

Terms of Service

Parties

Axient Pty Ltd (ABN 14 090 510 848) (**Axient**) and the **Client** whose details are set out in a Quote or Proposal agree that the following terms and conditions apply to the services performed by Axient under this agreement.

Part A General Provisions

1 Services

- 1.1 The Client appoints Axient to provide the Services to the Client.
- 1.2 It is understood and agreed that the Services may include advice and recommendations, but subject to the provisions contained in this agreement and any rights the Client may have at law, all decisions in connection with the implementation of such advice and recommendations will be the responsibility of, and made by, the Client.

2 Term of Agreement

- 2.1 This agreement will commence on the Commencement Date set out in a Quote or Proposal or as agreed by the Parties and will remain in force for the Term unless terminated earlier in accordance with this agreement.

3 Payment of Fees

- 3.1 The Client will compensate Axient for the Services in the amounts and at the times as set out in Item 4 of the Schedule and as otherwise invoiced by Axient. Axient standard terms of trade require payment within fourteen [14] days of receipt of any invoice.
- 3.2 Where the Client has agreed to pay Axient on an instalment basis, the Client agrees to provide Axient with valid and up-to-date purchase order or similar and the Client authorises Axient to invoice against said purchase order or similar in accordance with the amounts set out in a Quote or Proposal.
- 3.3 If payment for the Services is not received within 14 days of its due date, Axient is entitled to charge a late charge of 10% per annum compounded monthly. Without limiting its other rights or remedies, Axient has the right to suspend or terminate entirely the Services if payment is not received within 30 days of the invoice date.

4 GST

- 4.1 All fees and amounts due under this agreement are, unless otherwise stated, exclusive of all taxes. Client must pay tax

levied under a New Tax System (Goods and Services Tax) Act 1999 (Cth) (**GST**) on a taxable supply made to it under this agreement, in addition to any consideration (excluding GST) that is payable for that taxable supply. It must do so at the same time and in the same way as it is required to pay the consideration for the taxable supply.

- 4.2 If a party is required under this agreement to indemnify another party, or to make a reimbursement or contribution to another party, and that other party can obtain an input tax credit on an acquisition associated with that indemnity, reimbursement or contribution, the amount the party is required to pay is reduced by the amount of that input tax credit but increased by any GST payable by that other party in respect of the indemnity, reimbursement or contribution.
- 4.3 If an adjustment event results in the GST on a taxable supply being different from the GST recovered by Axient, it may refund to Client any excess and will recover from Client any shortfall. The recovery of any money from any party is conditional on an Adjustment Note being given first.
- 4.4 The terms taxable supply, input tax credit and adjustment event have the meaning defined in a New Tax System (Goods & Services Tax) Act 1999.

Part B Confidentiality, Intellectual Property and Privacy

5 Confidentiality

- 5.1 To the extent that, in connection with this agreement, a party comes into possession of any information of a confidential nature of the other party (**Confidential Information**), each party must only use the Confidential Information of the other party solely for the purposes of this agreement, and will not disclose such Confidential Information to any third party without the other party's prior written consent.
- 5.2 Confidential Information includes but is not limited to the details of the Services, Axient's pricing information for the Services, the terms of this agreement, information or material proprietary to or deemed to be proprietary to that party, information designated as confidential by that party, information acquired by the other party solely by virtue of provision of the Services and trade secrets of that party.

- 5.3 Confidential Information excludes any information that:
- 5.3.1 is in or becomes part of the public domain, other than through a breach of this agreement or an obligation of confidence owed to Axient; or
 - 5.3.2 was known to Client at the time of disclosure, unless such knowledge arose through breach of an obligation of confidence; or
 - 5.3.3 Client can prove was independently acquired or developed without breaching any of the obligations set out in this agreement.
- 6 Intellectual Property**
- 6.1 The Client acknowledges that Axient owns the Axient Materials and all intellectual property rights in the Axient Materials.
- 6.2 Axient grants to the Client, a non-exclusive, limited, non-transferable licence for the Term to use the Axient Materials, and all Intellectual Property Rights in them, for Client's internal business purposes only and subject to any limitations set out in writing by Axient. This licence is contingent upon the Client's full and final payment to Axient of all sums due under this agreement.
- 6.3 To the extent that Axient uses, in connection with the performance of the Services, any intellectual or other property that it owns or licenses, Axient retains all right, title and interest in and to such property.
- 7 Client Material**
- 7.1 The Client may contribute Client Material to the Services. If so, the Client grants to Axient a royalty-free, non-exclusive and perpetual licence to use, reproduce, sub-license, disclose, modify and adapt the Client Material for the purpose of providing the Services.
- 7.2 The Client warrants that it has obtained all necessary approvals, consents and permissions to provide the Client Material to Axient, and that Axient's use of the Client Material, including incorporation of the Client Materials into the Services and the Axient Materials, will not infringe:
- 7.2.1 the rights of any person, including the privacy rights or the intellectual property rights of any person; and
 - 7.2.2 any other laws, including without limitation, a breach of the Australian Consumer Law.
- 8 Compliance with the Privacy Act**
- 8.1 Each party warrants to the other that it will comply with privacy laws with respect to Personal Information.
- 9 Personal Information**
- 9.1 The Client warrants to Axient in relation to any Personal Information disclosed by the Client to Axient, that:
- 9.1.1 all Personal Information provided to Axient under, or in connection with the Services has been collected strictly in accordance with the *Privacy Act 1988 (Cth)*;
 - 9.1.2 the individual to whom the information relates has been made aware of Axient's identity, of how to contact Axient, and of the other matters of which we are required to inform a person about whom information is collected under the *Privacy Act 1988 (Cth)*; and
 - 9.1.3 Axient is authorised to collect the information from the Client and use the information for the purposes of this agreement and delivering the Services generally.
- 9.2 In relation to any Personal Information that Axient discloses to the Client under this agreement, the Client must:
- 9.2.1 not use, disclose, store, transfer, or handle the information except in accordance with the *Privacy Act 1988 (Cth)*;
 - 9.2.2 take all reasonable steps to ensure that the information is protected from misuse, loss, unauthorised access, modification, or disclosure;
 - 9.2.3 take all reasonable steps to destroy or permanently de-identify the information when the information is no longer needed for a purpose connected with this agreement;
 - 9.2.4 use or disclose the information only for a purpose connected with this agreement or as required by law; and
 - 9.2.5 cooperate with any reasonable request or direction from Axient that relates to protecting the information or exercising the

