# **Services**

## Kaplan Group Australia Pty Ltd (ACN 660 300 925) (**Kaplan**) is, amongst other things, a company providing various maintenance and cleaning services, including rope access and window cleaning, leak detection, general building maintenance, signage erecting, and such other services which may be provided in the future.

## The services that Kaplan will provide to the Client are set out in a Work Order or are otherwise contained in correspondence from Kaplan to the Client (**Services**). Except for agreed variations to the Services pursuant to clause 3 of this Agreement, Kaplan is not bound to perform works and/or services not included in the Services.

## Kaplan will use its best endeavours to perform the Services and provide any other services otherwise agreed to by the parties from time to time.

## Kaplan will use its best endeavours to complete the Services in accordance with any time frame(s) referred to in the Work Order, but Kaplan is not bound to perform the Services within such time frames.

## Kaplan will use its best endeavours to perform Services involving leak detection but does not provide any guarantee as to accuracy or results of such leak detection.

## Where the Services involve roof access and/or building maintenance, Kaplan is not responsible for certifying, inspecting or warranting the roof access system or building maintenance units (**BMUs**).

## Where the Services involve standard maintenance cleaning, the scope of work does not include the cleaning of frames or façade.

## Where the Services involve standard maintenance cleaning, the scope of work does not include the removal of pre-existing paint splatters, silicone sealant or hard water stains on glass panels and other surfaces.

## The Client certifies that all access points required for industrial rope access comply with all codes, laws and standards. Alternatively, the Client may request that Kaplan provide such certification. In the event Kaplan agrees to such a request, Kaplan will charge an additional reasonable fee for the certification as determined by Kaplan.

## Where the Services involve window cleaning, Kaplan will issue the Client a certificate of completion as soon as possible following the completion of the Services. Once received, the Client must promptly sign and return to Kaplan the certificate of completion.

## The Client acknowledges and agrees to the terms and conditions contained in this Agreement. For the avoidance of doubt the provisions of this Agreement take priority over any other agreement, deed or terms and conditions in relation to the Services and/or engagement of Kaplan by the Client.

# **Access**

## The Client must provide Kaplan with physical access to the working site as is reasonably necessary to enable Kaplan to perform the Services and any associated works and/or services.

# **Price**

## Unless otherwise agreed between the parties (being Kaplan and the Client), the Client acknowledges and agrees that an invoiced amount for the Services may vary from the estimate provided (and may exceed any quoted amount or estimate) due to:

### The volume of the services;

### The complexity of the services; and

### The time needed to provide the Services.

## The Client may issue written or oral variation(s) to the Services. The price of any such variation(s) will be agreed to by both parties, or, failing that, Kaplan will charge a reasonable amount for the variation(s) as determined by Kaplan.

## The Client acknowledges and agrees that the invoiced amount will be adjusted to include the above variations and that it will accept without dispute the revised invoice amount for the Services.

# **Payment**

## The Client must pay the fees, other amounts payable under the Agreement and Work Order and all applicable taxes in accordance with the procedure set out below and/or in the Work Order.

## Kaplan may invoice the Client as per the Work Order and the Client must pay in full and without set-off, deduction, counterclaim, or withholding, within thirty (30) days of the date of the invoice (unless stated otherwise on the invoice).

## Subject to its discretion and any terms and conditions it considers necessary, Kaplan may, upon request, require that the Client pays the invoice in according to specific progress payments.

## If the Client fails to pay any amount due under this Agreement, or any other agreement between the parties, in full and by the relevant due date (including in accordance with the terms of a progress payment arrangement) Kaplan reserves its rights to:

### Suspend the Services under this Agreement or any other agreement between the parties; and/or

### End this Agreement and any other agreement between the parties, by written notice to the Client.

## The Client must pay for any additional works and/or services Kaplan undertakes and any associated liability, cost, penalty or expense Kaplan incurs and sustains as a result of:

### The Client’s failure to pay any amount due under the Agreement; and

### The Client’s ending of the Agreement before Kaplan has finished providing the Services.

## All amounts set out in the Agreement and any other invoices and documents Kaplan provides to the Client that relate to the fees and/or any amounts payable under the Agreement are exclusive of GST and other applicable government taxes, levies or duties unless stated otherwise.

