

# Garry Wolnarek ATF Wolnarek Trading Trust T/A Umbrella Accountants – Terms & Conditions of Trade

<b>1. Definitions</b>		
1.1 "Firm" shall mean Umbrella Accountants - Tax Agent and its successors and assigns.	13.	<b>Security and Charge</b>
1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.	13.1	Notwithstanding anything to the contrary contained herein or any other rights which the Firm may have however:
1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Client on a principal debtor basis.		(a) Where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client 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 the Firm or the Firm's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Firm (or the Firm's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
1.4 "Services" shall mean all services supplied by the Firm to the Client and includes any advice or recommendations.		(b) Should the Firm elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Firm from and against all the Firm's costs and disbursements including legal costs on a solicitor and own client basis.
1.5 "Price" shall mean the cost of the Services as agreed between the Firm and the Client subject to clause 4 of this contract.		(c) To give effect to the provisions of clause [13.1 (a) and (b)] inclusive hereof the Client and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Firm or the Firm's nominee as the Client's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Firm and/or the Firm's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Client and/or the Guarantor in any land, realty or asset in favour of the Firm and in the Client's and/or Guarantor's name as may be necessary to secure the said Client's and/or Guarantor's obligations and indebtedness to the Firm and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Firm's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.
<b>2. Acceptance</b>		
2.1 Any instructions received by the Firm from the Client for the supply of Services and/or the Client's acceptance Services supplied by the Firm shall constitute acceptance of the terms and conditions contained herein.		
2.2 Where more than one Client has entered into this agreement, the Client's shall be jointly and severally liable for all payments of the Price.		
2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the Firm.		
2.4 None of the Firm's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Firm in writing nor is the Firm bound by any such unauthorised statements.		
2.5 The Client undertakes to give the Firm not less than fourteen (14) days prior written notice of any proposed change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice).		
<b>3. Services</b>		
3.1 The Services are as described in the letter of engagement as provided by the Firm to the Client.	14.	<b>Cancellation</b>
3.2 These terms and conditions are to be read in conjunction with the Firm's letter of engagement. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.	14.1	The Firm may cancel these terms and conditions or cancel delivery of Services at any time before the Services are delivered by giving written notice. The Firm shall not be liable for any loss or damage whatever arising from such cancellation.
<b>4. Price and Payment</b>		
4.1 At the Firm's sole discretion:	15.	<b>Privacy Act 1988</b>
(a) The Price shall be as indicated on invoices provided by the Firm to the Client in respect of Services supplied; or	15.1	The Client and/or the Guarantor/s agree for the Firm to obtain from a credit-reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Firm.
(b) The Price of the Services shall (subject to clause 4.2) be the Firm's quoted Price which shall be binding upon the Firm provided that the Client shall accept in writing the Firm's quotation within thirty (30) days.	15.2	The Client and/or the Guarantor/s agree that the Firm may exchange information about Client and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
4.2 Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Firm's quotation and will be shown as variations on the invoice.		(a) To assess an application by Client;
4.3 Time for payment for the Services shall be of the essence and will be stated in the letter of engagement. If no time is stated, then payment shall be on delivery of the Services.		(b) To notify other credit providers of a default by the Client;
4.4 The Firm may withhold delivery of the Services until the Client has paid for them, in which event payment shall be made before the delivery date.	15.3	(c) To exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and
4.5 At the Firm's sole discretion, payment for approved Client's shall be due seven (7) days following the date in which an invoice is posted to the Client's address or address for notices.	15.4	(d) To assess the credit worthiness of Client and/or Guarantor/s.
4.6 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Client and the Firm.		The Client consents to the Firm being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
4.7 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Firm.		The Client agrees that Personal Data provided may be used and retained by the Firm for the following purposes and for other purposes as shall be agreed between the Client and Firm or required by law from time to time:
<b>5. Delivery of Services</b>		(a) provision of Services;
5.1 The failure of the Firm to deliver shall not entitle either party to treat this contract as repudiated.		(b) marketing of Services by the Firm, its agents or distributors in relation to the Services;
5.2 The Firm shall not be liable for any loss or damage whatever due to failure by the Firm to deliver the Services (or any of them) promptly or at all.		(c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services;
<b>6. Risk</b>		(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and
6.1 If the Firm retains property in the Services nonetheless, all risk for the Services passes to the Client on delivery.		(e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
<b>7. Errors and Omissions</b>		15.5 The Firm may give, information about the Client to a credit reporting agency for the following purposes:
7.1 The Client shall inspect the Services on delivery and shall within seven (7) days of delivery notify the Firm of any errors, omissions or failure to comply with the description or quote. The Client shall afford the Firm an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client 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 errors or omissions.	16.	(a) to obtain a consumer credit report about the Client; and or
	16.1	(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
<b>8. Indemnity</b>		15.6 The Firm undertakes to maintain strict confidentiality over the Financial Statements and records in the Firm's possession (including diary notes, working papers etc), which must not be delivered to any other person without the prior consent of the Client excepting by process of law.
