

Terms of Trade

1. Definitions

- 1.1. "Firm" means Gardiner Hall Accounting Pty Ltd T/A Gardiner Hall & Co, its successors and assigns, or any person acting on behalf of, and with the authority of, Gardiner Hall Accounting Pty Ltd T/A Gardiner Hall & Co.
- 1.2. "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting the Firm to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a). if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b). if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c). includes the Client's executors, administrators, successors and permitted assigns.
- 1.3. "Services" mean all Services provided by the Firm to the Client at the Client's request from time to time.
- 1.4. "Documentation" means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by the Firm in the course of it conducting, or providing to the Client, any Services.
- 1.5. "Fees" means the price payable (plus any GST where applicable) for the Services as agreed between the Firm and the Client in accordance with clause 7 of this contract.
- 1.6. "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Acceptance

- 2.1. The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions upon written acceptance of the Services as outlined in the Letter of Engagement to be provided by the Firm. **By signing acceptance of the Terms and Conditions contained herein the Client acknowledges and accepts that personal information may be stored overseas in accordance with clause 20, however, at present, the Firms' software provider's server, are hosted in Adelaide.**
- 2.2. These terms and conditions may only be amended with both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Firm
- 2.3. None of the Firm's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Firm in writing nor is the Firm bound by any such unauthorised statements.
- 2.4. On completion of any Services the Firm will retain Documentation as follows for:
 - (a). **Meeting of Members and Directors** – five (5) years from the date of the last entry;
 - (b). **Financial Records and Audit Files** – seven (7) years from the date of the Director' report or, where an audit has been conducted, the auditor's report;
 - (c). **Taxation Records** – five (5) years after the date on which they were prepared or obtained;
 - (d). **Superannuation Funds Records** – ten (10) years after the auditor concludes the audit or review of the financial statements.

Thereafter, unless separate arrangements have been made, the Firm may destroy or erase the documents and records created and/or produced by the Firm during the course of the Engagement (except where provided by law) and documents addressed to the Firm remain the property of the Firm in accordance with clause 11.
- 2.5. The Client shall not construe as legal advice, any Documentation provided by the Firm, or on behalf of the Firm, during the provision of the Services. It is recommended that the Client seek independent legal advice from an appropriately qualified legal practitioner.
- 2.6. The Firm and the Client agree that both parties may communicate with each other electronically,

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and electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act. The Client acknowledges that electronic transmissions are inherently insecure, can be corrupted or intercepted, may not be delivered any may contain viruses. The Firm is not responsible to the Client for any loss suffered in connection with the use of e-mail as a form of communication with the Client.

3. Disclosure

3.1. The Client acknowledges that:

- (a). The Firm can, and may, refer the Client for products and/or professional services offered by third parties. The Client further acknowledges that the Firm may expect to derive consideration, either monetary or otherwise, from the referral; and
- (b). a third party may derive consideration, either monetary or otherwise, from the referral; and
- (c). the Firm will not obtain, or seek to obtain, any consideration from a third party until such time as the Client has been disclosed of the nature, source and amount of any benefit the Firm will receive from the referral; and such details shall be found in the completed prescribed form.

4. Change in Control

4.1. The Client shall give the Firm not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address and contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by the Firm as a result of the Client's failure to comply with this clause.

5. Services

- 5.1. The Services shall be as described in the Letter of Engagement provided by the Firm to the Client.
- 5.2. These terms and conditions are to be read in conjunction with the Firm's Letter of Engagement and/or with the Terms and Conditions posted on the Firm's website. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.

6. Client's Obligations

- 6.1. The Client agrees to pay for the Services described in the Letter of Engagement.
- 6.2. The Client shall provide promptly to the Firm all reasonable and necessary assistance, including access to all information which the Firm considers to be relevant to the engagement, so as to enable the Firm to provide the Services. Furthermore, the Client shall update information provided by it to the Firm where there has been a material change to that information which affects the scope of performance by the Firm of the Services.

