

GENERAL TERMS AND CONDITIONS

of Diana Hartsink
ABN: 27468943523

Updated on 17 December 2014

Article 1. Definitions

1.1 The following definitions shall apply to these Terms and Conditions:

- CLIENT means the person, firm, company or organisation which enters into an Agreement with the CONSULTANT and for whom the CONSULTANT is or will be performing the Services.
- Conditions means the general terms and conditions laid down in this document.
- CONSULTANT means Diana Hartsink - ABN: 27468943523 - who enters into a contract with the CLIENT to perform Services for this CLIENT.
- Fee means all money payable by the CLIENT to the CONSULTANT, however described, for the Services performed.
- Intellectual Property means intellectual property of every sort, whether or not registered or registrable in any country, including intellectual property of kinds coming into existence after today; and including, among others, patents, trademarks, unregistered marks, designs, copyrights, software, domain names, discoveries, Know-how, creations and inventions, moral rights, together with all rights which are derived from those rights.
- Offer means an offer, proposal, quotation or statement of work and is a detailed specification of the Services to be performed.
- Services means a piece of work to be undertaken by the CONSULTANT on behalf of the CLIENT as fully described in an Offer.
- Third party means any person other than the CONSULTANT, the CLIENT or their respective employees or agents.
- Agreement means each and every contract or agreement between the CONSULTANT and the CLIENT.

Article 2. General

- 2.1. Unless otherwise agreed to in a documented communication from the CONSULTANT, these Conditions apply to any Offer and to any Agreement between the CONSULTANT and the CLIENT.
- 2.2. The Conditions also apply to all Agreements with the CONSULTANT for the performance of which Third parties should be engaged.
- 2.3. These Conditions take precedence to and supersede any terms and conditions referred to, offered or relied upon by the CLIENT, whether in negotiation or at any stage in the dealings between the CLIENT and the CONSULTANT with respect to the Services. The CONSULTANT shall not be bound by any other terms and conditions provided by the CLIENT unless the CLIENT notifies in writing that it intends such terms and conditions to apply and the CONSULTANT accepts such terms and conditions in writing.

- 2.4. Any deviations from these Conditions will apply only if such deviations have been explicitly agreed in writing between the CONSULTANT and the CLIENT.
- 2.5. The version of these Conditions applicable at the time of the conclusion of the Agreement will apply to that Agreement. A more recent version will only apply if the CLIENT has received this newer version and has approved of it in writing.

Article 3. Interpretation

- 3.1 The headings to the paragraphs to these Conditions are inserted for convenience only and do not affect the interpretation.
- 3.2 A reference to one gender shall include any or all genders and a reference to the singular may be interpreted where appropriate as a reference to the plural and vice versa.
- 3.3 A reference to a person includes a human individual, a corporate entity and any organisation which is managed or controlled as a unit.
- 3.4 The words "without limitation" shall be deemed to follow any use of the words "include" or "including" herein.
- 3.5 In these Conditions, in the context of permission, "may not" in connection with an action of the CLIENT, means "must not".
- 3.6 A reference to a clause or article is a reference to a clause or article of these Conditions.
- 3.7 Any agreement by any party not to do or omit to do something includes an obligation not to allow some other person to do or omit to do that same thing.
- 3.8 Except where stated otherwise, any obligation of any person arising from these Conditions may be performed by any other person.
- 3.9 A reference to the knowledge, information, belief or awareness of any person shall be deemed to include the knowledge, information, belief or awareness that person would have if he had made reasonable inquiries.
- 3.10 A reference to an act, regulation or standard includes new law or standard of substantially the same intent as that referred to.
- 3.11 The Conditions are made only in the English language. If there is any conflict in meaning between the English language version of these Conditions and any version or translation of these Conditions in any other language, the English language version shall prevail.

