



FIVE AT HEART PTY LTD

## STANDARD TERMS AND CONDITIONS

### 1. Definitions

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in the state where the business is to be transacted.

**Claim** means any claim, allegation, debt, cause of action, liability, proceeding, suit or demand of any nature and whether present or future, actual or contingent, fixed or unascertained and arising at law, in equity, under statute or otherwise.

**Client** means any person or entity with whom a Contract is formed with Five at Heart for the provision of Product(s) and/or Services.

**Confidential Information** means all information (whether of a business, engineering, financial, industrial, scientific or technical nature or otherwise) and records of a party, in whatever form, but does not include information that:

- (a) is publicly available at the date of this agreement;
- (b) becomes publicly available after the date of this agreement without breach of this agreement;
- (c) is obtained by a party from a third party without breach by that third party of any obligation of confidence concerning that information; or
- (d) was already in a party's possession (as evidenced by written records) when provided by or on behalf of the other party.

**Contract** means the agreement formed between the Parties governing the provision of the Product(s) and/or Services, comprising:

- (a) the Quote;
- (b) the Sales Order; and
- (c) any Documents attached to, or expressly incorporated by reference in the Sales Order; and
- (d) these terms and conditions.

**Control** has the meaning set out in the *Personal Property Securities Act 2009* (Cth).

**Costs** means any cost, charge, expense, outgoing, payment or other expenditure of any nature whatsoever including all legal fees on a full indemnity basis, and whether calculated on a time charge basis or otherwise.

**Delivery** means either:

- (a) delivery of Product(s) to the Delivery Point specified in the Sales Order; or
- (b) where the Quote and Sales Order contemplate installation of Product(s) or the provision of Services, the completion of installation of the Product(s) or completion of the Services.

**Delivery Point** means the delivery point specified in the Sales Order, being the place Five at Heart is required to deliver the Product(s).

**Deposit** means 25% of the estimated price stated in the Quote (or such other amount as may be expressly stated in the Quote).

**Documents** means any correspondence or other documents (including, but not limited to, specifications and drawings) referred to in, or annexed to, the Quote or the Sales Order.

**Financing Statement** has the meaning set out in the *Personal Property Securities Act 2009* (Cth).

**Five at Heart** means Five at Heart Pty Ltd.

**Government Body** means:

- (a) any person, body or other thing exercising an executive, legislative, judicial or other governmental function of any country or political subdivision of any country;
- (b) any public authority constituted by or under a law of any country or political subdivision of any country; and
- (c) any person deriving a power directly or indirectly from any other Government Body.

**GST** has the meaning given to that term under the GST Act.

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

**Intellectual Property** means any and all intellectual and industrial property rights throughout the world including rights in respect of, or in connection with:

- (a) any confidential information;
- (b) copyright (including future copyright and rights in the nature of, or analogous to, copyright);
- (c) database rights;
- (d) moral rights;
- (e) inventions (including patents);
- (f) trade marks;
- (g) service marks;

- (h) designs;
- (i) circuit layouts; and
- (j) any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields,

whether or not registered or registrable and includes any:

- (k) right to apply for the registration;
- (l) renewals and extensions; and
- (m) licences,

of the rights listed above.

**Parties** means the parties to the Contract, being the Client and Five at Heart.

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

**Price** means the amount payable by the Client to Five at Heart, as specified in the Tax Invoice issued by Five at Heart in respect of the Product(s) or Services.

**Product or Products** means all goods that Five at Heart provides to the Client under the Contract.

**Purchase Order** means any document issued by the Client to Five at Heart constituting a 'purchase order', 'letter of intent' or any other document or correspondence confirming that the Client accepts the Quote provided by Five at Heart.

**Quote** means any document issued by Five at Heart to the Client titled 'quotation', 'quote' or any other document of similar style or type as a quotation for the provision of the Product(s) or Services to the Client.

**Representative** means, for a person or entity, its officers, employees, agents and advisers.

**Sales Order** means the document titled 'order', 'sales order', 'confirmation' or any other document issued by Five at Heart following receipt of a Purchase Order.

