

These terms of business and our proposal will form the agreement between us (the "Contract").

1. OUR SERVICES

1.1 Scope of Services

Our services may include:

- 1.1.1 **services to assist you** - this means that we will use reasonable skill and care to assist you with your project but you will be responsible for the overall management and control of the services and the results of the project; and/or
- 1.1.2 **services to perform** - this means that we will provide you with the services and will, to the extent set out in these terms of business, be responsible for the management and control of the services and for the quality of the deliverables.

1.2 Our staff

The provision of personnel will be as follows:

- 1.2.1 We will use reasonable efforts to ensure that the individuals named above are available for the period specified, unless otherwise agreed.
- 1.2.2 If we are unable to do this, we will give you as much notice of any changes as we reasonably can, and will provide you with details of replacement staff with similar levels of training and expertise.
- 1.2.3 During the period covered by this proposal and for six months after our work is finished, neither of us will employ any employee of the other who is or has been connected with this Contract. If either of us does so, it will pay the other a recruitment fee of 30% of the employee's gross annual salary package.
- 1.2.4 This will not restrict either of us from employing staff who make unsolicited applications in response to a general advertising or genuine recruitment campaign.

1.3 Timetable

- 1.3.1 Unless otherwise explicitly stated in our proposal, dates in any timetable are intended for planning and estimating purposes only and are not contractually binding.
- 1.3.2 Where the proposal specifies a fixed commitment to timeframes, we will use our reasonable efforts to meet those timeframes.
- 1.3.3 You acknowledge that timeframes may not be met to the extent that you or your contractors cause delays, or any assumption made by the parties in our proposal proves incorrect.
- 1.3.4 You acknowledge that timeframes are based on the assumption that we will receive the full co-operation of your employees and contractors and the commitment of your organisation.

1.4 Changes to services or Contract

- 1.4.1 Either of us may request changes to the services or to any other aspect of the terms of business.
- 1.4.2 Until a change is agreed in writing both of us will continue to act in accordance

with the latest agreed version of the Contract.

1.5 Scope of our obligations

You acknowledge and agree that:

- 1.5.1 while we must meet our obligations under this Contract with due professional care, we do not owe any further or more general contractual duty or duty of care to you; and
- 1.5.2 the full scope and extent of our obligations in relation to the services are as expressly set out in this Contract.

2. DELIVERABLES

2.1 Preparation and delivery

We will prepare and deliver any deliverables set out in our proposal.

2.2 Acceptance

- 2.2.1 You accept any deliverables for which acceptance criteria are described:
 - (a) when those acceptance criteria have been met; or
 - (b) when you make any productive use of the deliverables (other than for testing purposes, to the extent expressly allowed by this agreement),whichever occurs first.
- 2.2.2 Deliverables for which no acceptance criteria are specified will be deemed accepted on the earlier of:
 - (a) your productive use of them; or
 - (b) 3 working days after we have delivered them to you unless otherwise agreed by us.

2.3 Copyright Ownership of deliverables

- 2.3.1 Use of deliverables
We own and/or will own the copyright in all deliverables and other materials not identified as client materials.
- 2.3.2 We grant you a non-exclusive, non-transferable licence to use these deliverables for your own internal use but you must not provide these deliverables or copies of them to any third party whether for reward or otherwise without first obtaining our express written permission.
- 2.3.3 You agree that this Clause 2 is an essential term of the Contract and that we have the right to seek interlocutory relief restraining a breach of this provision without the need to prove actual loss or damage.

2.4 Use of Software

- 2.4.1 The use of any software included in the deliverables, but in which you do not have intellectual property rights, will be subject to the terms of the software licence referred to in our proposal.
- 2.4.2 If no such licence is referred to, you may use the software for your internal use but you must not affect our rights or any third party's rights to it by copying or changing it or providing it to third parties whether for reward or otherwise without our express written permission.
- 2.4.3 You agree that this Clause 3 is an essential term of the Contract and that we have the right to seek interlocutory relief restraining a breach

of this provision without the need to prove actual loss or damage.

2.5 Freedom to use ideas

This Contract does not prevent or restrict us from developing and using any ideas, concepts, information, tools, methodologies or know-how relating to methods or processes of general application, including those in the field of information technology and business processes.

3. YOUR RESPONSIBILITIES

You acknowledge that we will require the following assistance from you to perform our services in accordance with the Contract.

