

# General Terms and Conditions for Services of UNITY Consulting Australia Pty Ltd

## 1 Dictionary

In these terms and conditions (**Terms**) the words below have the following meanings:

**Agreement** has the meaning given at clause 2.3.

**Australian Consumer Law** means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and any equivalent State or Territory legislation.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in Sydney, New South Wales, Australia.

**Claim** means a claim, action, proceeding, judgment or demand made or brought by or against a person, however arising and whether present, unascertained, future or contingent.

**Commencement Date** means the date for commencement of performance of the Services, as set out in an Order Form.

**Confidential Information** means all information and other content disclosed by the Disclosing Party to the Receiving Party and, in the case of the Contractor as the Disclosing Party, includes these Terms and the Prices, but excludes information that:

- a) the Receiving Party can prove by contemporaneous written documentation was in the lawful possession of the Receiving Party before the Disclosing Party had any dealings with the Receiving Party or was independently generated by the Receiving Party or on its behalf;
- b) is in the public domain otherwise than as a result of a breach of this agreement or any other obligation of confidentiality owed to the Disclosing Party; or
- c) was legally and properly obtained by the Receiving Party from any other source without restriction on further disclosure.

**Consequential Loss means:**

- a) any loss of revenue or profits, loss of actual or anticipated savings, and loss of opportunity; and
- b) any loss that does not flow naturally and directly from the relevant breach, negligence or other act or omission.

**Consumer** has the meaning given in the Australian Consumer Law.

**Consumer Guarantee** means a guarantee provided under Division 1 of Part 3-2 of the Australian Consumer Law.

**Contractor** means UNITY Consulting Australia Pty Ltd ABN 39 675 825 984 of Level 5, 20 Bond Street, 2000 Sydney, NSW.

**Customer** means the entity or individual named in an Order Form that has engaged with the Contractor for the supply of Services.

**Customer Materials** means all documents, information, items, designs, specifications, instructions or materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Contractor in connection with the Services.

**Defective Services** means any Services performed by the Contractor which do not meet the requirements set out in an Order Form.

**Defects Warranty Period** means the period of 7 days commencing from the date of completion of performance of the Services under an Order Form by the Contractor.

**Expense** means any additional expense or cost incurred by the Contractor in connection with the performance of the Services, such as for travel or accommodation.

**Force Majeure Event** means any event which is beyond the reasonable control of Contractor and includes viruses, pandemics, epidemics, public health emergencies and governmental actions, laws and regulations taken in response to same.

**Insolvency Event means:**

- a) in relation to a body corporate, a liquidation or winding up or the appointment of a voluntary administrator, receiver, manager or similar insolvency administrator to that body corporate or any substantial part of its assets;
- b) in relation to an individual or partnership, the act of bankruptcy, or entering into a scheme or arrangement with creditors;
- c) in relation to a trust, the making of an application or order in any court for accounts to be taken in respect of the trust or for any property of the trust to be brought into court or administered by the court under its control; or the occurrence of any event that has substantially the same effect to any of the preceding events.

**Intellectual Property** means all rights conferred under statute, common law or equity in any jurisdiction, whether existing now or in the future and whether or not registered or registrable, in relation to trade marks, copyright, patents, patentable inventions, designs, trade secrets, circuit layouts, programming tools, object code, source code, methods, techniques, recipes, formulae, algorithms, modules, libraries and database rights, together with the right to apply for the registration or grant of any such intellectual property, and Intellectual Property Rights has a corresponding meaning.

**Loss** means any loss, liability, cost, expense, damage or payment however arising, whether present, unascertained, future or contingent and includes direct loss and Consequential Loss.

**Order Form** means a document agreed between the parties as set out in clause 2.2.

**Personnel** means, in relation to a party, that party's the employees, contractors, agents and subcontractors.

**PDH Services** means services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption.

**Price** means the price payable for the Services specified in an Order Form.

**Privacy Law** means any privacy or related law or regulation applicable to the Services or the parties.

**Representative** means, in relation to each party, that party's authorised representative under the Agreement as either set out in an Order Form or as agreed between the parties.

**Services** means management consulting for innovation and transformation to be provided by Contractor to Customer as detailed in an Order Form.

**Tax or Taxes** means any tax, excise, levy, duty, charge, fee, or deduction which is assessed, levied, imposed or collected by any government agency, and includes any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any such amounts.

