

Subcontractor Services Agreement

Deed of Supply

Deed dated _____

Between _____ **'Subcontractor'**,

ABN _____

of (address) _____

in favour of **Finsbury Green Pty Ltd 'Company'** (ABN 52 007 743 151)

Signed of behalf of **Finsbury Green** by its duly authorised officer.

Signed _____

Name _____

Title _____

Date _____

Signed of behalf of **the Subcontractor** by its duly authorised officer.

Signed _____

Name _____

Title _____

Date _____

Terms and Conditions

1 Scope

- 1.1 This Agreement governs the purchase and supply of the goods and/or services described in Schedule A ('Subcontractor Services') as required by Finsbury Green in order to fulfil its obligations to its Customer.
- 1.2 The Subcontractor acknowledges that Finsbury Green is reliant on the Subcontractor's provision of the Subcontractors Services in order for Finsbury Green to fulfil its obligations for the supply of the goods and/or services to the Customer.
- 1.3 During the term of this Agreement set out in Schedule A ('Term'), the Subcontractor will provide to Finsbury Green, the Subcontractor Services required by Finsbury Green.
- 1.4 The terms and conditions of this Agreement shall override any standard terms and conditions of the Subcontractor.
- 1.5 Finsbury Green is not obliged to purchase the Subcontractor Services from the Subcontractor nor guarantee any specific volume of work.

2 Purchase Orders

- 2.1 Finsbury Green may place orders for the Subcontractors Services by issuing the Subcontractor with a purchase order in the form used by Finsbury Green from time to time ('Purchase Order').
- 2.2 The Subcontractor will process Finsbury Green's Purchase Order immediately on receipt. The Subcontractor shall be deemed to have accepted the Purchase Order unless the Purchase Order has been declined , within one (1) business day of receipt by the Subcontractor of the Purchase Order.
- 2.3 The Subcontractor acknowledges that Finsbury Green is not obliged to issue any Purchase Order, does not guarantee any volume of business for the Subcontractor, does not commit to ordering any minimum quantity or value from the Subcontractor and will not undertake any Subcontractor Services without a Purchase Order from Finsbury Green.
- 2.4 Finsbury Green reserves the right to cancel at any time any Purchase Order, which may be in progress. The Subcontractor shall document the costs incurred by the cancellation of a Purchase Order in progress and submit to Finsbury Green for review, authorisation and payment. Finsbury Green will pay such costs unless Finsbury Green considers, in its sole discretion but after consultation with the Subcontractor, such costs (or part of such costs) could have reasonably been mitigated by the Subcontractor.
- 2.5 Should an adjustment to the value of a Purchase Order be required after the Purchase Order is issued due to additional costs being incurred by the Subcontractor as result of (for example but not limited to) author's corrections or revised quantities, the adjustment must be communicated to Finsbury Green (in the form of a variation within **sourceit**). Finsbury Green will accept or decline the variation within **sourceit** and a new Purchase Order will be issued, but will not unreasonably decline the variation, for example if the reasons for the variation are beyond the reasonable control of the Subcontractor (such as in the examples cited earlier in this clause).

3 Substrate and materials

- 3.1 The Subcontractor warrants that it will not use any substrate or other materials (for example but not limited to) paper, inks, varnishes, plates or packaging materials other than the substrate or materials specified by Finsbury Green in the Purchase Order or unless otherwise approved in writing by Finsbury Green.
- 3.2 Any unauthorised use of substrate or materials shall constitute a material breach of the Agreement, and Finsbury Green may, in its sole discretion, require the Subcontractor to:
 - (a) Stop production until Finsbury Green is satisfied that the correct substrate or material is being used; or
 - (b) Require a rework to be made using the substrate or material originally specified.
- 3.3 The Subcontractor shall bear any costs associated with rectifying this breach.

