

CUSTOMER APPLICATION with GOODS AND SERVICES AGREEMENT

for use with Consumers

This document including the terms of trade contain the following key points:

- Identification of the entity you are dealing with
- Protection & assistance with disputes
- Ability to recover costs should a default occur
- Ability to credit default should a debtor not pay
- Compliance with the Privacy Act
- Assistance with the PPSR

Remember, most contracts are only relevant and useful when things go bad so it is important to obtain a duly signed application for each new Customer.

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Disclaimer

The Credit Application and Terms and Conditions are provided as a general template and may not be suitable for your particular industry or business. Marshall Freeman Collections Pty Ltd shall not be responsible for damage and disclaims all liability for any loss (whether direct/indirect or consequential) or expense suffered by you by reason of the use, enforceability or accuracy of the Credit Application and Terms and Conditions.

Marshall Freeman Collections Pty Ltd does not provide legal advice and this document should not be construed as providing legal advice or substituted for obtaining specific proper legal advice and a tailored legal document to suit your particular industry or business. Marshall Freeman Collections Pty Ltd can recommend a suitable law firm should you require specific legal services and advice.

It is important to understand that although terms may be clearly stated, should legal action be commenced it will be up to a court of law to determine the dispute and ultimately decide in its discretion how to interpret the terms and conditions and what costs and interest are recoverable.

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1. Interpretation
 - 1.1 In these terms and conditions:
 - (a) "Company" means the entity stated in the Application for Credit and any related body corporate as defined in the Corporations Act 2001 (Cth) and its successors and assigns.
 - (b) "Customer" means the entity stated in the Application, its successors and assigns.
 - (c) "Goods" means goods (as that term is defined under the PPSA) supplied to the Customer (and where the context so permits includes Services).
 - (d) "Governing State" means the State or Territory where the Company has its principal place of business.
 - (e) "PPSA" means the Personal Property Securities Act 2009 (Cth).
 - (f) "ROT security interest" means a retention of title security interest under a "conditional contract" as defined under the PPSA.
 - (g) "Services" means all services supplied to the Customer and includes any advice or recommendations, intellectual or intangible property under the PPSA (and where the context so permits includes any supply of Goods).
2. Delivery and Risk
 - 2.1 Should the Company elect to post any Goods or organise delivery of Goods, the Customer's risk of loss or damage to such Goods passes to the Customer on the date and at the time that the Goods were ordered, and it is the Customer's responsibility to ensure these Goods are insured and covered for their time in transit.
 - 2.2 The Company will not be responsible for non-delivery or delay in delivery of any Goods and where such non-delivery or delay occurs the Company may deliver the Goods not delivered or delayed at any subsequent time and the Customer must accept and pay for them.
 - 2.3 The Customer is not entitled to any compensation from the Company of any nature for any loss, damage or delay.
 - 2.4 Except to the extent required by law, the Customer will not be entitled to return any Goods and the Company will not be obliged to accept the return of any Goods whatsoever.
3. Title
 - 3.1 Until all monies and obligations owing by the Customer to the Company have been paid and discharged in full, the Company shall retain all legal and beneficial title in all Goods.
 - 3.2 If Goods to which legal title has not passed to the Customer are in the possession of the Customer, the Customer is under an obligation to:
 - (a) retain them in a good and merchantable condition until they are either paid for or collected by the Company; and
 - (b) allow the Company, its servants or agents onto the premises where they are stored for the purpose of inspecting and collecting the Goods.
 - 3.3 In relation to Goods for which payment in full has not been received:
 - (a) The relationship between the Customer and the Company shall be fiduciary;
 - (b) The Customer will hold those Goods as bailee for the Company;
 - (c) Where the Customer sells those Goods, the Customer does so as fiduciary agent of the Company;
 - (d) Where the Goods are disposed of, the monies resulting from the disposal and all other proceeds received in respect of the Goods, including insurance proceeds will be kept separately in trust for the Company;
 - (e) Where the Goods are disposed of, the Customer may only dispose of the Goods in the ordinary course of its business on commercially reasonable terms;
 - (f) The Customer undertakes that until it delivers the Goods to a third party, it will store the Goods on its premises separately from its own Goods, or those of any other person, and in a manner which makes the Goods readily identifiable as the Company's Goods.
4. Access
 - 4.1 The Customer irrevocably permits the Company or any person authorised by the Company in writing, upon giving

reasonable notice to enter the Customer's premises or at premises where the Goods are reasonably believed by the Company to be held on the Customer's behalf for the purpose of examining or recovering the Goods. The Customer also agrees to indemnify and hold the Company harmless for reasonable costs of removal, enforcement, and legal action in respect of the removal of any Goods, the subject of this Agreement.

