



Terms and Conditions

These terms and conditions ("Terms") apply to all consultancy services and any goods provided by HORSELL CONSULTING (A.C.N. 125 234 317) to the CUSTOMER referred to in a Quotation or Contract issued by HORSELL CONSULTING or for whom HORSELL CONSULTING provides deliverables.

1. Deliverables

1.1. HORSELL CONSULTING will provide consulting services to the CUSTOMER as requested. The specific nature of the services that HORSELL CONSULTING will provide will be as agreed in writing by HORSELL CONSULTING and the CUSTOMER from time to time and contained in a written Contract (the "Services"). HORSELL CONSULTING may also supply the CUSTOMER with Products, as ordered by CUSTOMER and agreed by HORSELL CONSULTING from time to time and specified in a Contract. The term "Products" means any items, hardware and/or third party software provided to the CUSTOMER by or on behalf of HORSELL CONSULTING pursuant to these Terms. The term "Deliverables" refers collectively to Services and Products and the work products (including reports) of such Services.

1.2. These Terms and any written Contract set out the entire agreement between HORSELL CONSULTING and the CUSTOMER in relation to the supply by HORSELL CONSULTING of Deliverables. They supersede any document that the CUSTOMER may issue, and all prior agreements, negotiations, communications and representations by the parties.

2. Quotations and Ordering

2.1. If the CUSTOMER requests it, HORSELL CONSULTING may issue a quotation in respect of any Deliverable proposed to be provided under these Terms. The quotation remains open for acceptance for up to 14 days from the date of issue (or such other time as specified in the quotation). HORSELL CONSULTING may withdraw a quotation at any time. The CUSTOMER can accept a Quotation by signing a copy of it and sending to HORSELL CONSULTING, or by e-mail. If the CUSTOMER accepts HORSELL CONSULTING's quotation, HORSELL CONSULTING will issue a Contract setting out the following details:

2.1.1. the nature of the Deliverables to be provided pursuant to the Contract;

2.1.2. any specifications for the Deliverables;

2.1.3. a plan for the preparation of those specifications and/or the Deliverables;

2.1.4. the fee payable to HORSELL CONSULTING for the Deliverables (if the Contract states that the price for the Deliverables is fixed) or a method for calculating that price, and the payment schedule for the Deliverables;

2.1.5. the Facilities to be made available by the CUSTOMER (including any Means of Access required and any Restrictions on Access);

2.1.6. such other items as HORSELL CONSULTING considers relevant for that Contract; and

2.1.7. the deposit amount; if any, to be paid in advance on account of the Deliverables.

2.2. Once the CUSTOMER accepts the Contract and pays any deposit amount referred to in paragraph 2.1.7, HORSELL CONSULTING will begin providing the Deliverables in accordance with the Contract. The CUSTOMER can accept a Contract by signing a copy of it and sending it to HORSELL CONSULTING, or by e-mail. To the extent of an inconsistency between these Terms and a Contract, the Contract prevails.

2.3. Any quotation that HORSELL CONSULTING gives (whether before this Agreement was signed) is based on the information that was provided to HORSELL CONSULTING at the time of quotation. If that information is later found to be inaccurate or there is a change to the nature or scope of the Deliverables or if circumstances change, HORSELL CONSULTING may charge an additional amount calculated on a time and materials basis at HORSELL CONSULTING's standard or agreed scale of charges.

3. Reporting, Means of Access and Facilities

3.1. The CUSTOMER shall make an employee (as specified in the Contract) available to meet with HORSELL CONSULTING when HORSELL CONSULTING reasonably requires it for the purposes of discussing the status of the Deliverables.

3.2. HORSELL CONSULTING may provide the Services remotely and is not required to attend the CUSTOMER's premises. The CUSTOMER authorises HORSELL CONSULTING to access the CUSTOMER's facilities referred to in the Contract (the "Facilities") using the Means of Access and subject to any Restrictions on Access set out in the Contract, for the purposes of providing the Deliverables. HORSELL CONSULTING will not use the Means of Access to access the Facilities for any purpose other than in accordance with these Terms.

