

**ONLINE TERMS AND CONDITIONS (attached to Proposal)**

**1. ACCEPTANCE**

- 1.1 These Terms and Conditions (**Terms**) are between **Vested Utility Pty Ltd (ABN 27 603 351 882)**, its successors and assignees (referred to as **“we”, “us” or “our”**) and the Client described in the Proposal (referred to as **“you” or “your”**), and collectively the Parties.
- 1.2 You have requested specific services, described on and able to be ordered via our Website (**Services**). You accept these Terms by:
  - (a) ticking the online acceptance box;
  - (b) confirming by email that you accept the Terms;
  - (c) instructing us to proceed with the Services; or
  - (d) making part or full payment for the Services, set out in our tax invoice to you (**Invoice**).
- 1.4 **You agree that these Terms form the agreement under which we will supply Services to you. Please read these Terms carefully.** Please contact us if you have any questions. Purchasing Services from us indicates that you have had sufficient opportunity to read these Terms and contact us if needed and that you have read, accepted and will comply with these Terms. If you do not agree to these Terms, you should not purchase from us.

**2. SERVICES**

- 2.1 We agree to perform the Services with due care and skill.
- 2.2 We will perform the Services for the period as set out in our Proposal.
- 2.3 We may provide the Services to you using our employees, contractors and third party providers, and they are included in these Terms.
- 2.4 If you request amended or additional services, including but not limited to changes in scope, variations or additional rounds of comments (**Variation**), we have discretion as to whether we perform this work and whether an adjustment to the Fee may be required in respect of the same. If we are unable to accommodate the Variation, we may request that we be paid for Services performed to date and terminate these Terms.
- 2.5 If we agree to perform a Variation, then we will inform you of any additional cost (**Variation Fee**). You need to approve the Variation and Variation Fee before we commence work. We will invoice you accordingly for the Variation.

**3. PRICE, INVOICING AND PAYMENT**

- 3.1 You agree to pay us the Fees set out on our Proposal, for the chosen Services. All amounts are stated in Australian dollars. All amounts include Australian GST (where applicable).
  - 3.2 The Price and Services can be varied by written agreement between us, including by email.
  - 3.3 You agree to pay our Invoices within the Invoice Terms. If an Invoice is unpaid for more than 1 business day we will cease to provide the Services to you until we receive payment of the Invoice.
  - 3.4 We may charge interest at the rate of 2% per month on any amounts unpaid after the expiry of 7 days after the payment date.
  - 3.5 If invoices are unpaid for 30 days after the payment date, we have the right to engage debt collection services for the collection of unpaid and undisputed debt, and the right to commence legal proceedings for any outstanding amounts owed to us.
  - 3.6 Our pricing structure, payment methods and these Terms may be amended from time to time at our discretion. The pricing changes will apply to you for Services provided to you after the date of the change. All other changes will apply from the date that the amended or new Terms are posted on our Site or are provided to you, whichever is earlier.
- 4. YOUR OBLIGATIONS AND WARRANTIES**
- 4.1 You warrant that you will not canvass, employ, induce or attempt to employ, induce, solicit or entice away from us, any employee or contractor that was employed by or contracted to us during the term that we provide Services to you or the prior twelve (12) month period.
  - 4.2 You warrant that throughout the term of these Terms that:
    - (a) there are no legal restrictions preventing you from agreeing to these Terms;
    - (b) you will cooperate with us and provide us with information that is reasonably necessary to enable us to perform the Services as requested by us from time to time, and comply with these requests in a timely manner;
    - (c) the information you provide to us is true, correct and complete;
    - (d) you will not infringe any third party rights in working with us and receiving the Services;
    - (e) you will inform us if you have reasonable concerns relating to our provision of Services under these Terms, with the aim that we and you will use all reasonable efforts to resolve your concerns;
    - (f) you are responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to be provided, at your cost, and for providing

- us with the necessary consents, licences and permissions;
  - (g) you consent to the use of your name and Intellectual Property in relation to the Services in a way which may identify you;
  - (h) if applicable, you hold a valid ABN which has been advised to us; and
  - (i) if applicable, you are registered for GST purposes.
- 4.3 You agree that all works you provide to customers referred to you as part of the Service (**Works**) will be undertaken with due care and skill, and that you will maintain during the Term all appropriate licences and approvals required to provide the Works, and that all Works are undertaken in accordance with that licence.
- 4.4 You agree that you will offer a 12 month warranty on all Works and components. You agree to make good any claims regarding the Works made by a customer to their satisfaction at your expense. If you are unable to make good the Works, you agree you will be liable for the cost of any repairs we carry out on your behalf.
- 4.5 You will provide us with your business details including a digital photograph of you which will form part of your profile. This profile will be included on our website and will allow us to provide the Services to you.
- 4.6 You will at all times during the term of these Terms display our sign on both sides of your work vehicles or another place as agreed by us from time to time. You will provide us with photographic evidence of the display of the signs.
- 5. OUR INTELLECTUAL PROPERTY**
- 5.1 The work and materials that we provide to you in carrying out the Services contains material which is owned by or licensed to us and is protected by Australian and international laws (**Materials**). We own the intellectual property rights in the Materials including but not limited to copyright which subsists in all creative and literary works incorporated into our Materials.
- 5.2 You agree that, as between you and us, we own all Intellectual Property rights in our Materials, and that nothing in these Terms constitutes a transfer of any intellectual property rights in our Materials, except as stated in these Terms or with our written permission.
- 5.3 Your use of our Materials does not grant you a licence, or act as a right to use any Intellectual Property in the Materials, whether registered or unregistered, except as stated in these Terms or with our written permission.
- 5.4 You must not breach our Intellectual Property rights by, including but not limited to:
- (a) altering or modifying any of the Materials;