4 Pricing

4.1 Prices for the Subcontracted Services shall be submitted within **sourceit**.

5 Standard of services

- 5.1 The Subcontractor Services will comply with the service levels set out in Schedule B ('Service Levels'), the Purchase Order or as otherwise agreed by the parties in writing from time to time ('Specification'). In the event Finsbury Green, acting reasonably, believes the Subcontractor Services do not meet the Service Levels, Purchase Order or Specification, Finsbury Green may require the Subcontractor to resupply the Subcontractor Services at no additional cost to Finsbury Green.
- 5.2 Finsbury Green, from time to time, may request and jointly agree with the Subcontractor changes or additions to the Service Levels contained in Schedule B.
- 5.3 The Subcontractor will allow Finsbury Green, on reasonable notice and at a mutually agreeable time to perform inspections and quality assurance or environmental performance audits of the Subcontractors facilities and/or to inspect the Subcontractor Services at any stage of production or delivery. This clause 5.3 is read subject always to any confidentiality obligation the Subcontractor may owe any of its own customers and Finsbury Green acknowledges that the Subcontractor may reasonably refuse Finsbury Green's request to conduct an inspection or audit to the extent and insofar as this may breach the Subcontractor's confidentiality obligations.
- 5.4 The Subcontractor warrants that:
- (a) The Subcontractor and its employees engaged in providing the Subcontractor Services have the necessary and appropriate skills, capabilities, resources and experience to provide the Subcontractor Services to the standard required; and
 - (b) The Subcontractor Services will be rendered with due care and skill and that any materials supplied in connection with the Subcontractor Services will be of merchantable quality, fit for purpose, free from defect and complete in their entirety, notwithstanding Clause 3 of this Agreement.
- 5.5 Without prejudice to any other rights or remedies that Finsbury Green may have, Finsbury Green acting reasonably may reject any part of the Subcontractors Services after completion of the Subcontracted Services, if those Subcontractor Services or that part of the Subcontractor Services do not comply with the requirements of this Agreement subject to the Subcontractor being given reasonable opportunity to inspect and confirm the defect is the result of the Subcontractor Services.
- 5.6 The Subcontractor shall, where Finsbury Green requires, at its own risk and expense, rework Subcontractor Services rejected under clauses 5.1 or 5.5 to comply with the requirement of this Agreement, within twenty four (24) hours, or such other timeframe as agreed in writing between the parties, of notice of rejection from Finsbury Green.
- 5.7 Initial receipt of the Subcontractor Services at the point of delivery may be signed for as unexamined and this shall not affect Finsbury Green's rights subsequently to reject those Subcontractor Services under this Agreement. Where subsequent inspection identifies that the Subcontractor Services fail to comply with the requirements of this agreement, then, subject to the Subcontractor being given all reasonable opportunities to inspect and confirm the identified defect, the Subcontractor shall make good the deficiency, of notice from Finsbury Green of the deficiency, in accordance with clause 5.6 above.
- 5.8 Where Finsbury Green supplies the Subcontractor with printed product or materials in order for the Subcontractor to supply the Subcontractor Services under this Agreement, the following sub-clauses apply:
- (a) Finsbury Green must ensure that materials supplied are fit for purpose (for example but not limited to) appropriate quality and correct quantity;
 - (b) sufficient quantities of such materials must be supplied to enable the Subcontractor to supply the Subcontractor Services allowing, where applicable, for a reasonable amount of wastage;
 - (c) such materials must be supplied by the time notified by the Subcontractor. If materials are not supplied by such time, then the Subcontractor must still use all reasonable endeavours to supply the Subcontractor Services by the time required by Finsbury Green, but Finsbury Green acknowledges that its timeframes may need to be adjusted in these circumstances;
 - (d) either Finsbury Green or its Customer (as the case may be) is responsible for the content and accuracy of the materials supplied; and
 - (e) without limiting paragraph (d), Finsbury Green warrants that any such material will not contain anything illegal, obscene, defamatory or offensive nor will it infringe the copyright or other protected right of any person.

5.9 Where inspection by the Subcontractor draws attention to the printed product or materials delivered by Finsbury Green to be deficient in any respect then, subject to Finsbury Green being given all reasonable opportunities to inspect and confirm the deficiency, Finsbury Green shall make good the deficiency, of notice from the Subcontractor of the deficiency.

5.10 Finsbury Green shall not be responsible for the cost of delays or downtime due to late or deficient materials supplied by the Subcontractor under this Agreement.

6 Subcontractor notification of despatch & supply of samples.

6.1 The Subcontractor must send to Finsbury Green confirmation via **sourceit** confirming the despatch of goods within two (2) business hours of despatch and supply up to 20 samples at no additional cost.

7 Production or service delays

7.1 The Subcontractor must, immediately on becoming aware of anything that is likely to or which shall result in a delay in the provision of the Subcontractor Services, notify Finsbury Green of such and provide details of:

- (a) The exact nature of the problem; and
- (b) The cause of the problem; and
- (c) Steps being taken to minimise or remove the problem.

7.2 If the Subcontractor cannot achieve the original delivery date as stated on the Purchase Order and an alternate date can not be agreed between Finsbury Green and the Subcontractor, then Finsbury Green can cancel the Purchase Order at no cost to Finsbury Green and source subcontractor services from an alternate supplier and charge the Subcontractor any increased costs or offset increased costs against their account.

8 Packaging, labelling and delivery of consignments

8.1 Finsbury Green will detail delivery address, product unitising and packaging requirements for the goods on the Purchase Order.

8.2 All consignments must be accompanied by a delivery docket that includes (at a minimum) the following information as is specified on the Purchase Order:

- (a) Supplier name; and
- (b) Finsbury Green Purchase Order number; and
- (c) Item code; and
- (d) Item description; and
- (e) Version date; and
- (f) Unit of measure (UOM); and
- (g) Total quantity (in UOM) of goods contained in the consignment; and
- (h) Number of packages, eg 1 of 10 cartons etc; and
- (i) Number of packages contained in the consignment; and
- (j) Any other reference codes as may be specified as required on the Purchase Order.
- (k) If the consignment constitutes a part delivery of the Subcontractor Services, the total balance outstanding of the delivery must be clearly indicated and an advanced despatch notice in a format and manner as requested must be supplied on a job by job basis.

