

# **CUSTOMER RELATIONSHIP AGREEMENT**

## **Mould Cleaning Australia**

### **1. Customer Relationship Agreement**

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- 1.1. This Customer Relationship Agreement (**CRA**) sets out the terms and conditions on which Mould Cleaning Australia ABN 40 145 108 284 supply our Services to our customers.
- 1.2. This CRA incorporates, and is to be read in conjunction with:
- a. our Privacy Policy;
  - b. our Service Agreement;
  - c. where agreed in writing by both parties, any other document that sets out any terms of our customer relationship.
- 1.3. This CRA applies from the earlier of:
- a. The time that you request a Service Agreement; or
  - b. The time that you first request and receive Services from us.
- 1.4. If at any time you wish to contact us about this CRA or any of the documents listed in clause 1.2, you may contact us at:
- Mould Cleaning Australia  
Email: [admin@mouldcleaningaustralia.com.au](mailto:admin@mouldcleaningaustralia.com.au)  
Post: 4A Reliance Drive, Tuggerah 2259  
Phone: 1800 614 228
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### **2. Application**

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- 2.1. You may make an application to receive Services by completing and submitting an online application or order form on our website.
- 2.2. We will assess your Application based on a number of factors, including but not limited to the following criteria:
- a. our Credit Assessment;
  - b. the information you provide us; and
  - c. any previous relationship that you may have had with us, including through Related Entities.
- 2.3. You acknowledge and agree that we may refuse your application at our sole discretion.
- 2.4. You warrant that the information provided to us in the application is true and correct, and that you will advise us as soon as possible if any of the information changes in a material respect during the term of this CRA. You acknowledge and agree that we will act in reliance of the information provided by you.

### **3. Credit Assessment**

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- 3.1. We may request that you provide us with information to enable us to undertake a credit assessment. You do not have to provide this information, but if you do not then we may refuse your application. If you do provide the information, it will be used in accordance with our Privacy Policy and as disclosed in this clause 3.
- 3.2. Our credit assessment may include, but is not limited to, the following:
- a. obtaining your credit record; or
  - b. contacting any credit references that you may nominate, or any other person or entity that we may reasonably believe has relevant information.

### **4. Your Obligations**

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- 4.1. You warrant and agree that you will:
- a. comply with all terms of this CRA, and any other document that forms part of our customer relationship;
  - b. make all payments due to us on time;
  - c. reasonably co-operate with us to allow us to provide the Services to you in an efficient and safe manner; and
  - d. not on-sell our Services without our prior written consent, which may be withheld at our discretion.
- 4.2. You warrant and agree that you will not use, or attempt to use, our Services:
- a. to commit an offence, or to do anything that is contrary to law;
  - b. in any way which damages or interferes with (or threatens to damage or interfere with) the operation of any of our Services or the operation of any of the services provided to us by a Supplier;
  - c. in any way that may cause loss or damage to another person or entity;
  - d. to infringe upon another person's right;
  - e. in any way that would constitute misuse;
  - f. in any way that is contrary to the terms of this CRA or any other document that forms part of our customer relationship.

### **5. Our Obligations**

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- 5.1. We agree that we will do the following:
- a. comply with all terms of this CRA, and any other document that forms part of the customer relationship; and
  - b. reasonably co-operate with you to provide the Services to you in an efficient and safe manner.
- 5.2. We are subject to a number of legal obligations which we must comply with. These legal obligations may change from time to time as laws are amended.
- 5.3. In particular, and without limitation, we may be subject to laws that require us to provide your information to third parties, such as state and federal police and other regulatory authorities. We may also be subject to laws that require us to intercept your communications that are made using the Service.
- 5.4. We agree that we will not take such actions unless we are required to by law.
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- 5.5. You acknowledge that we may be subject to these legal requirements, and you agree that you will not hold us liable for complying with these legal requirements.

## **6. Fees and Charges**

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- 6.1. You must pay all charges for your Services in accordance with the provisions of the Service Agreement.
- 6.2. You acknowledge and agree that we may charge you reasonable additional fees where we have incurred additional costs as a result of:
- a. a breach of this CRA by you;
  - b. a negligent or fraudulent act or omission by you or by any of your employees, agents or contractors;
  - c. any other circumstances caused by you that are outside of our direct control.
- 6.3. You acknowledge and agree that GST is applicable to the Services that we provide to you. If our fees and charges are expressed as an amount exclusive of GST, you must pay GST at the applicable rate in addition to the fees and charges. If our fees and charges are expressed as an amount inclusive of GST, we may vary them in accordance with any changes to the applicable GST rate.
- 6.4. Changes to pricing are addressed in clause 10 of this CRA.

