

Terms and Conditions of Engagement

1 Definitions

In these terms and conditions, unless expressed or implied to the contrary:

- 1.1 “Agreement” means the contract for the supply by Dynamity to the Client of Services incorporating these Terms, the invoice and any other terms and conditions set out in any other document forwarded by Dynamity to the Client.
- 1.2 “Client” means that person, firm, company, authority or organisation to which Dynamity is engaged to provide the Services.
- 1.3 “Dynamity” means Dynamity Pty Ltd ABN 94 165 484 499 or any subsidiary or operating associated company.
- 1.4 “Services” means any and all work undertaken by Dynamity for the Client and any and all materials and/or deliverables supplied by Dynamity to the Client.
- 1.5 “Terms” or “Conditions” means these Terms and Conditions of Engagement.
- 1.6 “Project” is the project or job referenced in the Quotation or Proposal.
- 1.7 “Quotation” or “Proposal”, means the document (including any other document referenced therein) given to the Client explaining the Services being provided by Dynamity to the Client and the pricing for each.
- 1.8 The “Fee” is the fee, cost, or price associated with performing the Services.

2 Services

- 2.1 Dynamity will provide consulting services to the Client for any solution requested by the Client.
- 2.2 In providing the Services, Dynamity warrants to perform its services with the degree of skill, care and diligence normally exercised by consultants in similar circumstances. No other warranty or representation, expressed or implied, is included or intended in its Services.
- 2.3 Dynamity prides itself on its ability to provide quality service to its Clients. The responsibility for choosing to engage Dynamity rests entirely with our Clients who must advise us immediately of any dissatisfaction with the services provided.
- 2.4 The Client shall supply free of charge to the office of Dynamity briefings and all information, drawings, plans, maps, photographs and all other documents necessary for completion of the Services.
- 2.5 The engagement or use in whatever capacity by the Client (or by any third party as a result of an introduction by the Client) of Dynamity constitutes acceptance of these Terms by the Client.

3 Fees

- 3.1 Services will be charged to the Client as specified in the Quotation or Proposal and will be listed in each invoice with details the work completed to that date. Services provided outside of a Quotation or Proposal will be charged to the Client as per our standard price list.
- 3.2 The price of Services specified in any standard price list of Dynamity is subject to change at any time without notice to the Client.
- 3.3 Any Quotation or Proposal given by Dynamity to the Client will remain valid for a period of 30 days from the date when the Quotation or Proposal was given or such other period as nominated in the Quotation or Proposal.

- 3.4 Unless specifically stated otherwise, all prices are quoted excluding the Goods and Services Tax (GST) and any other additional Government imposed taxes and charges associated with the Services. Where applicable, such taxes and charges will be added at the appropriate rate at the time of invoicing.

4 Payment

- 4.1 Dynamity shall be entitled to render invoices at any time.
- 4.2 All monies payable by the Client to Dynamity shall be paid within fifteen (15) days of the invoice date. Moneys not paid within that period shall attract interest from the date of invoice until payment at the rate of 1% per month without relieving the Client of his obligation to pay the account.
- 4.3 Payment may be made by cheque, or EFT. When making payment, the relevant Invoice Number must be quoted for reconciliation purposes.
- 4.4 Reports/advice or any other materials provided by Dynamity to our Client must not be relied upon and remain the property of Dynamity until such time as our invoice for Services provided to the Client have been paid for in full.
- 4.5 The Client agrees to pay all costs (including legal and other debt collection costs on an indemnity basis) related to the recovery by Dynamity from the Client of any monies due by the Client to Dynamity under or in connection with this Agreement.
- 4.6 Should the Client be in dispute as to the invoice amount the Client must address said dispute with Dynamity immediately upon receipt of invoice.

5 Deadlines

- 5.1 Dynamity will use its best endeavours to provide Services to the Client by any date specified in the Agreement.
- 5.2 The Client acknowledges that Dynamity does not warrant or represent that the Service will be delivered on that date.
- 5.3 The failure to deliver the Services by the date required will not:
- 5.3.1 avoid or give the Client the right to avoid the Agreement; or
- 5.3.2 to the extent permitted by law, render Dynamity liable for any loss or damage.
- 5.4 Any orders for Services accepted by Dynamity will be accepted in good faith but are subject to the availability of resources to complete work at that time.

6 Liability And Indemnity

- 6.1 Dynamity maintains insurances as required by law.
- 6.2 The Client will indemnify Dynamity and hold Dynamity harmless from any action, claims, liability or loss in respect of the performance of the Services.
- 6.3 At the written request of the Client, Dynamity will, at the cost of the Client, arrange any additional insurance cover or otherwise vary the nature of the insurance cover beyond that normally borne by Dynamity. No additional liability shall attach to Dynamity until the Client has paid the cost of such additional insurance or alternatively reimbursed Dynamity therefore.
- 6.4 Dynamity shall not be liable to the Client under this Agreement, law of tort (including negligence), statute, in equity or otherwise for any kind of indirect or consequential loss or damage arising out of or in connection with this Agreement.