5. Transactions contemplated by this Agreement

5.1 The Company's tender of delivery of Goods and Services under this Agreement is a condition of the Customer's duty to accept the Goods or Services provided and, unless otherwise agreed, the Customer's duty to pay for them.

6. Disputes

6.1 If the Customer disputes any Goods sold or Services supplied by the Company are faulty, defective or disputes the Invoices the Company has issued, the Customer must notify their reasons in writing to the Company within 14 days of the Invoice date, failing which the Customer loses any right to dispute the quality of the Goods, Services or value.

7. Whole Agreement

7.1 These terms and conditions together with the Application embody the whole agreement between the parties and all previous dealings, representations and arrangements are hereby excluded and cancelled.

8. Payment

8.1 The Customer agrees to pay all amounts due in clear funds on the date of invoice for the Goods and/or Services provided by the Company.

8.2 The Customer agrees that if it fails to pay in accordance with this clause, the Company may:

- (a) Charge a late payment fee of \$50.00 on all amounts paid after the due date;
- (b) Charge interest on debts at 15% per annum from time to time;
- (c) Charge a dishonour handling fee in the amount of \$25.00;

- (d) Withhold supply;
- (e) Sue for the money owing on the Goods or Services provided;
- (f) Take steps to secure monies owing and enforce such security;
- (g) Recover all collection and legal costs and expenses incurred in collecting overdue accounts and/or enforcing security interests on an indemnity basis.

8.3 Failure to comply with clause 8.1 will constitute a breach of contract and the Company may treat the whole Agreement as repudiated and act accordingly.

8.4 In the event this agreement has been entered into by more than one party each party shall be jointly and severally liable for any amount due.

9. Default

9.1 If the Customer:

- (a) Fails to pay for any Goods or Services on the due date; or
- (b) Otherwise breached this agreement and failed to rectify such breach within seven day's notice; or
- (c) Cancels delivery of Goods or Services; or
- (d) Commits an act of bankruptcy or allows a trustee in bankruptcy or receiver and manager to be appointed to the Customer or any of its property; or
- (e) Allow a judgment or order to be enforced or become enforceable against the Customer's property.

then the Company may enter upon the Customer's premises (doing all that is necessary to gain access) where Goods supplied under this contract are situated at any time and re-take possession of any or all of the Goods the Company has supplied to the Customer and:

- (i) Resell the Goods concerned;
- (ii) Terminate the agreement; and
- (iii) Sue for any monies owing.

9.2 The Customer will be in default if the Customer does not pay any monies payable when called upon so to do and the Customer acknowledges and agrees that the Company is authorised to contact a credit reporting agency throughout the term of the Agreement to obtain a report about the creditworthiness of the Customer.

- 9.3 The Customer authorises the Company to engage in the exchange of information with a credit reporting agency or with other such parties as are necessary to give effect to the contract and to the ongoing relationship between the parties hereto.
- 9.4 The Company reserves the right to report a Customer's delinquent account to a credit reporting agency should payment remain outstanding for more than 30 days.
- 9.5 The Company may refer any outstanding account for debt collection or issue legal proceedings to recover any outstanding invoices. Should an account be referred for debt collection the Customer acknowledges and agrees to pay debt collection charges to be calculated at not less than 20% plus GST and will be incurred on the day the Company refers the matter to their nominated debt collection agency. The Customer shall also be liable for interest and all legal recovery costs associated with such action on a solicitor and own Customer or indemnity cost basis.
10. Security Interest
- 10.1 The Customer consents to registration of the security interests arising in favour of the Company as a result of these conditions and lodgment of a financing statement in respect of the security interests with the Personal Property Securities Register, and must do everything (including obtaining consents, signing and producing documents, completing documents or procuring that they are completed, and supplying information) which the Company considers necessary or desirable for the purposes of the PPSA including, without limitation:
- (a) ensuring that the security interests are registered, enforceable, continuously perfected and otherwise effective in accordance with the PPSA;
 - (b) enabling the Company to apply for any registration, or give any notification, in connection with the security interests; and
 - (c) enabling the Company to exercise rights in connection with the security interests in accordance with the PPSA.
11. Existing Agreements and security interests - Transitional and Non-transitional PPSA security interests
- 11.1 Where the Customer has previously entered into an agreement with the Company for the supply of Goods on credit (Existing Agreement):
- (a) Upon any order being made by the Customer for the supply of Goods after the first provision of this document to the Customer.
 - (i) these Terms shall apply to such supply and any subsequent supply of Goods.
 - (ii) any security interest (including any ROT security interest) granted by the Customer under an Existing Agreement shall immediately vest in the Company.
- 11.2 Any order made by the Customer shall not constitute a new security agreement as between the parties, but only further performance of these Terms unless expressly excluded in writing signed by the Company.
- 11.3 This Agreement will not act as a merger of their rights but that the terms contained under such Existing Agreement will be amended by the terms contained herein to the extent of any inconsistency.
12. Creation of Charge
- 12.1 As further and alternative security for the obligations owing to the Company, the Customer hereby grants a charge in favour of the Company over all of its rights title and interest in all of its present and after acquired property, including real property owned by the Customer beneficially or otherwise from time to time, and consents to a caveat or other registrable interest being lodged with the relevant government department in respect of such charge. For the purposes of section 20(1) and (2) PPSA, the Customer states that the charge is in all of the Customer's present and after acquired property (whether owned beneficially or otherwise) from time to time.

