

**Bernarra Nominees Pty Ltd ACN 070 485 442**  
**trading as Screening Solutions**

**Terms of Trade**

**1. Definitions and interpretation**

**1.1 Definitions**

In these Terms of Trade:

**Additional Charge** means:

- (a) fees or charges for additional Goods supplied and/or work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with the Supplier's then current prices; and
- (b) expenses incurred by the Supplier, at the Customer's request or reasonably required as a result of the Customer's conduct.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in the place where the Goods are provided.

**Customer** means the person or entity specified and/or identified as the customer on a Quote or Order and includes the Customer's agents and permitted assigns.

**Goods** means any goods, products or services purchased by the Customer from the Supplier and supplied by the Supplier to the Customer.

**Intellectual Property Rights** means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.

**Loss** includes, but is not limited to, costs (including, but not limited to, party to party legal costs and the Supplier's legal costs), expenses, lost profits, award of damages, personal injury and property damage.

**Order** means a purchase order for Goods placed by a Customer, whether in response to a Quote or otherwise, and as varied in writing from time to time by the parties.

**PPS Law** means:

- (a) the *Personal Property Security Act 2009* (Cth) (PPS Act) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a PPS Law.

**Quote** means a written description of the Goods to be supplied and/or provided by the Supplier to the Customer, an estimate of the Supplier's charges for the provision of the Goods and performance of the required work (if any) and an estimate of the time frame for the provision of the Goods and performance of the required work (if any).

**Security Interest** has the same meaning given to this term in the PPS Law.

**Supplier** means Bernarra Nominees Pty Ltd ACN 070 485 442 trading as Screening Solutions and includes the Supplier's agents and permitted assigns.

**1.2 Interpretation**

In these Terms of Trade, unless the context otherwise requires:

- (a) a reference to writing includes email and other communication established through the Supplier's website (if any);
- (b) the singular includes the plural and vice versa;
- (c) a reference to a clause or paragraph is a reference to a clause or paragraph of these Terms of Trade;
- (d) a reference to a party to these Terms of Trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings are for ease of reference only and do not affect the meaning or interpretation of these Terms of Trade; and
- (g) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing;
- (h) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
- (i) in all other cases, must be done on the next Business Day.

**2. General**

- (a) These Terms of Trade apply to all transactions between the Customer and the Supplier relating to the provision of Goods, including all Quotes, Orders or any other contracts or agreements in writing between the Supplier and the Customer for the provision of Goods.
- (b) The variation or waiver of a provision of these Terms of Trade, or a party's consent to a departure by the other party from a provision of these Terms of Trade, is ineffective unless in writing and signed by all the parties.
- (c) The Supplier may amend any details in a Quote by notice in writing to the Customer. Such amended details supersede any relevant prior detail in the dealings between the parties.

**3. Quotes**

- (a) The Supplier may provide the Customer with a Quote. Any Quote issued by the Supplier is valid for 30 days from the date of issue.
- (b) Unless otherwise expressly agreed in writing, a Quote does not include delivery and/or installation of the Goods.
- (c) Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary material and instructions to the Supplier.
- (d) Following provision of a Quote to the Customer, the Supplier is not obliged to provide or supply any Goods, or commence any work until the Quote has been accepted by the Customer by completing and returning an Order form to the Supplier.
- (e) The Supplier reserves the right to amend any Quote before the Order has been completed to take into account any rise or fall in the cost of completing the Order. The Supplier will notify the Customer of any amendment as soon as practicable, at which point the amended Quote will be the estimate or Quote for the purposes of these Terms of Trade.
- (f) An indication in a Quote of the time frame for the provision of the Goods is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding upon the Supplier.

