the Supplier for all Services and/or Products supplied to the satisfaction of the Customer up to and on termination; and

18.5.2. Each party will return to the other party all Confidential Information of that other party in material form (including without limitation, those parts of all notes and other records of the first party containing Confidential Information of the other party) in its possession, custody or control.

18.6. After termination of this Agreement a party will not use, disclose, record, sell or otherwise transfer any confidential information of the other party.

18.7. Clauses 12, 13 and 14 shall continue to bind the parties after termination or expiry of this Agreement.

19. Notices

19.1. A party notifying or giving notice under this Agreement will notify:

19.1.1. In writing;

19.1.2. Addressed to the address of the recipient specified on the first page of this Agreement or as varied by notice given in accordance with this clause; and

19.1.3. Left or sent by post or facsimile to that address.

19.2. A notice given in accordance with clause 19.1 will be taken as received if:

19.2.1. Delivered by hand to the recipients address, on the date of delivery, as long as delivery is acknowledged in writing by the recipient;

19.2.2. Sent by post, 2 working days after the posting; and

19.2.3. Sent by facsimile on a working day to the recipient, on the date of transmission, or if sent on a non working day to the recipient, on the next working day (in both cases as long as the sender's machine records a successful transmission).

20. Co-operation

20.1. Each party will do or cause to be done all acts and things necessary or desirable to give effect to, and refrain from doing all acts and things that could hinder performance of, this Agreement.

21. Relationship of the parties

21.1. This Agreement does not create a relationship of principal and agent, employer and employee or partnership between the Supplier and the Customer.

22. Entire Agreement

22.1. This Agreement and the Schedule Form is the entire Agreement between the parties as to its subject matter and supersedes any prior understanding or agreement between the parties, including without limitation any letter of intent or proposal.

23. Variations

23.1. No variation to this Agreement or any of the Schedules shall prevail unless agreed upon in writing by the Customer and the Supplier. Each Party agrees to negotiate in good faith any variations to this Agreement proposed by the other which are required due to operational reasons but noting that there is no requirement for any party to agree on such terms.

23.2. The parties may only vary this Agreement by a document signed by both parties.

24. Governing Law

The law applicable in Victoria governs this Agreement.

25. GST

25.1. In this Agreement, the terms Adjustment Note, GST, Input Tax Credit, Price, Recipient, Supplier, Taxable Supply and Tax Invoice have the meaning ascribed to those terms in *A New Tax System (Products and Services Tax) Act 1999* (Cth).

25.2. Unless otherwise expressly stated, all amounts stated under this Agreement are expressed to be exclusive of GST. If GST is payable on a Taxable Supply the price payable for that Taxable Supply will be the amount expressed in this Agreement plus an amount equal to the amount of GST payable by the Supplier on the relevant Taxable Supply (*the GST Amount*).

25.3. If an amount payable is calculated by reference to or relates to a cost, expense, liability or similar amount (*Liability*) incurred by a party, then the Liability must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Liability.

25.4. No payment of the GST Amount is required until the Supplier has provided a Tax Invoice or Adjustment Note, as the case may be, to the Customer.

25.5. This clause will continue to apply after expiration or termination of this Agreement.