



Terms of Trade

Acceptance of Terms

By requesting, booking or instructing the Supplier to provide the Services (whether by email, telephone, acceptance of a meeting invitation, acceptance of a quotation or proposal, or by any other written or verbal instruction), the Customer acknowledges that it has received, read and agrees to be bound by this Agreement. If the individual accepting this Agreement does so on behalf of an entity, they warrant that they have authority to bind that entity.

Terms

1. Term

This Agreement commences on the Agreement Date and applies to each engagement under which the Customer requests the Supplier to provide Services, unless otherwise agreed (**Term**).

2. Structure of Agreement

- (a) The Services to be provided, the applicable Fees and any specific commercial terms may be agreed by the parties, including by email, quotation, proposal, booking confirmation or other written communication.
- (b) In the event of any inconsistency, the following order of precedence applies:
 - (i) any quotation, proposal, booking confirmation or other written agreement relating to the relevant Services; and
 - (ii) this Agreement.

3. Customer obligations

3.1 General obligations

The Customer must:

- (a) provide the Supplier with clear, accurate, complete and up-to-date information and immediately notify the Supplier if the information changes;
- (b) carry out its obligations under the Agreement in a timely and efficient manner;
- (c) do all things necessary to enable the Supplier to perform its obligations under the Agreement, including providing the Supplier, or a third party identified by the Supplier, with the necessary access to the Customer's systems, data and Personnel; and
- (d) not make or publish any false, disparaging, malicious or defamatory statement (whether written or oral) about the Supplier, its Personnel or the Services.

3.2 Specific obligations

The Customer must comply with:

- (a) the reasonable directions, policies and procedures of the Supplier or a third party identified by the Supplier; and
- (b) all laws and industry standards in its use of the Services and Deliverables and performance of its obligations under the Agreement.

4. Supplier obligations

4.1 Obligations

The Supplier must:

- (a) use reasonable endeavours to provide the Services and Deliverables in accordance with the agreed scope of Services; and
- (b) provide the Services and Deliverables with reasonable care and skill.

4.2 Qualifications

The obligations under clause 4.1 will not apply in the event of:

- (a) any non-conformance caused, or contributed to, by the Customer's use of the Services contrary to the Supplier's instructions or this Agreement; or
- (b) a Force Majeure Event.

5. Fees

5.1 Payment

- (a) The Customer must pay the Fees agreed between the parties in relation to the relevant Services, whether set out in a quotation, proposal, booking confirmation, email or otherwise agreed in writing.
- (b) The Fees are payable in Australian dollars on the date of the invoice, unless otherwise agreed between the parties.



- (c) If the Customer fails to pay the Fees by the due date, or any other amounts owing to the Supplier, the Supplier may:
 - i. charge interest on the outstanding amount at the Interest Rate;
 - ii. suspend further performance of the Services and delivery of the Deliverables;
 - iii. set off the outstanding amounts against any amounts owed to the Customer by the Supplier under this Agreement ; and
 - iv. terminate this Agreement.
- (d) The Customer must pay the Supplier all costs and expenses incurred in recovering any outstanding Fees, including legal costs.

5.2 GST

- (a) A reference in this clause to a term defined or used in A New Tax System (Goods and Services Tax) Act 1999 (Cth) is a reference to that term as defined or used.
- (b) All amounts in the Agreement are exclusive of GST, unless otherwise specified.
- (c) If GST is imposed on a supply made under, or in connection with, the Agreement, the recipient of the supply must pay the supplier an amount equal to the GST payable on the supply in addition to, and at the same time as, any consideration for the supply.

5.3 International payments

- (a) Unless otherwise agreed, all payments must be made in Australian dollars (AUD).
- (b) The Customer is responsible for all currency conversion costs, transfer fees and intermediary bank charges incurred in making payment and must ensure the Supplier receives the full invoiced amount.
- (c) The Supplier is responsible for any fees charged by its own bank for receiving payment.

6. Reimbursable expenses

- (a) The Customer must reimburse the Supplier for any out-of-pocket expenses reasonably incurred in providing the Services, where those expenses have been approved by the Customer in advance (unless otherwise agreed).
- (b) Reimbursable expenses may include postage, courier, freight and reasonable travel expenses.
- (c) Reimbursable expenses are payable in addition to the Fees.

7. Supplier rescheduling

- (a) The Supplier may reschedule a booked meeting, consultation, workshop or other booked Services where reasonably necessary due to illness, injury or other unforeseen circumstances.
- (b) The Supplier will give the Customer as much notice as reasonably practicable and use reasonable endeavours to agree a replacement date and time.
- (c) A rescheduling under this clause does not constitute a breach of the Agreement or entitle the Customer to any refund or compensation.