**Term** has the meaning given in clause 3.

## 2 Agreement

2.1 These Terms apply to and govern the supply and performance of Services by the Contractor to the Customer.

2.2 If the Customer wishes to procure Services from the Contractor on these Terms, the parties must agree and execute an order form document setting out the Services, the timeframes for performance of the Services (if any) and the Price for the Services (an Order Form).

2.3 The agreement between the parties will be comprised of the following documents:

- a) an Order Form, including any schedule or attachment to the Order Form; and
- b) these Terms, (together, an Agreement), and in the case of any inconsistency between the Order Form and these Terms, the Order Form will take precedence to the extent of the inconsistency (unless the parties specifically agree otherwise in a particular instance).

## 3 Commencement

The Contractor will perform the Services on and from the Commencement Date, until the sooner of:

- a) if any end date is specific in an Order form, that date;
- b) the completion of the Services; or
- c) the date this Agreement is terminated in accordance with clause 17 or otherwise by operation of law, (the Term).

## 4 Representatives

4.1 Each party shall nominate a Representative as that party's sole contact person and representative for matters relating to the Agreement, and providing directions, notices, consents or otherwise under the Agreement.

4.2 A party must ensure that its Representative has the authority to bind that party in relation to directions, notices and consents given in connection with this Agreement. A party shall be entitled to rely on as binding on the other party any direction, notification, consent or otherwise given by the other party's Representative.

## 5 Performance of Services

5.1 During the Term, the Contractor must perform the Services:

- a) with due care and skill; and
- b) in accordance with all applicable laws, and must use reasonable endeavours to meet the requirements and timeframes (if any) set out in an Order Form.

5.2 Unless the parties specifically agree otherwise, if any Services have been performed prior to the Term, those Services will be governed by the terms of this Agreement.

5.3 The Contractor will ensure that all Contractor Personnel employed or engaged by it to perform the Services will be suitably qualified and skilled to perform the Services.

5.4 The Contractor may substitute or replace any Personnel employed or engaged by it to perform the Services, provided that at all times the Contractor Personnel will be suitably qualified and skilled to perform the Services.

5.5 The Customer must:

- a) provide all necessary Customer Materials, assistance and information to the Contractor as reasonably required by the Contractor to perform the Services; and
- b) if any Services are to be performed at sites or premises owned or controlled by the Customer, provide the Contractor and its Personnel (at no charge) with access to such sites or premises and such other facilities and equipment as the Contractor reasonably requires in order to perform the Services.

5.6 If the Contractor's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer or the Customer Personnel, then, without prejudice to any other right or remedy the Contractor may have, the Contractor will be entitled to an extension of time to perform its obligations equal to the length of the delay caused by the Customer.

## 6 Changes

6.1 If either party wishes to propose a change or variation to the scope or performance of the Services under an Order Form (Change), that party must provide written notice to the other party setting out:

- a) details of the proposed Change; and
- b) any impact on Price, timeframes, specifications or other details of the Order Form,

(a Change Request).

6.2 On receipt of a Change Request, the parties will cooperate promptly, reasonably and in good faith to agree the details of a Change Request, including any impact on the Order Form and proposed effective date of the Changed Services.

6.3 Neither party is bound to any Change until such time as the parties have each agreed and executed a written Change Request.

6.4 If the performance of the Services under a particular Order Form is, in the Contractor's reasonable and good faith opinion, impossible or impractical due to the need for a Change, and the parties have not agreed a Change under this clause 6 within a reasonable time following the Contractor issuing a Change Request, then the Contractor may, by written notice to the Customer:

- a) cease performance of the Services until such time as the parties can agree a Change Request; or
- b) terminate the Agreement.

6.5 If the Customer proposes a Change Request, and the Contractor, acting reasonably and in good faith, is required to spend a significant amount of time scoping the requested Change, the Contractor may charge the Customer for its time spent on such works, provided that:

- a) the Contractor must notify the Customer of the likely cost of such works, calculated by reference to the Contractor's then standard time and materials rates; and
- b) the Contractor must not commence any such works or charge the Customer, until the Customer has agreed to pay the amount set out at clause 6.5(a).

## 7 Defective Services

7.1 Subject to the provisions in this clause 7, the Contractor will, at its sole cost, rectify any Defective Services notified to the Contractor by the Customer within the Defects Warranty Period.

