

# TERMS AND CONDITIONS

## 1 DEFINITIONS & INTERPRETATION

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1.1 In this Agreement:

**'Acceptance'** means that the Deliverable has passed the Acceptance Tests.

**'Acceptance Criteria'** means the performance criteria for the Deliverable set out in the SOW.

**'Acceptance Test Plan'** means the test plan for the testing of the Deliverable set out in the SOW.

**'Acceptance Tests'** means the acceptance tests for the Deliverable set out in the SOW.

**'Murdoch Webster Software'** means software and related documentation developed or written by Murdoch Webster.

**'Business Day'** means a day of the week which is not a Saturday, Sunday or public holiday in Victoria.

**'Confidential Information'** means in relation to a party all proprietary information or material belonging to that party or its Related Bodies Corporate which is either designated as confidential or confidential in nature including, without limitation:

- (a) specifications, records, data, programs, tools, methodologies, know-how and trade secrets of that party or its Related Bodies Corporate; and
- (b) information about the business, finances, marketing strategies, products, personnel, customers and transactions of that party or its Related Bodies Corporate.

**'Customer Data'** means all data and information belonging to or in the control of the Customer.

**'Customer Materials'** means Customer Data and Customer Resources.

**'Customer Resources'** means any hardware, software, materials and resources made available by the Customer or its subcontractors (other than Murdoch Webster) for use in conjunction with the Services.

**'Defect'** means a material failure of a Deliverable to perform in accordance with, or satisfy the requirements of, the relevant Specifications.

**'Deliverable'** means the deliverable to be provided by Murdoch Webster to the Customer in relation to or as part of the Services, and for the avoidance of doubt does not include the Goods.

**'Designated Equipment'** means the equipment, if any, described in the SOW.

**'Expenses'** means all reasonable expenses incurred by Murdoch Webster in connection with performing the Services.

**'Fees'** means the fees for the performance of the Services and delivery of the Deliverable to be paid by the Customer to Murdoch Webster as set out in the SOW.

**'Force Majeure Event'** means anything outside the reasonable control of a party, including but not limited to, acts of God, earthquakes, floods, droughts, fires, terrorism, riots, strikes and acts or omissions of government or governmental agencies.

**'Goods'** means any third party products, including all hardware and software components and associated integration and support services, ordered by the Customer and specified in the SOW or a quote provided by Murdoch Webster.

**'GST'** has the meaning set out in the *A New Tax System (Goods and Services Tax) Act 1999*.

**'Implementation Plan'** means the plan set out in the SOW.

**'Insolvency Related Event'** means that:

- (a) a party disposes of the whole or any part of its assets, operations or business other than in the normal course of business;
- (b) a party enters into any arrangement between itself and its creditors;
- (c) a party is or is deemed to be unable to pay its debts as they become due;
- (d) a party ceases to carry on business;
- (e) a mortgagee enters into possession of the party's assets or business; or
- (f) a receiver, a receiver and manager, a trustee in bankruptcy, an administrator, a liquidator, a provisional liquidator or other like person is appointed over the whole or any part of the party's assets or business.

**'Intellectual Property Rights'** means all rights, whether registrable, registered or unregistered in any patent, trade mark, copyright, registered design or other design right or circuit layout right, or any applications for, or rights to obtain or acquire, any such rights in any jurisdiction in the world.

**'Nominated End-User'** means the party nominated by the Customer and specified in the SOW as the ultimate beneficiary of the Services.

**'Payment Plan'** means the plan, if any, set out in the SOW.

**'Personnel'** means a party's employees, agents and subcontractors.

**'Proposed Variation'** means a written request for amendments to the Services.

**'Related Body Corporate'** has the meaning set out in section 50 of the *Corporations Act 2001*.

**'Representative'** means the person appointed in writing by either party to act as their representative under this Agreement.

**'Services'** means the services to be provided to the Customer by Murdoch Webster, as described in the SOW.

**'SOW'** means the statement of work for the provision of the Supply, and to which this Agreement is attached.

**'Specifications'** means the relevant specifications set out or referred to in the SOW.

**'Supply'** means the provision of the Goods and/or Services (as the context requires) under this Agreement.

**'Taxes'** means any government taxes, levies, charges, duties or withholdings (including GST) which are assessed, levied, imposed or collected by any government body in any jurisdiction and includes, but is not limited to, any interest penalties, fines, charges, fees or other amounts imposed on, or in respect of any of these.