8. Customer cancellations and rescheduling

- (a) The Customer may reschedule or cancel a booked meeting, consultation, workshop or other booked Services by giving the Supplier at least 24 hours' prior notice.
- (b) If the Customer:
 - (i) reschedules or cancels a booked Service with less than 24 hours' notice; or
 - (ii) fails to attend a booked Service without prior notice,the Supplier may:
 - (iii) require payment of the applicable Fees that would otherwise have been payable for the booked Service;
 - (iv) treat the booked Service as having been provided; or
 - (v) agree to reschedule the booked Service without charge or on such terms as the Supplier determines.
- (c) The Supplier may waive or reduce any cancellation or no-show charge.
- (d) This clause does not apply where the cancellation or rescheduling results from a request made by the Supplier under clause 7.
- (e) The parties acknowledge that the amounts payable under this clause are a genuine and reasonable allocation of risk having regard to the Supplier's need to reserve time, prepare for the booked Services and the likelihood that the Supplier will be unable to accept alternative work on short notice.

9. Intellectual Property

9.1 Supplier IP

- (a) The Supplier owns the Supplier IP.
- (b) Subject to the Supplier's receipt of the Fees, the Supplier grants to the Customer a non-exclusive non-transferrable and non-sub-licensable licence to use the Supplier IP during the Term solely for the Customer's internal business purposes and only to the extent necessary to receive the benefit of the Services and Deliverables provided under this Agreement.

9.2 Customer IP

- (a) The Customer owns the Customer IP.



- (b) The Customer grants to the Supplier a royalty-free, worldwide, non-exclusive, non-revocable, perpetual, transferrable and sub-licensable licence to use the Customer IP for the purpose of the performing its obligations under this Agreement.

9.3 Developed IP

- (a) The Supplier owns the Developed IP.
- (b) Subject to the Supplier's receipt of the Fees, the Supplier grants to the Customer a non-exclusive, non-transferrable and non-sub-licensable licence to use the Developed IP during the Term for the purpose of performing its obligations under this Agreement.

10. Warranties

The Customer warrants on a continuing basis that:

- (a) the use of the Customer IP by the Supplier will not infringe any third party's rights;
- (b) it has received all consents required to allow the Supplier to freely use the Customer IP without infringing any third party's rights, including Moral Rights; and
- (c) it will use the Services in accordance with any usage restrictions specified in the Agreement or by the Supplier or a third party identified by the Supplier.

11. Liability and indemnity

11.1 Liability

- (a) To the fullest extent permitted by Law, the Supplier:
 - i) excludes all express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), in connection with the Services or Deliverables;
 - ii) is not liable for Consequential Loss suffered by the Customer or a third party which arises out of, or in connection with, the Agreement; and
 - iii) is not liable for any loss to property or for personal injury or death.
- (b) The Supplier's aggregate liability under the Agreement to the Customer or any third party, however arising, is limited to the Fees paid by the Customer to the Supplier, that is the subject of the Claim, in the 12 months preceding the Claim.

11.2 Indemnity

The Customer indemnifies, and must continue to indemnify, the Supplier and its Personnel, from all Loss incurred by them, and all Claims against them, arising out of, or in connection with:

- (a) any of the Customer's representations or information being false, inaccurate or misleading;
- (b) the Customer's infringement of the Supplier IP or Developed IP;
- (c) the Customer's breach of the Agreement; or
- (d) an act or omission by the Customer in connection with the Agreement.

11.3 Survival

This clause 11 survives termination of this Agreement.

12. Termination

12.1 Termination

Either party may terminate this Agreement with immediate effect if the other party:

- (a) commits a material breach (including a failure to pay any Fees) that is incapable of remedy;
- (b) commits a material breach (including a failure to pay any Fees) that is capable of remedy and fails to remedy that breach within 10 Business Days of receiving notice of the breach; or
- (c) suffers an Insolvency Event.

12.2 Effect of termination

- (a) Termination of this Agreement will not affect any rights or obligations which may have accrued prior to termination, including for any prior breach.
- (b) On termination:
 - (i) all licences and rights granted under, or in connection with, this Agreement will immediately terminate;
 - (ii) the Customer must immediately stop using the Supplier IP; and
 - (iii) the Customer must pay any outstanding amounts owing to the Supplier within 7 days after termination.
- (c) On termination of this Agreement, the Customer must:
 - (i) immediately stop using the Supplier IP and Developed IP; and
 - (ii) permanently destroy or return all copies of the Confidential Information of the Supplier on request, and certify to the Supplier that it has done so.