Article 4. Offers and quotations

- 4.1 All Offers and prices communicated by the CONSULTANT are non-binding, unless expressly agreed upon.
- 4.2 All of the Offers drawn up by the CONSULTANT are valid during a period of 30 days, unless explicitly stated otherwise.
- 4.3 The CONSULTANT is only committed to the Offer when the CLIENT has accepted and confirmed the Offer within 30 days.
- 4.4 A composite Offer will not oblige the CONSULTANT to perform part of the Services for a corresponding part of the stated price.
- 4.5 The CONSULTANT will never be bound to an acceptance that deviates from the original offer, irrespective of whether the deviation concerns only minor points. The CONSULTANT will

consider every acceptance deviating from the Offer as a new offer, concerning which the parties will enter into further consultations, unless the CONSULTANT accepts this new Offer in writing immediately following receipt.

- 4.6 In the absence of statement to the contrary, the prices given in the Offers are exclusive of VAT/GST and other government levies, as well as potential additional expenses in the context of the Services, including travel and accommodation costs, unless stated otherwise.
- 4.7 Any travel and accommodation expenses incurred will be charged at cost to the CLIENT.
- 4.8 All Services from the CONSULTANT are provided on the basis of information, written specifications or designs supplied by the CLIENT. Changes or deviations from the original data lead to changes in the cost.
- 4.9 Offers do not automatically apply to future Services.

Article 5. Performance of Services

- 5.1 The CONSULTANT shall provide the Services in accordance with the professional standards.
- 5.2 All Services are carried out on the basis of a best efforts obligation. This means the CONSULTANT has no obligation to produce a certain result unless the CONSULTANT expressly stated to deliver a result in the written Agreement and the result is described with sufficient definiteness.
- 5.3 If a sample, model or prototype is shown to the CLIENT, then it is supposed to be only provided as an indication, unless expressly agreed that the product or service provided will correspond to that sample, model or prototype.
- 5.4 If it has been agreed that the Services will be performed in phases, the CONSULTANT may postpone performance of those parts belonging to a subsequent phase until the CLIENT has approved the results of the preceding phase in writing.
- 5.5 If in the context of the Services the CONSULTANT or Third parties engaged by the CONSULTANT perform work at the CLIENT's location, or a location designated by the CLIENT, the CLIENT will provide any reasonable access and facilities desired by the CONSULTANT or the Third parties free of charge.

Article 6. Engaging Third parties

- 6.1 If and in so far as required for a satisfactory implementation of the Services, the CONSULTANT will be entitled to engage Third parties for certain work.
- 6.2 Engaging Third parties by the CONSULTANT or the CLIENT will only be done in consultation with the other party.
- 6.3 The CLIENT shall not, for the duration of the Agreement and for a period of one year after the termination of the Agreement, either directly or indirectly hire a Third party that was hired by the CONSULTANT to perform specific activities for the CLIENT, or enter into a contractual relationship with this Third party, unless the CONSULTANT has provided its approval in writing.

Article 7. Input from the Client

- 7.1 The CLIENT is obliged to provide all information which the CONSULTANT in her opinion requires to carry out the Services correctly, (a) in the desired form, (b) in the desired manner and (c) timely. The CONSULTANT determines what the desired form, manner and time shall constitute.
- 7.2 The CLIENT is responsible and has the (financial) risk for the accuracy, completeness and

reliability of the information provided to the CONSULTANT, even if it originates from Third parties. The CLIENT indemnifies the CONSULTANT for damages resulting from incorrect or incomplete information.

- 7.3 If the information required for the execution of the Services has not been provided to the CONSULTANT in due time, the CONSULTANT holds the right to suspend the execution of the Services and charge additional costs resulting from the delay – according to the usual rates of the CONSULTANT – to the CLIENT.
- 7.4 The CLIENT has to ensure that the work to be performed by Third parties, which are not part of the Agreement with the CONSULTANT, are carried out timely and in such a way that the implementation of the Services is not delayed.
- 7.5 If the CLIENT provides the CONSULTANT with data carriers, electronic files or software, etc., the CLIENT will guarantee that these items are free of viruses and defects.

Article 8. Clear communication

- 8.1 To ensure clear communication, the CLIENT will nominate one representative who will be authorised to make decisions relating to the Services and who will be responsible for:
1. Organising monthly meetings at which he and the CONSULTANT will review the progress of the Services;
 2. Providing all information and documentation reasonably required by the CONSULTANT to enable completion of the Services;
 3. Approving the results;
 4. Informing the CONSULTANT of any defects or complaints if this would be the case.
- 8.2 Each month the CONSULTANT will prepare a progress report on the progress of the work on the Services and will deliver it to the CLIENT's representative at least one day before each meeting.