**'Term'** means the term as set out in the SOW, which extends automatically on a month to month basis on the existing terms of this Agreement (including price), unless either party notifies the other at least 30 days prior to any automatic extension.

**'Warranty Period'** means:

- (a) in respect of a Deliverable, 30 days commencing on Acceptance; or
- (b) in respect of Goods, the period specified in the terms applying to those Goods and specified in the SOW, quote, or applicable third party terms.

1.2 This Agreement is to be read in conjunction with any SOW to which it is attached. In the event of any inconsistency between the Agreement and the SOW, the terms of the SOW will prevail.

1.3 In this Agreement, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of this Agreement;
- (b) the singular includes the plural;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to this Agreement includes any schedules and annexures;
- (e) a reference to a party includes its administrators, successors and permitted assigns; and
- (f) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies.

## **2 SUPPLY OF GOODS**

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2.1 In consideration for payment of the Fees, Murdoch Webster will supply the Goods in accordance with this Agreement.

2.2 The Customer expressly acknowledges and agrees that the Goods are supplied by Murdoch Webster but manufactured by a third party and not by Murdoch Webster. The terms of use associated with the Goods, including any warranties made and remedies available to the Customer, will be as set out in the terms agreed between the Customer and relevant third party manufacturer.

2.3 The Customer acknowledges that Murdoch Webster' quote is subject to change based on exchange rate fluctuation. The Customer is deemed to have accepted the relevant third party terms once an order is placed with Murdoch Webster. Murdoch Webster will arrange for the supply of the Goods upon receipt of the Customer's order, unless Murdoch Webster provides notice to the Customer within 10 days that the order is not accepted. The Customer cannot cancel its order once Murdoch Webster has accepted the Customer's order.

- 2.4 The cost of any special packing and packing materials used in relation to the Goods are at the Customer's expense notwithstanding that such cost may have been omitted from any quote or order.
- 2.5 The delivery times made known to the Customer for supply of the Goods are estimates only and Murdoch Webster is not liable for late delivery. Murdoch Webster will notify the Customer of any delay to the delivery times if it becomes aware of any such delay. Murdoch Webster is not liable for any loss, damage or delay occasioned to the Customer or its customers arising from late delivery.
- 2.6 Murdoch Webster reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Customer within 14 days of a request by Murdoch Webster for such instructions.
- 2.7 Murdoch Webster is not under any duty to accept Goods returned by the Customer, and will do so only on terms to be agreed in writing in each individual case. If Murdoch Webster agrees to accept returned Goods from the Customer, the Customer must return the Goods to a location specified by Murdoch Webster with all original packaging and materials, and Murdoch Webster is entitled to charge a restocking fee (not to exceed 20% of the purchase price of the Goods).

### **3 SUPPLY OF SERVICES**

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- 3.1 In consideration for payment of the Fees, Murdoch Webster will perform the Services and deliver to the Customer the Deliverables.
- 3.2 Murdoch Webster will:
- (a) use reasonable efforts to provide the Services in accordance with the SOW; and
  - (b) participate in meetings and discussions regarding the Services as reasonably required by the Customer.
- 3.3 The Customer may choose to nominate a Nominated End User as the ultimate beneficiary of the Services. Such nomination in no way varies the obligations of Murdoch Webster to perform the Services under the Agreement, and nothing in the Agreement shall be interpreted to restrain such a business relationship. Murdoch Webster shall not deliver the Services directly to the Nominated End-User or approach the Nominated End-User to deliver the Services directly to them whilst the Agreement continues.
- 3.4 Nothing in this Agreement prevents, restricts or limits Murdoch Webster from providing the Services or any similar services to any other person.
- 3.5 Services procured via prepayment must be used within six months of the date of purchase. No refunds will be provided for any prepaid Services that have not been utilised within this timeframe.
- 3.6 Where the Services include cybersecurity or security testing, the Customer acknowledges that:
- (a) the Services are designed to reduce cybersecurity risk but do not guarantee prevention of all security incidents or breaches;
  - (b) cybersecurity threats evolve and no security measures provide absolute protection; and
  - (c) the Customer remains responsible for implementing security controls, monitoring systems, responding to incidents, and maintaining backups.