functions of the Privacy Commissioner under the *Privacy Act 1988* (Cth).

- 9.3 The Client must promptly inform Axient in writing of any complaint the Client receives concerning the use, disclosure, storage, transfer, or handling of Personal Information and comply with any reasonable direction of Axient in relation to a complaint concerning the use, disclosure, storage, transfer, or handling of Personal Information.

Part C Termination rights

10 Termination

- 10.1 A party may terminate this agreement with 30 days written notice to the other party (**Defaulting Party**) on or at any time after the occurrence of any of the following events:
- 10.1.1 a breach by the Defaulting Party of one of its material obligations under this agreement, and where the Defaulting Party has failed to remedy the breach within fourteen (14) days of receipt of the notice; or
 - 10.1.2 the Defaulting Party passing a resolution for its winding-up or a court of competent jurisdiction making an order for the Defaulting party's winding-up or dissolution.
 - 10.1.3 The Client has determined they no longer wish to use the service.
- 10.2 If this agreement is terminated by Axient under clause 10 then Axient will stop performing the Services and may, in addition to terminating this agreement:
- 10.2.1 retain any fees and allowances paid;
 - 10.2.2 be regarded as discharged from any further obligations under this agreement;
 - 10.2.3 pursue any additional or alternative remedies provided by law;
 - 10.2.4 the Client must immediately pay Axient the fees that remain outstanding for the remainder of the Term and any allowances that are, on the date of termination, due and payable under this agreement; and
 - 10.2.5 the Client must indemnify Axient in relation to its unavoidable and unrecoverable costs directly arising from the termination.
- 10.3 The obligations of any party arising prior to the effective date of termination will

continue in full force and effect notwithstanding the expiration or earlier termination of this agreement.

11 Return of Materials

- 11.1 Upon termination of this agreement each party will promptly return to the other all materials and other property of the other held by it.

Part D Issues relating to liability and client cooperation

12 Limitation on damages

- 12.1 Axient, its agents and subcontractors, and each of their officers, or employees will not be liable to the Client for any actions, claims, damages, liabilities, costs, expenses, or losses in any way arising (including a breach of this agreement or any negligent act or omission) out of or relating to the Services or the Axient Materials for an aggregate amount in excess of the fees paid by the Client to Axient under this agreement.
- 12.2 In no event will Axient, its agents or subcontractors, or any of their officers or employees be liable for special, indirect, incidental, consequential or punitive damages, costs, expenses or losses of any nature, including, without limitation, lost profits and opportunity costs.

13 Limitation on Warranties

- 13.1 Axient will perform the Services in good faith, with due care and skill and in accordance with any performance standards that may be set out in Item 2 of the Schedule.
- 13.2 To the maximum extent permitted by law, Axient disclaims all other warranties, either express or implied, including without limitation warranties of merchantability and fitness for a particular purpose. Where any legislation such as the Australian Consumer Law (Cth) implies into this agreement any condition, guarantee or warranty and that legislation voids or prohibits conditions in a contract excluding the application of the conditional warranty or guarantee, the liability of Axient for any breach of the condition, guarantee or warranty is limited to, at Axient's option either:
- 13.2.1 the resupply of the Services; or
 - 13.2.2 the reasonable cost of having the Services resupplied.
- 13.3 Both parties will be under a duty to mitigate any damages or loss suffered or incurred as a result of any breach of this agreement by the other party.

14 Client Cooperation, Warranty and Indemnity

14.1 In addition to the Client's responsibilities as set out in Item 2 of the Schedule, the Client will cooperate with Axient in the performance of the Services, including, without limitation, providing Axient with reasonable facilities and timely access to data, information and personnel of the Client.