- (b) creating derivative works from the Materials; or
  - (c) using our Materials for commercial purposes such as on sale to third parties.
- 5.5 **Our material licensed to you:** We will license to you our logo and marketing materials (**Licensed Material**), upon full payment of our invoices.
- 5.6 We grant you a *non-exclusive, revocable, suburb specific and non-transferable* licence to use the Licensed Material for the agreed purpose during the term of these Terms.
- 6. YOUR INTELLECTUAL PROPERTY AND MORAL RIGHTS**
- 6.1 You agree to provide information including any Intellectual Property to us to enable us to provide the Services. You:
- (a) warrant that you have all necessary rights to provide the Intellectual Property to us;
  - (b) grant us a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable licence to use the Intellectual Property in any way we require to provide the Services to you; and
  - (c) consent to any act or omission which would otherwise constitute an infringement of your Moral Rights.
- 6.2 If you (or any employee or agent) have Moral Rights in any Intellectual Property that you provide to us, you:
- (a) irrevocably consent to any amendment of the Intellectual Property in any manner by us for the purposes of providing Services to you;
  - (b) irrevocably consent to us using or applying the Intellectual Property for the purposes of providing Services to you without any attribution of authorship;
  - (c) agree that your consent extends to acts and omissions of any of our licensees and successors in title; and
  - (d) agree that your consent is a genuine consent under the *Copyright Act 1968* (Cth) and has not been induced by duress or any false or misleading statement.
- 7. CONFIDENTIAL INFORMATION**
- 7.1 We, including our employees and contractors, agree not to disclose your Confidential Information to any third party (other than, where necessary, Third Party Suppliers); to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; only to use the Confidential Information for the purpose for which it was disclosed by you, to provide better quality services to you, and not for any other purpose.
- 7.2 You, including your employees and contractors, agree not to disclose our Confidential Information to any third party; to use all

reasonable endeavours to protect Confidential Information from any unauthorised disclosure; and only to use the Confidential Information for the purpose for which it was disclosed or provided by us to you, and not for any other purpose.

- 7.3 These obligations do not apply to Confidential Information that:
- (a) is authorised to be disclosed;
  - (b) is in the public domain and/or is no longer confidential, except as a result of breach of these Terms;
  - (c) is received from a third party, except where there has been a breach of confidence; or
  - (d) must be disclosed by law or by a regulatory authority including under subpoena.

7.4 The obligations under this clause will survive termination of these Terms.

**8. FEEDBACK AND DISPUTE RESOLUTION**

8.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Services, please contact us.

8.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:

- (a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them (**Initial Meeting**).

- (b) If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of Western Australia to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.

8.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.

**9. TERMINATION**

9.1 The Parties may terminate these Terms by mutual agreement, by notice per the Notice Period in writing including by email.

9.2 Either Party may terminate these Terms, if there has been a material breach of these Terms, subject to following the dispute resolution procedure.

9.3 We may terminate these Terms immediately, at our sole discretion, if:

- (a) we consider that a request for the Service is inappropriate, improper or unlawful;
- (b) you fail to provide us with clear or timely instructions to enable us to provide the Services;
- (c) we consider that our working relationship has broken down including a loss of confidence and trust;
- (d) for any other reason outside our control which has the effect of compromising our ability to perform the work required within the required timeframe; or
- (e) you fail to pay an Invoice within 10 business days of the payment date.

9.4 On termination of these Terms you agree that any payments made are not refundable to you, and you are to pay all Invoices for Services rendered to you.

9.5 If you terminate these Terms early, you must pay for all Services provided prior to termination, including any Services which have been performed and have not yet been invoiced to you.

9.6 On termination of these Terms you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and Intellectual Property.

9.7 On termination of these Terms, we agree to promptly return (where possible), or delete or destroy (where not possible to return), your Confidential Information and Intellectual Property, and/or documents containing or relating to your Confidential Information and Intellectual Property.

9.8 On completion of the Services, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.

9.9 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.

**10. INSURANCE**

10.1 You agrees to make your own arrangements to ensure adequate insurance coverage is effected and maintained throughout the Term.