7.2 To be entitled to the remedy under clause 7.1, the Customer must notify the Contractor in writing of the Defective Service as soon as reasonably practicable, but in any case, within 14 days of the Customer becoming aware of the Defective Services.

7.3 The Contractor's liability to rectify any Services which are alleged to be Defective Services is subject to the Contractor being provided with the reasonable opportunity by the Customer to inspect any allegedly Defective Services and determine if those Services are defective.

7.4 The Contractor will have no liability to rectify any allegedly Defective Services if the alleged defect arises:

- a) due to an act or omission of the Customer or Customer Personnel; or
- b) the Contractor performing the Services in compliance with the Customer's specifications or instructions, where a defect could not have been avoided while complying with such specifications or instructions.

## 8 Price and payment

8.1 In consideration of the performance of the Services by the Contractor, the Customer must pay to the Contractor the Price set out in an Order Form, in accordance with this clause 8 (unless the parties have agreed alternative payment terms in a particular Order Form).

8.2 The Contractor may also charge Expenses in connection with the performance of the Services, provided that all Expenses have been notified to the Customer and approved by the Customer prior to them being incurred.

8.3 The Contractor will issue an invoice for Services performed pursuant to an Order Form on a monthly basis. The Contractor may also provide with each invoice, a performance report providing additional detail as to the Services against which the invoice relates.

8.4 The Customer must raise any issues with any invoice or performance report provided by the Contractor within 14 days from the date of that invoice.

8.5 The Customer must make full and final payment of each invoice within 30 days from the date of that invoice.

## 9 GST

9.1 Unless otherwise expressly stated in writing in an Order Form, all amounts payable by the Customer in connection with an Order Form do not include an amount for GST. If GST is payable on any supply made by the Contractor, this will be included as a separate line item on an invoice, and the Customer must pay to the Contractor, in addition to and at the same time as the payment for the supply, an amount equal to the amount of GST on the supply. Where the Customer is required to reimburse or indemnify the Contractor for any Loss or

other amount incurred, the amount to be reimbursed or paid will be reduced by the amount of any input tax credit that the Contractor will be entitled to claim for the Loss or amount incurred and increased by the amount of any GST payable by the Contractor in respect of the reimbursement or payment.

9.2 This clause does not merge on completion or termination of the Agreement.

9.3 In this clause, words and expressions which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended, varied or replaced from time to time) have the same meaning given to them by that Act.

## 10 Non-solicitation

10.1 The Customer must not, without the prior written consent of the Contractor, at any time from the Commencement Date until the date which is six months following the expiry or termination of the Term, canvass, solicit, interfere with or entice away, or attempt to canvass, solicit, interfere with or entice away, from the Contractor or employ or engage or attempt to employ or engage any person who is, or has been, engaged as Personnel of the Contractor (Employee).

10.2 Breach of clause 10.1 by the Customer will render the Customer liable to pay to Unity, on demand, liquidated damages equal to 50% of the Employee's total annual remuneration.

10.3 The parties agree that activities of general solicitation for employment which are placed in good faith, such as on jobs websites or general advertisements, and any Personnel of a party responding to same, will not be considered a breach of clause 10.1.

## 11 Intellectual Property Rights

11.1 Each of the Contractor and the Customer will own, and will continue to own, all Intellectual Property Rights subsisting in any materials, documents or information (and including the Customer Materials, in relation to the Customer only) it:

- a) provides or makes available to the other party under, or in connection with an Agreement; and
- b) which are developed independently from the Agreement, (together, Background IP).

11.2 Each party grants to the other party a non-exclusive, worldwide, royalty free licence to use its Background IP for the purposes of performing its obligations and exercising its rights under the Agreement.

11.3 The licence in Background IP granted under clause 11.2 can only be transferred or sublicensed with the prior written consent of the owner of the Background IP.

11.4 If, in the course of performing the Services for the Customer under an Agreement, the Contractor has developed any Intellectual Property (Developed IP), then unless otherwise agreed between the parties in writing, the Contractor will own the Developed IP, on and from the date upon full payment of the remuneration.

11.5 Subject to full and final payment of the Price by the Customer to the Contractor, the Contractor grants to the Customer a nonexclusive, irrevocable, worldwide, royalty-free licence to use the Developed IP solely in connection with the Customer's internal business purposes, or for any other purpose agreed between the parties in an Order Form.

## 12 Infringement claims

12.1 Each party warrants that the use by the other party of its Background IP as contemplated under an Agreement will not infringe, or cause the other party to infringe, the Intellectual Property Rights of any third party.

