

TERMS AND CONDITIONS

1. GENERAL

1.1 These terms and conditions (Terms and Conditions) apply to all goods and services supplied by Productivity Matters Pty Ltd ACN 162 300 601 (Productivity Matters). Unless otherwise agreed in writing, the prospective purchaser or purchaser (Client) of the Services agrees to be bound by and accept the Services in accordance with these Terms and Conditions. The Client acknowledges that these Terms and Conditions will incorporate and be read in conjunction with the terms contained in any letter of engagement, proposal or quotation (Proposal) and, to the extent of any inconsistency, the terms of the Proposal will prevail to the extent of the inconsistency.

1.2 All quotations, including delivery dates or completion times, are estimates only and Productivity Matters will not be liable for any failure to deliver the Services in accordance with the quotation. Quotations for Services are valid for 30 days from the date of the quotation unless otherwise stated in writing by Productivity Matters.

1.3 Invoicing

For projects over \$5, 000 and under \$20, 000 Productivity Matters will invoice 50% of the total proposed at project onset and 50% at project completion.

For projects \$20, 001 and above Productivity Matters will invoice monthly until the project is complete.

2. SERVICES

2.1 The Services provided by Productivity Matters may include goods, services and/or materials, and will be provided in accordance with a Proposal as accepted by both parties (Services).

2.2 All quotations, including delivery dates or completion times, are estimates only and Productivity Matters will not be liable for any failure to deliver the Services in accordance with the quotation. Quotations for Services are valid for 30 days from the date of the quotation, unless otherwise stated in writing by Productivity Matters.

2.3 If Productivity Matters provides the Services to the Client in the absence of any Proposal, the Client agrees that Productivity Matters will provide the Services in accordance with Productivity Matters' usual procedures and practices as applicable from time to time, or as Productivity Matters determines to be reasonable and appropriate in the circumstances.

2.4 Productivity Matters may, in its sole discretion, delegate, assign or authorise a third party to assist or deliver the Services. The Client agrees that Productivity Matters may disclose any relevant information which is reasonably required by the third party to deliver the Services.

2.5 The Client acknowledges that any advice, audit, report or other service is based on the information available to Productivity Matters. The Client is responsible for providing all relevant information to Productivity Matters prior to it providing the Services. The Services are provided for the sole purpose for which it was commissioned and for no other purpose.

3. CLIENT'S OBLIGATIONS

3.1 The Client must:

- (a) provide Productivity Matters and its representatives with appropriate and timely instructions and all information which could be relevant or necessary for Productivity Matters to provide the Services in accordance with these Terms and Conditions;
- (b) ensure that its employees, contractors, staff or any other person on the Services site diligently co-operates with, and not delay, Productivity Matters' representatives in performing the Services;
- (c) ensure Productivity Matters has all necessary access to any sites, workplaces or areas which are subject to the Services, including removing any obstructions or permitting access to other areas to allow necessary equipment or personnel to access to the sites, workplaces or areas;
- (d) comply with all relevant laws as applicable from time to time;
- (e) ensure the site is safe, secure and complies with all health and safety laws;
- (f) provide Productivity Matters and its representatives with any special equipment and/or resources (including personnel) necessary for Productivity Matters to deliver the Services; and
- (g) ensure that it maintains all necessary and appropriate public liability insurance policies.

4. PRODUCTIVITY MATTERS' OBLIGATIONS

4.1 Productivity Matters agrees that:

- (a) it will provide the Services using the necessary skill, care and diligence; and
- (b) the Services will be reasonably fit for their intended purpose having regard to the proper performance by the Client, its contractors and employees of their obligations under these Terms and Conditions.

5. FEES

5.1 Productivity Matters will invoice the Client for the Services and the Client agrees to pay the fees and the applicable GST in full, without set-off, deduction, counterclaim or conditions within 14 days of the date of the invoice or within a timeframe as otherwise agreed in writing between the parties (Fees).

Productivity Matters may request the Client provide Productivity Matters with a director's guarantee or other guarantee prior to or during the delivery of the Services.

5.2 Payments will be made by cash, cheque, direct debit or any other method agreed by the parties. Payment will be deemed to have been received once payment is cleared and released (as appropriate) to Productivity Matters by any relevant financial institution.

5.3 The Client acknowledges that the Fees and any other charges may differ from a particular quotation as a result of changes to the Services, circumstances, Client directions or variations in costs of materials, goods or services.

5.4 The Client must provide seven days advance notice to Productivity Matters of any changes to scope or variation to these terms. Productivity Matters reserves the right to invoice the Client for all work agreed leading up to this change in scope.

6. GST

6.1 Unless otherwise stated, the Fees and all other charges, rates or consideration for any supply made under these Terms and Conditions are exclusive of GST and will be increased by the amount of GST and any other taxes and duties which may be applicable.

6.2 All GST must be paid at the time any payment to which it relates is payable (provided a tax invoice has been issued for the supply).