13. Confidential Information

13.1 Confidentiality obligations

A Receiving Party must:



- (a) maintain the confidentiality of the Confidential Information and not disclose it, or allow it to be disclosed to a third party, except:
 - (i) where expressly permitted to do so under the Agreement;
 - (ii) with the prior consent of the other party; or
 - (iii) to its officers, employees or legal advisers who have a need to know for the purposes of the Agreement and are aware the Confidential Information must be kept confidential; or
 - (iv) as required by Law; and
- (b) take reasonable precautions to maintain the secrecy and confidentiality of the Confidential Information.

13.2 Exceptions

The confidentiality obligations in this Agreement do not extend to information:

- (a) disclosed to a party which, at the time of disclosure, is rightfully known to or in the possession of that party and not subject to an obligation of confidentiality on that party;
- (b) that is public knowledge (except because of a breach of this Agreement or any other obligation of confidence); or
- (c) required to be disclosed by Law or any Government Agency, or for the enforcement of this Agreement, whether before, on, or after the Agreement Date.

13.3 Survival

This clause 13 survives termination of this Agreement.

14. Force Majeure Events

14.1 Consequences of a Force Majeure Event

If a Force Majeure Event prevents a party from performing any of its obligations:

- (a) as soon as reasonably practicable, that party must give the other party notice of the Force Majeure Event; and
- (b) that party is excused from performing its obligations which it is prevented from performing, for the duration of the Force Majeure Event, subject to it notifying the other party.

14.2 No release from obligation to pay money

A Force Majeure Event does not excuse a party from any obligation to pay money.

14.3 Termination for extended Force Majeure Event

If a Force Majeure Event prevents a party from performing its obligations to a material degree for more than 30 consecutive days, the other party may terminate this Agreement by giving 5 Business Days' notice.

15. Dispute resolution

- (a) Before commencing court or tribunal proceedings (except for interlocutory or interim relief), the parties must refer any dispute under or relating to the Agreement to a nominated representative of each party to endeavour to resolve the dispute within 30 days.
- (b) If the dispute is not resolved with this period, either party may initiate court or tribunal proceedings.
- (c) Each party must continue to perform its obligations under the Agreement during the dispute.

16. Acknowledgement

The Customer acknowledges it has had the opportunity to read this Agreement before accepting them.

17. Notices and electronic communications

17.1 Notices

A notice, consent, agreement, approval, waiver, direction or similar given or required under this Agreement:

- (a) must be in writing, in English and signed by, or sent by email from, a person authorised by the sender;
- (b) must be delivered to the recipient in person, by email to the email address last notified by the recipient for the purpose of receiving notices, or by registered post to the recipient's address last notified to the sender; and is deemed to be given by the sender, and received by the recipient:
 - (i) if delivered in person, on delivery;
 - (ii) if sent by email, at the date and time the email was sent, as recorded by the sender's email server, unless the sender receives an automated delivery failure notice, in which case notice is deemed not to be given or received; or
 - (iii) if sent by registered post, 5 Business Days (or 10 Business Days, if posted outside Australia) after the date it was posted.

17.2 Electronic communication

The parties consent to giving and receiving notices electronically.

18. General

18.1 Entire agreement

This Agreement constitutes the entire agreement between the parties in relation to, and supersedes any prior conduct, arrangement, agreement or understanding of, its subject matter.

18.2 Relationship of parties

- (a) Unless otherwise provided in this Agreement, no party is authorised to bind another party.



- (b) Nothing in this Agreement creates an employment, agency, trust, partnership, fiduciary or joint venture relationship between any of the parties.

18.3 Set off

The Supplier may set off amounts owed or payable under this Agreement against amounts payable to the Customer.

18.4 Severability

If any part of this Agreement is or becomes invalid or unenforceable under any law, it is severed in the relevant jurisdiction but only to the extent it is invalid or unenforceable.

18.5 Variations

The Supplier may amend this Agreement from time to time by publishing updated Terms on its website. The amended Terms apply to continued use of the Services after notice has been given.

18.6 Waivers

A waiver of a right, power or remedy must be signed by the party giving it and cannot be implied by conduct, delay or failure to act.

18.7 Survival

Each obligation and warranty capable of future operation will continue in force after this Agreement is fully performed or has otherwise ended.

18.8 Governing law and jurisdiction

- (a) This Agreement is governed by the laws in force in Victoria, Australia.
- (b) Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Victoria, Australia and waives any right to claim that those courts are an inconvenient forum.