**4. Orders**

- (a) Every Order by the Customer for the provision of Goods must be submitted in writing on the Supplier's standard Order form (unless otherwise agreed in writing).
- (b) An Order will not be deemed to have been placed by the Customer unless the Order clearly identifies the Goods ordered and the Supplier has confirmed to the Customer in writing that the Order has been accepted by it. Any costs incurred by the Supplier in reliance on incorrect or inadequate information may result in the imposition on the Customer of an Additional Charge.
- (c) Orders must be signed by an authorised representative of the Customer and must specify the required date of delivery.
- (d) Placement of an Order by the Customer signifies acceptance by the Customer of these Terms of Trade and the most recent Quote (if any).
- (e) The Supplier may in its absolute discretion refuse to provide Goods where:
  - (i) Goods are unavailable for any reason whatsoever;
  - (ii) credit limits cannot be agreed upon or have been exceeded; or
  - (iii) payment for Goods previously supplied to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Supplier, associated with the Customer under the same or another supply contract, has not been received by the Supplier in full.
- (f) An Order cannot be cancelled without the prior written consent of the Supplier. Where an Order is cancelled, the Customer indemnifies the Supplier against any Losses incurred by the Supplier as a result of the cancellation, including, but not limited to loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.

**5. Variations**

- (a) The Customer may request that its Order be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier in order to have effect.
- (b) If the Customer wishes to vary its requirements after a Quote has been prepared or after the placement of an Order, the Supplier reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Supplier in respect of the requested variation supersedes the original Quote.
- (c) The Supplier has an automatic extension of time for the provision of the Goods equal to the delay caused by the variation.

**6. Invoicing and payment**

- (a) The Supplier may in its absolute discretion, issue an invoice to the Customer in any one or both of the following ways:
  - (i) prior to providing or supplying the Goods, for an amount equal to the whole or any part of the amount specified in an Order and Additional Charges (if any); or
  - (ii) upon completion of the supply or provision of the Goods or any time thereafter, for an amount equal to the Order or the balance of the Order outstanding, plus any Additional Charges and any amount not previously invoiced.
- (b) The Customer must pay an invoice issued by the Supplier to the Supplier within 14 days of a valid tax invoice being issued to the Customer (**Credit Period**).
- (c) If any invoice is due but unpaid, the Supplier may withhold the provision of any further Goods until overdue amounts are paid in full.
- (d) The Supplier may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to the Supplier.

- (e) The Customer is not entitled to retain any money owing to the Supplier notwithstanding any default or alleged default by the Supplier of these Terms of Trade, including (but not limited to) the supply of allegedly faulty or defective Goods or a delay in the provision of Goods. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.
- (f) The Customer must pay the Supplier on demand interest at the rate of 10% per annum on all overdue amounts owed by the Customer to the Supplier, calculated daily.
- (g) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Supplier, are to be paid by the Customer as a debt due and payable under these Terms of Trade.
- (h) The Customer and the Supplier agree to comply with their obligations in relation to Goods and Services Tax (GST) under the *A New Tax System (Goods and Services Tax) Act 1999* and any other applicable legislation governing GST.

## 7. Additional Charges

- (a) The Supplier may require the Customer to pay Additional Charges in respect of costs incurred by the Supplier as a result of reliance by the Supplier of inadequate or incorrect information or material provided by the Customer, or information or material supplied later than required by the Supplier in order for it to provide the Goods within the required or specified time frame (if any).
- (b) The imposition of Additional Charges may also occur as a result of cancellation by the Customer of an Order where cancellation results in the Supplier suffering or incurring a Loss, storage costs for goods not collected from the Supplier within 2 weeks of the date on which the Goods are manufactured, fabricated, created or formed at the rate set out in the Quote or Order, photocopying, communication costs, couriers, packing and handling, Government or council taxes or charges, additional work required by the Customer or any other occurrence which causes the Supplier to incur costs in respect of the Customer's Order, which costs are additional to the quoted or agreed cost.

