

MGI South Qld Pty Ltd – Terms & Conditions of Trade

1. **Definitions**
- 1.1 "Act" shall mean the Corporations Act 2001 (Cth).
- 1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 1.3 "Consumer" means a consumer for the purposes of the Australian Consumer Law.
- 1.4 "MGI" shall mean MGI South Qld Pty Ltd (ACN 119 035 380), its successors and assignee or any person acting on behalf of and with the authority of MGI South Qld Pty Ltd including, but not limited to any entities associated with MGI.
- 1.5 "MGI Billings" shall mean MGI's total fees or hourly rates and, where applicable, miscellaneous expenses.
- 1.6 "MGI Firms" shall mean any entity (whether incorporated or not) which carries on business under a name which includes all or part of the MGI name or is otherwise within (or associated or connected with the entity within) or is a correspondent firm of the Worldwide network for MGI Firms.
- 1.7 "Services" shall mean all services supplied by MGI to the Client and includes any advice or recommendations.
- 1.8 "Small Business Contract" means a small business contract for the purposes of the Australian Consumer Law at the time this agreement was entered.
- 1.9 "Price" shall mean the cost of the Services as agreed between MGI and the Client subject to clause 3 of this contract.
2. **Acceptance**
- 2.1 These terms and conditions apply in respect of the Services to be performed by MGI for the client named in the attached engagement letter or proposal ("Client" or "you") and any subsequent engagement letter or proposal to which terms and conditions apply.
- 2.2 Any instructions received by MGI from the Client for the supply of Services and/or the Client's acceptance of Services supplied by MGI shall constitute acceptance of the terms and conditions contained herein.
- 2.3 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.4 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be amended with the written consent of MGI.
- 2.5 The Client undertakes to give MGI at least fourteen (14) days notice of any change in the Client's name, address and/or any other change in the Client's details.
- 2.6 None of MGI's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by a Director of MGI in writing nor is MGI bound by any such unauthorised statements.
- 2.7 Where these terms and conditions form part of a proposal, the proposal will remain open to acceptance for fourteen (14) days from the date of submission. Thereafter, acceptance is subject to reconfirmation of the terms of the proposal by MGI.
3. **Delivery of Services**
- 3.1 The Services are described in the engagement letter or proposal.
- 3.2 If MGI's engagement letter or proposal states that MGI will carry out "Statutory Audit" or "Statutory Review" work, this refers to an audit or review of a financial report or a concise report that is required to be carried out under Part 2M of the Act.
- 3.3 If MGI's engagement letter or proposal states that MGI will carry out an "Audit of the Compliance Plan", this refers to an audit that is required to be carried out under Part 5C of the Act.
- 3.4 If MGI's engagement letter or proposal is to carry out an audit under legislation other than the Act, that clause will override clause 3.2 or 3.3 of these terms and conditions.
- 3.5 The failure of MGI to deliver shall not entitle either party to treat this contract as repudiated.
- 3.6 MGI shall not be liable for any loss or damage whatever due to failure by MGI to deliver the Services (or any of them) promptly or at all.
4. **Price and Payment**
- 4.1 At MGI's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by MGI to the Client in respect of Services supplied; or
- (b) MGI's quoted Price (subject to clause 4.2) which shall be binding upon MGI provided that the Client shall accept MGI's quotation in writing within fourteen (14) days or as provided in the quote or proposal.
- 4.2 MGI reserves the right to change the Price in the event of a variation to MGI's quotation.
- 4.3 At MGI's sole discretion a deposit may be required.
- 4.4 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the invoice.
- 4.5 At MGI's sole discretion:
- (a) payment shall be due on delivery of the Services; or
- (b) payment for approved Clients shall be made by instalments in accordance with MGI's payment schedule; or
- (c) payment for approved Client's shall be due fourteen (14) days following the end of the month in which a statement is posted to the Client's address or address for notices.
- 4.6 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and MGI.
- 4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4.8 All charges are exclusive of expenses unless the engagement letter or proposal, states otherwise. MGI will charge the Client miscellaneous expenses (including but not limited to travel, subsistence and document handling costs, photocopying, printing, faxes, couriers) incurred in connection with the Services. The charges will be calculated as the amounts incurred by us (net of any applicable GST input tax credit to which we are entitled) plus GST as applicable. Alternatively, MGI reserves the right to charge a fixed percentage of the professional fees to cover expenses and outlays. The percentage will not exceed five percent (5%) of the GST exclusive value of the professional time charged.