Article 9. Performance period

- 9.1 The CONSULTANT will do it's best to complete the Services in accordance with the timetable set down in the Offer.
- 9.2 If a time limit has been agreed by the CONSULTANT and the CLIENT in which the Services should be carried out and the CLIENT fails to: (a) comply with a prepayment-if agreed upon, or (b) provide the necessary documents timely, completely and in the desired form and manner to the CONSULTANT, the CLIENT and the CONSULTANT will enter into consultation about a new time limit by which the service should be carried out.
- 9.3 Time limits, within which Services should have been completed, are to be regarded as fixed dates only if these are expressly and with so many words agreed between the CONSULTANT and the CLIENT.

Article 10. Amendment of the Agreement

- 10.1 If during the performance of the Services it proves necessary to amend or supplement the work to be carried out for a proper performance, the parties will adjust the Agreement accordingly in mutual consultation and good time, also with respect to the financial and/or qualitative consequences of these amendments.
- 10.2 If the parties agree that the Agreement will be amended or supplemented, the completion time of the Services to be performed by the CONSULTANT may be affected as a result. The CONSULTANT will inform the CLIENT of such as soon as possible.

Article 11. Fees and costs

- 11.1 When concluding the Agreement, the parties could agree a fixed Fee.
- 11.2 If no fixed Fee is agreed, the Fee for the work to be performed will be charged to the CLIENT on the basis of the time actually spent multiplied by the agreed Fee per time unit.
- 11.3 If a Fee has been agreed on the basis of the time actually spent and the CLIENT requests the work to be performed on a Saturday, Sunday or Holiday the hours are billed at a raised hourly rate:
 - Saturdays: 150% of the agreed hourly rate;
 - Sundays and holidays: 200% of the agreed hourly rate.
- 11.4 The Fee and any cost estimates are exclusive of VAT/GST and other government levies unless explicitly stated otherwise.
- 11.5 In addition to the Fees, the expenses and invoices of Third parties engaged by the CONSULTANT will be charged to the CLIENT.
- 11.6 The CONSULTANT shall be entitled after 28 days notice to the CLIENT and not more than once in every 12 months to increase the rates for work charged by the hour. Such increase shall be no greater than 10% in any year.
- 11.7 Moreover, if a fixed Fee has been agreed, the CONSULTANT may increase the Fee if it turns out during the performance of the work that the originally agreed or expected amount of work was estimated incorrectly to such an extent when the Agreement was concluded – and such is not attributable to the CONSULTANT – that the CONSULTANT may no longer be reasonably expected to perform the agreed work for the originally agreed Fee. In that case, the CONSULTANT will inform the CLIENT on time of the intention to increase the Fee. In so doing, the CONSULTANT will state the size of the increase and the date on which this increase will take effect.
- 11.8 The amendments in Fees as stated in article 11.6 are not grounds for terminating the contract.

Article 12. Invoicing and payment

- 12.1 Unless otherwise specified in the Offer, the CONSULTANT will send an invoice to the CLIENT after the end of each calendar month for work done during that month.
- 12.2 The invoice shall include whatever reasonable expenses the CONSULTANT has incurred in performing the Services, provided such expenses have been approved in advance by the CLIENT.
- 12.3 The CLIENT will pay the sum specified in the invoice, in Australian Dollars, within 14 days of date of sending the invoice. Failure to make timely payment shall entitle the CONSULTANT to stop all work for the CLIENT, including work regulated by any other Agreement. Objections to the amount of the invoice will not suspend the payment obligation.
- 12.4 The CONSULTANT has the right to ask the CLIENT for an advance or pre-payment, to be paid before commencing the Services.
- 12.5 Banking charges by the receiving bank on payments to the CONSULTANT will be borne by the CONSULTANT, except when the payment is made from a bank outside of Australia in which case the CLIENT will bear the charges. All other charges relating to payment in a currency other than Australian dollars will be borne by the CLIENT.
- 12.6 The CONSULTANT may charge for any reasonable costs incurred as a result of any delay caused by the CLIENT or any circumstance controlled by the CLIENT.
- 12.7 The CONSULTANT reserves the right to charge the CLIENT interest on overdue balances,