## 8. Damaged, Defective or Incomplete Goods

- (a) The Supplier may refuse any claim made by the Customer for any Goods which the Customer alleges were supplied or provided in a damaged or defective condition, or which are incomplete, or do not meet the specifications agreed upon between the Supplier and the Customer in the Order, unless the Customer gives written notice to the Supplier to that effect within 72 hours of delivery of those Goods.
- (b) If the Customer fails to advise the Supplier in writing of damaged, defective or incomplete Goods pursuant to paragraph 8(a), the Customer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Customer's Order
- (c) Subject to the Customer's rights under The Australian Consumer law, the liability of the Supplier under this clause 8 is limited to the replacement value of those Goods or the supply of equivalent Goods.
- (d) Any Goods which are the subject of a claim by the Customer under this clause 8 must be promptly returned to the Supplier at the Customer's sole cost and expense.

## 9. Installation of Goods

- (a) Unless specified otherwise in writing in an Order, the Customer acknowledges that:
  - (i) the Supplier will not install the Goods purchased from it by the Customer; and
  - (ii) the Supplier may recommend or refer another person or entity to install the Goods purchased by the Customer from the Supplier; and
  - (iii) if the Customer engages a person or entity to install the Goods purchased by it from the Supplier, irrespective of whether that person or entity was recommended or referred to the Customer by the Supplier, the Customer:
    - (A) acknowledges and agrees that any installation agreement or arrangement between the Customer and the installer is a private agreement or arrangement between them and has nothing to do with the Supplier; and
    - (B) indemnifies the Supplier from any Loss suffered or incurred by the Customer from the installation of the Goods by the installer engaged by the Customer.
- (b) If, in an Order, the Supplier agrees to install the Goods on behalf of the Customer, the Supplier agrees to do so in a manner that complies with The Australian Consumer Law.

## 10. Title and risk

- (a) Risk in the Goods passes to the Customer immediately upon delivery of the Goods to the Customer's nominated delivery address.
- (b) Property in the Goods supplied to the Customer pursuant to these Terms of Trade does not pass to the Customer until all money due and

payable to the Supplier by the Customer (including money owing in respect of other transactions between the Supplier and the Customer) has been paid in full.

- (c) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of those Goods, the Customer agrees that it:
  - (i) is a bailee of the Goods until property in them passes to the Customer;
  - (ii) irrevocably appoints the Supplier its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any Security Interest in favour of the Supplier with respect to the Goods under applicable PPS Law;
  - (iii) must be able, upon demand by the Supplier, to separate and identify as belonging to the Supplier the Goods supplied by the Supplier from other goods which are held by the Customer;
  - (iv) must not allow any person to have or acquire any Security Interest in the Goods;
  - (v) must insure the Goods, in the name of the Supplier and Customer, for their full replacement value with a reputable insurer and provide a certificate of currency of such insurance to the Supplier immediately upon written request by the Supplier;
  - (vi) agrees that the Supplier may repossess the Goods if payment is not made within the Credit Period (or such longer time as the Supplier may, in its complete discretion, approve in writing) of the supply of the Goods; and
  - (vii) grants an irrevocable licence to the Supplier or its agent to enter the Customer's premises, or any other premises in which the Goods are stored or located, in order to recover possession of Goods pursuant to this paragraph. The Supplier may use reasonable force in exercising its rights of recovery under this paragraph. The Customer indemnifies the Supplier in respect of any damage to property or personal injury which occurs as a result of the Supplier entering the Customer's premises or any other premises under this paragraph.
- (d) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of those Goods, and the Customer makes a new object from the Goods, whether finished or not, or the Customer mixes the Goods with other goods or the Goods become part of other goods (**New Goods**), the Customer agrees with the Supplier that the ownership of the New Goods immediately passes to the Supplier. The Customer will hold the New Goods on trust for the Supplier until payment of all sums owing to the Supplier whether under these Terms of Trade or any other contract have been paid in full, and the Supplier may require the Customer to store the New Goods in a manner that clearly shows the Supplier's ownership of the New Goods.
- (e) For the avoidance of doubt, under paragraph (d), the ownership of the New Goods passes to the Supplier at the beginning of the process, operation or event by which the Goods are converted into, are mixed with or become part of other goods.
- (f) Notwithstanding paragraph (c) the Customer may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business provided that:
  - (i) where the Customer is paid by a third party in respect of Goods including New Goods, the Customer agrees to hold the whole of the proceeds of sale less any GST on trust for the Supplier - in a separate bank account - until all amounts owned by the Customer to the Supplier have been paid in full; or
  - (ii) where the Customer is not paid by a third party, the Customer agrees to assign all of its rights against the third party to the Supplier upon the Supplier giving the Customer notice in writing to that effect, and for the purpose of giving effect to that assignment the Customer irrevocably appoints the Supplier as its attorney.
- (g) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of those Goods, the Customer acknowledges that the Supplier has a right to register and perfect a Security Interest pursuant to the PPS Law.
- (h) If:
  - (i) a PPS Law applies or commences to apply to these Terms of Trade or any transaction contemplated by them, or the Supplier determines (based on legal advice) that this is the case; and
  - (ii) in the Supplier's opinion, the PPS Law:
    - (A) does or will adversely affect the Supplier's security position or obligations; or
    - (B) enables or would enable the Supplier's security position to be improved without adversely affecting the Customer,
 the Supplier may give notice to the Customer requiring the Customer to do anything (including amending these Terms of Trade and/or executing any new terms and conditions) that in the Supplier's opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated in paragraph (ii)(A) or improve the security position as contemplated in paragraph (ii)(B). The Customer must comply with the requirements of that notice within the time specified in the notice. If having completed everything reasonably practicable as required under this paragraph, in the Supplier's opinion the Supplier's security position or obligations under or in connection with these Terms of Trade