3.3. If stated in a Contract or project plan, or if HORSELL CONSULTING requests it, CUSTOMER will provide HORSELL CONSULTING with reasonable assistance and facilities free of charge (including the Means of Access and any other Items referred to in the Contract or a project plan, office facilities, and liaison with the necessary officers and employees of the CUSTOMER) in order to assist HORSELL CONSULTING to provide the Deliverables.

4. Consulting Rates, and Other Expenses

4.1. Unless the price for the Deliverables is stated in a Contract to be fixed, HORSELL CONSULTING is entitled to charge the CUSTOMER for Deliverables on a time and materials basis at HORSELL CONSULTING's standard or agreed scale of charges from time to time.

4.2. If HORSELL CONSULTING is required to attend the CUSTOMER's or any other premises for any reason pursuant to these Terms, the CUSTOMER will reimburse HORSELL CONSULTING for reasonable transport and/or accommodation expenses incurred by HORSELL CONSULTING in doing so plus a management fee of 15% where such services are unable to be booked by the CUSTOMER. The CUSTOMER will also indemnify HORSELL CONSULTING and keep it indemnified for all expenses HORSELL CONSULTING may incur on the CUSTOMER's behalf or in carrying out its obligations under these Terms including a management fee of 15%.

5. Invoicing and Payment

5.1. HORSELL CONSULTING may invoice the CUSTOMER on an interim basis for progress payments, including for such expenses, as the CUSTOMER is required to reimburse HORSELL CONSULTING. HORSELL CONSULTING's invoices will contain such information and detail as the CUSTOMER reasonably requires to permit the CUSTOMER to account for the Deliverables.

5.2. Unless otherwise expressly stated, all amounts specified in a quotation or Contract represent the value of the Taxable Supply, and do not include GST. HORSELL CONSULTING will provide the CUSTOMER with a Tax Invoice in a form that complies with the law relating to the imposition of GST.

5.3. HORSELL CONSULTING's invoices are payable within 14 days of the invoice date, regardless of whether or not the CUSTOMER has received payment from any other party in respect of any Deliverables. Payment is to be made by direct debit to an account nominated in writing by HORSELL CONSULTING. If the CUSTOMER does not pay an invoice by that time, then without prejudice to HORSELL CONSULTING's rights: (a) interest is also payable on the outstanding amount, to be calculated at the prescribed rate under the Victorian Penalty Interest Rates Act 1983; and (b) by written notice to the CUSTOMER, HORSELL CONSULTING can suspend or terminate any licence granted to the CUSTOMER to use the Deliverable in respect of which payment is outstanding, and may recover or remove from the Facilities any Deliverables for which payment has not been made.

5.4. If the CUSTOMER breaches any obligation under this document (including clause 5.3) then without prejudice to HORSELL CONSULTING's rights, HORSELL CONSULTING may recover from the CUSTOMER all reasonable expenses (including legal costs) incurred by HORSELL CONSULTING in the enforcement of that obligation.

6. Confidentiality

6.1. Each party acknowledges the confidentiality of the other party's confidential information. Neither party will gain a right or interest in the other party's confidential information, other than for the purposes contemplated by these Terms. Each party must keep all of the other party's confidential information confidential, and only use it for the purposes of fulfilling its obligations under these Terms. However this obligation will not apply to information which: (a) was in the public domain when it was provided to a party, or later enters the public domain, through no fault of the party; or (b) the party is obliged by law to disclose, provided that it has first advised the other party of this obligation.

7. Intellectual Property

7.1. Upon payment in full for the Deliverables, HORSELL CONSULTING grants the CUSTOMER a non-exclusive and non-transferable perpetual licence to use the Intellectual Property for the CUSTOMER's own business purposes or for sub-licensing to the CUSTOMER's own client. The licences granted under these Terms will also permit the CUSTOMER to copy the Intellectual Property for the purposes of staff and subcontractor education and system backups. However, the CUSTOMER must not copy or use any of the Intellectual Property for any other purposes, or do or permit any act to be done that infringes HORSELL CONSULTING's (or its licensors') intellectual property rights. If the CUSTOMER intends to sub-license the Deliverables to its own client, it may only do so if HORSELL CONSULTING consents to it, and even if HORSELL CONSULTING consents to it, the CUSTOMER must ensure that any sub-licence agreement with that client contains the same protections in respect of HORSELL CONSULTING's confidential information and the Intellectual Property, and the same limitations and exclusions of HORSELL CONSULTING's liability, as set out in this document. If despite this provision, the CUSTOMER or any other party on the CUSTOMER's behalf makes any amendment, adaptation or alteration to such Intellectual Property (or any part of it), or creates a derivative work based on any part of the Intellectual Property (collectively "Derivatives"), ownership of the Derivatives will automatically vest in HORSELL CONSULTING, and the CUSTOMER assigns all future copyright and other intellectual property rights in the Derivatives to HORSELL CONSULTING. If HORSELL CONSULTING requests it, the CUSTOMER will sign all documents and do all things required to better evidence that assignment.

