

The success of consulting work requires that we work co-operatively and openly with our clients. To this end, these terms of business will form the Contract between us.

1. OUR SERVICES

1.1 Scope of Services

Our services may be either:

- (a) **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; or
- (b) **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

We will use reasonable efforts to ensure that the individuals named above are available for the period specified, unless otherwise agreed. 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.

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. However, 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

Unless otherwise explicitly stated in this proposal, dates in any timetable are intended for planning and estimating purposes only and are not contractually binding. Where the proposal specifies a fixed commitment to timeframes, we will use our reasonable efforts to meet those timeframes. However, you acknowledge that timeframes may not be met to the extent that you or your contractors cause delays, or any assumption in this Contract proves incorrect. In particular, 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

Either of us may request changes to the services or to any other aspect of the terms of business. However, 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:

- (a) while we must meet our obligations under this Contract with due professional care, we do not owe any further or more general duty to you; and
- (b) 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 this agreement.

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 Ownership of deliverables

2.3.1 Use of deliverables

We will own the copyright in all deliverables and other materials not identified as Client Materials. You will have 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 without first obtaining our written permission.

2.3.2 Software

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 the agreement. 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.

2.4 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

To perform our services adequately, we will require the following assistance from you.

3.1 Information and materials

You agree to provide all information and materials reasonably required to enable us to provide the services. 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. We will not obtain any intellectual property rights in any information or materials you provide to us.

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

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

If payment is more than 14 days overdue we may suspend provision of our services and charge interest at a rate of 3% above the Westpac overdraft rate on the outstanding amount.

- 4.6 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.
- 4.7 In the event where the client does not proceed to UAT, all remaining project fees will be payable 14 days after the delivery of the software for UAT. If UAT is delayed by more than 30 days, any subsequent assistance with UAT and deployment to a production environment (go-live) will be charged at the development rates specified in the proposal.
- 4.8 In the event where UAT is signed off but the client does not proceed to deployment to a production environment (go-live), all remaining project fees will be payable 5 days after UAT sign off. If go-live is delayed by more than 30 days, any subsequent assistance with go-live will be charged at the development rates specified in the proposal.

5. TERMINATION

- 5.1 **For convenience**
Either of us may terminate the Contract at any time by giving not less than 45 days written notice. If you do, 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.
- 5.2 **Breach of contract**
If either of us breaches the Contract in a material way, the other may give notice requiring the breach to be remedied within 30 days. If the breach is not so remedied, the party serving notice may serve a further notice terminating the Contract with immediate effect.

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, 9, 11 and 12 survive termination or expiry of this Contract.

6. CONFIDENTIALITY

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. Our confidential information includes our methodologies and tools. This restriction does not apply to information which is or becomes generally available to the public (other than as a result of a breach of an obligation under this clause), is independently developed by the recipient, or is required by law to be disclosed.

7. 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. The warranting party will indemnify the other party against any final award of damages, or settlement, arising out of a breach of this warranty. However, this clause will not apply to any infringement caused by:
- (a) 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 the proposal);
 - (b) 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
 - (c) information, materials or directions given by the other party or a third party (that is not a contractor or agent of the warranting party).
 - (d) accidental infringement as a result of one party responding to another party's specific request for a deliverable
- 7.2 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.
- 7.3 The remedies available and the liability we accept under this clause 7 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.

7.4 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. 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. Where this paragraph 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:

- (a) in the case of services, the cost of supplying the services again; and
- (b) in the case of goods, the lowest of the cost of replacing the goods, acquiring equivalent goods or having the goods repaired.

7.5 We will maintain:

- (a) professional indemnity insurance in respect of liability under this Contract for an amount of at least \$5 million; and
- (b) public liability insurance for an amount of at least \$5 million.

Both of us will comply with all workers compensation or similar legislation in respect of our respective personnel.

8. SUBCONTRACTORS AND THIRD PARTIES

8.1 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.

8.2 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.

9. 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.

10. FORCE MAJEURE

Neither of us will be liable to the other for any failure to fulfil obligations caused by circumstances outside its reasonable control.

This clause does not apply to any of your obligations to pay money for services performed.

11. 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.

12. ISSUE RESOLUTION

If any dispute arises between us under this Contract:

- (a) the party raising the dispute must notify the chief executive officer (or its equivalent) of the other party in writing that a dispute exists, with sufficient detail to enable the dispute to be considered; and
- (b) unless the parties otherwise agree, if the dispute is not resolved after 14 days from that notice, the dispute will be referred to mediation by a mediator agreed by us; and
- (c) nothing in this clause prevents either of us from commencing proceedings at any time against the other for urgent interlocutory relief.

13. 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.

14. ENTIRE AGREEMENT

Each of us acknowledges that this Contract is constituted by these terms and conditions only. 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).

15. PRIVACY

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:

- (a) it is for a purpose related to the performance of the Services;
- (b) you have made all disclosures required under the Privacy Act;
- (c) you have obtained any consents required under the Privacy Act; and
- (d) to do so would not otherwise breach the Privacy Act.

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.

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.

16. 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.

17. 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:

- (a) if by hand delivery, when it is delivered;
- (b) if by pre-paid post, on the third business day after posting (seven if posted to or from a place outside Australia); and
- (c) 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.

18. 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.

19. 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.