- 4.9 MGI Billings are based on the currently applicable GST rate (except where we have assessed that the Services to be provided are GST free). If this GST rate changes, MGI Billings will be adjusted to reflect the change. MGI revise their fee scale six monthly. Any rates quoted to you remain in force until either 31 December or 30 June, as appropriate, and MGI reserves the right to increase their fees for any Services continuing past those dates as per clause 4.2.
- 5.1 Unless specifically agreed otherwise, the Client is obliged to pay MGI any expenses to which MGI are entitled which will not arise until MGI have issued a fee account to the Client. Where an amount for GST is stated to be a component of the fees and expenses, MGI's fee account will comply with the law specifying what is a "tax Invoice" for GST purposes.
5. **Risk**
- 5.1 If MGI retains ownership of the Services nonetheless, all risk for the Services passes to the Client on delivery.
6. **Confidential / Intellectual Property**
- 6.1 Where MGI 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 those software, spreadsheets, training materials, databases, proposals, tender documents and other electronic tools shall remain vested in MGI, and shall only be used by the Client at MGI's discretion.
- 6.2 The Client warrants that any software, spreadsheets, databases, electronic tools or instructions to MGI will not cause MGI to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify MGI against any action taken by a third party against MGI in respect of any such infringement.
- 6.3 Exceptions to clause 6.1 and clause 6.2 are disclosures to legal advisers, disclosures required by law, and disclosures necessary for the proper performance of the Services.
- 6.4 Any tools developed specifically for the Client will be covered under a separate engagement letter.
7. **Resourcing**
- 7.1 In the course of providing the Services we or an outsource supplier may at our discretion draw on the resources of other MGI Firms, or entities associated with MGI Firms or any other third party entity (either within or outside Australia) deemed necessary for us to satisfactorily provide the Services but the provision of the Services will remain our responsibility alone. Where parts of the Services are performed by a MGI Firm, information (which may include personal information) may be required to be transferred outside Australia.
- 7.2 The Client acknowledges and accepts the consent of this transfer; and
- (a) The Client agrees that the Client will not bring any claim (whether in contract, negligence or any other tort or otherwise) against any other MGI Firm or its personnel in respect of the Services. Any partner or employee of another firm who deals with the Client in connection with the Services does so solely on MGI's behalf.
- (b) The provisions of clauses 7.1 and 7.2 have been stipulated expressly for the benefit of other MGI Firms and their employees (together "the Beneficiaries"). The Client agrees that each of the Beneficiaries have the right to rely upon this clause 7 as if they were parties to this contract. Each MGI Firm who agrees to assist in the provision of the Services does so, on reliance of the protections afforded to it by this clause 7 the benefit which MGI accept on the Client's behalf.
8. **Errors and Omissions**
- 8.1 The Client shall inspect the Services on delivery and shall within fourteen (14) days of delivery notify MGI of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford MGI an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 8.2 For defective Services, which MGI has agreed in writing that the Client is entitled to reject, MGI's liability is limited to either (at MGI's discretion) replacing the Services or repairing the Services provided that the Client has complied with the provisions of clause 8.1.
9. **Indemnity**
- 9.1 Subject to clause 16.4, the Client agrees to indemnify MGI, its directors, partners, associates, employees, contractors and any other person who may be sought to be made liable in excess of the limit of liability described in clause 16.1 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 MGI.
10. **The Competition and Consumer Act 2010 (Cth) and Fair Trading Acts**
- 10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
11. **Default & Consequences of Default**
- 11.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
- 11.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify MGI from and against all costs and disbursements incurred by MGI in pursuing the debt including legal costs on a solicitor and own client basis and MGI's collection agency costs.
- 11.3 Without prejudice to any other remedies MGI may have, if at any time the Client is in breach of any obligation (including those relating to payment), MGI may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. MGI will not be liable to the Client for any loss or damage the Client suffers because MGI exercised its rights under this clause.
- 11.4 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 11.5 Without prejudice to MGI's other remedies at law MGI shall be entitled to cancel all or any part of any order of the Client which remains unperformed and all amounts owing to MGI shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to MGI becomes overdue, or in MGI's opinion the Client will be unable to meet its payments as they fall due; or