## **4 CUSTOMER'S OBLIGATIONS**

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- 4.1 The Customer must provide to Murdoch Webster:
- (a) such information and assistance as Murdoch Webster reasonably requires from time to time to enable Murdoch Webster to perform its obligations under this Agreement in a proper and timely manner;
  - (b) the personnel, resources, information materials and equipment (if any) described in the SOW; and
  - (c) such access to the Customers' premises and materials as is reasonably necessary to enable Murdoch Webster to properly and promptly perform the Services.
- 4.2 Murdoch Webster will comply with all reasonable security procedures and safety measures notified in writing to Murdoch Webster from time to time by the Customer in relation to its premises.
- 4.3 The Customer will obtain all licences, rights and permissions necessary for Murdoch Webster to access, use and modify the Customer Materials for use in relation to the Supply.
- 4.4 Unless expressly included in the scope of Services under a Statement of Work, the Customer is solely responsible for:
- (a) implementing and maintaining backup systems for all Customer Data, systems and infrastructure;
  - (b) testing backup and recovery procedures; and
  - (c) maintaining business continuity and disaster recovery plans.

## **5 ASSUMPTIONS**

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- 5.1 Murdoch Webster' performance depends on:
- (a) the Customer performing its responsibilities set out in this Agreement;
  - (b) the Customer and its Personnel reasonably cooperating with Murdoch Webster and its Personnel;
  - (c) all information provided by the Customer to Murdoch Webster in relation to this Agreement and the Services (including information provided prior to the date of this Agreement) remaining true and correct; and
  - (d) any other assumptions set out in this Agreement or the SOW remaining true and correct.
- 5.2 Murdoch Webster will be relieved from relevant obligations under this Agreement to the extent that any of the assumptions in clause 5.1 is incorrect.

## **6 ACCEPTANCE TESTING**

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- 6.1 Where Acceptance Testing is specified as applicable under the relevant SOW, this clause 6 will apply, and Murdoch Webster must ensure each Deliverable conforms substantially to the Acceptance Criteria.

- 6.2 Murdoch Webster will conduct the Acceptance Tests in accordance with the Acceptance Test Plan.
- 6.3 Murdoch Webster will provide the Customer with reasonable notice of when and where the Acceptance Tests will be conducted and the Customer will be entitled to observe the Acceptance Tests.
- 6.4 If a Deliverable does not conform substantially to the Acceptance Criteria, Murdoch Webster will remedy that non-compliance and re-perform the relevant part of the Acceptance Tests.
- 6.5 A Deliverable will be deemed to be Accepted on the earlier of:
- (a) Murdoch Webster's receipt of written notice from the Customer that the Deliverable substantially conforms to the Acceptance Criteria;
  - (b) 10 Business Days after delivery of the Deliverable to the Customer, if the Customer has not provided written notice of any material non-conformance with the Acceptance Criteria; or
  - (c) the Customer's use of the Deliverable for business operations for 5 consecutive Business Days.

## **7 REMUNERATION**

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- 7.1 The Customer will pay Murdoch Webster the Fees and Expenses in accordance with this clause 7.
- 7.2 Murdoch Webster will issue invoices to the Customer as specified in the SOW, In relation to the Goods, Murdoch Webster will issue invoices on delivery to the Customer.
- 7.3 The Customer must pay the amounts set out in invoices in Australian currency within the period stated on the invoice or, when no period is stated, not exceeding 14 days from the date of the invoice. If the Customer fails to pay invoices when due Murdoch Webster may suspend performance of the Services until payment is received.
- 7.4 The Customer must pay any amount it is required to pay under this clause in full and without deduction, by electronic transfer into a bank account nominated by Murdoch Webster.
- 7.5 If the Customer disputes the whole or any portion of an invoice, the Customer must pay the undisputed portion and will notify Murdoch Webster in writing, within 7 days of receipt of the invoice, of the reasons for disputing the remainder of the invoice. If it is resolved that some or all of the amount in dispute ought to have been paid to Murdoch Webster at the time it was invoiced, the Customer must pay the amount finally resolved together with interest on that amount in accordance with clause 7.4.
- 7.6 If the Customer does not pay any amount due under this Agreement on time, Murdoch Webster may:
- (a) on 7 days notice, suspend provision of the Supply; and
  - (b) charge the Customer interest (calculated on a daily Murdoch Webster) on any unpaid amounts at an annual rate equivalent to the Official Cash Rate set by the Reserve Bank of Australia.
- 7.7 The Fees will be subject to review if Murdoch Webster' provision of the Supply is delayed or in any other way hindered or adversely affected by:

- (a) any failure by the Customer to perform its obligations and responsibilities as set out in this Agreement; or
- (b) any factor outside the responsibility of Murdoch Webster under this Agreement.

7.8 If the assumptions referred to in clause 5 are inaccurate or there is a change in the scope of the Supply that results in a delay in Murdoch Webster performing the Supply, Murdoch Webster will not be liable for that delay and will be entitled to recover from the Customer any additional costs and expenses incurred by Murdoch Webster as a result of the delay or the change in the scope of the Supply. Any additional costs and expenses will be charged to the Customer at Murdoch Webster' then current rate for the impacted Services and, if applicable, any costs incurred by Murdoch Webster in connection with delayed delivery of the Goods.

## **8 TAXES**

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- 8.1 The Fees and Expenses are exclusive of all Taxes. Any Taxes arising in connection with this Agreement will be payable by the Customer. In particular and without limitation, all amounts payable by the Customer to Murdoch Webster for a supply made under or in connection with this Agreement have been calculated without including an amount for GST.
- 8.2 The Customer must pay an additional amount equal to the GST on the supply or component of the supply, made or deemed to be made, at the same time and in the same manner as making payment of any consideration on which the GST is calculated. If the GST is not calculated on monetary consideration, the Customer must pay the GST within 7 days of receiving Murdoch Webster' invoice.
- 8.3 Murdoch Webster must provide to the Customer a valid tax invoice in respect of a taxable supply.
- 8.4 If either party is required to reimburse to the other any cost, expense or other amount that the other party has incurred in connection with this Agreement, the amount to be reimbursed will be reduced by any part of that amount which is recoverable by the other party by way of an input tax credit.
- 8.5 If at any time an adjustment is made or required to be made between Murdoch Webster and the relevant taxing authority on account of any amount paid as GST as a consequence of any supply made or deemed to be made or other matter or thing under or in connection with this Agreement, a corresponding adjustment must be made as between Murdoch Webster and the Customer and any payment necessary to give effect to the adjustment must be made.

## **9 WARRANTIES**

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- 9.1 The Customer represents and warrants to Murdoch Webster that it has not relied on any representation made by Murdoch Webster which has not been expressly stated in this Agreement.
- 9.2 Murdoch Webster represents and warrants to the Customer that:
  - (a) the Services will be provided with due skill and care;
  - (b) during the Warranty Period the Deliverables will comply in all material respects with the applicable Specifications; and
  - (c) the use of the Deliverables by the Customer in accordance with this Agreement will not infringe any Intellectual Property Rights of a third party.
- 9.3 If the Customer notifies Murdoch Webster of a Defect in the Deliverables during the Warranty Period, Murdoch Webster will, at no cost to the Customer:

- (a) promptly commence remedying or rectifying the Defect;
- (b) notify the Customer of an estimate of how long it will take to remedy or rectify the defect; and
- (c) notify the Customer when the Defect has been remedied or rectified.

9.4 Murdoch Webster will not be liable for a Defect, to the extent that the Defect is caused:

- (a) by the Customer;
- (b) by a third party, unless the third party is a contractor or agent of Murdoch Webster;
- (c) by a Force Majeure Event, including the failure of the Customer to operate the Deliverable in accordance with the Specifications;
- (d) by a modification of any part of the Deliverable by or on behalf of the Customer without Murdoch Webster' consent;
- (e) by a modification to the Customer Materials which interface with the Deliverables by or on behalf of the Customer which has not been agreed to by Murdoch Webster in writing.