10.2 You agrees to provide us with evidence of such arrangements, prior to us providing the Services.

**11. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS**

11.1 **ACL:** Certain legislation including the Australian Consumer Law (**ACL**) in the *Consumer and*

*Competition Act 2010 (Cth)*, and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services by us to you which cannot be excluded, restricted or modified (**Statutory Rights**). Our liability is governed solely by the ACL and these Terms.

- 11.2 **Services:** If you are a consumer as defined in the ACL, the following applies to you: We guarantee that the Services we supply to you are rendered with due care and skill; fit for the purpose that we advertise, or that you have told us you are acquiring the Services for or for a result which you have told us you wish the Services to achieve, unless we consider and disclose that this purpose is not achievable; and will be supplied within a reasonable time. To the extent we are unable to exclude liability; our total liability for loss or damage you suffer or incur from the Services is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates.
- 11.3 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services in the period set out in the Proposal where it is affected by your delay in response, or supply of incomplete or incorrect information.
- 11.4 **Referral:** On request by you, we may provide you with contact details of third party specialists. This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about the third party advice or provision of services, and we disclaim all responsibility and liability for the third party advice or provision of services, or failure to advise or provide services.
- 11.5 **Warranties:** To the extent permitted by law, we exclude all express and implied warranties, and all material and work is provided to you without warranties of any kind, either express or implied. We expressly disclaim all warranties including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- 11.6 **Liability:** To the extent permitted by law, we exclude all express or implied representations, conditions, guarantees and terms relating to the Services and these Terms, except those set out in these Terms, including but not limited to:
  - (a) implied or express guarantees, representations or conditions of any kind, which are not stated in these Terms;
  - (b) the Services being unavailable; and
  - (c) any loss, damage, costs including legal costs, or expense whether direct, indirect,

incidental, special, consequential and/or incidental, including loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any indirect, remote, abnormal or unforeseeable loss, or any loss or damage relating to business interruption, or otherwise, suffered by you or claims made against you, arising out of or in connection with your inability to access or use the Services, and the late supply of Services, even if we were expressly advised of the likelihood of such loss or damage.

- 11.7 **Limitation:** Our total liability arising out of or in connection with the Services, however arising, including under contract, tort, including negligence, in equity, under statute or otherwise, will not exceed the total fees paid by you to us in the twelve (12) month period prior to the event giving rise to the liability, or one hundred dollars (AUD\$100) if no such payments have been made, as applicable.
- 11.8 **Your Liability:** You are liable for and agree to indemnify us in respect of any claim, action, damage, loss, cost, charge, expense, penalty, fine or payment which we suffer, incur or are liable for as a result of:
  - (a) the manner in which the Works are performed by you, including but not limited to any act or omission by you in connection with the performance of the Works; and
  - (b) any breach by you (or your employees, agents or subcontractors) of your obligations or warranties under these Term.
- 11.9 This clause will survive termination of these Terms.
- 12. INDEMNITY**
- 12.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
  - (a) any information that is not accurate, up to date or complete or is misleading or a misrepresentation;
  - (b) any breach of these Terms; and
  - (c) any misuse of the Services from or by you, your employees, contractors or agents.
- 12.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of the Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.

12.3 The obligations under this clause will survive termination of these Terms.

**13. GENERAL**

- 13.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.
- 13.2 **Publicity:** You consent to us using advertising or publically announcing that we have undertaken work for you.
- 13.3 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.
- 13.4 **GST:** If and when applicable, GST payable on the Services will be set out on our Invoices. By accepting these Terms you agree to pay us an amount equivalent to the GST imposed on these charges.
- 13.5 **Relationship of parties:** These Terms are not intended to create a relationship between the parties of partnership, joint venture, or employer-employee.
- 13.6 **Assignment:** These Terms are personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent not to be unreasonably withheld).
- 13.7 **Severance:** If any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.
- 13.8 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control. If we are delayed from performing our obligations due to such a circumstance for a period of at least 2 months, we may terminate our agreement with you by giving you 5 business days' notice in writing.
- 13.9 **Notice:** Any notice required or permitted to be given by either Party to the other under these

conditions will be in writing addressed to you at the address in the Proposal. Our address is set out in the Proposal. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission.

- 13.10 **Jurisdiction & Applicable Law:** These terms are governed by the laws of Western Australia and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Western Australia.
- 13.11 **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between you and us and supersede any prior agreement, understanding or arrangement between you and us, whether oral or in writing.

**14. DEFINITIONS**

- 14.1 **Confidential Information** includes confidential information about the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, Intellectual Property, technology, and other information whether or not such information is reduced to a tangible form or marked in writing as "confidential".
- 14.2 **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.
- 14.3 **Intellectual Property** includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit layouts, trade names, trade secrets, business names, company names or internet domain names.
- 14.4 **Moral Rights** means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined in the *Copyright Act 1968* (Cth).
- 14.5 **Notice Period** means a period of 10 working days.
- 14.6 **Website** means the website, available at **[vestedutility.com.au](http://vestedutility.com.au)**

**Contact details:**

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