## **7. Invoicing**

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- 7.1. You acknowledge and agree that you will be invoiced for the Services that you receive from us in accordance with your Service Agreement or as otherwise agreed in writing.
- 7.2. We will review our calculation of charges if you can show that it is likely that a manifest error has occurred, but otherwise we are not required to review or amend our calculation of charges.
- 7.3. Normally, we will include all charges relating to an invoicing period on the relevant invoice. However, if this is not possible for whatever reason, you acknowledge and agree that the charges may be included in a later invoice, provided that such invoice is issued within twelve (12) months of the date of the relevant Services.
- 7.4. We may amend and reissue any invoice if an error is subsequently discovered, provided that such invoice is reissued within thirty (30) days of the error being discovered by us and on the basis that:
- a. if you have overpaid, we will, at your determination; credit your account with the overpayment or issue you with a refund within thirty (30) days; and
  - b. if you have underpaid, the difference owed to us must be paid by you within thirty (30) days, unless otherwise agreed in writing.
- 7.5. If you have a dispute in relation to an invoice, you agree that you will do the following:
- a. you must raise the dispute within three (3) months of receiving the relevant invoice;
  - b. you agree that you will not be entitled to make any claim or commence any proceedings, whether under this CRA or at law, unless you have raised the dispute with us within three (3) months of receiving the relevant invoice;
  - c. you must provide us with details as to why you are disputing the invoice;
  - d. you must provide us with further details upon reasonable request;
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- e. you must pay any undisputed portion of the invoice by the due date; and
  - f. if we make a determination that there was no error, and the dispute resolution process is not invoked by you, you must pay the outstanding amount within fourteen (14) days of the determination.
- 7.6. If you have raised a dispute and complied with clause 7.5, we must do the following:
- a. within a reasonable time frame, carry out the appropriate investigations and make a determination;
  - b. if we agree that there is an error, we must, at your determination, provide you with a credit or a refund;
  - c. if we do not agree that there is an error, we must provide you with reasonable written reasons as to why that decision was made.
- 7.7. If we decide, pursuant to clause 7.6, that there is no error or that the error is not to the extent that you have claimed, you have the right to invoke the dispute resolution process set out in clause 18, provided that you do so within fourteen (14) days of receiving our written reasons. If you do not do so, you will be deemed to have accepted our determination.

## **8. Quality and Maintenance**

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- 8.1. We aim to provide, but do not guarantee, fault-free Services.
- 8.2. The Service Agreement sets out how we will provide the Services to you.
- 8.3. If you are unhappy with our Services, you may report it to us by phone, email or through any other means made available by us from time to time.
- 8.4. You acknowledge and agree that:
- a. before reporting to us, you must take all reasonable steps to ensure that the fault is not in, or caused by you;
  - b. any costs that we incur due to your incorrect reporting of faults may be charged to you;
  - c. we are not responsible for rectifying any faulty Services where that fault is arising in, or is caused by, your equipment or any third party provider engaged directly by you;
  - d. we are not responsible for the maintenance, repair or proper functioning of your equipment except where set out in our Service Agreement; and
  - e. unless specifically agreed in writing, we are not responsible for the security of your property.

## **9. Changes to this CRA**

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- 9.1. If we wish to make any changes to your CRA, we must provide you with at least thirty (30) days' notice in writing.
- 9.2. If you do not advise us within that thirty (30) day period that you object to the changes to your CRA, they will take effect.
- 9.3. If you object to the changes to your CRA, you agree that the following will apply:
- a. you must advise us in writing of your objections within that thirty (30) day period;
  - b. we will, at our sole discretion, either:
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- i. provide you with notice that you are permitted to terminate this CRA without penalty provided that such termination occurs within fourteen (14) days; or
    - ii. provide you with notice that the changes will not occur to your CRA and continue on the basis of the existing terms of the CRA;
  - c. the terms of the existing CRA will remain in effect during this process.
- 9.4. This clause does not apply to changes in pricing, which are addressed in clause 10.

## **10. Changes to Pricing**

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- 10.1. The charges for the Services that we provide to you are set out in the Pricing Schedule.
- 10.2. We may change the charges for Services at any time without notice.
- 10.3. This clause does not apply to changes in the GST rate as set out in clause 3.

