



# ACORN WINDOW CLEANING

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## Anusie Pty Ltd as Trustee for The Boks Family T/A Acorn Window Cleaning *Terms & Conditions of Trade*

### 1. Definitions

- 1.1 “Acorn” shall mean Anusie Pty Ltd as trustee for The Boks Family Trust T/A Acorn Window Cleaning its successors and assigns or any person acting on behalf of and with the authority of Anusie Pty Ltd as trustee for The Boks Family Trust T/A Acorn Window Cleaning.
- 1.2 “Customer” shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by Acorn to the Customer.
- 1.3 “Guarantor” means that person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 “Services” shall mean all Services supplied by Acorn to the Customer and includes any advice or recommendations.
- 1.5 “Price” shall mean the price payable for the Services as agreed between Acorn and the Customer in accordance with clause 4 of this contract.

### 2. The Competition and Consumer Act 2010 (“CCA”) and Fair Trading Acts (“FTA”)

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 2.2 Where the Customer buys Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer’s statutory rights.

### 3. Acceptance

- 3.1 Any instructions received by Acorn from the Customer for the supply of Services and/or the Customer’s acceptance of Services supplied by Acorn shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of Acorn.
- 3.4 The Customer shall give Acorn not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer’s name and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by Acorn as a result of the Customer’s failure to comply with this clause.
- 3.5 Services are supplied by Acorn only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

### 4. Price and Payment

- 4.1 At Acorn’s sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by Acorn to the Customer in respect of Services supplied; or
  - (b) Acorn’s quoted Price (subject to clause 4.2) which shall be binding upon Acorn provided that the Customer shall accept Acorn’s quotation in writing within six (6) months.
- 4.2 Acorn reserves the right to change the Price in the event of a variation to Acorn’s quotation in the event of a change to the scope of Services provided.
- 4.3 At Acorn’s sole discretion a non refundable deposit may be required.
- 4.4 Acorn may submit detailed progress payment claims in accordance with Acorn’s specified payment schedule.

- 4.5 At Acorn's sole discretion:
  - (a) payment shall be due on delivery of the Services; or
  - (b) payment shall be due before delivery of the Services; or
- 4.6 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.
- 4.7 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (excluding Diners), or by direct credit, or by any other method as agreed to between the Customer and Acorn.
- 4.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4.9 Receipt by Acorn of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Acorn's ownership or rights in respect of the Services shall continue.

## **5. Delivery of Services**

- 5.1 At Acorn's sole discretion delivery of the Services shall take place when the Customer takes possession of the Services at the Customer's nominated address.
- 5.2 The Customer shall make all arrangements necessary to take delivery of the Services whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Services as arranged then Acorn shall be entitled to charge a reasonable fee for redelivery.
- 5.3 Delivery of the Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.4 The failure of Acorn to deliver shall not entitle either party to treat this contract as repudiated.
- 5.5 Acorn shall not be liable for any loss or damage whatsoever due to failure by Acorn to deliver the Services (or any of them) promptly or at all where due to circumstances beyond the control of Acorn.

## **6. Errors and Omissions**

- 6.1 Acorn shall not be liable for any dirt or marks of any kind that may appear after the completion of the Services. It is the Customer's responsibility to inspect the surface as soon as possible after window cleaning and to notify Acorn within forty eight (48) hours of completion (time being of the essence) of any alleged errors, omission or failure to comply with the description or quote. The Customer shall afford Acorn an opportunity to inspect the Services within a reasonable time following delivery if the Customer believes the Services are defective in any way. If the Customer shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage. For defective Services, which Acorn has agreed in writing that the Customer is entitled to reject, Acorn's liability is limited to rectifying the Services, except where the Customer has acquired Services as a consumer within the meaning of the Competition and Consumer Act 2010 (Cwth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Services, or rectification of the Services.
- 6.2 In the event that Acorn is called out to inspect an alleged error or omission but Acorn finds that the Services were not defective or inadequate and that there is no further Services to be performed, then Acorn reserves the right to charge a callout fee for the inspection.

## **7. Default and Consequences of Default**

- 7.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Acorn's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 7.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by Acorn.
- 7.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Acorn from and against all costs and disbursements incurred by Acorn in pursuing the debt including legal costs on a solicitor and own client basis and Acorn's collection agency costs.
- 7.4 Without prejudice to any other remedies Acorn may have, if at any time the Customer is in breach of any obligation (including those relating to payment), Acorn may suspend or terminate the supply of Services to the Customer and any of its other obligations under the terms and conditions. Acorn will not be liable to the Customer for any loss or damage the Customer suffers because Acorn has exercised its rights under this clause.
- 7.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 7.6 Without prejudice to Acorn's other remedies at law Acorn shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Acorn shall, whether or not due for payment,

become immediately payable in the event that:

- (a) any money payable to Acorn becomes overdue, or in Acorn's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

## **8. Security and Charge**

8.1 Despite anything to the contrary contained herein or any other rights which Acorn may have howsoever:

- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Acorn or Acorn's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that Acorn (or Acorn's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should Acorn elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Acorn from and against all Acorn's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Acorn or Acorn's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 8.1.

## **9. Cancellation**

- 9.1 Acorn may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Customer. On giving such notice Acorn shall repay to the Customer any sums paid in respect of the Price. Acorn shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 9.2 In the event that the Customer cancels delivery of Services by notification to Acorn in writing, then the Customer shall be liable to pay for all Services delivered up to the time of cancellation and shall be liable for any loss incurred by Acorn (including, but not limited to, any loss of profits) as a result of the cancellation.

## **10. Privacy Act 1988**

- 10.1 The Customer and/or the Guarantor/s (herein referred to as the Customer) agree for Acorn to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by Acorn.
- 10.2 The Customer agrees that Acorn may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
  - (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer.The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 10.3 The Customer consents to Acorn being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 10.4 The Customer agrees that personal credit information provided may be used and retained by Acorn for the following purposes (and for other purposes as shall be agreed between the Customer and Acorn or required by law from time to time):
  - (a) the provision of Services; and/or
  - (b) the marketing of Services by Acorn, its agents or distributors; and/or
  - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Services; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or

- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services.
- 10.5 Acorn may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer;
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 10.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;
  - (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
  - (c) advice that Acorn is a current credit provider to the Customer;
  - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - (f) information that, in the opinion of Acorn, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
  - (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
  - (h) that credit provided to the Customer by Acorn has been paid or otherwise discharged.

## **11. General**

- 11.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 11.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Melbourne.
- 11.3 Acorn shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Acorn of these terms and conditions.
- 11.4 In the event of any breach of this contract by Acorn the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Services.
- 11.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Acorn nor to withhold payment of any invoice because part of that invoice is in dispute.
- 11.6 Acorn may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 11.7 Acorn reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Acorn notifies the Customer of such change. The Customer shall be under no obligation to accept such changes except where Acorn supplies further Services to the Customer and the Customer accepts such Services.
- 11.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 11.9 The failure by Acorn to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Acorn's right to subsequently enforce that provision.