12.2 Subject to clause 12.3, the Contractor warrants that:

- a) the Services as performed by the Contractor under an Agreement; and
- b) the granting of the licence under clause 11.5 in the Developed IP from the Contractor to the Customer, and the Customer's use of the Developed IP as permitted under clause 11.5, will not infringe the Intellectual Property Rights of any third party (Infringement Claim).

12.3 The Contractor will not be in breach of the warranty at clause 12.2 to the extent the Infringement Claim arises from:

- a) the use of any Customer-owned Background IP in the Services or Developed IP;
- b) any modification, amendment or adaptation of the Services or the Developed IP by the Customer which is not authorised by the Contractor; or
- c) the Contractor performing the Services in compliance with the Customer's specifications or instructions.

12.4 The Customer must:

- a) notify the Contractor as soon as reasonably practicable if the Customer receives notification of an Infringement Claim; and
- b) provide reasonable assistance and information to the Contractor in connection with an Infringement Claim (at the Contractor's cost).

## 13 Confidentiality

13.1 A party which receives Confidential Information (Receiving Party) from the other party (Disclosing Party) must:

- a) maintain the confidential nature of the Confidential Information;
- b) not disclose or otherwise provide the Confidential Information to any person except under clauses 13.1, 13.2 and 13.3 or with the prior written consent of the Disclosing Party;