8.3 Where the Purchase Order specifies that goods are to be delivered to locations included in Schedule C, or as otherwise specified by Finsbury Green and accepted by the Subcontractor ('Consignment Packing and Delivery Requirements'), then the Subcontractor must comply with the requirement of Schedule D.

8.4 Finsbury Green or the Customer may at its own discretion reject delivery of any goods that do not meet the requirements detailed on the Purchase Order or the requirements as specified in this Clause 8. Should a delivery be rejected pursuant to the Clause 8 the Subcontractor will meet all reasonable costs and expenses incurred for the repacking, relabelling and redelivery of the goods.

8.5 The Subcontractor agrees to supply the quantity of good as shown on the applicable Purchase Order, Finsbury Green is under no obligation to accept or pay for oversupply of goods without prior agreement in writing or a revised Purchase Order being supplied by Finsbury Green.

9 Customer contact

9.1 Unless otherwise requested or consented to by Finsbury Green, the Subcontractor must not have any meetings, dealings or discussions directly with the Customer.

- 9.2 In recognition of the confidentiality of Finsbury Green’s Customer relationships and in consideration of Finsbury Green’s engagement of the Subcontractor for the Subcontractor Services, during the term of this Agreement and for a period of twelve (12) months following the expiry or termination of this Agreement the Subcontractor will not make any contact with nor provide any goods or services to a Customer to whom the Subcontractor has provided Services to under this Agreement or has been introduced to or made aware of by Finsbury Green without prior approval in writing from Finsbury Green.
- 9.3 In the event that:
- (a) The Subcontractor had an existing relationship with a Customer immediately prior to the commencement of this Agreement the Subcontractor must advise Finsbury Green in writing within twenty four (24) hours of receiving a Purchase Order to produce goods for the Customer in question; or
 - (b) Finsbury Green forms a future relationship with a Customer for which the Subcontractor is at that time providing Services directly to the Customer the Subcontractor must advise Finsbury Green in writing within twenty four (24) hours of receiving a Purchase Order to produce goods for the Customer in question; and
 - (c) Finsbury Green’s agreement with the Customer ceases during the Term of the Agreement or with twelve (12) months of the expiry or termination of this Agreement, then the restraint contained in Clause 9.2 above shall not apply.
- 9.4 Finsbury Green may recover from the Subcontractor its reasonable costs (including but not limited to the loss of profits borne by Finsbury Green) in enforcing this Agreement or preventing its breach by the Subcontractor. This Clause 9 does not limit Finsbury Green’s other rights under common law, equity or statute) about use of confidential information as is stated in Clause 12 of the Agreement and competition of Subcontractors

10 Invoicing and payment

- 10.1 The Subcontractor must complete all milestones in Printools including submitting a Tax Invoice number into the appropriate field in Printools. This will then trigger the payment process to the supplier from Finsbury Green.
- 10.2 Upon being awarded a job from Printools, Finsbury Green will provide a Recipient Created Tax Invoice (RCTI) to the Subcontractor for the goods and services required.
- 10.3 Subject to the acceptance of the Subcontractor Services as outlined in Clause 5 Finsbury Green shall pay the Subcontractor on receipt of a correctly rendered Tax Invoice within sixty (60) days from the end of the month or as prescribed in the table below.

Calendar Days from EOM that Payment is to be paid to Subcontractor for Goods and Services supplied	Settlement Discount as a (%) percentage
Calendar Days from EOM job is awarded	

- 10.4 Finsbury Green may withhold or setoff any payments due to the Subcontractor against any monies or debts owing by the Subcontractor to Finsbury Green under this agreement.
- 10.5 Ownership of all goods shall pass to Finsbury Green on delivery.
- 10.6 Where an invoice is disputed each party shall promptly consult and cooperate with the other party to resolve the dispute within five (5) business days. Finsbury Green shall not be required to pay the disputed component of any invoice until such time as the dispute is resolved but must pay the undisputed component in accordance with clause 10.2 above.