3.1 Information and materials

- 3.1.1 You agree to provide all information and materials reasonably required to enable us to provide the services.
- 3.1.2 We will not be liable for any loss or damage arising from reliance on or from any inaccuracy or other defect in any information or materials supplied by you.
- 3.1.3 We will not obtain any intellectual property rights in any information or materials you provide to us.
- 3.1.4 If you cause a delay which in turn delays us from providing the services, then you agree to pay us all costs, expenses and losses reasonably incurred by us as a result of that delay. We will not be liable for any breach of our obligations to the extent resulting from that delay.

3.2 Your staff

- 3.2.1 You agree to ensure that your staff provide all assistance we reasonably require to enable us to provide the services. You will be responsible for ensuring that your staff have the appropriate skills and experience.
- 3.2.2 If any of your staff fail to perform as required, you will ensure that, on request by us, additional or alternative staff with appropriate skills and experience are made available.

4. FEES AND PAYMENT

- 4.1 You agree to pay for the services as set out in the proposal and in this clause 4. All charges are payable in Australian dollars unless otherwise set out in the proposal.
- 4.2 Any estimate given by us of any fees or charges will be given after reasonable consideration of the information available to us at the time, but will not be binding. The fixed price specified in the proposal will be subject to your compliance with your obligations and the correctness of any assumptions set out in this Contract.
- 4.3 Our fees do not include expenses or taxes. Out-of-pocket expenses we reasonably incur in connection with the assignment must be reimbursed to us provided that we supply you, upon request, with appropriate evidence that the expenses were so incurred.

- 4.4 Our fees and, where applicable, our out-of-pocket expenses and other expenses payable by you must be increased by the amount of any GST that we must pay on the supply to you of the services, goods or other things we supply under this Contract. You must pay the amount of that GST (in addition to those fees and expenses) at the same time and in the same manner as those fees and expenses are payable, or earlier on our demand.

- 4.5 You will also be responsible for paying any other taxes arising from the Contract.

- 4.6 Unless otherwise stated in the proposal:

- (a) we will invoice you monthly for fees and expenses; and
- (b) our accounts are payable within 14 days from receipt.

- 4.7 If payment is more than 14 days overdue we may charge interest at a rate of 6% above the Reserve Bank of Australia's Cash Target Rate on the outstanding amount calculated from the date of the relevant unpaid invoice or invoices.

- 4.8 Except to the extent the proposal expressly states that we will perform a project, or part of it, at a fixed price, we may reasonably vary any fee rate stated in the proposal by giving you 30 days written notice of the variation. Any change in the location at or to which the services are to be performed may result in a change in applicable fee rates.

- 4.9 You agree that if any invoice is more than 14 days overdue, we may at any time, with or without notice and in our absolute discretion suspend the provision of our services until the payment is made in full. This provision shall not apply if there is a bona fide dispute about an invoice or part thereof provided that the undisputed portion of the invoice is paid in full. You agree that we shall not be liable to you for any loss of damage arising out of such suspension of our services.

5. TERMINATION

5.1 For convenience

Either of us may terminate the Contract for convenience at any time:

- 5.1.1 by giving not less than 30 days written notice. If you terminate the Contract;
- 5.1.2 you will pay us for all services already provided and for costs or losses reasonably incurred by us as a result of the early termination; and
- 5.1.3 we will not be liable to compensate you for any loss or damage arising out of such termination by us

5.2 Breach of contract

If either of us breaches the Contract in a material way:

- 5.2.1 the other may give notice requiring the breach to be remedied within 30 days;
- 5.2.2 if the breach is not so remedied, the party serving notice may serve a further notice terminating the Contract with immediate effect; and
- 5.2.3 a party may also serve a notice terminating the Contract with immediate effect where the breach is not capable of rectification
- 5.3 Return of property**
On termination of the Contract for any reason, each of us will return any property of the other (including any confidential information). However for our operations, for instance for archival and quality purposes, we may retain one copy of any documentation or software related to the services.
- 5.4 Termination for insolvency**
Either of us may immediately terminate the Contract by written notice if the other party is unable to pay its debts or has a receiver, administrator, administrative receiver or liquidator appointed, or calls a meeting of its creditors or for any other reason ceases to carry on business, or if any of these events appear reasonably likely to occur.
- 5.5 Clauses surviving termination or expiration**
Clauses 1.2, 2.3, 2.4, 4, this clause 5, and clauses 6, 7, 8, 9, 11, 12, 15 and 16 shall survive termination or expiry of this Contract.
- 6. CONFIDENTIALITY**
- 6.1 For the purposes of this Clause 6, Confidential Information shall mean:
- 6.1.1 the terms of this agreement;
- 6.1.2 a party's methodologies and tools;
- 6.1.3 all information disclosed by the party to the other party under or in connection with the Contract,
- but does not include:
- (a) information in the public domain (other than through any breach of confidence);
- (b) information rightfully received by the other party from a third person who is under no obligation of confidentiality in relation to the information and who has not obtained that information as a result of a breach of any duty of confidence owed to the first party; or
- (c) information that has been independently developed by the other party.
- 6.2 Neither of us will disclose to any third party (except our approved subcontractors who have a need to know), without the prior written consent of the other party, any confidential information received from the other party for the purposes of providing or receiving the services.
- 7. INTELLECTUAL PROPERTY LIABILITY**
- 7.1 Each of us ("warranting party") warrants to the other ("other party") that any deliverables or materials it develops and provides under this Contract will not infringe the intellectual property rights of any third party.
- 7.2 The warranting party will indemnify the other party against any final award of damages, or settlement, arising out of a breach of this warranty.
- 7.3 This clause will not apply to any infringement caused by:
- 7.3.1 the other party's (or its agents' or contractors') unauthorised use, misuse or modification of the item, or use of the item in combination with items not provided or developed by the warranting party (except as contemplated by our proposal);
- 7.3.2 the failure of the other party to comply with laws or to follow directions given, or to use any enhancement or correction made available, in respect of the item; or
- 7.3.3 information, materials or directions given by the other party or a third party (that is not a contractor or agent of the warranting party);
- 7.3.4 accidental infringement as a result of one party responding to another party's specific request for a deliverable
- 7.4 In the event of accidental infringement occurring as a result of one party following another party's request for a specific deliverable, the requesting party will indemnify the delivering party against any final award of damages, or settlement, arising out of a breach of this warranty.
- 8. LIMITATION OF LIABILITY AND INDEMNITY**
- 8.1 Subject to Clause 9, the remedies available and the liability we accept under this clause 8 are the only remedies and to the extent permissible by law the absolute limit of our liability arising under or in connection with the Contract (including in negligence). All other liability is expressly excluded, in particular but without limitation, liability for loss of profits, special or consequential loss including without limitation economic loss or failure to realise anticipated savings or benefits.
- 8.2 To the extent permissible by law all warranties, conditions or terms other than those expressly set out in this Contract are excluded including but not limited to all implied and statutory conditions.
- 8.3 You acknowledge that we have made no warranties or representations in relation to the services other than those (if any) set out in the Contract.
- 8.4 Where this Clause cannot legally operate, and to the extent permitted by law, our liability for any breach of any warranty or any term implied by law into this Contract is limited to:

- 8.4.1 in the case of services, resupply of the services or payment to you of the cost of supplying the services again; and
- 8.4.2 in the case of goods at our discretion, the lowest of the cost of replacing the goods, acquiring equivalent goods or having the goods repaired.
- 8.4.3 You agree to indemnify us and keep us indemnified for any loss or damage arising out of any material breach of the Contract and in particular any essential term.
- 9. AUSTRALIAN CONSUMER LAW**
- 9.1 The following provision applies if you are a consumer: "Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."
- 9.2 For the purposes of the Australian Consumer Law a consumer is a person (including a corporation) and will be a consumer in relation to particular services if either:
- (a) the amount payable for the goods and/or services is \$40,000 or less; or
 - (b) the goods and/or services are of a kind usually acquired for personal, domestic or household use or consumption.
- 10. INSURANCE**
- 10.1 We will maintain public liability insurance for an amount of at least \$5 million.
- 10.2 Both of us will comply with all workers compensation or similar legislation in respect of our respective personnel.
- 11. SUBCONTRACTORS AND THIRD PARTIES**
- 11.1 We reserve the right to employ subcontractors. Any reference to our staff in the Contract includes our subcontractor staff. Subject to these terms of business, we will remain liable to you for any services provided by any subcontractor of ours.
- 11.2 Where you are using third parties you will ensure that you have appropriate agreements with them. Unless agreed otherwise in writing, you will be responsible for the management of the third parties, the quality of their input and work, and any breach of the Contract caused by them.
- 11.3 To the extent permitted by law, you shall release, fully indemnify and keep us indemnified and our officers, employees and agents, against any injury, death, or property damage whether direct or indirect and whether sustained by us, our officers, employees and agents, you, your officers, employees and agents or a third party arising out of:
- 11.3.1 a breach of this agreement by you;
 - 11.3.2 Your any wilful, unlawful or negligent act or omission of; or
 - 11.3.3 the discharge of your obligations pursuant to the Contract.
- 11.4 This indemnity applies regardless of whether or not legal proceedings are instituted.
- 11.5 This indemnity applies to any payment, settlement, compromise or determination regardless of whether same is authorised or not by you.
- 12. BREACH OF CONTRACT/CONTRIBUTORY NEGLIGENCE**
- Each of us agrees that if it makes any claim against the other for loss as a result of a breach of the Contract, and that loss is contributed to by its own actions, then liability for its loss will be apportioned according to the respective responsibility for the loss, and the amount it may recover from the other party will be reduced by the extent of its contribution to that loss.
- 13. FORCE MAJEURE**
- Neither of us will be liable to the other for any failure to fulfil obligations caused by circumstances outside its reasonable control which could not with reasonable diligence have been avoided, and provided that the effected party should use its best endeavours to find a work around solution to the event of Force Majeure.
- This clause does not apply to any of your obligations to pay money for services performed.
- 14. GOVERNING LAW**
- This Contract will be governed by and interpreted in accordance with the governing law of New South Wales unless otherwise specified in the proposal, and both of us submit to the jurisdiction of the courts of that State or Territory.
- 15. DISPUTE RESOLUTION**
- 15.1 Each of us shall use its reasonable endeavours to co-operatively resolve a dispute.
- 15.2 If a dispute arises, the dispute shall be referred to the relevant representatives of the parties.
- 15.3 If the dispute is not resolved by those representatives within 5 days of such a referral in accordance with subclause 14.2, the dispute shall be referred to a panel consisting of a nominated senior representative of each of the parties (**Panel**) for resolution. Each of us shall nominate a representative for the Panel within 5 days of the referral to the Panel in accordance with this subclause 14.3.
- 15.4 If the dispute is not resolved by the Executive Panel within 10 days of such referral, either of us shall refer the dispute for mediation in accordance with clause 14.5
- 15.5 The mediation must be conducted in accordance with the Alternative Dispute Resolution Centre Mediation Guidelines and the provisions of this clause 14.5 as follows:
- 15.5.1 in the event of any inconsistency between them, the provisions of this clause 15.5 will prevail;
 - 15.5.2 mediations are to be conducted in private;
 - 15.5.3 the parties must notify each other no later than 48 hours prior to mediation of the names of their Representatives who will attend the mediation;
 - 15.5.4 nothing in this clause 14.5 is intended to suggest that the parties are able to refuse the other party's chosen Representatives or to limit other Representatives of the parties attending the mediation;
 - 15.5.5 the terms of any mediation, settlement agreements and any information relating to