9.5 Murdoch Webster does not warrant that the Deliverables will be error-free or will operate without interruption.

9.6 To the extent permitted by law, Murdoch Webster makes no warranty or representation, express or implied, in relation the Goods.

9.7 To the full extent permitted by law and except as otherwise stated in this Agreement, all terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating in any way to the subject matter of this Agreement are excluded.

## **10 INTELLECTUAL PROPERTY**

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10.1 All Intellectual Property Rights in the Murdoch Webster Software and any pre-existing Intellectual Property Rights in the information or resources Murdoch Webster provides to the Customer for the purposes of completion of the engagement are and remain the property of Murdoch Webster. The Customer obtains no rights to the Murdoch Webster Software or information or resources belonging to Murdoch Webster.

10.2 The Customer has ownership over all Intellectual Property Rights in any material created by Murdoch Webster solely for the purpose of completing the engagement.

10.3 Murdoch Webster retains all Intellectual Property Rights in tools, templates, scripts, configurations, methodologies, processes, and know-how of general application, including any improvements or enhancements created during the engagement.

10.4 Upon payment of the applicable Fees, Murdoch Webster grants to the Customer:

- (a) a non-exclusive, worldwide, non-transferable licence to use the Murdoch Webster Software for the Term for the Customer's own internal business purposes, on the Designated Equipment (if specified as such in the SOW); and
- (b) a perpetual, non-exclusive, worldwide, fully-paid up licence to use, modify and adapt each Deliverable (to the extent the customer does not already own the relevant Intellectual Property

Rights under clause 10.2).

- 10.5 The Customer grants and must procure the grant to Murdoch Webster of a fully paid-up, non-exclusive licence of Customer Materials and Intellectual Property Rights it owns under clause 10.2 on the following terms:
- (a) the licence is for the Term; and
  - (b) Murdoch Webster may use, copy, modify and sublicense the Customer Materials to the extent necessary for the purpose of Murdoch Webster carrying out its obligations under this Agreement.
- 10.6 The Customer acknowledges and agrees that:
- (a) as between the Customer and Murdoch Webster, the Customer is solely responsible for the availability and integrity of all Customer Data; and
  - (b) Murdoch Webster has no liability in relation to the accuracy or completeness of Customer Data, whether as a result of such Customer Data being stored in, generated by or processed as part of the Services, or otherwise.
- 10.7 Without limiting any other restrictions set out in this Agreement, the following restrictions apply to the licences granted to the Customer under clause 10.3:
- (a) the Customer may not sell, sublicense or otherwise re-supply or communicate to the public the Murdoch Webster Software;
  - (b) the Customer may not integrate the Murdoch Webster Software with any products or services;
  - (c) other than to the extent permitted by law, the Customer may not decompile, disassemble, reverse engineer or otherwise decrypt or discover the source code of all or any portion of the Murdoch Webster Software.
- 10.8 Where Murdoch Webster incorporates into any part of the Services, materials supplied by the Customer which are subject to any patent, copyright, proprietary right or interest of any third party, the Customer shall take all necessary action to obtain any right or licence required by Murdoch Webster to perform the Services. The Customer shall give Murdoch Webster prior notification of this fact, and Murdoch Webster may require the Customer to provide some alternative material which is not subject to any such third party patent, copyright, proprietary right or interest, if available, or practicable.
- 10.9 Where any person makes a claim for Intellectual Property Rights infringement in connection with the provision of the Supply, Murdoch Webster may modify, limit, suspend or cancel the provision of Services or materials, if required, in response to the claim.
- 10.10 For the avoidance of any doubt, nothing in this Agreement prevents or restricts Murdoch Webster from developing, retaining and using any ideas, concepts, information, tools, methodologies or know-how relating to methods or processes of general application.

## **11 LIABILITY**

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- 11.1 Where conditions or warranties are implied into this Agreement by law and such warranties or conditions cannot be excluded, restricted or modified, to the extent permitted by law Murdoch Webster's liability for breach of any such condition or warranty will be limited, at Murdoch Webster'

option, to:

- (a) in the case of Goods, the replacement or repair of the goods, the supply of equivalent goods or the payment of the cost of replacing or repairing the goods or of acquiring similar goods; and
- (b) in the case of Services, the supply of the services again or the payment of the cost of having the services supplied again.