7.2. The CUSTOMER must hold materials provided by or on behalf of HORSELL CONSULTING confidential. The CUSTOMER must not disclose any of those materials to any third party without HORSELL CONSULTING's prior written consent. The CUSTOMER must also take all reasonable steps within its power to protect the Intellectual Property from

- unauthorised disclosure or use.
- 7.3. The CUSTOMER will indemnify HORSELL CONSULTING fully against any loss, liability, cost or expense that HORSELL CONSULTING suffers or incurs (including liability to any other party) as a result of the CUSTOMER's (or if applicable, the CUSTOMER's client's) breach of this clause 7.
8. **Warranties**
- 8.1. HORSELL CONSULTING warrants that any services that it provides as part of the Services will be provided with a reasonable level of care and skill, using appropriately skilled personnel. In relation to Products, HORSELL CONSULTING will endeavour to pass to the CUSTOMER the benefit of any warranties given by their manufacturers or licensors.
- 8.2. The CUSTOMER must ensure that the written specifications for any Deliverable (whether in the Contract or prepared pursuant to a project plan) meet with the CUSTOMER's requirements prior to the work commencing under this document. Once HORSELL CONSULTING has provided a Deliverable to the CUSTOMER, the CUSTOMER must promptly test the Deliverable for compliance with the Contract. The CUSTOMER must submit all complaints, claims, or notifications of Deliverables that do not comply with the Contract to HORSELL CONSULTING in writing within 14 days of the date of HORSELL CONSULTING's invoice for the Deliverable. Otherwise, the CUSTOMER is deemed to have accepted the Deliverable. On no account shall the CUSTOMER have any claim against HORSELL CONSULTING on the basis that the Deliverable provided in accordance with its specifications does not meet the CUSTOMER's or any other person's requirements.
9. **Liability**
- 9.1. None of the Deliverables provided pursuant to these Terms or a Contract are designed or intended to be fault-tolerant or to be used where their failure or malfunction could lead to death, personal injury, or economic, physical or environmental damage ("Risky Activities"). HORSELL CONSULTING specifically disclaims any express or implied warranty of fitness of any of the Deliverables for Risky Activities, and the CUSTOMER will indemnify HORSELL CONSULTING for any losses arising from the use of any Deliverable by any person for Risky Activities.
- 9.2. Except for express undertakings to indemnify and any warranties set out in these Terms, to the extent permitted by the law, HORSELL CONSULTING expressly excludes all conditions and warranties whether expressed or implied.
- 9.3. Despite any other provision in these Terms or a Contract, in no event will HORSELL CONSULTING be liable to any party including the CUSTOMER for any indirect, punitive, special, incidental or consequential damage in connection with or arising out of these Terms (including for loss of profits, use, data, or economic advantage), regardless of how it arises. The CUSTOMER will indemnify HORSELL CONSULTING from and against any claim by any party claiming any such damage against HORSELL CONSULTING.
- 9.4. Subject to clause 9.5, in no event will HORSELL CONSULTING's total aggregate liability in respect of all claims arising under or pursuant to these Terms exceed the amount actually paid to HORSELL CONSULTING under these Terms during the previous 12 months, regardless of whether such claims arise out of a single event or a series of events.
- 9.5. Certain provisions of the Trade Practices Act, 1974 (Cth) and other statutes, rules and regulations may imply certain non-excludable warranties or conditions. To the extent that they are not permitted to be excluded, they are included in these Terms, and HORSELL CONSULTING's cumulative liability for breach of those non-excludable conditions or warranties and the CUSTOMER's only remedy in relation to such a breach is limited to:
- 9.5.1. in the case of the goods that were supplied by HORSELL CONSULTING or on its behalf, at HORSELL CONSULTING's option: (i) replacing or repairing the goods, or supplying equivalent goods; (ii) paying the cost of replacing or repairing the goods or of acquiring equivalent goods; or (iii) refunding the amount paid to HORSELL CONSULTING for the goods; and/or