- including on the VAT/GST due, at a rate of 5% above the base rate of the Reserve Bank of Australia from the due date until receipt of payment.
- 12.8 The CONSULTANT shall be entitled to transmit invoices electronically. The CLIENT agrees explicitly to accept invoices transmitted electronically by the CONSULTANT.
- 12.9 Data extracts from the computer systems of the CONSULTANT constitute sufficient evidence of (the contents and the dates of) the transmitted electronic communications and invoices until the recipient provides the rebuttal.
- 12.10 All reports, drawings, designs, (electronic) files and the like remain the property of the CONSULTANT until paid for in full by the CLIENT.
- 12.11 In the case of a jointly given assignment to perform the Services the CLIENTs are severally liable for the payment of the invoice amount, the interest(s) and costs, even if only one CLIENT is named on the invoice.
- 12.12 If the financial position or the payment behaviour of the CLIENT in the opinion of the CONSULTANT gives rise to it, the CONSULTANT may require the CLIENT to provide immediate (additional) assurance in a form to be determined by the CONSULTANT. If the CLIENT fails to provide the required assurance the CONSULTANT is entitled, without prejudice to its other rights, to immediately suspend the further execution of the Services and to render all amounts the CLIENT owes to the CONSULTANT immediately due and payable.
- 12.13 In the event of the CLIENT being in default of his obligation to pay and the overdue account is then referred to a debt collection agency, and/or law firm for collection the CLIENT shall be liable for the recovery costs incurred and if the agency charges commission on a contingency basis the CLIENT shall be liable to pay as a liquidated debt, the commission payable by the CONSULTANT to the agency, fixed at the rate charged by the agency from time to time as if the agency has achieved one hundred per cent recovery.

Article 13. Complaints

- 13.1 The CONSULTANT strives to deliver 100% satisfactory results, however if the Services have not been performed in accordance with the Agreement, the CLIENT should inform the CONSULTANT of such in writing within 8 days of discovering this fact, but no later than 14 days following completion of the work in question. The notification must specify the defect in as much detail as possible, so that the CONSULTANT will be able to respond satisfactorily.
- 13.2 If the CONSULTANT considers the complaint well founded, it will perform the work agreed as yet, unless this has now become demonstrably meaningless for the CLIENT. In that case, the CLIENT must notify the CONSULTANT thereof in writing.
- 13.3 If performing the agreed work as yet is no longer possible or has become meaningless, the CONSULTANT will be liable for the damage suffered by the CLIENT only within the limits of article 15.
- 13.4 A complaint as stated in article 13.1 shall not suspend the CLIENT's payment obligations.

Article 14. Termination

- 14.1 Work on the Services shall commence on a date to be agreed between CONSULTANT and CLIENT and shall continue until the Agreement is terminated:
1. by completion of the Services and payment to the CONSULTANT; or
 2. by one party giving 30 days' notice of termination in writing to the other; or
 3. immediately by the CONSULTANT if the CLIENT fails to pay any sum due within 14 days of the date of submission of an invoice having been notified of non-payment by the CONSULTANT; or
 4. immediately by either party if the other commits any material breach of any term of these

- Conditions and which in the case of a breach capable of being remedied is not remedied within 30 days of a written request to remedy it; or
5. immediately by either party if a trustee / administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration or bankruptcy order; or
 6. immediately by the CLIENT if the CONSULTANT is or becomes incompetent or negligent in respect of any of his obligations under the Agreement; or
 7. immediately by the CLIENT if the CONSULTANT refuses to carry out the work reasonably and properly required of her under the Agreement.
- 14.2 Notwithstanding termination of the Agreement for whatever reason, all the provisions in these Conditions that are intended to operate or have effect after termination or expiration shall continue in full force and effect.
- 14.3 Without regard to the reason why the Agreement ends, the CLIENT will pay the CONSULTANT for all work done to the time the notice of termination is received by the CONSULTANT, calculated to the nearest one hour.
- 14.4 If the CONSULTANT terminates the Agreement prematurely, it will ensure, that the provisional results of the work performed up to the time of termination will be made available to the CLIENT, unless the termination is based on facts and circumstances attributable to the CLIENT.

