

ODJL PTY LTD T/a Pest Bully (ABN 55 165 971 086) agrees to provide a Commercial Pest Control Inspection and Treatment Program (the “Service”) at the specified areas of the premises described in the attached document for the Fee (including GST) in relation to those Pests described in the attached document in accordance with these terms and conditions. The Client’s furniture and equipment is excluded from treatment unless specifically detailed by TPB in writing.

Access

The Client must ensure that TPB’s personnel and other authorised personnel (“Personnel”) have full and safe access (free of any health and safety hazards and risks) to the relevant areas of the premises and all facilities such as water and electricity that TPB may reasonably require to provide the services during business hours or at times agreed with the Client. Before any service is commenced, the Client must advise TPB of any health and safety risks including the presence of asbestos. The Client must provide TPB with all necessary information, plans, instructions, documentation and co-operation if required by TPB. TPB will comply with all reasonable security and safety instructions of the Client while present at the Client’s premises.

Pest Inspection and Treatment

The treatment and inspection undertaken by TPB will be based upon a visual inspection only and limited to those areas and sections of the premises that are fully accessible and visible to the personnel at the time and on the day of the inspection. Furniture, equipment, fittings and stock may conceal evidence of some pests that can only be revealed when these items are removed. Reports will be provided to the Client on the date of Service or emailed to the address supplied by the Client.

The treatment will cover only those pests and areas described in the quotation. All other pests are excluded unless agreed by TPB in writing.

Any Termite Treatment is subject to the terms and conditions for the relevant termite treatment. Please note that Termite Treatment does not provide control for damp wood termites, dry wood termites, fungus, wood decay, wood boring beetles or any other pest not included in the quotation.

Additional Service visits

The Service covers the scheduled number of visits each year to inspect and provide treatments where necessary to the premises for the control of the specified Pests. TPB will provide recommendations for achieving effective Pest control. It is the Client’s responsibility to notify TPB immediately if any fresh signs of pests are noticed in between regular visits by TPB. TPB will carry out additional work to address those issues at no additional charge to the Client. The additional services are subject to the Client’s implementation of any recommendations by TPB. Additional call out visits will be delivered during normal business hours and for Pests specified and covered in the Agreement. Additional service visits required to control Pests beyond scheduled visits will incur additional charges. A service report will be provided at the time of each service visit or emailed to the Client after such visit.

Safety

The Client has to follow all the safety instructions provided by TPB personnel/representative regarding pesticides and other safety measures relevant to the treatment, and if required, has to undergo the induction provided by TPB.

Terms of Service

This agreement will operate for an initial minimum period of twelve (12) months commencing on the date of this agreement, unless otherwise agreed. This agreement will automatically be extended, unless terminated or varied and will operate until such time that it is terminated by either party by giving at least two (2) calendar months written notice. No termination can take effect before the last day of the initial minimum term except if terminated as aforesaid. The Client acknowledges that any failure to provide this notice will result in the Client being liable for amounts equal to the fees for the two (2) months period.

Fees

The Client will pay TPB for the Service and use of any TPB equipment as quoted. Those fees are in addition to any fee charged by TPB for the initial pest treatment. Fees for the Service are payable within 7 days of service delivery unless otherwise agreed upon. Fees are inclusive of GST which shall be payable in addition to the fees upon TPB providing a tax invoice. The Fees are based on the services and equipment required allowing for set up costs, materials and equipment costs, service support and administration costs ("Service Costs"). If TPB agrees to accept a reduction or cancellation of any part of the Service, any variation to the fees must take account of these Service Costs. The fees may not necessarily be varied pro rata to the change in the Services.

Payment, Interest on arrears & no set off

The Client agrees to pay the amount quoted and any additional charges that may apply to the services on the day. Interest will be charged on amounts overdue for payment at the rate of 2% above the rate charged by TPB's Bank for overdrafts under \$100,000 from the due date until paid calculated daily. Payments by bank card including credit and debit cards will incur a 1% surcharge fee payable by the Client. Any costs incurred by TPB in relation to debt collection for outstanding fees or legal fees will be payable by the Client on an indemnity basis.

The Client may not deduct or withhold any amount (whether by way of set off, counterclaim or otherwise) from any money owing to TPB.

Fee Review

After the initial minimum term, and no more than once annually, TPB may review and increase the fees by notice to the Client.

Treatment effectiveness

TPB will deliver the Service in a competent and professional manner taking into account these terms. The ongoing effectiveness of the pest control provided depends on the Client implementing TPB's recommended hygiene, housekeeping, stacking and property maintenance procedures. The Client acknowledges that pest treatment may also be rendered ineffective by disturbing treated areas, building alterations, renovations and introducing untreated or infested materials to the property that encourage pest activity.

Advice and recommendations

TPB's personnel will provide a service report after each visit and provide advice and recommendations to the Client to control and minimise pests and their habitat. These may cover hygiene, housekeeping, stacking, storage and maintenance. TPB may elect to terminate this agreement if the Client should fail to implement recommendations necessary to eliminate factors or conditions contributing to Pests and the re-infestation by Pests.