7 Termination and/or Postponement

- 7.1 The Client may terminate or postpone this Agreement:

- 7.1.1 in the event of substantial breach by Dynamity of its obligations hereunder, which breach has not been remedied within thirty (30) days of written notice from the Client requiring the breach to be remedied; or
- 7.1.2 for any or no reason upon giving Dynamity thirty (30) days written notice of his intention to do so.
- 7.2 Dynamity may terminate or postpone this Agreement:
 - 7.2.1 in the event of monies payable to Dynamity being outstanding for more than 30 days from the date of invoice; or
 - 7.2.2 in the event of substantial breach by the Client of his obligations hereunder, which breach has not been remedied within 30 days of written notice from Dynamity requiring the breach to be remedied; or
 - 7.2.3 for any or no reason upon giving the Client thirty (30) days written notice of his intention to do so.
- 7.3 In the event of termination or postponement by either party pursuant to clauses 7.1 or 7.2, Dynamity shall be entitled to be paid for that part of the Services rendered up to the time of termination or postponement and additional costs reasonably incurred in placing its files in order.
- 7.4 If the termination or postponement is under 7.1.2, Dynamity shall be entitled to an additional payment representing its reasonable profit lost in not completing the Services.
- 7.5 Dynamity will use its best endeavours to minimize costs following the receipt of notice of termination or postponement.

8 Copyright

- 8.1 Copyright in all of the materials and/or deliverables provided by Dynamity in connection with the Services shall remain the property of Dynamity.
- 8.2 Subject to clause 8.3, the Client alone shall have a license to use the materials and/or deliverables referred to in clause 8.1 for the purpose of completing the Project, but the Client shall not use, or make copies of, such documents in connection with any work not included in the Project.
- 8.3 If the Client is in breach of any obligation to make a payment to Dynamity, Dynamity may revoke the license referred to in clause 8.2, and the Client shall then cause to be returned to Dynamity all materials and/or deliverables referred to in clause 8.1, and all copies thereof.

9 Governing Law and Jurisdiction

- 9.1 These Terms are governed by and construed in accordance with the laws of Western Australia and the parties irrevocably submit to the jurisdiction of the courts of that state.

10 Joint and Several

- 10.1 If a Client consists of more than one person or corporate body, the Agreement binds them jointly and each of them severally.

11 Severance

- 11.1 If a provision in the Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unforeseeable. If it is not possible to read down a provision as required in this Condition, then that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in the Agreement.

12 Disputes

- 12.1 Should the Client be in dispute as to standard of services provided by Dynamity the Client must address said dispute with Dynamity immediately upon receipt of invoice.

- 12.2 Should the actions outlined in 12.1 fail to resolve a dispute between the Client and Dynamity, the dispute shall in the next instance be referred to mediation in accordance with the Mediation and Conciliation Rules of the Institute of Arbitrators and Mediators Australia.
- 12.3 Clauses 12.1 and 12.2 shall not prevent Dynamity from instigating legal action at any time to recover monies owing by the Client to Dynamity.

13 Force Majeure

- 13.1 Dynamity is not liable for non-performance or delay in performing any of its obligations under the Agreement caused by unforeseeable circumstances beyond its reasonable control (including without limitation, acts of God, civil or military authority, accidents, earthquakes, strikes, the elements, labour disputes, shortage of suitable parts or components or other materials, mechanical breakdown, fire, flood, tempest and war).

14 Miscellaneous

- 14.1 In these Terms, a reference to a person includes a firm, partnership, joint venture, association, corporation or other corporate body; and a person includes the legal personal representatives, successors and assigns of that person.
- 14.2 In these Terms, a reference to the singular includes the plural and vice versa; and a gender includes the other genders.
- 14.3 In these Terms, headings are inserted for ease of reference and do not affect the interpretation of these Terms.
- 14.4 Unless otherwise agreed, Dynamity will provide services to the Client between the core business hours of 9am to 5pm Monday to Friday.
- 14.5 Neither party may assign, transfer or sublet any obligation under this Agreement without the written consent of the other. Unless stated in writing to the contrary, no assignment, transfer or subletting shall release the assignor from any obligation under the Agreement.
- 14.6 The Client agrees to provide a safe working environment for Dynamity to conduct the Services.
- 14.7 Unless stated otherwise, a Proposal is valid for 30 days from the date of the Proposal.
- 14.8 The Agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by the Agreement and have no effect.
- 14.9 These Terms apply, unless otherwise agreed in writing, to the exclusion of and shall prevail over all and any other terms. No variation shall be made to these terms without the prior written consent of a director of Dynamity and, unless otherwise agreed in writing, these terms apply on and from the date of the engagement of Dynamity in any matter whatsoever for and on behalf of the Client.
- 14.10 Nothing in these Terms are to be read as excluding, restricting or modifying the application of any legislation which by law cannot be excluded, restricted or modified.

--- end of document ---