- c) not use the Confidential Information for the Receiving Party's own or another's advantage, or to the competitive disadvantage of the Disclosing Party; and
  - d) not copy or duplicate or allow the copying or duplication of any Confidential Information.
- 13.2 The Receiving Party may disclose Confidential Information to any of its Personnel, legal or financial advisors (Authorised Persons) provided that:
- a) the Authorised Person has a need to know and then only to the extent that the Authorised Person has a need to know; and
  - b) before disclosure, the Receiving Party has made the Authorised Person fully aware of the confidential nature of the Confidential Information and the terms of this clause 13 and, if requested by the Disclosing Party, the Receiving Party ensures that the Authorised Person signs a confidentiality deed in a form approved by the Disclosing Party.
- 13.3 The obligations of confidence do not apply where the Receiving Party is required by law to disclose specific Confidential Information, provided that the Receiving Party must to the extent practicable in the circumstances give the Disclosing Party reasonable prior notice of any proposed disclosure of Confidential Information including the form and content of the disclosure to be made and must only disclose that part of the Confidential Information which its legal advisers reasonably believe is necessary to disclose
- 14 Privacy and data**
- 14.1 The Contractor warrants that it complies with and will continue to comply with the Privacy Laws in relation to the performance of the Services.
- 14.2 The Customer must obtain all consents and perform all notifications and communications required under the Privacy Laws in order to allow the:
- a) disclosure of information to the Contractor and the Contractor Personnel; and
  - b) Contractor and Contractor Personnel to use such information for the purposes of performing its obligations under the Agreement.
- 14.3 Where the Customer provides data or information to the Contractor, the Contractor warrants that it has in place and will maintain during the Term, administrative, physical, technical and organisational safeguards for the protection, confidentiality and integrity of any such Customer data or information.
- 14.4 Unless otherwise agreed between the parties, the Customer:
- a) is responsible for ensuring the accuracy and integrity of all data provided to the Contractor under the Agreement, including that all such data has been adequately backed-up; and
  - b) must not provide to the Contractor any sensitive data or information (such as relating to health, medical status, racial or ethnic origin, financial information, or similar).
- 15 Australian Consumer Law**
- 15.1 If the Customer is a Consumer and the Contractor supplies PDH Services to the Customer:
- a) the Services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the Service, the Customer is entitled:
    - (i) to cancel the Services or the Agreement; and
    - (ii) to a refund for the unused portion of the Services, or to compensation for the reduced value of the Services;
  - b) the Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, the Customer is entitled to have problems with the Services rectified in a reasonable time and, if this is not done, to cancel the Services or the Agreement and obtain a refund for the unused portion of the Services or Agreement; and
- 15.2 If the Customer is a Consumer and any Services supplied by the Contractor to the Customer are non-PDH Services, the Contractor's liability to the Customer in connection with any breach of the Consumer Guarantees in respect of those non-PDH Services is limited (at the Contractor's discretion) to: Page 4
- a) the supplying of the Services again; or
  - b) the payment of the cost of having the Services supplied again.
- 16 Liability**
- 16.1 If the Customer makes a Claim against Contractor which includes a cause of action, other than for a breach of a Consumer Guarantee then, to the extent the Claim, or part of the Claim, does not relate to a Consumer Guarantee, and to the maximum extent permitted by law:
- a) subject to clauses 16.1(b), 16.2, 16.3 and 16.4, the Contractor's total aggregate liability arising in connection with all such Claims will be limited to an amount equal to the total amount actually paid by the Customer under the applicable Order Form/s relating to the Services that are the subject of the Claim; and
  - b) the Contractor will not be liable to the Customer for any Consequential Loss.
- 16.2 The Contractor's liability set out at clause 16.1(b) is reduced to the extent:
- a) any such Claim was caused, or contributed to, by an act or omission of the Customer or Customer Personnel; or
  - b) the Customer has failed to take reasonable steps to mitigate its Loss.
- 16.3 The limitation of the Contractor's liability set out at clause 16.1(b) does not apply to:
- a) the fraud or wilful misconduct of the Contractor or Contractor Personnel;
  - b) personal injury (including death) or property damage;
  - c) Claims for loss of or damage to data or information owned by the Customer and provided to the Contractor under the Agreement, provided that the Contractor's sole liability to the Customer in relation to such Claims will be the cost of restoring such lost or damaged data to the last available back-up.
- 16.4 Notwithstanding anything else in this clause 16, but subject to clause 15, the Contractor will not be liable to the Customer for any Claims brought by the Customer after the expiry of the sooner of: (a) two years after the date the Customer first became aware of the Claim; or (b) three years after the date the Agreement expires or has been terminated.
- 17 Termination**
- 17.1 Without limiting either party's other rights under the Agreement, either party may terminate the Agreement with immediate effect by written notice to the other party:
- a) if the other party is the subject of an Insolvency Event;
  - b) if the other party has breached any term of the Agreement and, if the breach is capable of remedy, has not remedied the breach within 30 days or receiving notice requiring the breach to be remedied; or
  - c) in accordance with clause 18.2.
- 17.2 On termination or expiry of the Agreement:
- a) the Contractor will, from the date of termination or expiry, cease performance of the Services;
  - b) the Contractor may issue to the Customer an invoice for those Services performed by the Contractor up to the date of termination or expiry; and
  - c) all monies owed by the Customer to the Contractor (including any Prices which have accrued but are unpaid) will become immediately due and payable.
- 17.3 The termination or expiry of the Agreement does not operate to terminate any rights or obligations that by their nature are intended to survive termination or expiration. Each party retains any rights, entitlements or remedies it has accrued before termination or expiry, including the right to pursue all remedies available to either party at law or in equity.
- 18 Force Majeure**
- 18.1 The Contractor will not be liable for any failure to perform or delay in performing its obligations under the Agreement if that failure or delay is due to a Force Majeure Event.
- 18.2 If a Force Majeure Event under clause 18.1 exceeds 30 consecutive days, the Contractor may terminate the Agreement by providing written notice to the Customer
- 19 Miscellaneous terms**
- 19.1 These Terms or the terms in an Order Form may only be amended or varied by a document in writing signed by each party.
- 19.2 Each party must maintain and keep current and complete records relating to the performance of Services under the Agreement, and must, within a reasonable time of receipt of a written request from the other party, provide the other party with access to, or copies of, those records.
- 19.3 Neither party may assign, subcontract or otherwise deal with any of its rights or obligations under the Agreement without the written consent of the other party.
- 19.4 If any provision in the Agreement is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed without affecting the validity or enforceability of the remaining provisions.
- 19.5 Nothing in an Agreement creates a relationship of employment, agency, partnership or joint venture between the parties.
- 19.6 Notices by a party under the Agreement must be in writing and delivered by hand, prepaid post or email and sent to the address of the receiving party specified in the Agreement (as applicable) or as otherwise notified by the relevant party to the other party. Notices will be deemed to have been received by hand on delivery, by post within two (2) Business Days of sending (or within five Business Days, if posted to or from a location outside of Australia) and by email one hour after the email (unless the sender knows that email has failed to send).
- 19.7 The United Nations Convention on International Contracts for the Sale of Goods is expressly excluded from any Agreement under these Terms.
- 19.8 Each Agreement is governed by the laws in force in New South Wales, Australia, and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia

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