7. Fees and Payment

7.1. At the Firm's sole discretion:

- (a). the Fees shall be as indicated on invoices provided by the Firm to the Client in respect of Services provided; or
- (b). (where the Client is on a "**Fixed Price Agreement**"), the Client is required to pay monthly Fees in advance for the on-going provision of the Services to the Firm by Client as stipulated in this agreement; or
- (c). the Fees as calculated at the date of provision of the Services in accordance with the Firm's current Fee Schedule; or

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- (d). the Firm's estimated Fees, which shall be indicated on the Firm's Letter of Engagement and is based on the information available to the Firm at that date. The Fees are an estimate only, and not a quotation, and are subject to change;
 - (e). the Firm's quoted price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 7.2. At the Firm's sole discretion a non-refundable deposit may be required.
- 7.3. The Firm reserves the right to change the Fees in the event of a variation to the Firm's Letter of Engagement.
- 7.4. Time for payment for the Services being of the essence, the Fees will be payable by the Client on the date/s determined by the Firm, which may be:
 - (a). on completion of the Services; or
 - (b). by way of instalments/progress payments in accordance with the Firm's payment schedule;
 - (c). the date specified on any invoice or other form as being the date for payment; or
 - (d). failing any notice to the contrary, the date which is fifteen (15) days following the date of any invoice given to the Client by the Firm.
- 7.5. Payment may be made by cash, cheque, bank cheque, ezidebit, electronic/on-line banking, credit card (plus a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Firm
- 7.6. The Client shall not be entitled to set off against, or deduct from the Fees, any sums owed or claimed to be owed to the Client by the Firm nor to withhold payment of any invoice because part of that invoice is in dispute.
- 7.7. Unless otherwise stated the Fees do not include GST. In addition to the Fees the Client must pay to the Firm an amount equal to any GST the Firm must pay for any provision of Services by the Firm under this contract or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Fees. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Fees, except where they are expressly included in the Fees.

8. Fixed Price Agreement

- 8.1. The Fixed Price Agreement shall continue for an annual term and, upon expiration of this term, will continue on an annual basis thereafter, unless cancelled by way of the Client providing the Firm with fourteen (14) days' written notification of its intention to do so. Following receipt of notice from the Client, the provision of the Services to the Client by the Firm shall cease at the end of the notification period and the Client must reimburse the Firm (on a pro rata calculation basis) for any use of the Services above its Fixed Price Agreement allowance.

9. Provision of the Services

- 9.1. Any time specified by the Firm for provision of the Services is an estimate only and the Firm will not be liable for any loss or damage incurred by the Client as a result of any delay. However, both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that the Firm is unable to provide the Services as agreed solely due to any action or inaction of the Client then the Firm shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.
- 9.2. The Firm may provide the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 9.3. Where the Services are provided on a subscription basis, the provision of the Services shall continue for the term stipulated on the Firm's quotation and, upon expiration of this term, will continue on a monthly basis, unless terminated in accordance with clause 18.3.

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10. Risk

- 10.1. Irrespective of whether the Firm retains ownership of any Documentation, all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as the Firm may repossess the Documentation.

11. Title

- 11.1. The Client acknowledges and agrees that the Client's obligations to the Firm for the provision of the Services shall not cease, and ownership of any Documentation shall not pass, until:
- (a). the Client has paid the Firm all amounts owing for the particular Services; and
 - (b). the Client has met all other obligations due by the Client to the Firm in respect of all contracts between the Firm and the Client.
- 11.2. Receipt by the Firm of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Firm's ownership or rights in respect of the Services, and this contract, shall continue.
- 11.3. It is further agreed that, until ownership passes in accordance with clause 11.1:
- (c). the Client is only a bailee of the Documentation and must return the Documentation to the Firm immediately upon request by the Firm;
 - (d). the Client shall not charge or grant an encumbrance over the Documentation nor grant nor otherwise give away any interest in the Documentation while they remain the property of the Firm;
 - (e). the Client irrevocably authorises the Firm to enter any premises where the Firm believes the Documentation are kept and recover possession of the Documentation.