**Security Interest** means a Security Interest as defined in the *Personal Property Securities Act 2009* (Cth).

**Services** includes all services provided by Five at Heart to the Client under the Contract.

**SOP Act** means the legislation applying in the jurisdiction where the Product(s) are provided or Services take place, including the *Building and Construction Industry Security of Payment Act 1999* (NSW), the *Building and Construction Industry Security of Payment Act 2002* (VIC), the *Building Industry Fairness (Security of Payment) Act 2017* (Qld), the *Construction Contracts Act 2004* (WA), the *Construction Contracts (Security for Payment) Act 2004* (NT), the *Building and Construction Industry Security of Payment Act 2009* (SA), the *Building and Construction Industry Security of Payment Act 2009* (TAS) or the *Building and Construction Industry Security of Payment Act 2009* (ACT).

**Tax** means any present or future tax, levy, deduction, impost, withholding, charge or duty which is levied or imposed by any Government Body together with any interest, penalty or fine on those amounts.

**Tax Invoice** means a document that complies with the requirements of the GST Act for a tax invoice.

## 2. **Interpretation**

2.1 Unless the contrary intention appears, a reference in these terms and conditions to:

- (a) headings are for convenience only and do not affect the interpretation of these terms and conditions;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) the words include, including, such as, for example and similar expressions are not to be construed as words of limitation;
- (e) a clause, party or schedule is a reference to a clause of, and a party and schedule to these terms and conditions;
- (f) 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;
- (g) money is to Australian dollars, unless otherwise stated;
- (h) a party includes the party's executors, administrators, successors, substitutes and permitted assigns; and
- (i) if the day on or by which a person must do something under these terms and conditions is not a Business Day, the person must do it on or by the next Business Day.

## 3. **Contract**

3.1 The terms of the Contract are comprised in the following documents:

- (a) the Quote and any Documents attached to, or expressly incorporated by reference in, the Quote;
- (b) the Sales Order and any Documents attached to, or expressly incorporated by reference in, the Sales Order; and
- (c) these terms and conditions.

3.2 The Quote constitutes an offer by Five at Heart to the Client, and the Purchase Order constitutes acceptance of the Quote, forming the Contract between the Parties.

3.3 If any Product(s) or Services are provided by Five at Heart before a Quote or Sales Order is issued to the Client, the Product(s) or Services are provided on the basis of these terms and conditions, which bind the Client and Five at Heart immediately.

3.4 These terms and conditions supersede any other terms and conditions between the Parties (including, for the avoidance of doubt, any terms contained within a Purchase Order or other document issued by the Client) and shall prevail to the extent of any inconsistency.

## 4. **Ordering and Payment**

4.1 Order process

- (a) Five at Heart will issue a Quote, which provides an estimated Price for the Product(s) and/or Services.
- (b) A Quote is valid and open for acceptance for 30 days from the date of issue (unless otherwise specified in writing by Five at Heart).
- (c) The Client will confirm the order by issuing a Purchase Order to Five at Heart.
- (d) After receiving a Purchase Order, Five at Heart will issue a Sales Order confirming the order and the estimated price and requiring payment of the Deposit.
- (e) Once the Product(s) and/or Services have been provided, Five at Heart will issue a Tax Invoice which specifies the Price to be paid for the Product(s) and/or Services. The Price may differ from the estimated price noted in the Quote, to the extent that there is any variation to the scope of Product(s) and/or Services to be provided or otherwise by agreement between the parties.

#### 4.2 Payment

- (a) Payment of the Deposit must be made within 15 days of receipt of a Sales Order and in any event prior to commencement of the provision of any Product(s) or Services.
- (b) The Client acknowledges that the Deposit is on account of overheads and materials which will be allocated to fulfilling the order and is therefore non-refundable.
- (c) The balance of the Price must be paid by the Client within 7 days of issue of a Tax Invoice.
- (d) If the Client disputes any amount claimed as due and payable in the Tax Invoice, the Client must notify us within 14 days of the Tax Invoice being issued specifying the reasons for the dispute.
- (e) The Client must pay interest to Five at Heart on any Tax Invoice (or part thereof) which is not paid in accordance with these terms and conditions at a rate of 10% per annum, compounding monthly.
- (f) The Client must compensate Five at Heart for any Costs that it incurs as a result of any default by the Client under the Contract, including but not limited to any failure by the Client to pay any Tax Invoice (or part thereof) in accordance with these terms and conditions.