Client's initials.....

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- (b) 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 12. Cancellation**
- 12.1 MGI may cancel these terms and conditions or cancel delivery of Services at any time before the Services are delivered by giving written notice. On giving such notice MGI shall repay to the Client any sums paid in respect of the Price. MGI shall not be liable for any loss or damage whatever arising from such cancellation.
- 12.2 In the event that the Client cancels delivery of Services the Client shall be liable for any loss incurred by MGI (including, but not limited to, any loss of profits) up to the time of cancellation.
- 12.3 On termination of this agreement for any reason each party will return any property of the other including any confidential information. However, for our internal quality or audit purposes, we are entitled to retain one copy of any documentation or other material upon which the Services are based.
- 13. Privacy Act 1988**
- 13.1 The Client agrees and consents to MGI obtaining from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by MGI.
- 13.2 The Client agree that MGI may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by 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 credit worthiness of Client.
- 13.3 The Client agrees that personal credit information provided may be used and retained by MGI for the following purposes and for other purposes as shall be agreed between the Client and MGI or required by law from time to time:
- (a) provision of Services; and/or
- (b) marketing of Services by MGI, its agents or distributors in relation to the Services; and/or
- (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
- (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 13.4 MGI may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 14. Lien**
- 14.1 Provided that the lien of MGI shall continue despite the commencement of proceedings or judgment for the price having been obtained where MGI has not received or been tendered the whole of the price, or the payment has been dishonoured, MGI shall have:
- (a) a lien on the Services;
- (b) the right to retain them for the price while MGI is in possession of them;
- (c) a right of resale;
- (d) the foregoing right of disposal.
- 15. Equitable Charge**
- 15.1 The Client as beneficial owner and/or registered proprietor now charge in favour of MGI all of the Client's estate and interest in any real property (including but not limited to any applicable land owned by the Client ("Land") to secure payment of accounts rendered by MGI to the Client for the supply of Services including interest payable on these accounts and costs (including legal costs on a full indemnity basis) incurred by MGI and including the costs to prepare and lodge a Caveat against the Land and to remove the Caveat.
- 16. Liability Limitations**
- 16.1 The liability limitations of MGI, its directors, partners, associates, and employees shall be as detailed in The Institute of Chartered Accountants in Australia (QLD) Scheme approved under the Professional Standards Act 2004 (QLD).
- 16.2 Subject to clause 16.4, the Client agrees to indemnify MGI, its directors, partners, associates, employees and any other person who may be sought to be made liable in excess of the limit of liability described in clause 16.1 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 MGI.
- 16.3 Subject to clause 16.4, MGI shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of or in relation to a breach by MGI of this agreement.
- 16.4 If, at the time of entering into this agreement, the Client is a Consumer, or this agreement is deemed to be a Small Business Contract, MGI's Services come with non-excludable guarantees under the Australian Consumer Law that the Services will be provided with due care and skill and be reasonably fit for any specified purpose. For a major failure, the Client is entitled, at the Client's option, to a refund of money paid for Services not delivered or to payment for the reduction in value of the Services delivered, and to compensation for any other loss.
- 17. Variation**
- 17.1 Subject to clause 17.2, MGI may vary these terms and conditions at any time on written notice to the Client and such variation will take effect from the date on which MGI notifies the Client of such variation.