- 11.2 If the Customer makes a claim in relation to a Defect in the Deliverable, the Customer's sole remedy will be to require Murdoch Webster to correct the Defect.
- 11.3 Despite any other provision of this Agreement, to the full extent permitted by law, Murdoch Webster' aggregate liability to the Customer for any obligation under or any act or omission arising out of or in connection with this Agreement, whether arising in contract, equity, negligence, tort or for breach of statute or otherwise, will be limited to the aggregate Fees for Services paid by the Customer to Murdoch Webster under this Agreement, in the 12 month period prior to the date the liability arose.
- 11.4 To the full extent permitted by law, in no event will Murdoch Webster be liable to the Customer for any loss of interest, revenue, profit, or data or for any consequential, indirect, incidental, special, punitive or exemplary damages, arising from or related to the subject matter of this Agreement (and whether in contract, equity, negligence, tort or for breach of statute or otherwise) even if Murdoch Webster has been advised of the possibility of such loss or damage.
- 11.5 The Customer will use its best efforts to mitigate any loss, cost, expense or damage which it suffers or incurs in connection with this Agreement.
- 11.6 Murdoch Webster' liability arising out of or in connection with this Agreement (whether in contract, equity, negligence, tort or for breach of statute or otherwise) will be reduced by the extent, if any, to which the Customer contributed to the loss.

## **12 PUBLICITY & CONFIDENTIALITY**

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- 12.1 A party may not make any public statement about this Agreement unless it has first obtained prior written consent from the other party.
- 12.2 Each party ('Recipient') must:
- (a) keep confidential the Confidential Information of the other party ('Discloser') of which it becomes aware under or in relation to this Agreement and not disclose it or make it available directly or indirectly to any third party (subject to the prior written consent of the other party or disclosure permitted under clause 12.3);
  - (b) use the Discloser's Confidential Information only for the purpose of performing its obligations under this Agreement;
  - (c) treat the Discloser's Confidential Information with at least the same degree of care as it treats its own Confidential Information of like kind and, in any event, with no less than a reasonable degree of care;
  - (d) without limiting subclause 12.2(c), implement security practices against any unauthorised copying, use, disclosure (whether that disclosure is oral, in writing or in any other form), access and damage or destruction of the Discloser's Confidential Information;

- (e) promptly notify the Discloser of any information which comes to its attention regarding any actual or potential breach of confidentiality, disclosure or unauthorised use of the Discloser's Confidential Information; and
- (f) comply with any reasonable directions of the Discloser in respect of the Discloser's Confidential Information, including any specific request made by the Discloser as to whether the Recipient may use and/or disclose that information.

12.3 A Recipient may disclose the Discloser's Confidential Information only to its officers, employees and permitted subcontractors who:

- (a) have a need to know the Confidential Information for the purposes of this Agreement (and only to the extent that each has a need to know); and
- (b) have undertaken to maintain the confidentiality of the Confidential Information in accordance with this clause 12.

12.4 The obligations of confidentiality under this clause 12 do not extend to information that (whether before or after the date of this Agreement):

- (a) a Recipient is required by law or governmental agency to disclose so long as the recipient promptly provides the other party with written notice of the required disclosure;
- (b) is public knowledge (and has not become public knowledge as a result of Recipient's breach of confidentiality);
- (c) was rightfully known to or in the possession or control of the Recipient prior to its receipt from the Discloser and which is not subject to an obligation of confidentiality on the Recipient;
- (d) is received by the Recipient in good faith from a third party without an obligation to keep such information confidential;
- (e) was independently created by the Recipient (and the Recipient has evidence in writing that the information falls within this exception).

12.5 Upon demand and upon termination or completion of this Agreement, the Recipient must:

- (a) deliver to the Discloser all of the Discloser's Confidential Information in its possession which is capable of being delivered; and
- (b) delete, erase, or otherwise destroy any of the Discloser's Confidential Information contained in computer memory, magnetic, optical, laser, electronic, or other media in its possession or control which is not capable of delivery to the Recipient.