11 Confidential information and privacy

- 11.1 The Subcontractor shall not disclose, advertise or publish the existence or terms of, or transactions under, this Agreement without Finsbury Green's prior written consent.
- 11.2 All information (regardless of form) relating to Finsbury Green, the Customer and the Subcontractor including (but not limited to) this Agreement, internal plans, customer, products, pricing of products and/or services, methods, practices, strategies and the like shall be treated by both the Subcontractor and Finsbury Green as confidential and shall at all times remain the property of the party who supplied the information. The recipient of such information shall not misuse or disclose such information except to its employees on a need to know basis as required to comply with the obligations under this Agreement.
- 11.3 The Subcontractor will adhere to the Privacy Laws in connection with the Subcontractor's provision of the Subcontractor Services.
- 11.4 The Subcontractor and Finsbury Green shall maintain and shall ensure that each of its employees, agents and contractors maintain strict confidentiality of all confidential information and Personal Information disclosed to or received by each of them in the course of the Subcontractor Services and not to use or disclose any such confidential information or Personal Information to any third party without the other party's prior written consent.
- 11.5 Each party receiving confidential information indemnifies the party supplying confidential information from and against all claims, liabilities, demands, fines, costs or expenses to the extent caused by a breach of the Privacy Laws or confidentiality in this Agreement by the receiving party or its employees, agents and contractors, except for any breach occurring in complying with the requirements of this Agreement or where disclosure is required by law.
- 11.6 Where databases containing personal information including but not limited to name, address and phone number are supplied during the process of completing Subcontractor Services both Finsbury Green and the Subcontractor must delete these from their systems once the job has been completed.
- 11.7 In the Clause, 'Privacy Laws' mean the Privacy Act 1988 (Clth.) as amended and 'Personal Information' has the meaning given by the Privacy Laws.

12 Reporting and review meetings

- 12.1 The Subcontractor shall render to Finsbury Green such reports on performance against Service Levels as contained in Schedule D of this agreement as well as any other reports that are reasonably required to meet Finsbury Green's reporting obligations to the Customer. The Subcontractor's nominated contact person shall attend such meetings as may be reasonably required by Finsbury Green to discuss the reports.

13 Termination

- 13.1 Finsbury Green may terminate this Agreement on written notice to the Subcontractor at any time if Finsbury Green's contract with the Customer is terminated for any reason. The Subcontractor may terminate this Agreement on the provision of ninety (90) days written notice.
- 13.2 Finsbury Green reserves the right to cancel at any time any Purchase Order which may be in progress. If a Purchase Order is so cancelled, the Subcontractor shall document the costs incurred by the cancellation of the Purchase Order in progress and submit to Finsbury Green for authorisation and payment (which may include press downtime to the extent the Subcontractor is reasonably unable to rebook press time reserved for completion of the Purchase Order, and costs of unused paper or other materials the Subcontractor has purchased but is reasonably unable to reuse for other customers of the Subcontractor). Finsbury Green will pay such costs unless Finsbury Green considers, in its sole discretion and after consultation with the Subcontractor, such costs (or part of such costs) could have been mitigated by the Subcontractor.
- 13.3 Either party may terminate this Agreement, in whole or in part, immediately in the event that the other party:
- (a) Breaches a material obligation under this Agreement and fails to remedy the same within seven (7) days of receiving notice of the breach to the reasonable satisfaction of the first party; or
 - (b) Enters bankruptcy or is subject to any form of insolvency or administration; or
 - (c) Is taken over or is subject to a significant change in shareholding or control.

- 13.4 On termination the Subcontractor will immediately cease work and mitigate its losses. The Subcontractor will deliver to Finsbury Green all goods then completed, all work in progress, all artwork, together with any other materials necessary for Finsbury Green or a third party to complete the provision of the Subcontractor Services.
- 13.5 Finsbury Green will only be liable for reasonable costs incurred by the Subcontractor for work in progress for which there is an accepted Purchase Order at the date notice of termination is given by Finsbury Green to the Subcontractor.

14 Compensation

- 14.1 If:
- (a) the Subcontractor cancels an accepted Purchase Order; or
 - (b) this Agreement is terminated by Finsbury Green pursuant to Clause 13.3 where the Subcontractor has not yet completed an accepted Purchase Order; or
 - (c) the Subcontractor is unable to meet their obligations under this Agreement for an accepted Purchase Order; and;
 - (d) as a result of the relevant circumstances in paragraph (a) to (c), Finsbury Green needs to procure goods or services from another subcontractor at higher prices than those in the accepted Purchase Order in order to complete the job the subject of the accepted Purchase Order, then the Subcontractor shall indemnify Finsbury Green for any direct losses or extra direct costs Finsbury Green reasonably incurs in procuring goods or services from another subcontractor. Finsbury Green can charge the Subcontractor any increased costs or offset increased costs against their account. Finsbury Green's right to enforce the indemnity in this Clause 14.1 will only arise where it can demonstrate to the reasonable satisfaction of the Subcontractor that it used all reasonable endeavours to minimise its losses or extra costs (including costs it was legitimately and reasonably required to pay to the Customer). If this clause is enacted then clause 25 shall not apply.

