

STANDARD TERM AND CONDITIONS

1. These standard terms and conditions are to be read in conjunction with our engagement letter which would have been received referencing this document. They apply to all services that we perform for you that are described in that letter (headed "Scope") and any additional services Smarter Business Processes Pty Ltd may provide from time to time. Together, the letter and these terms are called "this agreement". If the two documents are inconsistent, the terms in the engagement letter will overrule these standard terms and conditions.

OUR OBLIGATIONS

2. Smarter Business Processes Pty Ltd, its affiliates and controlled companies (collectively referred to as "Smarter Business Processes", "us" or "we", "our") will use all reasonable commercial efforts to complete the Services within any agreed specified timeframe. We will perform the Services with due care, competence and diligence. However, the quality of the Services will depend on input from you.

YOUR OBLIGATIONS

3. You will instruct us fully and, in a timely fashion, provide Smarter Business Processes each of the following (as they are ordinarily reasonably required to perform the Services):
 - a. Information – Smarter Business Processes is entitled to rely on the accuracy of that information without any independent verification. That is so whether the information is provided by you, your representatives, or your advisers;
 - b. Access – to files, records and information technology systems, to premises and to people (whether management or staff) with relevant skills and experience;
 - c. Resources – you will provide (and designate to the assignment) all resources that are reasonably necessary to ensure timely completion of the assignment.

DELAYS

4. When a particular assignment, task or instruction is to be completed within a specified timeframe, Smarter Business Processes will not be liable for any failure or delay in performing the Services if that failure or delay arises from anything beyond its control – including the untimely performance by you of your obligations. In addition, Smarter Business Processes is entitled to review its fees and, if the delay is substantial, terminate this agreement.

FEES AND EXPENSES

5. In addition to the fees, you agree to pay all reasonable outlays including (but not limited to) where required, travel, meals and accommodation.
6. Where fees are subject to a fixed quote, Smarter Business Processes is entitled to review any fees quoted, if you do not proceed with the specified assignment within 30 days of the provision of a quotation.

PAYMENT AND RESPONSIBILITY

7. You agree to pay fees and expenses within 14 days of the billing date. We reserve the right to perform no further work for you until all outstanding accounts are paid in full. We reserve the right to charge interest on all accounts outstanding in excess of the above 14 days, at the prevailing ATO benchmark interest rate.
8. It is recognised that Smarter Business Processes may provide services to entities over which you have or represent to have direct or indirect control or in which you may have a direct or indirect beneficial interest ("Associated entities"). Smarter Business Processes will invoice particular entities for which services are provided as you direct.
9. You agree that you accept ultimate personal responsibility for payment of all invoices which Smarter Business Processes renders to you and Associated Entities, so that you guarantee payment by those associated entities.

CONFIDENTIALITY

10. Both Smarter Business Processes and you agree to take reasonable steps to maintain (within our respective organisations) the confidentiality of any proprietary or confidential information of the other. If you wish to provide a third party with copies of Smarter Business Processes reports, letters, information, advice or other software systems, components or “add-ons” developed for you (in parts or as a whole), then Smarter Business Processes reserves the right to:
 - a. Set the term on which those copies are given or used; or
 - b. Require the third party to enter into a direct relationship with us.

INTELLECTUAL PROPERTY RIGHTS

11. Smarter Business Processes retains all copyright (and other intellectual property rights) in everything it develops (or is involved in developing) either before or during the course of an engagement – including systems, methodologies, software and know-how. We also retain all copyright (and other intellectual property right) in all reports, written advice or other deliverables we provide to you – although you will have the full right to use these materials within your own organisation. If you wish to use these materials outside your own organisation, you must first get our written permission.

INDEMNITY FOR LIABILITY TO THIRD PARTIES

12. You agree to indemnify Smarter Business Processes against all liabilities, claims, costs and expenses collectively referred to as “LOSS” (including any GST payable by Smarter Business Processes on amounts paid by you under this indemnity) incurred by Smarter Business Processes in respect of any claim by a third party which is related to, arises out of, or is in any way associated with our engagement. However, the indemnity does not apply to any Loss in respect of any matters which are finally determined to have resulted from Smarter Business Processes’ negligent, wrongful or wilful acts or omissions.