13. Contracting out
- 13.1 Where these Terms are inconsistent with the PPSA, the Australian Competition and Consumers Act 2009 (Cth) or any other legislation, to the extent permitted by law the parties are deemed to have expressly excluded and replaced those statutory provisions.
- 13.2 The Company and the Customer contract out of the provisions of sections 95, 96, 117, 118, 121(4), 130, 132(3)(d), 132(4), 142 and 143 of the PPSA and nothing in those provisions will apply to this Agreement.
- 13.3 The Company and the Customer acknowledge the Customer is a grantor and the Company is or will become the holder of a Purchase Money Security Interest (PMSI) by virtue of this Agreement and/or the PPSA.
- 13.4 The Customer hereby consents to and appoints the Company to be an interested person and their authorized representative for the purposes of section 275(9) PPSA.
- 13.5 The benefit of this contract and the security interest/s created hereunder may be assigned by the Company, but not by the Customer.
14. Appointment
- 14.1 The Customer appoints and authorizes the Company any director, officer or solicitor of the Company time to time as its attorney to execute and deliver in its name:
- (a) such form of security interest, charge or mortgage as the Company may reasonably require to better secure any charge granted under these conditions; and
- (b) any financing statement, consent form, security document or other document whatsoever for the purpose of:
- (i) registering any caveat or other registrable interest in respect of the charge or any security interest whatsoever granted under these conditions; or
- (ii) otherwise perfecting and enforcing the security interest.
15. Right to vary terms and conditions
- 15.1 These terms and conditions shall govern all transactions between the parties.
- 15.2 The Customer and the Company agree that the terms of this Contract may be altered unilaterally by the Company giving 14 days' written notice to the Customer. Clerical errors are subject to correction without notification.
16. Set-off
- 16.1 The Customer agrees that:
- (a) The Company may set-off any credit amount that the Company owes to the Customer against any debt due by the Customer to the Company at the Company's sole discretion and without notice;
- (b) The Customer is not entitled to withhold payment of any money in respect of any alleged set-off or claim the Customer might have against the Company.
17. Limitation of Liability
- 17.1 Except to the extent required by law, all Goods are purchased by the Customer "as is" and the Company will not be responsible for any damage or defect to the Goods.
- 17.2 Subject to any conditions and warranties mandatorily implied by law and to any conditions and warranties expressly contained herein, all conditions, warranties and representations on the part of the Company, whether express or implied, are hereby expressly excluded.
- 17.3 Subject to any legislation or express agreement to the contrary, the Customer acknowledges that it does not rely on the skill and judgment of the Company, its employees, agents or contractors in determining whether the Goods to be supplied are fit for any particular purpose and the Customer further acknowledges that any advice with respect to the use of Goods is given on the basis that the Company assumes no obligation or liability for advice given or results obtained, all such advice being given and accepted by the Customer is at the Customer's risk.
- 17.4 To the extent permitted by law, the Customer has responsibility for ensuring that the Goods are not used for any purpose for which they are not suitable and warrants and represents that it has