Client Co-operation

The Client must comply with all advice and instructions provided by TPB to the Client including any advice and instructions relating to pesticides and equipment usage and the health and safety of persons using the premises during and following the completion of any service.

Damage to Property

If delivery of the Service requires drilling or cutting any materials, the Client will be responsible for identifying the location of all utility services to the property including water and drainage pipes, electrical and telephone cables, gas pipes etc. TPB will exercise due care in performing any drilling or cutting but the Client will be liable for any damage caused by penetration to any such services, or structures on the premises, such as walls, footpaths, patios etc. unless caused by the negligence of TPB.

No assignment

All reports provided by TPB in relation to the Service are provided solely for the benefit of the Client named in the report. Neither this agreement nor any report may be assigned to another person or relied upon by any other person without the prior written approval of TPB that may be granted subject to conditions or withheld.

Indemnity

To the extent permitted by law, the Client will indemnify TPB and its Personnel against all actions, claims, proceedings or costs (including legal costs on a full indemnity basis) which TPB may incur as a result of:

(a) any person alleging loss or injury due to the equipment not being used by the Client or its staff or invitees in the manner recommended by TPB;

(b) any reliance placed on the content of a service or inspection report by any person other than the Client who obtained the report from the Client without the written approval of TPB, except to the extent any loss or damage is caused by TPB or its Personnel.

Force Majeure

TPB shall not be responsible for failure to meet any obligation if the failure results directly or indirectly from a cause beyond its control.

Termination

TPB may suspend the Services or terminate this agreement on immediate notice to the Client if:

(a) the Client is in breach of a material obligation and does not remedy that breach within two (2) business days of notice from TPB;

(b) the Client breaches any other provisions and fails to remedy that breach (if capable of remedy)

within ten (10) business days of notice from TPB: or
(c) the Client becomes insolvent or deemed insolvent, bankrupt, ceases or threatens to cease to carry on business, a receiver, manager, administrator or anything having a similar effect occurs in relation to the Client. It is agreed that non-payment, any modification or removal of any equipment without the approval of TPB, refusal to allow access to the premises to be serviced are material breaches of this agreement.

Non-Solicitation

For the duration of this Agreement and for a period of six (6) months after, the Client shall not directly or indirectly employ, engage or enter into any contract for works or services with any employee of TPB without the prior written consent of TPB. The client acknowledges that a breach of this will give rise to considerable cost being incurred by TPB. In the event of any such breach the Client agrees to make the following payments to TPB: a) the full recruitment costs associated with the recruitment of a replacement for the employee including for advertising, agency fees, and reasonable internal management time; b) any additional costs incurred by TPB in the employment of temporary staff to provide cover in whole or in part for the said employee during any recruitment period; and c) refund any training expenses incurred by TPB including but not limited to the costs reasonably associated with time on the job training. If TPB consents to the employment of any of its employees by the Client, such consent does not vary or amend the duties of confidentiality owed by the said employee to TPB, nor the Clients obligations under this Agreement.

Subcontracting

The Client agrees that TPB may subcontract any or all the work to be performed under this Agreement. TPB acknowledges that it remains responsible for performance of the Services, notwithstanding the appointment of a Subcontractor.

Privacy

The Client authorises TPB, its employees, technicians and related entities, pursuant to the **Privacy Act 1988 (Cth)**, to use and disclose the Client's personal information, in accordance with TPB Privacy Policy, that can be accessed on www.thepestbully.com.au. TPB is authorized to use this information to inform the Client regarding new offers, products and services provided by TPB and for informational purposes e.g. newsletters. The Client has the option to opt out of receiving such offers at any time by informing TPB.

Entire Agreement

This Agreement contains the entire understanding of the parties and (except for the provisions of the **Competition and Consumer Act 2010 (Cth)** or other laws which cannot be excluded or modified by agreement) all other terms representations, conditions, guarantees, undertakings, warranties including liability for negligence which may be implied by law or have any application are expressly excluded to the fullest extent permitted by law.

Governing Law

This Agreement is governed by the laws of the State or Territory where the Service is provided to the Client and all parties involved are subject to the jurisdiction of the courts of that State or Territory.

Liability

To the maximum extent permitted by law:

- (a) TPB will not be liable for any loss of profits or revenue, loss of business, wasted expenditure or any form of indirect or consequential loss arising out of or in connection with this agreement, the supply of the services, the equipment or the sale of any goods.
- (b) where a claim relates to a guarantee or warranty under the Australian Consumer Law, TPB's total aggregate liability to the Client under or in relation to this agreement (including in contract, negligence, tort or any common law or statutory right) is limited at TPB' option to:
 - (i) in relation to claims relating to services, the resupply of the services or the costs of resupply of the service; or
 - (ii) in relation to claims relating to goods, the resupply of the costs or the cost of re supply of the goods.
- (c) in all other circumstances, the liability of TPB to the Client (including in contract, negligence, tort or any common law or statutory right) under this agreement will not exceed the fees received by TPB from the Client pursuant to this agreement.