7. LIMITATION OF LIABILITY AND INDEMNITIES

7.1 To the extent permitted by law, Productivity Matters excludes all liability in relation to the provision of the Services whether in contract, tort or otherwise, including all liability for any indirect or consequential loss or damage (including loss of profits) suffered by the client. Subject to clause 7.2, nothing in this clause has the effect of excluding, restricting or modifying any statutory guarantee, warranty or condition implied in any applicable legislation.

7.2 To the extent permitted by law, the Client acknowledges that Productivity Matters' liability for any breach of any statutory guarantees, warranties or conditions, including these Terms and Conditions, at Productivity Matters' election, is limited:

- (i) the supply of the Services again; or
- (ii) the payment of the cost of having the Services supplied again.

7.3 The Client acknowledges that it is solely responsible for any actions or conduct it may undertake as a result of or in reliance on the Services. The Client further acknowledges that the Services are based on information and data provided by the Client and Productivity Matters will not be liable or responsible for any actions or conduct undertaken by the Client or a third party in reliance upon any incorrect Services which are as a result of the Client providing incomplete or incorrect information.

7.4 The Client agrees to indemnify Productivity Matters for:

(a) any loss, damage or cost it may suffer as a result of any breach by the Client of its obligations under these Terms and Conditions; and/or

(b) any willful default, negligent act or omission and/or other unlawful conduct by the Client, its employees and/or contractors in relation to the Services;

provided that the Client's liability will be reduced to the extent that the loss, damage or cost is caused by any willful default or negligent act or omission of Productivity Matters.

7.5 Nothing in these Terms and Conditions is intended to have the effect of excluding any provisions as required by statute, including any applicable provisions of the Competition and Consumer Act 2010 (Cth) or any other relevant fair trading legislation of Australia except to the extent permitted by such legislation.

8. DEFAULT AND INSOLVENCY

8.1 In the event of a default in payment:

- (a) Productivity Matters may, without prejudice to any other remedy it may have against the Client, immediately suspend or terminate the supply of the Services to the Client and any of its other obligations under these Terms and Conditions;
- (b) Productivity Matters may set off any other payments the Client has made against the amounts due; and
- (c) the Client agrees to indemnify Productivity Matters from and against all of Productivity Matters' costs and disbursements, including on a solicitor on an own client basis, and all of Productivity Matters' nominee's costs of collection.

8.2 Overdue invoices will incur interest from the date when payment became due at a rate of 2% per calendar month.

8.3 In the event that:

- (a) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors;
- (b) a receiver, manager, liquidator or similar person is appointed in respect of the Client or any asset of the Client; or
- (c) in Productivity Matters' sole opinion, the Client will be unable make payments as they become due; then without prejudice to any other rights available to Productivity Matters:
- (d) all outstanding amounts for Services provided by Productivity Matters (whether invoiced or not) will become immediately due and payable in addition to any interest in accordance with clause 8.2; and

(e) Productivity Matters will be entitled to terminate all or part of any Services which remain unperformed.

8.4 The Client agrees that Productivity Matters will not be liable for any loss or damage suffered by the Client as a result of Productivity Matters exercising its rights in accordance with this clause 8.

9. TERMINATION

9.1 In addition to Productivity Matters' right to terminate all or part of the Services in accordance with clause 8, Productivity Matters may terminate all or part of the Services:

- (a) immediately if, in Productivity Matters' sole opinion, the Client's workplace, site or area is deemed unsafe or dangerous, or if Productivity Matters' staff or contractors' health, safety or general well-being is compromised or is of concern as a result of the Client's workplace, conditions or on-site directions; or
- (b) if Productivity Matters provides the client with 7 days' written notice.

9.2 The Client may terminate the Services at any time by giving written notice to Productivity Matters. If the Client exercises this right, the Client will receive a final account which will include all outstanding costs, fees and disbursements, and the Client will pay Productivity Matter's costs, fees and disbursements up until the date Productivity Matters ceases to provide the Services.

10. CLIENT CANCELLATIONS

10.1 In the instance a Productivity's Matters consultant has a site visit booked with the Client and The Client cancels within 24 hours of the site visit occurring, the Client will be charged 80% of the amount quoted for that site visit.

10.2 In the instance a Productivity's Matters consultant has a site visit booked with the Client and The Client cancels within 25-48 hours of the site visit occurring, the Client will be charged 50% of the amount quoted for that site visit.

11. MISCELLANEOUS

11.1 If any term of these Terms and Conditions is invalid, void, illegal or unenforceable, it will have no effect on the validity, existence, legality and enforceability of the remaining terms.

11.2 All intellectual property rights in, arising out of or in connection with the Services will be owned by Productivity Matters.

11.3 Any variation to these Terms and Conditions must be agreed by both parties in writing.

11.4 Neither party will be liable for any default due to any event beyond the reasonable control of a party (other than acts or omission of that party's personnel including its contractors), any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm.

11.5 These Terms and Conditions are subject to the laws of Victoria.

11.6 Productivity Matters and the Client irrevocably and unconditionally submit to the courts of Victoria and courts which have jurisdiction to hear appeals from any of those courts.

11.7 Where the Client comprises more than one person or entity, each person or entity will be jointly and severally liable for payment of the Fees and the performance of all other obligations imposed on the Client under these Terms and Condition.