8.1 The Client agree to indemnify the Firm, its partners, associates, employees, contractors and any other person who may be sought to be made liable in excess of the limit of liability described in clause 17 in respect of any activity arising from or connected with these terms in respect of any claim of whatever kind, including negligence, that may be made by any person and any costs and expenses that may be incurred by the Firm.		<b>Lien</b>
		Where the Firm has not received or been tendered the whole of the price, or the payment has been dishonoured, the Firm shall have:
<b>9. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts</b>		(a) a lien on the Services;
9.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.		(b) the right to retain them for the price while the Firm is in possession of them;
		(c) a right of resale,
<b>10. Intellectual Property</b>		(d) the foregoing right of disposal,
10.1 The Client warrants that they hold all necessary intellectual property rights in any document or material that are supplied to the Firm for the provision of Services and that there is or will be no infringement of any rights or entitlements held by any third party.		provided that the lien of the Firm shall continue despite the commencement of proceedings or judgement for the price having been obtained.
10.2 The Client indemnifies and holds harmless the Firm for any claims made against it arising from the Firm's use of any material or information supplied by the Client.		<b>17. Liability Limitations</b>
<b>11. Default &amp; Consequences of Default</b>		Under the Professional Standards Act 2004 and the Scheme approved under that Act, the liability of the Firm, its partners, associates and employees or contractors is limited to a maximum sum of \$500,000, where the fee for the engagement is up to \$50,000, or ten times the fee (subject to a \$50 million ceiling) for fees in excess of \$50,000.
11.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.	17.3	The Scheme does not apply to limit our liability arising from any of the following:
11.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Firm from and against all the Firm's costs and disbursements including on a solicitor and own client basis and in addition all of the Firm's nominee's costs of collection.		(a) Death of or personal injury to a person;
11.3 Without prejudice to any other remedies the Firm may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Firm may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. The Firm will not be liable to the Client for any loss or damage the Client suffers because the Firm exercised its rights under this clause.	17.5	(b) Negligence or other fault of a legal practitioner in acting for a client in a personal injury claim;
11.4 If any account remains unpaid at the end of the second month after supply of the Services or services, the following shall apply: An immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.		(c) Breach of trust;
11.5 In the event that:		(d) Fraud or dishonesty; or
(a) any money payable to the Firm becomes overdue, or in the Firm's opinion the Client will be unable to meet its payments as they fall due; or	18.2	(e) Liability which is the subject to proceedings under the Land Title Act 1994, part 9, division 2, subdivision C.
(b) the Client 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	18.3	The exceptions listed above are not exhaustive and may include other situations such as members not meeting the requirements of the Act or the Scheme, for example, non-disclosure of the limitation of their liability, etc.
(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client;	18.4	The Client agrees, to the extent permitted by law, that the liability to the Client of the Firm, its partners, associates and employees or contractors in any way arising from or connected with this engagement including, without limitation, liability for negligence, will be limited to a maximum of \$500,000, where the fee for the engagement is up to \$50,000, or ten times the fee (subject to a \$50 million ceiling), for fees in excess of \$50,000 and the Client realises and indemnifies the Firm, its partners associates and employees or contractors from all claims arising from or connected with the performance or purported performance of any Services arising from or connected with this agreement to the extent any such claim or claims made exceed that limit.
then without prejudice to the Firm's other remedies at law	18.5	The Firm shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach of the Firm of these terms and conditions.
(i) the Firm shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies; and	18.6	<b>General</b>
(ii) all amounts owing to the Firm shall, whether or not due for payment, immediately become payable.		If any provision of these terms and conditions shall be invalid, void or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.