have been or will be materially adversely affected, the Supplier may by further notice to the Customer cancel these Terms of Trade, in which case the Customer must immediately pay to the Supplier any money owed to the Supplier by the Customer.

## 11. Intellectual Property Rights

The Customer agrees that it must not use any of the Supplier's intellectual Property Rights, whether registered or unregistered and which belong to the Supplier, without the prior written consent of the Supplier.

## 12. Agency and assignment

- (a) The Customer agrees that the Supplier may at any time appoint or engage an agent to perform an obligation of the Supplier arising out of or pursuant to these Terms of Trade.
- (b) The Supplier has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these Terms of Trade provided that the assignee agrees to assume any duties and obligations of the Supplier owed to the Customer under these Terms of Trade.
- (c) The Customer must not assign, or purport to assign, any of its obligations or rights under these Terms of Trade without the prior written consent of the Supplier.

## 13. Default by Customer

- (a) Each of the following occurrences constitutes an event of default:
  - (i) the Customer breaches or is alleged to have breached these Terms of Trade for any reason (including, but not limited to, defaulting on any payment due under these Terms of Trade);
  - (ii) the Customer, being a natural person, commits an act of bankruptcy;
  - (iii) the Customer, being a corporation, is subject to:
    - (A) a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
    - (B) a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of the Customer's property and undertaking;
    - (C) the entering of a scheme of arrangement (other than for the purpose of restructuring);
    - (D) any assignment for the benefit of creditors;
  - (iv) the Customer purports to assign its rights under these Terms of Trade without the Supplier's prior written consent;
  - (v) the Customer ceases or threatens to cease conduct of its business in the normal manner.
- (b) Where an event of default occurs, except where payment in full has been received by the Supplier, the Supplier may:
  - (i) terminate these Terms of Trade;
  - (ii) terminate any or all Orders and credit arrangements (if any) with the Customer;
  - (iii) refuse to deliver Goods;
  - (iv) pursuant to clause 10(c), repossess and re-sells any Goods delivered to the Customer, the payment for which has not been received; or
  - (v) retain (where applicable) all money paid on account of Goods or otherwise.
- (c) In addition to any action permitted to be taken by the Supplier under paragraph (b), on the occurrence of an event of default by the Customer, all the Customer's outstanding invoices become immediately due and payable to the Supplier.