15 Cooperation and assistance

- 15.1 The Subcontractor must at all times, and at its cost, proactively cooperate with Finsbury Green (and Finsbury Green's other subcontractors) in relation to the performance by Finsbury Green of its obligations to the Customer. The Subcontractor shall not in the supply of Subcontractor Services or its performance of obligations under this Agreement knowingly do or omit to do any act, matter or thing which might cause Finsbury Green to be or become in default of its obligations to the Customer.
- 15.2 The Subcontractor must promptly and at no cost to Finsbury Green make available such reasonable resources and supply such necessary information and documentation as may be reasonably required by Finsbury Green in relation to the Subcontractor Services.
- 15.3 The Subcontractor must give access during business hours on reasonable notice and at a mutually agreed time to any documents and records relating to the Subcontractors Services as will be reasonably required in order for Finsbury Green and/or the Customer to specifically audit the Subcontractors compliance with the Agreement for example, in relation to compliance of the Subcontractor Services against Service Levels, compliance by the Subcontractor with its duties and obligations under this Agreement and whether the provision of the Subcontractor Service by the Subcontractor complies with any applicable regulatory and compliance requirements.

16 Ownership of intellectual property

- 16.1 The Subcontractor agrees that ownership of intellectual property rights in the goods and/or services developed or created during the course of and as a result of the Subcontractor Services shall vest in Finsbury Green or the Customer as Finsbury Green may specify.
- 16.2 The Subcontractor will ensure that Finsbury Green or the Customer (as Finsbury Green may specify) obtains ownership of all intellectual property rights developed or arising after the commencement date of this Agreement if any:
- (a) New product and any modifications to existing products (whether those existing products are owned by the Subcontractor or otherwise) developed by the Subcontractor for the Subcontractor Services at Finsbury Green's or the Customer's request and cost; or
 - (b) New artwork or design or modifications to existing artwork or design developed by the Subcontractor in connection with the provision of any goods for Finsbury Green or the Customer at its request and cost including obtaining such intellectual property rights in the name of the Subcontractor and assigning or procuring the assignment of those rights to Finsbury Green or the Customer.

16.3 The Subcontractor acknowledges and agrees that any intellectual property developed in accordance with this Clause 16 shall not be used by the Subcontractor in its dealings with its other customers except where otherwise agreed by Finsbury Green or the Customer.

17 Use of names and marks

17.1 The Subcontractor must ensure that its officers, employees, agents and subcontractors do not use, trade marks, service marks or logos of Finsbury Green or the Customer, except with the prior written consent of the other party, which consent may be granted, withheld or made conditional in the absolute and unfettered discretion of that other party.

17.2 The Subcontractor shall ensure that no publicity relating to this Agreement or its relationship with the Customer, shall take place without the prior consent of Finsbury Green.

18 Insurance

18.1 During the currency of the Agreement the Subcontractor shall take out and maintain insurance policies with a reputable insurer for the following:

- (a) Workers' Compensation Insurance for those representative who are employees who provide the Subcontractor Services to at least the amount required by laws applicable in each relevant State and any other awards or industrial agreements applicable to be Subcontractor or its employees; and
- (b) General Liability (Public and Product) Insurance for an amount of not less than \$10 million per event.

18.2 The Subcontractor shall on request provide Finsbury Green a certificate of currency of such insurances. This is an essential term of this Agreement.

19 Occupational health and safety

19.1 The Subcontractor shall ensure that:

- (a) Its personnel do not carry out any of the Subcontractor Services unless it is safe to do so; and
- (b) All aspects of the Subcontractor Services are provided safely having regard to the health and safety of all persons that may be affected; and
- (c) Its personnel first assess the safety of providing the Subcontractor Services any incidental work, and that they do not carry out any of the services or any incidental work if they consider that it is not safe to do so.

19.2 The Subcontractor is aware of its obligations under the Occupational Health and Safety Act (VIC), Occupational Health, Safety and Welfare Act (SA), Occupational Health and Safety Act (NSW), ACT Occupational Health and Safety Act (ACT) its regulations and associated legislation ('the Acts'). The Subcontractor warrants that it shall, at all time when performing the Subcontractor Services, comply with all of its obligations under the Acts.

19.2 The Subcontractor acknowledges that Finsbury Green and the Customer rely on the expertise of the Subcontractor and its personnel to determine whether it is safe to provide the Subcontractor Services:

- (a) The Subcontractor must ensure its personnel are expressly informed of the requirements of this Agreement and of any other matters relating to occupational health and safety.
- (b) The Subcontractor must ensure that its personnel are adequately and regularly trained on matters of occupational health and safety, both when they are initially employed and thereafter on a regular basis.
- (c) The Subcontractor must ensure that appropriate occupational health and safety systems, processes and procedures are in place irrespective of whether or not there are systems, processes or procedures developed, required or recommended by the Subcontractor for the provision of the Subcontractor Services.

20 Environmental compliance

20.1 The Subcontractor is aware of its obligations under the Environmental Protect Act (VIC), Environmental Protection Act (SA), Protection of the Environment Operations Act (NSW), Environmental Protect Act (ACT) its regulations and associated legislation ('the Acts'). The Subcontractor warrants that it shall, at all time when performing the Subcontractor Services, comply with all of its obligations under the Acts.