12. Personal Property Securities Act 2009 ("PPSA")

- 12.1. In this clause financing statement, financing change statement, security agreement, and security interest have the meaning given to them by the PPSA.
- 12.2. Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
- (a). all Documentation previously supplied by the Firm to the Client; and
 - (b). all Documentation will be supplied in the future by the Firm to the Client; and
 - (c). all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to the Firm for Services – that have previously been provided and that will be provided in the future by the Firm to the Client.
- 12.3. The Client undertakes to:
- (a). promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Firm may reasonably require to:
 - (i). register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii). register any other document required to be registered by the PPSA; or
 - (iii). correct a defect in a statement referred to in clause 12.2(a)(i) or 12.2(a)(ii);
 - (b). indemnify, and upon demand reimburse, the Firm for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;

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- (c). not register a financing change statement in respect of a security interest without the prior written consent of the Firm;
 - (d). not register, or permit to be registered, a financing statement or a financing change statement in relation to the registration in favour of a third party without the prior written consent of the Firm.
- 12.4. The Firm and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
 - 12.5. The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
 - 12.6. The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
 - 12.7. Unless otherwise agreed to in writing by the Firm, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
 - 12.8. The Client must unconditionally ratify any actions taken by the Firm under clauses 12.2 to 12.5.
 - 12.9. Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. Security and Charge

- 13.1. In consideration of the Firm agreeing to provide the Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2. The Client indemnifies the Firm from and against all the Firm's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Firm's rights under this clause.
- 13.3. The Client irrevocably appoints the Firm and each director of the Firm as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

14. Defects, Warranties and the Competition and Consumer Act 2010 (CCA)

- 14.1. The Client must inspect the Firm's Services on completion and must within seven (7) days notify the Firm in writing of any evident defect in the Services provided or of any other failure by the Firm to comply with the scope of the Services which the Firm was to provide (as specified in the Firm's Letter of Engagement). The Client must notify any other alleged defect in the Firm's Services as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Firm to inspect/review the Services that were provided.
- 14.2. Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions ("**Non-Excluded Guarantees**").
- 14.3. The Firm acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.4. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Firm makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services. The Firm's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5. If the Client is a consumer within the meaning of the CCA, the Firm's liability is limited to the extent permitted by section 64A of Schedule 2.

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- 14.6. If the Firm is required to rectify, re-provide, or pay the cost of re-providing the Services under this clause or the CCA, but is unable to do so, then the Firm may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.

15. Default and Consequences Of Default

- 15.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Firm's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2. If the Client owes the Firm any money the Client shall indemnify the Firm from and against all costs and disbursements incurred by the Firm in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Firm's contract default fee, and bank dishonour fees).
- 15.3. Further to any other rights or remedies the Firm may have under this contract, if the Client has made payment to the Firm is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Firm under this clause 15 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 15.4. Without prejudice to the Firm's other remedies at law the Firm shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Firm shall, whether or not due for payment, become immediately payable if:
- any money payable to the Firm becomes overdue, or in the Firm's opinion the Client will be unable to make a payment when it falls due;
 - the Client has exceeded any applicable credit limit provided by the Firm;
 - 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; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

16. Use of Reports and Advice

- 16.1. Any advice that the Firm gives to the Client, its employees or agents is for the Client's exclusive use and must be used only for the purpose described in the Letter of Engagement.
- 16.2. Unless the Firm gives the Client prior written consent, the advice:
- must not be used or disclosed for any other purpose, referred to in any Document or made available to any other person, except the Client's lawyers or other professional advisor assisting in the Services; and
 - may not be relied upon by any other party other than the Client.
- 16.3. The Firm is not responsible to any other party other than the Client, who is provided with or obtains a copy of the Firm's advice.
- 16.4. The Firm's advice may, on occasion, be given to the Client in draft form or orally only on the basis that the Client may not rely on advice in that form. Accordingly, the Firm shall not be responsible if the Client or any other party relies on the advice or chooses to act, or refrains from acting, on the basis of any draft advice or oral comments or advice.
- 16.5. The Client acknowledges that the signed copy of the Firm's final advice is the definitive version.
- 16.6. Sometimes circumstances may change after the Firm has provided their final advice to the Client. If this happens the Firm will not update any final advice it has provided to the Client under these terms and conditions. If the Client would like the Firm to update their final advice, they must contact the Firm and both parties can discuss a suitable term of engagement with the Client.