12.6 Despite clause 12.5, Murdoch Webster may retain:

- (a) a copy of any documentation related to the Services for archival and quality purposes;
- (b) security logs, audit records, incident reports and security assessment findings; and
- (c) any information required to be retained by law or professional standards.

## **13 VARIATIONS**

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- 13.1 The Customer may at any time submit to Murdoch Webster a Proposed Variation.
- 13.2 Murdoch Webster will review each Proposed Variation submitted under this clause 13 and notify the Customer in writing, within 14 days:
- (a) the costs and expenses of either:
    - (i) complying with the Proposed Variation; or
    - (ii) preparing a revised or further proposal, design, scope of work or quotation for the Proposed Variation;
  - (b) the amendments required to the Implementation Plan which would result from the Proposed Variation; and
  - (c) any amendments required to this Agreement if the Proposed Variation is agreed between the parties.
- 13.3 The Customer must notify Murdoch Webster within 14 days after receipt of a submission under clause 13.2 that the Customer:
- (a) accepts the submission, in which case the parties will sign and date the submission, which will amend and form part of this Agreement;
  - (b) wishes to renegotiate the submission, in which case the parties will use reasonable endeavours to agree on amendments to the submission; or
  - (c) withdraws the request made under clause 13.1.
- 13.4 If the Customer does not respond within 14 days after receipt of a submission under clause 13.2, the request will be deemed to have been withdrawn.
- 13.5 If the parties do not agree to a Proposed Variation, Murdoch Webster will continue to provide the Services in accordance with this Agreement.

## **14 TERMINATION**

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- 14.1 Either party may immediately (or with effect from any later date it may nominate) terminate this Agreement by written notice to the other party if:
- (a) the other party materially breaches this Agreement and fails to remedy such breach within 30 days of receipt of notice from the first party specifying the breach and requiring it to be remedied;
  - (b) the other party materially breaches this Agreement and the breach is incapable of remedy; or
  - (c) an Insolvency Related Event happens to the other party.
- 14.2 Unless that failure is in accordance with the disputed invoice provision in clause 7.5 a failure to pay money constitutes a material breach.

## **15 CONSEQUENCES OF TERMINATION**

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- 15.1 On termination of this Agreement the Customer must pay Murdoch Webster for all Supplies rendered and Expenses incurred up to the date of termination. Unless otherwise agreed, all payments are due within 7 days of the date of Murdoch Webster' invoice.
- 15.2 The expiry or termination of this Agreement will not affect or limit:
- (a) any accrued rights or remedies of the parties; or
  - (b) the rights and obligations of the parties under any clause or part of this Agreement which, expressly or by implication from its nature, are intended to continue after termination or expiry.

## **16 DISPUTE RESOLUTION**

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- 16.1 A party must not start court or arbitration proceedings (except proceedings seeking interlocutory relief) in respect of a dispute or question arising out of this Agreement ('Dispute') unless it has complied with this clause 16.
- 16.2 If a dispute arises that cannot be resolved promptly between Murdoch Webster and the Customer's contact people, the party claiming that a Dispute has arisen must notify the other party of the exact nature of the Dispute and the proposed remedy ('Dispute Notice'), and the parties must nominate a senior executive to meet within 7 days of the notice to seek to resolve the Dispute.
- 16.3 The parties must ensure that their representatives use their best efforts to resolve the Dispute.
- 16.4 If the Dispute remains unresolved, either party may escalate the Dispute by mediation administered by the Australian Commercial Disputes Centre according to its Mediation Guidelines.
- 16.5 Each party must bear its own costs of complying with this clause 16.

## **17 NON-SOLICITATION**

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- 17.1 During the term of this Agreement and for 12 months after its expiration or termination, neither party will induce or solicit an employee of the other party who was involved in the Services to leave the employ of the other party.
- 17.2 Clause 17.1 does not restrict the other party from employing staff who make unsolicited applications in response to a general advertisement or genuine recruitment campaign.