20.2 The Subcontractor acknowledges the importance Finsbury Green places on environmental reform in the printing and related industries. To that end the Subcontractor shall ensure that they attain a Finsbury Green Star Rating by cooperating and supplying information to complete the online questionnaire on Finsbury Green's website and that the responses given are truthful and accurate in accordance with the terminology outlined within the questionnaire.

20.3 The Subcontractor shall render to Finsbury Green a Finsbury Green Star Rating Report as a true and accurate record of the Subcontractors environmental performance, as reasonably required to meet Finsbury Green's reporting obligations to the Customer.

21 Taxes

21.1 Except as otherwise stated in this Agreement all pricing specified in a Purchase Order is inclusive of all applicable taxes, duties, insurance, packing costs and other charges related to the Subcontractor Services with the exception of GST.

21.2 Finsbury Green will provide a RCTI to the Subcontractor in a form which complies with the GST Law before any GST Amount is paid.

21.3 The Subcontractor will provide Finsbury Green with a Tax Adjustment Note when credits, claims or discounts are applicable in a form which complies with GST Law.

21.4 In this Clause 21 'GST Law' has the meaning given by A New Tax System (Goods and Services Tax) Act 1999 and the expressions 'Taxable Supply' and 'GST' have the meaning given by the GST Law. 'GST Amount' means the amount of GST payable in respect of a Taxable Supply calculated by applying the appropriate rate of GST in accordance with GST Law.

22 Conflict of interest

22.1 For the purposes of this Clause 22 a 'Conflict of Interest' is an activity or interest which is in conflict with providing the services to Finsbury Green or to the Customer fairly and independently including because of the Subcontractor's or its personnel's business interests, but does not include merely offering or providing service to Finsbury Green's or the Customer competitors.

22.2 The Subcontractor warrants that, to the best of its knowledge, information and belief that no Conflict of Interest exists or is likely to arise in the performance of its obligations under this Agreement.

22.3 Where during this Agreement, a Conflict of Interest or risk of Conflict of Interest has arisen, the Subcontractor undertakes to notify Finsbury Green immediately in writing of the Conflict of Interest.

22.4 The Subcontractor will take all reasonable measures to ensure that it and its personnel do not, during the term of this Agreement, engage in any activity or acquire an interest that would create a Conflict of Interest.

23 Relationship

23.1 Finsbury Green and the Subcontractor are independent contractors and are not in a partnership, franchise, joint venture, agency, employer/employee relationship. The Subcontractor is not an agent of Finsbury Green for any purpose and may not make any legal commitment on behalf of Finsbury Green unless expressly authorised in writing. The Subcontractor must not knowingly do or allow too happen anything that may cause detriment to Finsbury Green in the performance of its obligations to the Customer.

23.2 The Subcontractor shall be solely responsible for the management of its personnel and the payment of salaries or wages, PAYG tax, tax instalment deductions, annual leave, long service leave, sick leave, worker's compensation insurance and employees' liabilities and employment termination.

24 Subcontracting of services

24.1 The Subcontractor must not subcontract the provision, in its entirety, of any Subcontractor Services in relation to a Purchase Order issued by Finsbury Green to a third party without the prior written consent of Finsbury Green, which Finsbury Green in its complete discretion will determine. For the avoidance of doubt, this does not limit the ability of the Subcontractor to subcontract a component of the services (for example for production finishing or embellishment) subject to the provisions of Clauses 24.2 and 24.3 in this Agreement.

24.2 The Subcontractor must not assign or subcontract any of its obligations under this Agreement without prior written consent of Finsbury Green, which Finsbury Green in its complete discretion will determine.

24.3 If Finsbury Green permits the Subcontractor to assign or subcontract the whole or part of the Agreement, the Subcontractor shall remain liable for the performance of the obligations under this Agreement and shall require the new subcontractor to enter into and agree to provision no less onerous than those contained in this Agreement.

25 Indemnity

- 25.1 Subject always to applicable law (including Part IVAA of the *Wrongs Act* (Vic)) the Subcontractor will indemnify Finsbury Green and the Customer against any direct: loss, liability, actions, claims, demands, damages, costs and expenses incurred or suffered to the extent it is caused by the Subcontractor's negligence or breach of this Agreement, or by negligence of its employees, agents and contractors except to the extent such loss, liability, actions, claims, demands, damages, costs and expenses is caused by an act or omission of Finsbury Green, the Customer or a third party. Finsbury Green's right to enforce the indemnity in this Clause 25.1 will only arise where it can demonstrate to the reasonable satisfaction of the Subcontractor that it used all reasonable endeavours to minimise the losses, liabilities, actions, claims, demands, damages, costs and expenses. This clause will survive the termination of this Agreement.
- 25.2 Without limiting Clause 25.1, the Subcontractor will indemnify Finsbury Green for any price credits or other service level penalties incurred by Finsbury Green under its contracts with its Customers as a result of a failure by the Subcontractor to comply with the agreed Service Levels.