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17. Confidentiality / Intellectual Property

- 17.1. Both the Client and the Firm agree to treat all information and ideas communicated to it by the other confidentially and agree not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.
- 17.2. Exceptions to clause 17.1 will be disclosures to legal advisers, disclosures required by law, and disclosures necessary for the proper performance of the Services.
- 17.3. Where the Firm has developed software, spreadsheets, training materials, databases, proposals, tender documents and other electronic tools ("Tools") in providing the Services for the Client, then the copyright in the Tools shall remain vested in the Firm, and shall only be used by the Client at the Firm's discretion.
- 17.4. The Client warrants that any software, spreadsheets, databases, electronic tools or instructions provided by the Client to the Firm will not cause the Firm to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Firm against any action taken by a third party against the Firm in respect of any such infringement.
- 17.5. Whether the Firm or the Client retains the copyright in relation to Tools which are specifically developed for the Client shall be as is agreed, recorded in writing, and signed by both parties to this contract.

18. Cancellation

- 18.1. Without prejudice to any other remedies the Firm may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Firm may suspend or terminate the provision of Services to the Client. The Firm will not be liable to the Client for any loss or damage the Client suffers because the Firm has exercised its rights under this clause.
- 18.2. The Firm may cancel any contract to which these terms and conditions apply, or cancel the provision of Services at any time before the Services have commenced, by giving written notice to the Client. On giving such notice the Firm shall repay to the Client any money paid by the Client for the Services. The Firm shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3. In the event that the Client cancels this contract, or the provision of the Services by the Firm, the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Firm as a direct result of the cancellation (including, but not limited to, any loss of profits).

19. Privacy Act 1988

- 19.1. The Client agrees for the Firm to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by the Firm.
- 19.2. The Client agrees that the Firm may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
 - (a). to assess an application by the Client; and/or
 - (b). to notify other credit providers of a default by the Client; and/or
 - (c). to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d). to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 19.3. The Client consents to the Firm being given a consumer credit report to collect overdue payment on commercial credit.

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- 19.4. The Client agrees that personal credit information provided may be used and retained by the Firm for the following purposes (and for other agreed purposes or required by):
- (a). the provision of Services; and/or
 - (b). analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
 - (c). processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d). enabling the collection of amounts outstanding in relation to the Services.
- 19.5. The Firm may give information about the Client to a CRB for the following purposes:
- (a). to obtain a consumer credit report;
 - (b). allow the CRB to create or maintain a credit information file about the Client including credit history.
- 19.6. The information given to the CRB may include:
- (a). personal information as outlined in 19.1 above;
 - (b). name of the credit provider and that the Firm is a current credit provider to the Client;
 - (c). whether the credit provider is a licensee;
 - (d). type of consumer credit;
 - (e). details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f). advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Firm has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g). information that, in the opinion of the Firm, the Client has committed a serious credit infringement;
 - (h). advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.7. The Client shall have the right to request (by e-mail) from the Firm:
- (a). a copy of the information about the Client retained by the Firm and the right to request that the Firm correct any incorrect information; and
 - (b). that the Firm does not disclose any personal information about the Client for the purpose of direct marketing, unless otherwise agreed.
- 19.8. The Firm will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 19.9. The Client can make a privacy complaint by contacting the Firm via e-mail. The Firm will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 19.10. The Firm undertakes to maintain strict confidentiality over the Financial Statements and records in the Firm's possession (including diary notes, working papers, etc.), which must not be delivered to any other person without the prior consent of the Client excepting by process of law.