## **18 NOTICE**

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- 18.1 A notice to be given by a party to another party under this Agreement must be in writing and left at or sent by prepaid registered post, hand delivery or facsimile to the recipient's address specified in this Agreement or as varied by written notice.
- 18.2 A notice is deemed to be received:
- (a) if by hand on the day of delivery;
  - (b) 3 days after the date of posting by prepaid registered post;
  - (c) if sent by facsimile, when the sender's facsimile system confirms successful transmission of

the total number of pages of the notice; or

- (d) if sent by email to the other party's email address as previously notified by that party.

## **19 FORCE MAJEURE**

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- 19.1 Neither party will be liable for any failure or delay to perform its obligations under this Agreement caused by a Force Majeure Event.
- 19.2 A party who considers itself affected by a Force Majeure Event must, as soon as practicable after becoming aware of event, notify the other party specifying:
- (a) the cause and extent of any non-performance or delay; and
  - (b) the means proposed to be adopted to remedy or abate the Force Majeure Event.
- 19.3 A party who is, by reason of a Force Majeure Event, unable to perform any obligation under this Agreement must:
- (a) use all commercially reasonable endeavours to remedy or abate the Force Majeure Event as quickly as possible;
  - (b) resume performance as quickly as possible after cessation of the Force Majeure Event; and
  - (c) notify the other party when the Force Majeure has terminated or abated to an extent which permits resumption of performance to occur.
- 19.4 Any delay or non-performance by either of the parties will be excused during the time and to the extent that such delay or non-performance is caused by a Force Majeure Event. In addition, the period of time during which performance of any obligation is prevented by a Force Majeure Event will be added to the time provided in this Agreement for performance of that obligation and to the time required for the performance of any act dependent on that obligation.
- 19.5 If a failure or delay to perform a party's obligations due to a Force Majeure Event exceeds 60 days, either party may immediately terminate this Agreement by written notice to the other party.
- 19.6 This clause 19 does not apply to any obligation to pay money.

## **20 GENERAL**

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- 20.1 Murdoch Webster may engage subcontractors to perform any part of its obligations under this Agreement. The appointment of subcontractors will not relieve Murdoch Webster of its responsibilities under this Agreement.
- 20.2 The Customer and Murdoch Webster shall nominate Representatives to act on their behalf in the operation of the Agreement. Where a Representative changes, prior to the change occurring that party shall notify the other party of the contact details of the new Representative. This in no way relieves the nominating party of their responsibilities under the Agreement.
- 20.3 Any provision of this Agreement will be read down to the extent necessary to prevent that provision or this Agreement being invalid, voidable or unenforceable in the circumstances. If that provision is still invalid or voidable:
- (a) if the provision would not be invalid or voidable if a word or words were omitted, that word or

those words will be deleted; and

- (b) in any other case, the whole provision will be deleted, and the remainder of this Agreement will continue to have full force and effect.

- 20.4 The Customer will not assign or transfer its rights or obligations under this Agreement without the prior written consent of Murdoch Webster, such consent not to be unreasonably withheld. Murdoch Webster may assign the Agreement or any interest hereunder upon reasonable written notice to the Customer, not being less than 14 days.
- 20.5 Nothing in this Agreement constitutes a relationship of employer and employee, principal and agent, joint venturers or partnership between Murdoch Webster and the Customer.
- 20.6 This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes any previous understandings or agreements on that subject matter. This Agreement applies exclusively to the exclusion of:
- (a) all prior representations, understandings and arrangements between Murdoch Webster and the Customer;
  - (b) any terms endorsed or delivered with or referred to by any order or other document delivered by the Customer to Murdoch Webster including the Customer's purchase order for any Supply; or
  - (c) all or any of the Customer's terms of trade even if Murdoch Webster has been provided with or made aware of those terms.
- 20.7 A waiver by a party of a provision of or of a right under this Agreement is binding on the party granting the waiver only if it is given in writing and is signed by the party or an authorised officer of the party granting the waiver. A waiver is effective only in the specific instance and for the specific purpose for which it is given. Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.
- 20.8 This Agreement may only be amended by agreement by the parties in writing.
- 20.9 This Agreement may be executed in counterparts by the respective parties.
- 20.10 This Agreement is governed by the laws of Victoria, Australia and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Victoria, Australia.