26 General

- 26.1 **Notices.** Any notice given under the Agreement must be in writing. Notices may be sent by normal mail, postage prepaid. Any facsimile or email notice must be followed within three (3) days by a postal notice. All notices shall be effective when received at the address for a party specified in this Agreement or otherwise notified in writing.
- 26.2 **Terms Confidentiality.** The Terms of this Agreement and Schedules attached are commercial in confidence between Finsbury Green and the Subcontractor and are not to be disclosed to any other party without prior written approval by Finsbury Green.
- 26.3 **Waiver.** Only the authorised representatives of a party may amend or waive provisions of this Agreement and such amendments or waiver shall be in writing and signed by both parties. If either party fails to enforce any term of this Agreement, failure to enforce on that occasion shall not prevent enforcement on any other occasion.
- 26.4 **Control.** The Subcontractor will notify Finsbury Green immediately if there is a change of ownership or control (effective or otherwise) of the Subcontractor. Finsbury Green shall have the right at the time to terminate this Agreement if there is a change in the ownership or control (effective or otherwise) of the Subcontractor.
- 26.5 **Force Majeure.** Neither party will be liable for any failure to perform or delay in performance of any obligation in this agreement where such failure or delay is due to anything beyond the reasonable control of the party, including adverse weather or terrain, industrial action, power or data transmission failures or import/export regulations or embargoes. This clause 26.5 does not apply to any payment of money.
- 26.6 **Illegality.** If part or all of any clause in this agreement is illegal or unenforceable, that clause will be severed From this agreement and the remaining clauses will continue in force.

27 Dispute resolution

- 27.1 **Good faith resolution.** The parties will use their reasonable endeavours acting in good faith to resolve any disputes in respect of the matters arising under this Agreement between them as soon as reasonably possible. Any dispute that cannot be resolved by the parties within a reasonable time will be referred to the relevant senior management representative of each party who will meet to resolve the issue through good faith negotiation. If they are unable to resolve the dispute within a period of five (5) business days, or if the parties agree at an earlier stage, the dispute shall be referred to a mediator.
- 27.2 **Mediation.** The mediator will have appropriate qualifications and practical experience to resolve the particular dispute and such appointment shall be agreed by the parties within three (3) business days of the decision to refer the matter to a mediator. In the event of a failure to agree on the mediator, a mediator will be appointed by an appropriate officer of the Law Institute of Victoria on the application of either party.
- 27.3 **Provision of information.** The parties will provide the mediator within a reasonable time to a request, with all the documentation reasonably requested by him or her relating to the particular dispute concerned, under such confidentiality obligations as reasonable under all the circumstances.

- 27.4 **Timeframe for resolution of dispute.** The mediator shall be required by the parties to use all reasonable endeavours to resolve the dispute within ten (10) business days following receipt of the information requested or if this is not possible as soon thereafter as may reasonably be practical and the parties shall cooperate as soon thereafter as may reasonably be practical and the parties shall cooperate fully with the mediator to achieve this objective.
- 27.5 **Equitable relief.** For the avoidance of doubt, this Clause 27 provides a form of alternative dispute resolution and is not a reference to arbitration, but no action or proceeding can be taken or instituted by a party without completing the procedures set out in the previous provisions of this Clause 27 except that nothing in this Clause 27 will prevent any party from seeking any form of equitable relief on an interim basis.
- 27.6 **Fees.** The fees and expenses of the mediator will be borne equally by the parties.
- 27.7 **Severability.** If any provision of this Agreement is held invalid by any law or regulation or any government or by any court, such invalidity shall not affect the enforceability of other provisions herein.
- 27.8 **Survival.** Rights and licences to use and sublicense software, obligation arising prior to the termination of this Agreement and obligations relating to confidentiality, indemnity and ownership of intellectual property shall survive the termination of this Agreement.
- 27.9 **Governing Law.** This Agreement is governed by and interpreted in accordance with the laws of South Australia.

Schedules

Schedule A

Description of the Subcontractor Services

- 1.0 The scope of services to be supplied shall be as follows
- (a) Commercial sheet fed printing and finishing; and
 - (b) Design services; and
 - (c) Web offset printing and finishing services; and
 - (d) Digital printing and finishing services; and
 - (e) Screen printing and finishing services; and
 - (f) Mailing services; and
 - (g) Distribution services; and
 - (h) Warehouse services; and
 - (i) Operational management from receipt of Purchase Orders through to final distribution of goods to the requested locations; and
 - (j) Production coordination and tracking; and
 - (k) Quality assurance; and
 - (l) KPI management reporting; and
 - (m) Environmental performance reporting; and
 - (n) Identification and implementation of cost reduction opportunities during the term of the Agreement; and
 - (o) Overall administration of print production services including work in progress, invoice and management reporting; and
 - (p) Any other services listed on the Purchase Order.
 - (q) Flexographic printing and finishing services; and
 - (r) Promotional goods; and
- 1.2 Term means from execution of this Agreement until the termination of this Agreement.