## The amount the Client must pay for any additional services will be calculated in accordance with the hourly rates set for the employees of Kaplan plus any disbursements or as agreed in writing by the parties. For the avoidance of doubt, Kaplan may ask the Client to confirm in writing that the Client agrees to pay for any additional services, and in such circumstances Kaplan is not required to commence these additional services unless and until it receives the Client’s written instruction to proceed.

## The Client must pay a fee for any works and/or services that Kaplan undertakes at the request of the Client which are:

### outside Kaplan’s ordinary business hours; or

### are emergency and/or urgent works that require immediate works and/or services to be undertaken Kaplan,

### (**Callout Works or Services**). The fee for such Callout Works or Services that the Client must pay to Kaplan is $650 (exclusive of GST) per person per hour for a 8 hour minim (unless a different amount is specified by Kaplan in a quote or otherwise). The cost of materials and consumables are not included and will be and additional fee.

## Either the Client or Kaplan may ask for the works and/or services that are set out in a Work Order or are otherwise contained in correspondence Kaplan to the Client to be varied (**Variation**). The fee for such Variation works and/or services that the Client must pay to Kaplan is $125 (exclusive of GST) per person per hour (unless a different amount is specified by Kaplan in a quote or otherwise).

## Interest on all invoiced amounts which are overdue will be payable by the Client at the rate fixed under section 2 of the *Penalty Interest Rates Act* 1983 (Vic) (as may change from time to time) from the date of the overdue amount until the date it is paid.

# **Information**

## The Client agrees to:

### Provide any information, specifications and documents Kaplan may request in order to assist it with providing the Services;

### Assist and cooperate with Kaplan in providing the Services; and

### Answer any reasonable questions Kaplan may have.

## The Client acknowledges and agrees that all information it (or its employees, agents or contractors) provided to Kaplan is complete, accurate and up to date.

## The Client acknowledges and agrees that Kaplan will not check nor verify the information provided to it, and will not accept any liability in connection with, any information the Client provides to Kaplan, save for the information which is required to be checked and verified as part of the Services and/or if there is an obvious error in it.

# **Liability**

## To the maximum extent permitted by law, the Client indemnifies Kaplan, its directors, officers, employees, and agents from and against any and all liability, losses, damages, costs and expenses in each case of any kind whatsoever (including legal expenses), due to:

### Loss or damage to any property; or

### Personal injury or death,

## to the extent contributed to or caused by a breach of this Agreement by the Client or by the Client’s Personnel or by the negligent or unlawful act, error or omission of the Client, or of the Client’s Personal arising from or in connection with this Agreement.

## To the maximum extent permitted by law, the Client indemnifies Kaplan for all liability, losses, damages, costs and expenses in each case of any kind whatsoever (including legal expenses), arising out of the Client’s failure to ensure that site conditions, buildings and associated infrastructure comply with relevant codes, laws or standards.

## To the maximum extent permitted by the law (including the provisions of the *Competition and Consumer Act* 2010 (Cth)), Kaplan’s liability to the Client arising out of or in connection with the performance or non-performance of the Services and/or this Agreement (whether under the law of contact, tort, equity, statute or otherwise) shall be capped at and limited in aggregate to the amount of fees paid by the Client to Kaplan under this Agreement over the 12 month period prior to the incident occurring.

## To the maximum extent permitted by the law (including the provisions of the *Competition and Consumer Act* 2010 (Cth)):

### Kaplan is not liable to the Client in respect of any and all indirect, consequential or special loss (including but not limited to loss of profit or revenue, loss of use, loss of goodwill, loss of savings, financing costs, increased operating costs, loss of business opportunity and the payment of liquidated sums or damages under any agreement or contract or any other consequential or indirect loss and damage) in each case of any kind whatsoever; and

### Kaplan is deemed to be discharged from all liability in respect of or arising out of or in connection with the performance of the Services or non-performance of the Services and/or this Agreement (whether under the law of contact, tort, equity, statute or otherwise) at the expiration of the earlier of one (1) year from the completion of the Services or one (1) year from the termination of this Agreement.

### Kaplan in providing its Services is not liable for any existing damage including scratches and marks on windows and other surfaces.