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20. Storage of Personal Information

- 20.1. We recommend that the Client checks where your data is held. The Privacy Act requires that data be stored in Australia or in a country where the laws are substantially similar to Australia's Privacy laws. The Firm does not recommend that your data be stored in a country where that country's privacy laws are very different to Australia's.
- 20.2. Unless agreed otherwise, the Client acknowledges and accepts that their data and personal information may be stored on servers overseas. At present, the Firm's software provider's servers, including data protection and back-up servers are stored in Adelaide.

21. Lien

- 21.1. Where the Client has left any of the Client's documentation with the Firm for the Firm to provide any Services in relation to that documentation and the Firm has not received or been tendered the whole of the Fees, or the payment has been dishonoured, the Firm shall have:
 - (a). a lien on the documentation; and
 - (b). the right to retain the documentation whilst the Firm is in possession of the documentation until such time as payment has been made in full; and
 - (c). the lien of the Firm shall continue despite the commencement of proceedings, or judgment for the Fees having been obtained; and
 - (d). the Firm shall be under no obligation to release the documentation to the Client if the Client is in default of payment except as may be required by any law or statute.

22. Liability Limitations

- 22.1. Except as is specified in clause 14, the liability limitations of the Firm, its partners, associates, and employees shall be as detailed in the CPA Australia and/or the Institute of Chartered Accountants in Australian and New Zealand, Schemes approved under the Professional Standards Act 2004 (SA).
- 22.2. The Client agrees, to the extent permitted by law, that the liability to the Client of the Firm, its partners, associates and employees or contractors in any way arising from or connected with this engagement including, without limitation, liability for negligence, shall be limited to damages which under no circumstances shall exceed the amount of Professional Indemnity insurance (\$2million) cover carried by the Firm
- 22.3. The Client agrees to indemnify the Firm, its partners, associates, employees and any other person who may be sought to be made liable in excess of the limit of liability described in clauses 22.1 and 22.2 in respect of any activity arising from or connected with these terms in respect of any claim of whatever kind, including negligence, that may be made by any person and any costs and expenses that may be incurred by the Firm
- 22.4. The Client acknowledges and accepts that the Firm shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
 - (a). resulting from an inadvertent mistake made by the Firm in the formation and/or administration of this contract; and/or
 - (b). contained/omitted in/from any literature (hard copy and/or electronic) supplied by the Firm in respect of the Services.
- 22.5. In the event such an error and/or omission occurs in accordance with clause 22.4, and is not attributable to the negligence and/or wilful misconduct of the Firm; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

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23. Complaint Procedures

23.1. It is the Firm's aim to obtain, either formally or informally, a regular assessment of the Firm's performance, and the Client's service partner will always be pleased to hear any suggestions as to how our service can be improved. If the Client wishes to make a complaint, they may call or write to the Firm's Office Manager at PO Box 487, Torrensville, SA 5031. If the Client is dissatisfied with the way any complaint is handled, they may report the matter to Australian Competition and Consumer Commission (ACCC) or any applicable regulatory body.

24. Trusts

24.1. If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust (Trust) then whether or not the Firm may have notice of the Trust, the Client covenants with the Firm as follows:

- (a). the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- (b). the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c). the Client will not without consent in writing of the Firm (the Firm will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
 - (i). the removal, replacement or retirement of the Client as Trustee of the Trust;
 - (ii). any alteration to or variation of the terms of the Trust;
 - (iii). any advancement or distribution of capital of the Trust; or
 - (iv). any resettlement of the trust property.

25. General

- 25.1. Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, arbitration in accordance with the Commercial Arbitration Act 2010 or its replacement(s).
- 25.2. The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.3. These terms and conditions, and any contract to which they apply, shall be governed by the laws of South Australia, the State in which the Firm has its principal place of business, and are subject to the jurisdiction of the Courts in that State.
- 25.4. The Firm may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 25.5. The Client cannot licence or assign without the written approval of the Firm
- 25.6. The Firm may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Firm's sub-contractors without the authority of the Firm

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- 25.7. The Client agrees that the Firm may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Firm to provide Services to the Client.
- 25.8. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 25.9. Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.