- 17.2 If, at the time of entering into this agreement, the Client is a Consumer, or this agreement is deemed to be a Small Business Contract, the Client may elect not to cancel the Services by written notice to MGI on or before the date of the variation which is 14 days after MGI provides the Client with a notice under clause 17.1 and clause 12 shall apply.
- 18. General**
- 18.1 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.
- 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.
- 18.3 In the event of any breach of this contract by MGI the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of MGI exceed the Price of the Services.
- 18.4 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by MGI.
- 18.5 MGI may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 18.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 18.7 The failure by MGI to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect MGI's right to subsequently enforce that provision.

AUDITING SERVICES

- 19. Management Representation Letter**
- 19.1 Where a general purpose financial report is prepared, it will include facts or judgements which are not recorded in accounting records. At MGI's request, the Client agrees to provide written confirmation:
- (a) That the financial report, has been prepared in accordance with Accounting Standards and other mandatory professional reporting requirements.
- (b) That sufficient records and related information has been maintained.
- (c) That to the best of the knowledge and belief of the directors or management (as applicable) there are no irregularities involving management or employees who have significant roles in the internal control structure.
- (d) That all important information relevant to the Services provided has been brought to our attention.
- (e) Of any facts or judgments or other oral representations MGI have received or have been told during the course of the audit or review on matters that have a material effect on the financial report.
- 20. Responsibilities of Management**
- 20.1 Dates in any timetable set out in the engagement letter or Client assistance schedule letter are intended for planning and estimating purposes only and are not contractually binding. The timely completion of the Services requires your cooperation in the provision of information and explanations relevant to the Services. Estimates of time for completion of the Services are given on the assumption that we receive the co-operation. MGI may change additional fees and expenses which result from delays in providing the co-operation.
- 20.2 Management is responsible for confirming to us in any management representation letter that the effects of misstatements brought to their attention by us are immaterial, both individually and in the aggregate, to the financial report taken as a whole.
- 21. Electronic presentation and/or filing of financial information**
- 21.1 If you intend to undertake the electronic filing of information containing or referring to any audit/review report with regulations (e.g. ASIC) or other bodies you agree to advise us of this and to provide us with a complete hard copy of the relevant electronic information on a timely basis. We have no obligations to check this information but we can require its removal or amendment or the taking of other appropriate action if we are of the opinion that the information or reference to our report is inconsistent with the report or is inaccurate or misleading in its content or its context.
- 22. Use of Reports**
- 22.1 The Client agrees that our audit report on the annual financial report, or reference to MGI, will not be included in any other document without MGI's prior written consent. Any agreement to perform work in connection with an offering, including an agreement to provide such consent, will be a separate engagement and subject to a separate engagement letter. The audit will not be planned or conducted in contemplation of reliance by any third party or with respect to any specific transaction. Therefore, items of possible interest to a third party will not be specially addressed and matters may exist that would be assessed differently by a third party.
- 22.2 With the exception of any audit/review report, any report issued by us is provided solely for your internal use.
- 23. Access of working papers**
- 23.1 The working papers for this engagement, including electronic documents and files, are the property of MGI and constitute confidential information.
- 23.2 We will notify you as soon as practicable (unless restricted by law) where we receive a legally compelling notice or request for access to our working papers from a third party.
- 23.3 We are subject to the Quality Control Review Program conducted by The Institute of Chartered Accountants in Australia and may participate in other review processes in relation to audit quality. The work we perform for you may be selected by the examiners for review.
- 23.4 As part of our quality control review program the work we perform for you may be selected for review. The review will be undertaken by us or other MGI Firms.

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