## **11. Australian Consumer Law**

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- 11.1. If you are an individual or a small business, as defined in the Australian Consumer Law, you have certain rights in relation to agreements such as this CRA.
- 11.2. We have prepared this CRA, and the associated documents referred to in clause 1.2, so that they are fair and in accordance with your rights and our obligations under the Australian Consumer Law.
- 11.3. We acknowledge that we have a wide range of customers who all have different circumstances. If you believe that any terms in this CRA are unfair, within the meaning of the CRA, please let us know and we will discuss your concerns with you.
- 11.4. If you advise us that you believe that a term is unfair, and we agree with your position, we will negotiate the appropriate amendments with you.
- 11.5. If we do not agree with your position that a term is unfair, there is a dispute resolution mechanism available to you as set out in clause 17 of this CRA. This dispute resolution process is in addition to your rights at law.

## **12. Third Party Suppliers**

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- 12.1. We obtain Third Party Products that we use as part of our Services. This includes, but is not limited to, mould remediation specific products, industrial and domestic cleaning products, dehumidification / air purification equipment.
- 12.2. We confirm that your agreement is with Mould Cleaning Australia, and not with any Suppliers (unless you enter into separate agreements with them).

## **13. Suspension of Services**

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- 13.1. We may suspend your Services in the following circumstances:
- a. If we reasonably suspect that you have engaged, or intend to engage in, illegal activity;
  - b. If we receive any notices from a court or other authority;
  - c. If we are required to by law; or
  - d. If you have not made payments in accordance with this CRA or any other agreement with us.

## **14. Termination of Services**

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- 14.1. If you commit a breach of this CRA, or any other document referred to in clause 1.2, and you fail to rectify that breach with fourteen (14) days of receiving a notice from us requiring you to rectify the breach.
- 14.2. If you commit a breach of this CRA that cannot be rectified, or that constitutes a material breach, or that causes serious risk of loss or harm to us or our other customers or Suppliers.

## **15. Force Majeure**

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- 15.1. A Party is not liable for failure to perform its obligations under this Agreement if such failure is solely the result of the occurrence of an event of Force Majeure.
- 15.2. If a Party asserts that an event of Force Majeure pursuant to clause 15.1 caused a failure to perform its obligations under this Agreement, that Party must prove that:
  - a. it took all reasonable steps to minimise delay or damages caused by foreseeable events;
  - b. it substantially fulfilled all non-excused obligations; and
  - c. it notified the other Party of the likelihood or actual occurrence of the Force Majeure event in a timely manner.

## **16. Liability**

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- 16.1. You acknowledge and agree that all express or implied terms, conditions, warranties, statements, assurances and representations in relation to the provision of the Services by us are hereby excluded, with the exception of:
    - a. the terms and conditions of this CRA, the documents referred to in clause 1.2, and any additional terms and conditions or variations to which we both agree in writing;
    - b. any conditions, warranties or requirements expressed or implied under the provisions of any legislation that cannot be contracted out of, including but not limited to the provisions of the Australian Consumer Law.
  - 16.2. Our liability for you for direct loss is set out in our Service Level Agreement.
  - 16.3. You acknowledge and agree that our Service Level Agreement is in excess of your rights, and our obligations, under the Australian Consumer Law.
  - 16.4. However, if our Service Level Agreement does not meet the requirements of the Australian Consumer Law, or if we are not permitted by law to exclude our liability, our liability will be limited, to the maximum extent permitted by law, to one or more of the following as determined by us in our absolute discretion:
    - a. the re-supply of the Services; or
    - b. the payment of the reasonable cost of having the Services re-supplied; or
    - c. the refund of any payments made to us by you for the relevant time period.
  - 16.5. To the maximum extent permitted by law, and except as expressly provided in this CRA, we will not be liable for any consequential loss or damage, whether arising in contract, tort or otherwise, sustained by you in connection with or arising out of the provision of the Services by us, our Related Entities or our Suppliers.
  - 16.6. Any advice, recommendation, information, assistance of service given by us in relation to the Services is given in good faith and is believed to be accurate,
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appropriate and reliable at the time it is given, but is provided without any warranty as to accuracy, appropriateness or reliability. To the maximum extent permitted by law, we do not accept any liability or responsibility or any loss or damage suffered as a result of your reliance on any such information, assistance or service.

- 16.7. You acknowledge and agree that you are jointly and severally liable for all obligations under this clause 16.

## **17. Dispute Resolution**

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- 17.1. If any dispute arises out of, or in connection with, this CRA or the interpretation of its terms, a Party must not commence any court proceedings relating to that dispute unless this dispute resolution clause has been complied with, except:
- a. where that Party seeks urgent interlocutory relief; or
  - b. where we are entitled to recover a debt owed to us by you.
- 17.2. A Party claiming that a dispute has arisen under or in relation to this Agreement must give written notice to the other parties specifying the nature of the dispute.
- 17.3. On receipt of that notice by the other parties, all of the Parties must use their best endeavours to resolve the dispute within a reasonable period of time.