### Kaplan is not liable for any damage caused by weather events occurring after the completion of the Services.

### Where the Services involve window cleaning, Kaplan is not liable for any claim or issue with the services or goods that is not noted by the Client expressly on the certificate of completion.

### The Client acknowledges that rope access to the site may cause damage including scratching and abrasions to surfaces and materials, and the Client agrees that Kaplan is not and shall not be liable for any such damage.

# **Confidentiality**

## All information a party provides to the other party is confidential and must not be disclosed to any other person (unless the disclosure is required by law), without the prior consent of the other party.

# **Termination**

## Kaplan may end this Agreement, at any time, by giving the Client fourteen (14) day’s written notice.

## If the Agreement is terminated under clause 8(a), the Client acknowledges and agrees that Kaplan may send an invoice for the Services undertaken by Kaplan up to and including on the date of termination and the Client acknowledges and agrees that it must pay to Kaplan:

### For all of the Services provided up to and including the date of termination;

### All disbursements incurred by Kaplan up to and including the date of termination; and

### Any costs and expenses reasonably incurred (as determined by Kaplan) by Kaplan by reason of the termination.

## If the Client refuses and/or fails to make payment in full to Kaplan pursuant to clause 8(b), Kaplan may withhold from the Client any and all of its Services until the Client complies with its obligations under clause 8(b).

# **Termination for default**

## Either party may terminate this Agreement by written notice to the other party of a material breach of this Agreement (which includes a failure to pay any amount due under this Agreement), if the other party fails to remedy that breach within fourteen (14) Business Days’ of the service of the notice specifying the breach.

## Kaplan may immediately terminate this Agreement by written notice to the Client if the Client enters or threatens to enter into bankruptcy, liquidation or analogous type of insolvency or (in the opinion of Kaplan) if the Client ceases to conduct its business.

# **General**

## If there is any inconsistency between these terms and conditions and any other document or oral and/or written agreement between the parties, these terms and conditions will prevail to the extent of any inconsistency.

## If any of these terms and conditions may be invalid, unenforceable or void (in whole or in part) the relevant term must be read down, to the maximum extent possible, as is necessary to ensure their validity.

## “Including” should be read to mean “including but not limited to”.

## This agreement can only be amended by way of a written document signed by both parties.

## Kaplan can only waive its rights arising from or in connection with the Agreement by a written document signed by one of its directors.

## The Client indemnifies Kaplan against any claim by, or in relation to a third party, arising from, in respect of, or in connection with the Services and all expenses Kaplan sustain or incur in defending or settling such claim or liability.

## This Agreement is governed by and interpreted in accordance with the laws applicable in the State of Victoria and Kaplan and the Client agree to submit to the non-exclusive jurisdiction of the courts of the State of Victoria.

## This Agreement contains the entire understanding between the parties concerning its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

# **Force Majeure**

## Kaplan is not liable to the Client and will not be deemed to be in breach of this Agreement by reason of any delay in performing, or any failure to perform, any of Kaplan’s obligations in relation to the Services if the delay or failure was due to any cause beyond the reasonable control of Kaplan (including as a consequence of adverse weather conditions rendering performance of the Services unsuitable, unsafe and/or impossible, or as a consequence of COVID-19 or related government or authority lock-downs or restrictions).

## In the event of delay in performance of the Services due to any cause beyond the reasonable control of Kaplan, Kaplan will be granted a reasonable extension of time to enable it to perform the Services for the Client.

# **Definitions**

## ‘**Agreement**’ means this document and the terms and conditions contained herein.

## ‘**Business Day**’ means calendar day but excludes public holidays as defined by the governing law of this Agreement and excludes weekends.

## ‘**Client**’ means the person or entity to whom Kaplan provides the Services and whose name and address appears on Kaplan’s proposal or scope of services.

## ‘**Client’s Personnel**’ means the Client’s directors and officers, employees, agents (including any owners corporation manager), shareholders, successors and assigns.

## ‘**Services**’ means the services and/or works set out in the Proposal Document or as otherwise agreed by the parties.

## **‘Work Order**’ means the document provided to the Client by Kaplan which includes (amongst other things) a breakdown of the Services and the associated fees.