19. Definitions

Agreement means these Terms together with any quotation, proposal, booking confirmation, email correspondence or other written communication setting out the Services, Fees or other agreed commercial terms...

Agreement Date means the date on which the Customer first accepts this Agreement in accordance with the 'Acceptance of Terms' section of this Agreement.

Business Day means a day that is not a Saturday, Sunday or gazetted public holiday in Melbourne, Victoria, Australia.

Claim means any claim, demand, remedy, suit, action, proceeding, right of action, claim for compensation or claim for abatement of any monetary obligation, whether arising under contract (including this Agreement), in tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise.

Customer IP means all Intellectual Property owned or licensed by the Customer, and includes any enhancements, modifications or derivatives of the Customer IP made after the Agreement Date, and excludes the Developed IP.

Confidential Information means, in relation to a Disclosing Party:

- (a) the following information, regardless of its form and whether the Receiving Party becomes aware of it before, on or after the Agreement Date:
- (i) information that is, by its nature, confidential;
 - (ii) information that the Disclosing Party designates as confidential; or
 - (iii) information the Receiving Party knows, or ought to know, is confidential;
- (b) all notes and other records prepared by the recipient based on or incorporating information in clause (a) above; and
- (c) all copies of the information, notes and other records in clauses (a) and (b) above, and in the case of the Supplier, includes the Supplier IP and Developed IP.

Consequential Loss means loss of profits, loss of revenue, loss of any contract value, loss of anticipated profit or damages for lost opportunity or savings, loss of goodwill, reputational damage, loss or corruption of data, or cost of finance, but, in each case, except where the loss, damage or cost arises naturally (that is, in the usual course of things) from the relevant act or omission.

Corporations Act means the Corporations Act 2001 (Cth).

Deliverables means the tangible deliverables produced or generated as a result of the Services, as agreed between the Supplier and the Customer from time to time under the Agreement.

Developed IP means all Intellectual Property created or developed by the Supplier under this Agreement, and excludes the Supplier IP.

Disclosing Party means a party to this Agreement who discloses or makes available Confidential Information to the Receiving Party.

Fees means any fees payable by the Customer for the Services and Deliverables under this Agreement.

Force Majeure Event means an event or circumstance beyond a party's reasonable control, including natural disaster, acts of war, terrorist acts, riots, failure or shortage of power supplies or other essential utility, pandemic, epidemic, quarantine, serious viral outbreak or other widespread or serious threat to human health (including an outbreak or recurrence), strike, government imposed shutdown or closure, a change in applicable law, computer virus, unauthorised intervention, fraud or technical failures.

Government Agency means any governmental, judicial or statutory body with authority or jurisdiction over this Agreement or a party.

Insolvency Event means any of the following:

- 1.3 a receiver, receiver and manager, liquidator, provisional liquidator, controller or any form of external administrator has been appointed over either party or any property belonging to either party;
- 1.4 an event occurs which gives any person the right to seek an appointment referred to in paragraph (a);



- 1.5 a party proposes or takes any steps to enter into a scheme, arrangement, agreement or compromise with its creditors or call a meeting of creditors;
- 1.6 a party suspends payment of its debts generally;
- 1.7 a party becomes insolvent or bankrupt within the meaning of the Corporations Act or a party has a bankruptcy petition presented against it;
- 1.8 an application is made to a court or a resolution is passed or an order is made for the winding up or dissolution of a party or an event occurs that would give any person the right to make an application of this type; or
- 1.9 any event under any law which is analogous to, or which has a substantially similar effect to, any of the events referred to in paragraphs (a) to (f).

Intellectual Property means all designs, copyright, trade marks, patents, operations, software or systems, trade names and domain names, rights in goodwill, rights in Confidential Information or other intellectual property rights, whether under statute, common law, equity, and whether registered or unregistered and including all applications for, and renewals or extensions of, such rights and all similar rights which subsist or will subsist now or in future in any part of the world.

Interest Rate means interest at the rate of 2% above the rate fixed under section 2 of the Penalty Interest Rates Act 1983 (Vic).

Moral Rights has the meaning given in the Copyright Act 1968 (Cth) (or equivalent legislation).

Personnel means a party's directors, officers, employees, agents, consultants, contractors or sub-contractors.

Receiving Party means a party to this Agreement who obtains Confidential Information of the other party to this Agreement.

Services means the services agreed between the Supplier and the Customer from time to time under the Agreement.

Supplier IP means all Intellectual Property owned or licensed by the Supplier and all modifications, enhancements, derivations and updates to it.

Term has the meaning in clause 1.

Terms means these Terms and Conditions.