#### 5. **Security of payment**

- 5.1 For the avoidance of doubt, any Tax Invoice issued by Five at Heart is deemed to be a "payment claim" under the relevant SOP Act where the Product(s) or Services are provided.

#### 6. **Delay**

- 6.1 If there is, or will be, a delay in Five at Heart providing the Product(s) or Services, Five at Heart will notify the Client as soon as practicable.
- 6.2 Five at Heart will not be liable for any loss or damage resulting from delay arising from causes beyond its reasonable control, and without its fault or negligence, including but not limited to acts of god, criminal acts, Government intervention or directions, fires, floods, tempests, epidemics, pandemics and severe weather.

#### 7. **Risk and Title**

- 7.1 Risk

- (a) Risk in the Product(s) and/or Services passes from Five at Heart to the Client when Five at Heart Delivers the Product(s) and/or Services to the Client and the Product(s) and/or Services are inspected and accepted by the Client.
- (b) Inspection by the Client is to occur within 24 hours of Delivery. If the Client fails to undertake an inspection within 24 hours of Delivery, the Client is deemed to accept the Product(s) and/or Services and immediately assumes all risk in and associated with them.

## 7.2 Title

On the payment of the Price in full by the Client, Five at Heart transfers to the Client, legal and beneficial ownership of and title to the Product(s) free from any encumbrances, third party Claims or third party rights and interests.

## 8. Security

8.1 If one Party (the "**Secured Party**") determines that the Contract (or a transaction in connection with it) is or contains a Security Interest, the other Party (the "**Grantor**") agrees to promptly do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which is reasonably requested by the Secured Party and which is reasonably necessary for the purposes of:

- (a) ensuring that the Security Interest is enforceable, perfected (including, where possible, by Control in addition to registration) and otherwise effective; or
- (b) enabling the Secured Party to apply for any registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by the Secured Party; or
- (c) enabling the Secured Party to exercise rights in connection with the Security Interest, but only to the extent of the Security Interest created.

8.2 The Grantor agrees:

- (a) to provide at least 10 business days' notice of any change to its name, or any other information which might affect the details recorded in any Financing Statement registered by the Secured Party;
- (b) not to change its place of business to a jurisdiction outside of Australia.

## 9. Warranties

9.1 From the time of Delivery, Five at Heart warrants that the Product(s) shall:

- (a) conform with the Quote (which may be amended from time to time, as agreed between the Parties);
- (b) be of merchantable and professional quality and fit for their intended purpose;
- (c) be new (unless otherwise specified);
- (d) be free from all Security Interests, liens, encumbrances and other interests (whether arising by operation of law or otherwise).

9.2 Five at Heart warrants that the Services shall:

- (a) not differ from that specified in the Quote; and

- (b) be carried out by suitably qualified, skilled and experienced personnel;
- (c) constitute workmanship of good quality and standard, conforming to good professional practice and relevant and applicable industry codes, laws, regulations and standards.

## 10. Defects

10.1 Unless otherwise agreed in writing between the Parties or identified in a product specification sheet issued by Five at Heart, a defects liability period of 12 months applies from either the date of Delivery to the specified Delivery Point or the installation of the Product(s), whichever is later.

## 11. Intellectual Property

11.1 Each party will retain the rights to any of its own Intellectual Property that was in existence prior to the Contract being formed between the Parties.

11.2 To the extent that it relates to the Product(s), each party grants to the other royalty free, non-transferable, non-exclusive right to use the other party's Intellectual Property.

11.3 Any Intellectual Property created in provision of the Product(s) or otherwise pursuant or incidental to the Contract between the Parties shall be the property of Five at Heart. Any new Intellectual Property that has been jointly created during the performance and in relation to this Contract shall become the property of Five at Heart.

11.4 Neither party will do anything, whether by act or omission and whether directly or indirectly, which may prejudice or infringe the other party's Intellectual Property.