Article 15. Limitation of liability

- 15.1 The law differs from one country to another. This paragraph applies so far as the applicable law allows.
- 15.2 All implied conditions, warranties and terms are excluded from these Conditions. If in any jurisdiction an implied condition, warrant or term cannot be excluded, then this sub paragraph will be deemed to be reduced in effect, only to the extent necessary to release that specific condition, warranty or term.
- 15.3 The CONSULTANT shall not be liable to the CLIENT for loss arising from or in connection with any representations, agreements, statements or undertakings made prior to the date of the Agreement.
- 15.4 The CONSULTANT will never be liable for damage, of whatever nature, resulting from the fact that the CLIENT provided incorrect and/or incomplete information.
- 15.5 The CONSULTANT gives no warranty that any particular result or outcome is achievable or attainable by a given date or at all.
- 15.6 The CONSULTANT shall not be liable to the CLIENT for any loss or expense which is:
1. indirect or consequential loss; or
 2. economic loss or other loss of turnover, profits, savings, business or goodwill; or
 3. damage due to business stagnation; or
 4. loss or damage suffered by the CLIENT as a result of an action brought by a Third party.
- The above provisions apply even if such loss was reasonably foreseeable or the CONSULTANT had been advised of the possibility of the CLIENT incurring it.
- 15.7 Except in the case of death or personal injury, the total liability of the CONSULTANT under the Agreement, however it arises, shall always be limited to the amount of the Fee owed for the Services to which the liability applies, with a maximum of \$10,000 (in words ten thousand Australian dollars). This applies whether your case is based on contract, tort or any other basis in law.
- 15.8 This paragraph (and any other paragraph which excludes or restricts the liability of the CONSULTANT) applies to the CONSULTANT's directors, officers, employees, subcontractors,

agents and affiliated companies as well as to CONSULTANT itself.

Article 16. Indemnity

- 16.1 The CLIENT agrees to indemnify, continue to indemnify and hold harmless the CONSULTANT against all liability, costs (including legal costs) claims and expense arising directly or indirectly from:
1. its failure to comply with the law of any country;
 2. its breach of the Agreement and/or these Conditions;
 3. any act, neglect or default by any agent, employee, consultant or customer of the CLIENT;
 4. a breach of the Intellectual Property rights of any person by the CLIENT.
- 16.2 The CLIENT indemnifies the CONSULTANT against any claims of Third parties, which suffer damage in connection with the execution of the Services and which damage is attributable to the CLIENT.
- 16.3 The CLIENT will be responsible for its own employees, consultants, agents and representatives ('Staff') and will indemnify the CONSULTANT against all claims that may arise out of any injury, loss or damage suffered by such Staff in connection with the breach, performance or non-performance of the Agreement.
- 16.4 The CONSULTANT will be responsible for her own income and other tax liability in respect of her Fees and she hereby agrees to indemnify the CLIENT in respect of any claim that may be made by any tax authority against the CLIENT in respect of income or other tax relating to the CONSULTANT's Services under the Agreement.

Article 17. Uncontrollable events / Force Majeure

- 17.1 Neither party shall be liable for any failure or delay in performance of the Agreement when it is caused by circumstances beyond his reasonable control.
- 17.2 If either party cannot perform the Agreement for any reason beyond his reasonable control for a continuous period of 21 days then either party may, at its discretion, terminate the Agreement by notice in writing at the end of this period. The notice must specify a date at least 7 days ahead, when the termination will take effect.
- 17.3 A termination notice is irrevocable unless both parties agree to re-instate the Agreement.
- 17.4 If the Agreement is terminated, all money due from one party to the other becomes due immediately.
- 17.5 The party claiming the uncontrollable event will take all necessary steps to perform the Agreement despite the uncontrollable event.

