

1. Definitions

- 1.1 "ABLS" means Andrew Barton Laundry Systems Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Andrew Barton Laundry Systems Pty Ltd.
- 1.2 "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by ABLS to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable to ABLS for the Goods as agreed between ABLS and the Customer in accordance with clause 4 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with ABLS's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and ABLS.
- 2.3 In the case of a Trust, the Customer agrees and acknowledges that the trustee(s) shall be liable to ABLS on the account and that in addition, the assets of the Trust shall be available to ABLS to meet payment of any unpaid account.

3. Change in Control

- 3.1 The Customer shall give ABLS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by ABLS as a result of the Customer's failure to comply with this clause.

4. Price and Payment

- 4.1 At ABLS's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by ABLS to the Customer; or
- (b) ABLS's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
2. ABLS reserves the right to change the Price if a variation to ABLS's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to ABLS in the cost of taxes, levies, materials and labour) will be charged for on the basis of ABLS's quotation and will be shown as variations on the invoice.
3. At ABLS's sole discretion a non-refundable deposit may be required.
4. Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by ABLS, which may be:
- (a) on delivery of the Goods;
- (b) before delivery of the Goods;
- (c) by way of instalments/progress payments in accordance with ABLS's payment schedule;

- (d) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
- (e) the date specified on any invoice or other form as being the date for payment; or
- (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by ABLS.
5. Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two percent (2%) of the Price), or by any other method as agreed to between the Customer and ABLS.
6. Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to ABLS an amount equal to any GST ABLS must pay for any supply by ABLS under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of Goods

- 5.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at ABLS's address; or
- (b) ABLS (or ABLS's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
2. At ABLS's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
3. The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then ABLS shall be entitled to charge a reasonable fee for redelivery and/or storage.
4. ABLS may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
5. Any time or date given by ABLS to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and ABLS will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

6. Risk

- 6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, ABLS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by ABLS is sufficient evidence of ABLS's rights to receive the insurance proceeds without the need for any person dealing with ABLS to make further enquiries.
- 6.3 If the Customer requests ABLS to leave Goods outside ABLS's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

6.4 The Customer acknowledges that ABLS is only responsible for parts that are replaced by ABLS and that in the event that other parts/ Goods, subsequently fail, the Customer agrees to indemnify ABLS against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.

7. Access

7.1 The Customer shall ensure that ABLS has clear and free access to the work site at all times to enable them to undertake the Services. ABLS shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of ABLS.

8. Title

- 8.1 ABLS and the Customer agree that ownership of the Goods shall not pass until: (a) the Customer has paid ABLS all amounts owing to ABLS; and (b) the Customer has met all of its other obligations to ABLS.
- 8.2 Receipt by ABLS 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.
- 8.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Goods and must return the Goods to ABLS on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for ABLS and must pay to ABLS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for ABLS and must pay or deliver the proceeds to ABLS on demand.
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of ABLS and must sell, dispose of or return the resulting product to ABLS as it so directs.
- (e) the Customer irrevocably authorises ABLS to enter any premises where ABLS believes the Goods are kept and recover possession of the Goods.
- (f) ABLS may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of ABLS. (h) ABLS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

9. Personal Property Securities Act 2009 ("PPSA")

- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 Upon assenting to these terms and conditions in writing the Customer

- acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by ABLS to the Customer.
- 9.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which ABLS may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, ABLS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of ABLS;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of ABLS;
 - (e) immediately advise ABLS of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
4. ABLS and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
5. The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
6. The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
7. Unless otherwise agreed to in writing by ABLS, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
8. The Customer must unconditionally ratify any actions taken by ABLS under clauses 9.3 to
- 9.5. Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
10. **Security and Charge**
- 10.1 In consideration of ABLS agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Customer indemnifies ABLS from and against all ABLS's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising ABLS's rights under this clause.
- 10.3 The Customer irrevocably appoints ABLS and each director of ABLS as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.
11. **Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 11.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify ABLS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow ABLS to inspect the Goods.
- 11.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**NonExcluded Guarantees**).
- 11.3 ABLS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, ABLS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. ABLS's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Customer is a consumer within the meaning of the CCA, ABLS's liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.6 If ABLS is required to replace the Goods under this clause or the CCA, but is unable to do so, ABLS may refund any money the Customer has paid for the Goods.
- 11.7 If the Customer is not a consumer within the meaning of the CCA, ABLS's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by ABLS at ABLS's sole discretion;
 - (b) limited to any warranty to which ABLS is entitled, if ABLS did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 11.8 Subject to this clause 11, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 11.1; and
 - (b) ABLS has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, ABLS shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of: (a) the Customer failing to properly maintain or store any Goods;
- (b) the Customer using the Goods for any purpose other than that for which they were designed;
- (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user; (d) the Customer failing to follow any instructions or guidelines provided by ABLS; (e) fair wear and tear, any accident, or act of God.
10. In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law
- no warranty is given by ABLS as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that ABLS has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 11.10.
11. ABLS may in its absolute discretion accept non-defective Goods for return (provided that the Goods are returned in as close a condition to that in which they were delivered as is possible) in which case ABLS may require the Customer to pay handling fees of up to twenty-five percent (25%) of the value of the returned Goods plus any freight costs.
12. Notwithstanding anything contained in this clause if ABLS is required by a law to accept a return then ABLS will only accept a return on the conditions imposed by that law.
12. **Intellectual Property**
- 12.1 Where ABLS has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of ABLS.
- 12.2 The Customer warrants that all designs, specifications or instructions given to ABLS will not cause ABLS to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify ABLS against any action taken by a third party against ABLS in respect of any such infringement.
- 12.3 The Customer agrees that ABLS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which ABLS has created for the Customer.
13. **Default and Consequences of Default**
- 13.1 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 ABLS's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Customer owes ABLS any money the Customer shall indemnify ABLS from and against all costs and disbursements incurred by ABLS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, ABLS's collection agency costs, and bank dishonour fees).
- 13.3 Without prejudice to any other remedies ABLS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions ABLS may suspend or terminate the supply of Goods to the Customer. ABLS will not be liable to the Customer for any loss or damage the Customer suffers because ABLS has exercised its rights under this clause.
- 13.4 Without prejudice to ABLS's other remedies at law ABLS shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to ABLS shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to ABLS becomes overdue, or in ABLS's opinion the Customer will be unable to make a payment when it falls due;
 - (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.

14. Cancellation

14.1 ABLS may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice ABLS shall repay to the Customer any money paid by the Customer for the Goods. ABLS shall not be liable for any loss or damage whatsoever arising from such cancellation.

14.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by ABLS as a direct result of the cancellation (including, but not limited to, any loss of profits).

14.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

15. Dispute Resolution

15.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration.

Any arbitration shall be:

- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

16. Privacy Act 1988

16.1 The Customer agrees for ABLS to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by ABLS.

16.2 The Customer agrees that ABLS 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.

3. The Customer consents to ABLS being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

4. The Customer agrees that personal credit information provided may be used and retained by ABLS for the following purposes (and for other purposes as shall be agreed between the Customer and ABLS or required by law from time to time):

- (a) the provision of Goods; and/or
- (b) the marketing of Goods by ABLS, 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 Goods; 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 Goods.

16.5 ABLS 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.
- 16.6 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 ABLS 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 ABLS, 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 ABLS has been paid or otherwise discharged.

17. Unpaid Seller's Rights

17.1 Where the Customer has left any item with ABLS for repair, modification, exchange or for

ABLS to perform any other service in relation to the item and ABLS has not received or been tendered the whole of any moneys owing to it by the Customer, ABLS shall have, until all moneys owing to ABLS are paid:

- (a) a lien on the item; and
- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

17.2 The lien of ABLS shall continue despite the commencement of proceedings, or judgment for any moneys owing to ABLS having been obtained against the Customer.

18. General

18.1 The failure by ABLS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect ABLS's right to subsequently enforce that provision. 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.

18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of Queensland in which ABLS has its principal place of business, and are subject to the jurisdiction of the Holland Park Courts in that state.

18.3 Subject to clause 11 ABLS 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 ABLS of these terms and conditions (alternatively ABLS's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

18.4 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 ABLS nor to withhold payment of any invoice because part of that invoice is in dispute.

18.5 ABLS may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

18.6 The Customer agrees that ABLS may amend these terms and conditions at any time. If ABLS makes a change to these terms and conditions, then that change will take effect from the date on which ABLS notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for ABLS to provide Goods to the Customer.

18.7 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.

18.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.