11.5 The Client acknowledges that:

- (a) all Intellectual Property, any other information relating to Five at Heart's products and any underlying materials relating to the foregoing shall vest at all times with Five at Heart;
- (b) the intellectual property rights in all of Five at Heart's content made available to the Client via any printed or electronic material remain the property of Five at Heart;
- (c) the Client is not authorised to publish, manipulate, distribute or otherwise reproduce, in any format, any of the intellectual property or content owned by Five at Heart (including but not limited to producing or procuring the production of any counterfeit or imitation of the Product(s)), without the prior written consent of Five at Heart;
- (d) if the Product(s) identified in the Quote and Sales Order are for a particular site, the Client shall not transport the Product(s) outside of the country of the site without the prior written consent of Five at Heart (which may be withheld in Five at Heart's sole and absolute discretion);
- (e) the Client must not attempt, or procure any third party, to reverse engineer, deconstruct, examine or undertake any other process to reveal the designs or functionality behind any of the Product(s).

## 12. Confidentiality

12.1 Each party warrants that it will comply with the *Privacy Act 1988* (Cth) as amended from time to time in relation to the collection, use or disclosure of personal information.

12.2 Each party warrants that any information provided under this Contract which is noted as confidential, or which that party ought reasonably to know to be confidential, will be treated as Confidential Information and each party agrees that any Confidential Information will not be

disclosed to any third party without the prior written consent of the other party (such consent to not be unreasonably withheld) except where:

- (a) necessary for the purpose of supplying the Product(s) or the provision of Services to the Client;
- (b) disclosure is permitted by these express terms and conditions;
- (c) the information is available to the public generally (except as a result of a previous breach of this clause 12.2);
- (d) that party is required to make the disclosure by law; or
- (e) the disclosure is made on a confidential basis to the Representatives or professional advisers of that party for the purpose of obtaining advice.

12.3 Each party warrants that the Confidential Information revealed in relation to this Contract will be used solely for the performance of the Contract and for no other purpose.

12.4 Each party will retain ownership of their Confidential Information and each party must return all Confidential Information immediately on completion of the Contract. The Parties agree that these obligations shall survive termination or expiration of the Contract.

### 13. **GST**

#### 13.1 GST exclusive amounts

Unless expressly stated to the contrary all amounts expressed in the Contract are exclusive of GST.

#### 13.2 Taxable supplies

- (a) 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 the Contract, the Recipient must pay the Supplier an amount equal to the GST payable on the supply by the Supplier.
- (b) The Recipient must pay the amount referred to in subclause (a)11.2(a), and any interest, penalties, fines or expenses relating to the GST, in addition to and at the same time as the consideration otherwise payable by the Recipient for the supply.

#### 13.3 Tax Invoice

As soon as practicable after Delivery of the Product(s) and/or Services, Five at Heart will issue a Tax Invoice to the Client.

#### 13.4 Adjustment event

If an adjustment event arises for a Taxable Supply under clause 11.2, the amounts required to be paid must be recalculated (**Recalculated Amount**) and the Recipient must pay the Supplier the Recalculated Amount.

#### 13.5 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.



14. **Governing law and jurisdiction**

14.1 The Parties shall submit to the non-exclusive jurisdiction, law and the courts of the State or Territory of Australia where Five at Heart has provided the Product(s) and/or the Services.

14.2 The Parties shall comply with all applicable laws, by-laws, ordinances, regulations, proclamations, orders and rules and with the lawful requirements of public and other authorities in any way related to the Contract.

15. **Miscellaneous**

15.1 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 remain in full force and effect in all other jurisdictions.

15.2 Variation

- (a) An amendment or variation to these terms and conditions is not effective unless it is in writing and signed by the parties.
- (b) Five at Heart may repeal and replace these terms and conditions at any time, by updating and displaying any new terms and conditions on its website.

15.3 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.

15.4 Entire agreement

The Quote, the Sales Order, any Documents attached to, or expressly incorporated by reference in, the Quote and the Sales Order and these terms and conditions:

- (a) constitute the entire agreement and understanding between the Parties relating to the subject matter of the Contract between the Parties; and
- (b) supersede any prior agreement, representation (written or oral) or understanding on anything connected with that subject matter.