Article 18. Confidentiality

- 18.1 Both parties will be obliged to observe secrecy with respect to all confidential information, which they may have obtained from one another or from another source in the context of the Agreement. Information will be considered confidential if the other party has expressly reported such or if such follows from the nature of the information.
- 18.2 If the CONSULTANT is obliged pursuant to a statutory provision or a judicial decision to provide Third parties designated by law or by the competent court with confidential information and the CONSULTANT is unable to invoke a right to decline to provide information acknowledged or allowed by law or by the competent court, the CONSULTANT will not be obliged to compensate the CLIENT or to pay it damages and the CLIENT will not be entitled to dissolve the Agreement on the basis of any damage that may have arisen as a consequence.

- 18.3 No public or press announcement nor research or academic report shall be made about the subject matter of the Agreement unless the text has been first approved by the other party. If the other party doesn't respond to a request for approval within 30 days of the request being made this will be seen as an approval.

Article 19. Intellectual property, copyrights and protection

- 19.1 These Conditions shall have no effect on the ownership of Intellectual Property existing at the date of concluding the Agreement.
- 19.2 The CONSULTANT may use whatever Intellectual Property of the CLIENT that the CLIENT sees fit to provide.
- 19.3 The CLIENT shall indemnify the CONSULTANT against any claim by a Third party based on a violation of any Intellectual Property right that may result from the information supplied by the CLIENT.
- 19.4 The CONSULTANT shall use and contribute to the Services such Intellectual Property as is appropriate and reasonable in the context that the selection and appointment of the CONSULTANT by the CLIENT was influenced by representations and reputation of the CONSULTANT in fields of knowledge associated with the Services.
- 19.5 The CONSULTANT is entitled to industrial and Intellectual Property rights with respect to the content and form of reports, drawings, designs, models, descriptions or opinions, software and the like, unless otherwise agreed.
- 19.6 All documents and items issued by the CONSULTANT, such as reports, advice, agreements, designs, sketches, drawings, software, models, etc. are intended for use only by the CLIENT, and the CLIENT may not copy, make public or inform Third parties of such without the prior permission of the CONSULTANT, unless the nature of the documents issued dictates otherwise.
- 19.7 The CONSULTANT will retain the right to use any knowledge acquired during the performance of the Services for other purposes, in so far as such does not involve passing confidential information to Third parties.
- 19.8 Without prejudice to the other provisions of these Conditions, the CONSULTANT reserves the rights and powers accruing to it on the basis of the applicable statutory provisions relating to Intellectual Property rights, including those pertaining to copyrights, design laws, trademark rights, patents, trade name rights, or database rights, unless otherwise agreed between the parties in this respect in writing. In so far as such a right may be obtained only by application or registration, the CONSULTANT will be exclusively authorised for that purpose.

The obligations set out in this paragraph shall continue after the Agreement has been terminated.

Article 20. Applicable law and disputes

- 20.1 The validity, construction and performance of these Conditions shall be governed by the laws of the State of NSW. Any dispute arising in connection with the Agreement shall be subject to the exclusive jurisdiction of the NSW courts.
- 20.2 The CONSULTANT and the CLIENT will resort to the courts only after they have made every demonstrable effort – whether or not by engaging an independent mediator – to solve the dispute in mutual consultation.

Article 21. Miscellaneous matters

- 21.1 If any term or provision of these Conditions are at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent

minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other of these terms.

- 21.2 Any obligation in these Conditions intended to continue to have effect after termination or completion of the Agreement shall so continue.
- 21.3 No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.
- 21.4 The rights and obligations of the parties set out in these Conditions shall pass to any permitted successor in title.
- 21.5 So far as any time, date or period is mentioned in these Conditions, time shall be of the essence.
- 21.6 The parties agree that electronic communications satisfy any legal requirement that such communications be in writing.
- 21.7 These Conditions do not give any right to any Third party.
- 21.8 In the event of any conflict between any term of these Conditions and the provisions of the articles of a limited company or any comparable document intended to regulate any other corporate or collective body, then the terms of these Conditions shall prevail.
- 21.9 Neither party may assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under the Agreement without the prior written consent of the other party, except that:
 - 1. A party may assign and transfer all its rights and obligations under the Agreement to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other party to be bound by the obligations of the assignor under the Agreement;
 - 2. The benefits and obligations of the Agreement shall be binding on any successor in title.