## **18. General**

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- 18.1. Notices in writing may be sent by us to the contact email address provided by you from time to time. You acknowledge and agree that it is your responsibility to keep your contact details updated, and that notices sent by us to out of date contact details will be deemed to have been correctly served for the purposes of this CRA.
- 18.2. This CRA may only be amended in writing, signed by the Parties.
- 18.3. Time is of the essence in relation to the obligations contained in this CRA, unless otherwise specifically stated.
- 18.4. Each party shall take all steps, execute all documents and do everything reasonably required to give effect to this CRA.
- 18.5. This CRA is binding on the successors and permitted assigns of each party.
- 18.6. The provisions of this CRA will remain in full force and effect and be binding upon the Parties after completion.
- 18.7. If part or all of any provision of this CRA is illegal or unenforceable then it may be severed from this CRA and the remaining provisions of this CRA will continue in full force and effect.
- 18.8. A waiver of any provision of this CRA or consent to any departure by a party from any provision of this CRA must be in writing and be signed by all parties and is effective only to the extent for which it is given.
- 18.9. This CRA contains the entire understanding between the Parties and all agreements, negotiations, understandings, representations, warranties, memoranda, or commitments in relation to or in any way affecting the subject matter of this CRA are superseded by this CRA and shall be of no force or effect whatsoever, except where specifically listed in clause 1.2.
- 18.10. The Parties acknowledge that they have received or had the opportunity to receive independent legal advice in respect of the terms and effect of this CRA and do not
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rely upon any representations or warranties in entering into this CRA (other than those set out expressly within the CRA).

- 18.11. This CRA is governed by and must be construed in accordance with the laws of New South Wales and any Court which may have appeals from it and the parties are subject to the non-exclusive jurisdiction of those Courts.

## **19. Definitions and Interpretation**

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- 19.1. In this CRA, the following definitions apply unless the context otherwise requires:

**Application** has the meaning set out in clause 2.1.

**Australian Consumer Law** means the provisions of Schedule 2 of *Competition and Consumer Act 2010 (Cth)*.

**Corporations Act** means *Corporations Act 2001 (Cth)*.

**CRA** means this Customer Relationship Agreement, including any amendments or variations that may occur.

**Customer** means the party that has agreed to the terms of this CRA.

**Disruption** means a material disruption to the Services provided by Mould Cleaning Australia to any customer or other party, or to the business operated by Mould Cleaning Australia.

**Force Majeure** means an event outside the control of either Party including but not limited to natural disasters (including but not limited to fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of electricity or telephone service.

**GST** has the meaning set out in the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* and its associated regulations.

**Interest** means simple interest calculated daily at the applicable Reserve Bank of Australia cash rate plus two percent (2%).

**Parties** means, collectively, Mould Cleaning Australia and the Customer.

**Pricing Schedule** means the pricing schedule agreed by Mould Cleaning Australia to the Customer.

**Privacy Policy** means the privacy policy of Mould Cleaning Australia from time to time.

**Products** means the products provided by Mould Cleaning Australia from time to time.

**Mould Cleaning Australia** means Mould Cleaning Australia Pty Ltd ACN 623 357 326.

**Service Agreement** means our standard service description describing the applicable Service and setting out specific terms and conditions for the Service.

**Service** means remediation of mould affected items and purification of indoor air.

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**Third Party Products and Services** means services and products that are supplied by a third party to Mould Cleaning Australia for use in conjunction with the Services provided to you.

- 19.2. In this CRA, the following rules of interpretation apply unless the context otherwise requires:
- a. references to "in writing" include, but are not limited to, notifications and messages by Mould Cleaning Australia;
  - b. references to "you", "your" and similar terms refers to the Customer who has entered into the CRA;
  - c. a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government, and vice versa;
  - d. a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under that legislation or legislative provision;
  - e. the singular includes the plural and vice versa;
  - f. a reference to any gender includes all genders;
  - g. a reference to a clause or schedule is to a clause or schedule of this CRA;
  - h. a recital, schedule, annexure or a description of the parties forms part of this CRA;
  - i. a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions), as amended, novated, supplemented or replaced from time to time;
  - j. a reference to any party to this CRA, or any other document or arrangement, includes that party's executors, administrators, substitutes, successors and permitted assigns;
  - k. where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
  - l. where an expression is defined anywhere in this CRA, it has the same meaning throughout;
  - m. a reference to any monetary amount is to an amount in Australian currency;
  - n. headings are for convenience of reference only and do not affect interpretation.
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