**Schedule B
Service Levels**

The following Service Levels will apply to all Subcontractor Services undertaken by the Subcontractor under this Contract, unless otherwise agreed between Finsbury Green and the Subcontractor.

Key performance indicator	Agreed standard and target
Quotation cycle times	The Subcontractor to provide a quotation of job costs as follows: <ul style="list-style-type: none"> ▪ Simple jobs within eight (8) business hours of receipt of notification of a request for quotation. ▪ Complex jobs within one (1) business day of receipt of notification of a request for quotation. ▪ Tenders as agreed with Finsbury Green.
Production cycle times	The Subcontractor to contract or form proofs as follows: <ul style="list-style-type: none"> ▪ Simple jobs within one (1) business day from receipt of approved artwork. ▪ Delivery in full (or in part as agreed by Finsbury Green) as per the purchase order (or milestone).
Production rejection rate	Less than 2% of Finsbury Green's orders to the Subcontractor rejected due to product quality issues.
Samples – accuracy and timeliness	Up to 20 Samples, unless otherwise stated to be delivered to the Finsbury Green contact on the day of first despatch, clearly labelled with the Finsbury Green order number & job number.
Invoicing – accuracy and timeliness	All invoicing errors to be resolved by the Subcontractor within five (5) business days of the notice of error.
Timeliness of reporting	100% of reports provided within agreed timeframes.
Non conformance reporting	As is evidenced from Finsbury Green's Variation and Enhancement System (VES).

Schedule C

Consignment Packing and Delivery Requirements

1.0 For all deliveries by the Subcontractor to Finsbury Green specifications.

1.1 Carton instructions

- 1.1.1 Stock items must be packed into Finsbury Green cartons (unless otherwise specified) in the quantities specified.
- 1.1.2 Finsbury Green cartons are designed to suit a range of sizes and quantities and the most appropriate size must be used for the stock item.
- 1.1.3 Cartons must not exceed 10kg in weight.
- 1.1.4 All packaging to be carried out in such a manner so as to preclude or negate any damage whilst in transit, during storage and handling.
- 1.1.5 Every carton in the consignment must be labelled.
- 1.1.6 Instructions for purchasing Finsbury Green cartons will be supplied once the supplier chain has been finalised.
- 1.1.7 All cartons must be labelled (at a minimum) the following information:
 - (a) Supplier name; and
 - (b) Finsbury Green Purchase Order number; and
 - (c) Customer name; and
 - (d) Product code and description; and
 - (e) Number of items within each carton; and
 - (f) No misleading labelling otherwise removed labels or repacked goods into cartons with correct labelling.
 - (g) If a carton contains inners, the inners should be labelled also (unless carton is never broken).

1.2 Palletising instructions

- 1.2.1 All deliveries for twenty (20) or more cartons will need to be palletised and shrink wrapped prior to deliver.
- 1.2.2 Do not pack in multiple items on the same pallet (unless otherwise specified). If possible, it is preferred that different stock items are not shipped on the same pallet, however, pallets can be stacked in multiples to maximise freight efficiencies.
- 1.2.3 All packaging to be carried out in such a manner so as to preclude or negate any damage whilst in transit, during storage and handling. Cartons are to be stacked safely in a uniform interlocking pattern.
- 1.2.4 Palletised deliveries must be on generic Australia Standard pallets (1.2m x 1.2m, maximum height 1.2m with no overhangs and maximum weight 1,000kg) and shrink wrapped to allow for handling via forklifts. As a rule Chep or Loscam pallets will not be accepted, however, if absolutely unavoidable a Chep or Loscam transfer is required as our warehouses will not exchange.
- 1.2.5 Labels with product details must be visible from the pallet face or front of pallet when placed in a rack.
- 1.2.6 All pallets must be labelled (at a minimum) the following information:
 - (a) Supplier name; and
 - (b) Finsbury Green Purchase Order number; and
 - (c) Customer name; and
 - (d) Product code and description; and
 - (e) Number of cartons x quantity per carton = quantity per pallet; and
 - (f) Number of pallets for example 1 of 4; and
 - (g) Each deliver should contain stock consignment notes.

1.3 Inwards goods acceptance times

- 1.3.1 Deliveries must be made between the hours of 8.00am and 5.00pm Monday to Friday only. Goods delivered outside of these hours will not be accepted unless prior arrangement is made with Finsbury Green.

**Schedule D
Reporting**

Report	Frequency	Reporting provided
Finsbury Green Star Rating Report	As required by Finsbury Green	The Subcontractor must complete this rating within 30 days of signing the agreement to ensure the ratification of the Agreement to Subcontract Services.
Ad hoc reporting	As required by Finsbury Green either quarterly or annually	A face to face discussion with the Subcontractors representative to analyse overall conformance using all the data available (including but not limited to) the Finsbury Green Q&E non conformance reporting data.