- had adequate opportunity to inspect the Goods and obtain independent expert advice.
- 17.5 To the extent that any warranty as to purpose or merchantable quality is implied by law and the Company is liable, the parties agree that the sole and exclusive remedy of the Customer will be to return the Goods and obtain a refund or at the Company's election for the Company to repair or replace the Goods as soon as reasonably practical.
- 17.6 To the extent permitted by law, in relation to services, the Company's liability is limited to supplying the services again or payment of the cost of having the services supplied again.
- 17.7 To the extent permitted by law, under no circumstances shall the Company be liable for any direct or indirect loss (including without limitation loss of profit) or damage whether special or consequential however arising (including as a result of negligence) except for any loss or damage (excluding loss of profit and special or consequential damage) suffered by the Customer as a direct result of a failure by the Company to perform their contractual obligations.
18. Severance and Waiver
- 18.1 If any provision of these Terms will be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
19. Jurisdiction and Notices
- 19.1 The agreement shall be deemed to have been made in the Governing State and shall be interpreted in accordance with the laws of the Governing State, Australia, and the parties submit to the non-exclusive jurisdiction of that State's Courts, except to the extent that the laws of the Commonwealth of Australia apply.
- 19.2 That in addition to any other means permitted by law, any documents, notifications or court proceedings may be given or served upon the Customer, its successors and permitted assignees in the same manner as any notice or document may be given under Part 8.5 of the PPSA and will be deemed so given or served.

20. Privacy
- 20.1 I/We acknowledge, accept, consent and warrant that I/ we have obtained the consent of any person whose personal information appears herein (if any) to the use of information in accordance with the provisions of these terms.
- 20.2 The Company may use personal information contained in the application to obtain credit reports containing consumer credit information and/or commercial credit information about the Applicant from credit reporting agencies.
- 20.3 The Company may use such personal information and any information disclosed by credit reporting agencies, in accordance with the Privacy Act 1988 (Cth), in assessing or enforcing the credit application including with respect to delinquent accounts and in accordance with the Company's privacy policy, as amended. Personal information may be disclosed to or between the Company's related companies, contractors, other credit providers, finance providers, service providers and the Company's risk insurers and debt collectors. The Company hereby gives notice in accordance with Section 18E(8)(c) of the Privacy Act that any personal information which is permitted to be kept on a credit information file might be disclosed to credit reporting agencies now or in the future. Upon request, any person may gain access to his/her personal information.

21.1 SERVICES PROVIDED

The Client hereby agrees to engage the Contractor to provide the Client with the following services (the "Services"):

- Design and fabricate a cat enclosure.; and
- provide and/or Install cat care products..

21.2 The Services will also include any other tasks which the Parties may agree on. The Contractor hereby agrees to provide such Services to the Client.

22 TERM OF AGREEMENT

22.1 The term of this Agreement (the "Term") will begin on the date of this Agreement and will remain in full force and effect until the completion of the Services, subject to earlier termination as provided in this Agreement. The Term may be extended with the written consent of the Parties.

23 PERFORMANCE

23.1 The Parties agree to do everything necessary to ensure that the terms of this Agreement take effect.

24 CURRENCY

24.1 Except as otherwise provided in this Agreement, all monetary amounts referred to in this Agreement are in AUD (Australian Dollars).

25 PAYMENT

25.1 A deposit of \$100.00 (the "Deposit") is payable by the Client upon execution of this Agreement.

25.2 For the remaining amount, the Client will be invoiced when the Services are complete.

8. Invoices submitted by the Contractor to the Client are due upon receipt.

9. The Payment as stated in this Agreement does not include sales tax, or other applicable duties as may be required by law. Any sales tax and duties required by law will be charged to the Client in addition to the Payment.

10. The Contractor will not be reimbursed for any expenses incurred in connection with providing the Services of this Agreement.

11. INTEREST ON LATE PAYMENTS

11. Interest payable on any overdue amounts under this Agreement is charged at a rate of 25.00% per annum or at the maximum rate enforceable under applicable legislation, whichever is lower.

26 CONFIDENTIALITY

26.1 Confidential information (the "Confidential Information") refers to any data or information relating to the business of the Client which would reasonably be considered to be proprietary to the Client including, but not limited to, accounting records, business processes, and client records and that is not generally known in the industry of the Client and where the release of that Confidential Information could reasonably be expected to cause harm to the Client.

