

Mackay Strategic Pty Ltd - Contract Terms

Mackay Strategic Pty Ltd (ABN 2660 2859414 001) (Consultant) offers services to another party (Client) on the following terms.

1. The contract for provision of services (Contract) between the Consultant and Client is created through an offer, which includes these terms (Offer) and acceptance of the Offer. The Contract may be varied by mutual agreement of both Consultant and Client. Offer, acceptance and any variation may occur in writing, verbally, or through action (such as proceeding in accordance with instructions). The Offer takes precedence over these terms to the extent of any inconsistency.
2. The Consultant shall exercise reasonable care and diligence to provide professional consulting and advisory services as outlined in the Offer (whether written or verbal).
3. The Consultant will use best endeavours to meet any timeframe outlined in the Offer. However, the nature of the services provided by the Consultant mean that timing must be flexible. Time is not to be of the essence in relation to the Contract.
4. Neither the Consultant nor the Client may assign or otherwise transfer any obligations created by the Contract without the consent of the other.
5. The Consultant and the Client may send and receive electronic communications, in the knowledge that such communications may not be secure and may be read, copied or interfered with by third parties. The Client releases the Consultant from any claim arising from any unauthorised reading, copying or interference, and for any delay or non-delivery, arising from use of electronic communications.
6. The Contract is governed by the laws of New South Wales and falls within the jurisdiction of the courts of NSW.
7. The failure of any individual provisions of these terms, by being found to be invalid, inconsistent or in any way unenforceable shall not negate any other provision within these terms.

Fees, Expenses and Payment

8. The Client shall pay the Consultant all agreed fees and expenses as outlined in the Offer, plus any reasonable adjustments arising from additional costs incurred in performing the services, applicable charges or taxes, (including GST where amounts payable by the Client are not expressed to be GST inclusive), and any additional work instructed by the Client, or required as the result of the failure of the Client to provide agreed support, information or documents.

9. Travel expenses will be disbursed at cost. Air travel will be booked in Business Class where available. Rail travel will be booked in First Class where available. Hire cars will be selected based on 'fitness for purpose'. Travel allowances will be charged at the applicable Australian Tax Office 'reasonable travel allowance rate'.
10. The Client will pay to the Consultant all fees and expenses owing to the Consultant within 14 days of receipt of a Tax Invoice. In the event that any moneys are owing to the Consultant beyond 14 days, the Consultant may accrue interest at a rate of 20 percent per annum.
11. The Consultant may take debt recovery action or issue notification of default for monies outstanding for more than 30 days, in its absolute discretion, without notice to the Client.

Premises and Site Work

12. Where the services are provided at the Client's premises or at a place within the control of the Client, the Client must provide safe access and working conditions and must ensure compliance with any applicable statutory workplace health and safety requirements.
13. The Consultant must also ensure compliance with any applicable statutory workplace health and safety requirements.

Client Support, including Provision of Documents

14. The Client will provide to the Consultant in a timely manner all support services, or other assistance reasonably required to undertake the services, whether or not such support is specifically identified in the Offer.
15. The Client shall provide any information or documents necessary to perform the services under the Contract, in such form as the Consultant may require.
16. The Consultant may rely on information and documents provided by the Client.

Liability

17. The Client indemnifies the Consultant for any claim against the Consultant, arising out of the Contract, which is caused by or arises from any action of the Consultant performed in good faith. Neither the Consultant nor its agents will, except where the law may otherwise require, be liable for any loss or other consequences arising out of the Contract.
18. In any event, other than as may be required by law, the Consultant's liability to the Client arising from the Contract is limited to the fee specified in the Offer. The Consultant is not liable for any consequential loss, whether direct or indirect, nor any liquidated damages. Further, the Consultant's liability in the event of a breach of condition or warranty is limited to the cost of re-supply of the services to be provided under the Contract.

Intellectual Property, Copyright and Moral Rights

19. The Consultant will retain ownership of intellectual property rights, including copyright and moral rights, in any new work created as a result of this contract. Following receipt of all payable contract fees and compliance with any other contract requirements, the Consultant grants to the Client a non-exclusive, royalty-free and irrevocable licence to any intellectual property in the materials created by the Consultant under this contract.
20. Copyright and ownership of any pre-existing material will remain with the existing copyright holder. If required by the Contract, the Consultant will use reasonable efforts to identify copyright holders and to obtain permission to use pre-existing material from the relevant copyright owners.
21. If for any reason, it is agreed that copyright in any new work created as a result of the Contract is vested in the Client, the Consultant may nevertheless use such materials for its business and services. The Consultant may also retain a copy of any new work created as a result of the Contract.

Confidential Information

22. Unless permission has been granted by the other party, neither the Consultant nor the Client will disclose to any third party any information that has been identified as confidential or sensitive, except where such disclosure is required by law or the information is already in the public domain.
23. The Consultant will return any documents containing confidential information to the Client on request.
24. The Consultant may use general information about the services and the Client for promotional purposes, and may nominate the Client as a professional referee, unless otherwise specified in the Offer.

Disputes

25. Both the Consultant and the Client have an obligation to notify each other of any dispute in a timely manner and to meet in good faith to resolve such a dispute. Notification and meeting may occur verbally, by telephone, in writing or through electronic means. In the event that satisfactory resolution cannot be reached within 5 business days, either the Consultant or the Client may instigate mediation proceedings, administered in accordance with procedures as set out by the Institute of Arbitrators and Mediators Australia, and both the Consultant and the Client will be obliged to participate in these proceedings, with costs to be shared equally. This process will not prevent the Consultant from taking other steps (including legal action) to recover outstanding debts or to seek interlocutory relief at any stage.

Termination

26. The Client may terminate the Contract at any time in the event of a breach of the Contract by the Consultant, provided 14 days notice has been given to the Consultant and a reasonable opportunity has been provided to the Consultant to remedy the breach. The Client may also terminate the Contract if the Consultant becomes insolvent, bankrupt, subject to any official management, receivership, liquidation, voluntary administration, or winding up provided the Consultant has been fully paid for all services performed and costs incurred up to the time that the termination occurs.
27. The Client may terminate the Contract for the Client's convenience, at any time, provided 30 days notice has been given to the Consultant and the Consultant has been fully paid for all services performed and costs incurred up to the time that the notice is served.
28. The Consultant may suspend work on the services under the Contract in the event of a breach of the Contract by the Client, (including non-payment of moneys due) provided 7 days notice has been given to the Client and a reasonable opportunity has been provided to the Client to remedy the breach. In the case of such suspension the Client must still pay the Consultant in full for all services performed and costs incurred up to the time that the suspension occurs.
29. The Consultant may terminate the Contract at any time in the event of a breach of the Contract by the Client, provided 14 days notice has been given to the Client and a reasonable opportunity has been provided to the Client to remedy the breach, or if the Client becomes insolvent, bankrupt, subject to any official management, receivership, liquidation, voluntary administration, or winding up. In the case of such termination the Client must still pay the Consultant in full for all services performed and costs incurred up to the time that the termination occurs.