- 9.5.2. in the case of any other services that were supplied by or on behalf of HORSELL CONSULTING, at HORSELL CONSULTING's option: (i) supplying the services again; (ii) paying the cost of having the services supplied again; or (iii) refunding the amount paid to HORSELL CONSULTING for the services.
10. **Agreement Non-exclusive**
- 10.1. The CUSTOMER acknowledges that HORSELL CONSULTING is providing Deliverables to the CUSTOMER on a non-exclusive basis and that HORSELL CONSULTING may provide services and products of the same or a similar nature as the Deliverables to any other party (provided that in doing so it does not breach clause 6).
11. **Termination**
- 11.1. Either party may terminate the agreement under a Contract or these Terms generally, if the other party:
- 11.1.1. breaches a material obligation under these Terms and does not remedy that breach within 14 days of a written notice of that breach from the other party; or
- 11.1.2. is deemed to be insolvent, or ceases to conduct its business in the ordinary way (except if it has assigned its rights and obligations under these Terms in accordance with these Terms prior to that occurring), or an administrator, receiver, receiver and manager, official manager, liquidator, provisional liquidator, or similar is appointed in respect of the other party or any of its assets.
- 11.2. On termination of an agreement under a Contract or these Terms, HORSELL CONSULTING is entitled to invoice the CUSTOMER for all Deliverables provided or in the process of being delivered but not yet invoiced, including Products ordered for the CUSTOMER but not yet delivered and invoiced (unless the Products can be returned to their supplier for a refund without cost or penalty). If any amount payable under these Terms remains unpaid 30 days after termination then, without prejudice to HORSELL CONSULTING's other rights, all licences granted to the CUSTOMER for which payment has not been received shall automatically terminate, and HORSELL CONSULTING may retake possession of any unpaid Products.
- 11.3. The CUSTOMER's obligations (including any obligations to indemnify) under clauses 7 (Intellectual Property) and 9 (Liability), and each party's obligations under clause 6 (Confidentiality) and this clause 11 survive the termination of any agreement under these Terms for any reason.
12. **General Provisions**
- 12.1. These Terms are governed by and will be interpreted according to the laws of Victoria, and the parties consent and submit to the jurisdiction of the Victorian courts.
- 12.2. If any provision of these Terms proves to be illegal or unenforceable for any reason, that provision is deemed omitted without affecting the remaining provisions and the remaining provisions of these Terms shall continue in full force and effect.
- 12.3. Any notice required or contemplated by these Terms is deemed to have been properly given to a party if it is in writing, properly addressed and delivered personally, or mailed postage paid or by facsimile to the party at its addresses set out in these Terms, or such other address nominated by a party in writing.
- 12.4. The CUSTOMER may not assign any of its rights or obligations under these Terms without HORSELL CONSULTING's prior written consent. HORSELL CONSULTING may arrange for subcontractors to perform any of its obligations under these Terms or a Contract.
- 12.5. HORSELL CONSULTING will not be liable to the CUSTOMER or to any third party for any non-performance or delay in the performance of its obligations under these Terms, if events or conditions beyond its reasonable control cause the non-performance or delay. In no event will this provision affect CUSTOMER's obligation to make payments to HORSELL CONSULTING under these Terms except in respect of Deliverables that cannot be delivered, until they can be delivered.
- 12.6. HORSELL CONSULTING's failure, delay or neglect to enforce a term of these Terms is not to be taken as a waiver of that term or HORSELL CONSULTING's rights, or a consent to, a waiver of, or any excuse for any different, continuing, or subsequent breach.
- 12.7. These Terms may only be amended or varied by written agreement of the parties.

I/we accept these terms and conditions as stated.

Name (1):		Name (2):	
Position:		Position:	
Company:		Company:	
Signature:		Signature:	
Date:		Date:	