- the existence, conduct, status or outcomes of the mediation is deemed to be Confidential Information of each party and may only be published or announced with the consent of all parties and on terms agreed by the parties;
- 15.5.6 the mediation will terminate in accordance with the ACDC Mediation Guidelines;
- (a) the parties will bear their own costs of the mediation including the costs of any Representatives and will each bear half the costs of the mediator; and
- (b) any agreement resulting from mediation will bind the parties on its terms.
- 15.6 Neither of us shall commence arbitration or legal proceedings other than for urgent interim orders, unless the parties have undertaken the process set out in subclauses 14.2 to 14.5 and those processes have failed to resolve the dispute.
- 15.7 All disputes arising out of or in connection with this agreement (together with any counterclaims and disputes under or in connection with this agreement) will be finally settled by binding arbitration under the under UNCITRAL Model Law, for the time being in force (the "Rules") (except as the Rules may be modified by the terms of this agreement) by one arbitrator appointed in accordance with the Rules. The arbitration proceedings will be conducted in Sydney, Australia in the English language. The award will include a written statement of findings of fact and conclusions of law and the reasons on which it is based. Subject to any terms contained in this agreement limiting or excluding damages, the arbitrator may award any relief that the arbitrator deems proper, including equitable relief. The award will be final and binding on the Parties and enforceable in any court of competent jurisdiction.
- 15.8 Prior to the resolution of a dispute, the parties shall continue to perform their respective obligations under this agreement to the extent that those obligations are not the subject matter of the dispute.
- 15.9 Nothing in this clause 14 shall prevent a party from choosing to perform an obligation that is the subject matter of the dispute.
- 16. RISK AND TITLE**
- 16.1 Risk of damage to or loss of any goods shall pass to you at the time of delivery to your premises or, if you wrongly fail to take delivery of the goods, at the time when we tender delivery of the goods.
- 16.2 Notwithstanding delivery and the passing of risk in the goods, the property in any goods supplied will not pass to the you until we have received payment in full in cash or cleared funds.
- 16.3 Until such time as the property in the goods passes to you, you shall hold the goods on a fiduciary basis as the our bailee, and shall keep the goods separate from your goods.
- 16.4 You shall keep the goods and any part there of insured in the amount of the price at which the goods are sold to you against all insurable risks and shall account to us for any monies relating to the goods and any part thereof received under such policy of insurance forthwith upon receipt of the same and pending such account shall hold such monies on trust for the Seller and pay them into a separate bank account designated as a trust account for us.
- 16.5 Any account of monies by you in accordance with the terms of this sub-condition received by the us shall not discharge your liability to pay the price for the goods plus any interest accrued in accordance with sub-condition 4.7 above but shall be set off against such liability.
- 16.6 Until such time as the property in the goods passes to you, you shall be entitled to resell or use the goods in the ordinary course of your business. Any sale shall be a sale of our property on your own behalf and you shall deal as principal when making such a sale.
- 16.7 Until such time as the property in the goods passes to you, we shall be entitled at any time to require you to deliver up the goods to us and, if you fail to do so forthwith, to enter upon any premises of yours or any third party where the goods are stored and repossess the goods.
- 17. PERSONAL PROPERTY SECURITY ACT ("PPSA")**
- 17.1 In this clause 16, unless the contrary intention appears, a reference to a term defined in the PPSA has the meaning it has in the PPSA.
- 17.2 If the Seller determines that Clause 15 is or contains a security interest for the purposes of the PPSA, you agree at your expense to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which we ask and consider necessary for the purposes of ensuring that the security interest is enforceable,perfected and otherwise effective;enabling us to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by us; or enabling us to exercise rights in connection with the security interest.
- 17.3 We need not give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- 18. ASSIGNMENT**
- Neither of us may assign, charge or otherwise deal in any of its rights or obligations under this Contract without the prior written consent of the other. Notwithstanding this, we may assign our rights and obligations to any successor to the part of our business to which this Contract relates.
- 19. ENTIRE AGREEMENT**
- 19.1 Each of us acknowledges that this Contract is constituted by these terms and conditions and our proposal only.

- 19.2 This Contract is the entire agreement between us on its subject matter and supersedes any previous arrangements, agreements, representations, understandings or statements (whether verbal, in writing, or some other format).
- 19.3 To the extent of any inconsistency between our proposal and these terms and conditions, our proposal shall take precedence. Nothing in this Clause 19.3 shall prevent the parties from agreeing expressly in writing to change the order of precedence of contractual documents.

20. PRIVACY

- 20.1 Disclosure by you of personal information to us in the course of our engagement is subject to the Privacy Act 1988 ("the Privacy Act"). Accordingly the Services are provided on the basis that you will only disclose personal information about an individual to us provided:
- 20.1.1 it is for a purpose related to the performance of the Services;
- 20.1.2 you have made all disclosures required under the Privacy Act;
- 20.1.3 you have obtained any consents required under the Privacy Act; and
- 20.1.4 to do so would not otherwise breach the Privacy Act.
- 20.2 If the performance of the Services requires a third party to supply personal information to either party, on the other party's request, it is the obligation of the requested party to ensure that the third party complies with clauses (a) to (d) above.
- 20.3 In respect of all personal information disclosed by you to us in the course of our engagement we will take all reasonable measures to ensure its protection to a standard compliant with the Privacy Act.

21. RELATIONSHIP OF PARTIES

We enter into this Contract as an independent contractor. Nothing in this Contract deems either of us to be an employee, partner, agent, joint venturer or representative of the other.

22. NOTICES

Unless otherwise specified in this Contract, any notice given under this Contract must be in writing and may be served by either of us on the other by hand delivery or pre-paid post to the address of the other, or by facsimile to the other's nominated facsimile number. Notices will be deemed served:

- 22.1 if by hand delivery, when it is delivered;
- 22.2 if by pre-paid post, on the third business day after posting (seven if posted to or from a place outside Australia); and
- 22.3 if by facsimile, on receipt by the sender of a transmission report by the machine from which the facsimile is sent, indicating that the facsimile was sent in its entirety to the facsimile number of the recipient.

23. SEVERABILITY

Any part of this Contract that is held to be unlawful or unenforceable by a court of competent jurisdiction is severed from this Contract and the remaining provisions will continue to operate.

24. WAIVER

Neither of us will be taken to waive any right under this Contract except if the waiver is given in writing and is signed.