26.2. The Contractor agrees that they will not disclose, divulge, reveal, report or use, for any purpose, any Confidential Information which the Contractor has obtained, except as authorised by the Client or as required by law. The obligations of confidentiality will apply during the Term and will survive indefinitely upon termination of this Agreement.

26.3 All written and oral information and material disclosed or provided by the Client to the Contractor under this Agreement is Confidential Information regardless of whether it was provided before or after the date of this Agreement or how it was provided to the Contractor.

27 OWNERSHIP OF INTELLECTUAL PROPERTY

27.1 The Client grants the Contractor permission to take photographs and video on site. All intellectual property and related material (the "Intellectual Property") that is developed or produced under this Agreement, will be the property of the Contractor. The Client is granted a non-exclusive limited-use licence of this Intellectual Property.

27.2 Title, copyright, intellectual property rights and distribution rights of the Intellectual Property remain exclusively with the Contractor.

28 RETURN OF PROPERTY

28.1 Upon the expiry or termination of this Agreement, the Contractor will return to the Client any property, documentation, records, or Confidential Information which is the property of the Client.

29 CAPACITY/INDEPENDENT CONTRACTOR

29.1 In providing the Services under this Agreement it is expressly agreed that the Contractor is acting as an independent contractor and not as an employee. The Contractor and the Client acknowledge that this Agreement does not create a partnership or joint venture between them, and is exclusively a contract for service.

30 RIGHT OF SUBSTITUTION

30. Except as otherwise provided in this Agreement, the Contractor may, at the Contractor's absolute discretion, engage a third party sub-contractor to perform some or all of the obligations of the Contractor under this Agreement and the Client will not hire or engage any third parties to assist with the provision of the Services.

30.2 In the event that the Contractor hires a sub-contractor:

- the Contractor will pay the sub-contractor for its services and the Payment will remain payable by the Client to the Contractor.
- for the purposes of the indemnification clause of this Agreement, the sub-contractor is an agent of the Contractor.

31 AUTONOMY

31.1 Except as otherwise provided in this Agreement, the Contractor will have full control over working time, methods, and decision making in relation to provision of the Services in accordance with the Agreement. The Contractor will work autonomously and not at the direction of the Client. However, the

Contractor will be responsive to the reasonable needs and concerns of the Client.

32 EQUIPMENT

32.1 Except as otherwise provided in this Agreement, the Contractor will provide at the Contractor's own expense, any and all tools, machinery, equipment, raw materials, supplies, workwear and any other items or parts necessary to deliver the Services in accordance with the Agreement.

33 NO EXCLUSIVITY

33.1 The Parties acknowledge that this Agreement is non-exclusive and that either Party will be free, during and after the Term, to engage or contract with third parties for the provision of services similar to the Services.

34 NOTICE

34.1 All notices, requests, demands or other communications required or permitted by the terms of this Agreement will be given in writing and delivered to the Parties at the following addresses:

- Client's email address as provided to the Contractor
- Kittysafe
46 virgil avenue
- Yokine
- western Australia 6060

or to such other address as either Party may from time to time notify the other.

35 INDEMNIFICATION

35.2 Except to the extent paid in settlement from any applicable insurance policies, and to the extent permitted by applicable law, each Party agrees to indemnify and hold harmless the other Party, and its respective directors, shareholders, affiliates, officers, agents, employees, and permitted successors and

assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever, which result from or arise out of any act or omission of the indemnifying party, its respective directors, shareholders, affiliates, officers, agents, employees, and permitted successors and assigns that occurs in connection with this Agreement. This indemnification will survive the termination of this Agreement.

36 ADDITIONAL CLAUSE

36.1 Kittysafe may use images of the installation for promotional purposes.

37 MODIFICATION OF AGREEMENT

37.1 Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorised representative of each Party.

38 TIME OF THE ESSENCE

38.1 Time is of the essence in this Agreement. No extension or variation of this Agreement will operate as a waiver of this provision.

39 ASSIGNMENT

39.1 The Contractor will not voluntarily, or by operation of law, assign or otherwise transfer its obligations under this Agreement without the prior written consent of the Client.

40 ENTIRE AGREEMENT

40.1 It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.

41 ENUREMENT

41.1 This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators and permitted successors and assigns.

42 TITLES/HEADINGS

42.1 Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.

43 GENDER

43.1 Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

44 GOVERNING LAW

44.1 This Agreement will be governed by and construed in accordance with the laws of the State of Western Australia.

45 SEVERABILITY

45.1 In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

46 WAIVER

46.1 The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.