CONTRACTUAL LIMITATION OF LIABILITY

13. Nothing in these Terms and Conditions excludes, restricts or modifies the application of any statute, including the Competition and Consumers Act 2010, where to do so would contravene that statute or cause the term to be void.
14. If any representations conditions or warranties are considered to be of importance to you, you should ask that they be incorporated in the Engagement Letter before it is accepted by you. These Terms and Conditions, and the Engagement Letter, constitute the whole of the agreement covering our relationship, and Smarter Business Processes will not be liable for any statements, representations or warranties (written or oral) which are not expressly contained in these documents. All warranties which may otherwise be implied by statute, common law, or custom are (subject to clause 13) expressly excluded.
15. You agree that in respect of any liability sustained by you in relation to this agreement:
 - a. Any loss or damage suffered by you (whether direct, indirect or consequential), including (without limitation) liability for any negligent act, omission or misrepresentation by Smarter Business Processes, shall be limited to the amount of professional fees paid to us in respect of the Services to which the claim arises. You agree to release Smarter Business Processes from all claims to the extent that Smarter Business Processes’ liability exceeds this amount;
 - b. To the extent that any loss or damage suffered by you is due to an act, omission, negligence, fault or lack of care on your part or on the part of any person for whom you are responsible, Smarter Business Processes is not liable for the loss or damage;
 - c. If Smarter Business Processes is liable for a breach of any warranty implied by Section 61 of the Competition and Consumer Act 2010, in respect of Services not of a kind ordinarily acquired for personal, domestic or household use or consumption, our liability under that section is limited to the supply of the Services again or the payment of the cost of having the Services supplied again, whichever we, in our absolute discretion elect;
 - d. Smarter Business Processes will not be liable for any losses, claims, expenses, actions, demands, damages, liabilities or any other proceedings arising out of reliance on any information which is false, misleading or incomplete.

RELIANCE ON THIRD-PARTIES

16. Any Solution or Software component provided by Smarter Business Processes may require the reliance on the availability or design of third party Software systems. You agree that Smarter Business Processes is not responsible for any modifications to our provided solution or software component after the delivery date should such third party systems become unavailable or be modified in such a way that removes desired functionality.

CONSIDERATION OF THIRD PARTY PROVIDERS

17. Smarter Business Processes strives to provide the best possible outcome for its customers given the scope and requirements of the solution required - this outcome aims to take into account software, technology or services which is currently available in the market place. While all reasonable attempts will be made to provide an exhaustive list of software alternatives, this is often not practical. You accept that any advice provided by Smarter Business Processes may not have considered every possible third party system. i.e. We can't know everything about everything but we will try our best to outline the alternatives that we feel are important.

GOVERNING LAW AND JURISDICTION

18. All aspects of the Services and the engagement letter are governed by, and construed in accordance with, the laws of the state of Queensland. Both you and Smarter Business Processes irrevocably submit to the exclusive jurisdiction of the Courts of the state of Queensland.

SEVERANCE

19. If any provision or part provision of this agreement is found to be illegal, unenforceable or otherwise invalid then, despite that invalidity:
 - a. This agreement will remain in full force and effect; and
 - b. That provision will be deemed to be deleted and substituted by a valid one which in its economic effect comes so close to the invalid provision that it can be reasonably assumed that the parties would have contracted also with this new provision.

VARIATION AND SURVIVAL

20. This agreement may be varied by written agreement of the parties. Provisions of this agreement that are capable of having effect will survive its termination.

MISCELLANEOUS

21. We will provide the Services as an independent contractor. Nothing shall be construed to create a partnership, joint venture or other relationship, including the creation of a fiduciary relationship or duty. No party has the right, power or authority to oblige or bind the other in any manner.

PARTIES TO AGREEMENT

22. A reference to "you" in this agreement includes any entity or commercial activity in which you have or have represented to have direct or indirect control or a direct or indirect beneficial interest.