## 14. Termination

In addition to the express rights of termination provided in these Terms of Trade, a party may terminate these Terms of Trade by giving 30 days written notice to the other party.

## 15. Exclusions and limitation of liability

- (a) The Customer expressly agrees that use of the Goods is at the Customer's risk. To the full extent allowed by law, the Supplier's liability for breach of any term implied into these Terms of Trade by any law is excluded.
- (b) All information, specifications and samples provided by the Supplier in relation to the Goods are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods will not entitle the Customer to reject the Goods upon delivery, or to make any claim in respect of them.
- (c) The Supplier gives no warranty in relation to the Goods provided or supplied. Under no circumstances is the Supplier or any of its suppliers liable or responsible in any way to the Customer or any other person for any losses, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues), as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods including in their form, content and timeliness of delivery, failure

of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:

- (i) any Goods supplied to the Customer;
  - (ii) any delay in supply of the Goods; or
  - (iii) any failure to supply the Goods.
- (d) Any advice, recommendation, information, assistance or service given by the Supplier in relation to Goods is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty or accuracy, appropriateness or reliability. The Supplier does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
  - (e) To the fullest extent permissible at law, the Supplier is not liable for any direct, indirect, punitive, incidental, special or consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods, or otherwise arising out of the provision of Goods, whether based on Terms of Trade, negligence, strict liability or otherwise, even if the Supplier has been advised of the possibility of damages.
  - (f) The Customer acknowledges that the Goods are not for personal, domestic or household purposes.
  - (g) The Australian Consumer Law may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, the Supplier's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods.

## 16. Indemnity

- (a) The Customer indemnifies and keeps indemnified the Supplier, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against the Supplier or, for which the Supplier is liable, in connection with any Loss arising from or incidental to the provision of Goods, any Order or the subject matter of these Terms of Trade including, but not limited to any legal costs incurred by the Supplier in relation to meeting any claim or demand or any party/party legal costs for which the Supplier is liable in connection with any such claim or demand. This provision remains in force after the termination of these Terms of Trade.

## 17. Force majeure

- (a) If circumstances beyond the Supplier's control prevent or hinder its provision of the Goods, the Supplier is free from any obligation to provide the Goods while those circumstances continue. The Supplier may elect to terminate the Order or keep the Order on foot until such circumstances have ceased.
- (b) Circumstances beyond the Supplier's control include, but are not limited to unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

## 18. Other matters

- (a) These Terms of Trade are governed by the laws of Victoria and each party irrevocably submits to the non-exclusive jurisdiction of the courts of such state.
- (b) These Terms of Trade and any Quotes, Orders and written variations agreed to in writing by the Supplier represent the whole agreement between the parties relating to the subject matter of these terms.
- (c) These Terms of Trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (d) In entering into these Terms of Trade, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its employees or agents relating to or in connection with the subject matter of these Terms of Trade.
- (e) If any provision of these Terms of Trade at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- (f) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (g) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quote (or as varied pursuant to this paragraph) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Quote; sent by facsimile transmission to the facsimile number of the addressee specified in the relevant Quote, with acknowledgment of receipt from the facsimile machine of the addressee or sent by e-mail to the e-mail address of the addressee specified in the relevant Quote with acknowledgement of delivery.
- (h) A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting; or if sent by facsimile or e-mail before 4 pm one Business Day at the

place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.

- (i) A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.
- (j) Each order placed by the Customer with the Supplier is deemed to be a representation by the Customer that at the time it placed the Order for the purchase of the Goods, it was solvent and able to pay all of its debts as and when they fell due.
- (k) The failure by the Customer to pay the Supplier's tax invoice on the due date for payment is conclusive evidence that the Customer had no reasonable grounds for making the representation referred to in paragraph (j).