14.2 The Client acknowledges and agrees that:

14.2.1 Axient's performance is dependent upon the timely and effective satisfaction of the Client's responsibilities under this agreement and timely decisions and approvals of the Client in connection with the Services. Axient is entitled to rely on all decisions and approvals of the Client;

14.2.2 Information provided by Axient to the Client as part of the Services (whether through Materials or otherwise) does not represent, and must not be relied upon as, legal advice; and

14.2.3 While Axient will try to ensure information provided to the Client is accurate, adequate and complete, it does not represent or warrant its accuracy, adequacy or completeness.

15 Indemnity

15.1 The Client continuously indemnifies Axient and its officers, employees, representatives and agents (**those indemnified**) from all liability for any claims, losses, damages or expenses suffered or incurred by those indemnified arising from or in connection with:

15.1.1 a breach of this agreement by the Client (or any of its officers, employees, contractors or agents);

15.1.2 any warranty given by the Client being, or subsequently becoming, untrue; and

15.1.3 any negligent act or omission by the Client or any of its officers, employees, contractors or agents.

15.2 Where this clause refers to a person who is not a party to this agreement Axient holds the benefit of this clause on trust for that person.

16 Limitation on actions

16.1 No action, regardless of form, arising under or relating to this Agreement, may be brought by either party more than one year after the cause of action has accrued, except that an action for non-payment of any invoice may be brought by a party not later than one year following the date of the last payment due to such party of any invoice under this agreement.

Part E Miscellaneous matters and definitions

17 Other terms

17.1 **Date for performance.** Axient agrees to use all reasonable efforts to meet any dates that may be set out in Item 3 of the Schedule. The parties agree however that such dates are not firm performance dates, may be revised during the term of any engagement and are only to be regarded as estimated dates for the relevant tasks and activities. If Axient uses diligent efforts but is unable to meet such dates, it will not be considered to be in breach of this agreement. Axient will notify the Client if it expects or encounters delays.

17.2 **Variations.** If the parties agree to change or extend the scope of the Services or Axient is required to perform additional services, this agreement will be varied to include such additional services as agreed or as required to be performed by Axient.

17.3 **Payment for additional services.** Axient is entitled to charge, and Client must pay, an additional fee as agreed between the parties, or in the absence of such agreement, calculated on a time and materials basis in accordance with the standard Axient rates applying at the time such additional Services are performed. Any such additional Services performed by Axient will be governed by the terms of this agreement.

17.4 **Special Conditions.** The parties will perform their responsibilities (if any) in respect of any special conditions listed in Item 5 of the Schedule. To the extent of any inconsistency between the special conditions and the provisions of this agreement, the special conditions will prevail.

17.5 **Authority.** Each party warrants that the person signing this agreement is authorised to execute this agreement on their behalf.

- 17.6 **Assignment.** Client may not assign this agreement without the written consent of Axient. Axient may subcontract or delegate its obligations and responsibilities under this agreement, provided that Axient will not be relieved of its obligations.
- 17.7 **Entire agreement.** This agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all other oral or written representations, understandings or agreements relating to the subject matter.
- 17.8 **Governing law.** This agreement takes effect, is governed by and will be construed in accordance with the laws of the State of New South Wales.
- 17.9 **Independent Contractor.** It is understood and agreed that each of the parties to this agreement is an independent contractor and that neither party is, nor will it be considered to be, an agent or representative of the other. Neither party will act or represent itself, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other.
- 17.10 **Notices.** Notices under this agreement must be in writing and may be delivered by hand, by registered mail, or by facsimile to the addresses of the parties specified in or notified pursuant to this agreement. Notice will be deemed given: (a) in the case of hand delivery or registered mail, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving party; (b) in the case of a facsimile or email, upon proof of completion of transmission.
- 17.11 **Severability.** If any provision of this agreement is declared or found to be illegal, unenforceable or void, then such provision will be null and void but each other provision not so affected will be enforced to the full extent permitted by applicable law.
- 17.12 **Survival.** All clauses in this agreement relating to payment, licence and ownership, confidentiality, privacy, warranties, limitations of warranties, limitations on damages and actions, non-exclusivity, non-solicitation and waiver will survive the termination or expiry of this agreement, to the extent allowed at law.
- 17.13

18 Definitions

In this agreement:

Client Material means any Material provided to Axient by the Client (or at the Client's direction) in connection with the Services.

Axient Materials means any Material created for, or provided to, the Client by Axient as part of the Services and includes all pre-existing intellectual property rights in any Material.

Fee means the fees set out in Item 4 of the Schedule payable by the Client to Axient.

Material includes documents, policies, interactive content, guides, instructions, checklists, reports, data, information, software, tools and methodologies, fonts, computer files, designs, graphics, logos, artwork, know-how, templates, equipment or other material of any sort and in any form.

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in writing or spoken, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Services means the Services set out in Item 3 of the Schedule and any additional services agreed between the parties.

Term means the duration of this agreement set out in Item 2 of the Schedule.

19 Interpretation

19.1 In this agreement, unless the context otherwise requires:

19.1.1 A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.

19.1.2 A reference to dollars or \$ means Australian dollars.

19.1.3 References to the word 'include' or 'including' are to be construed without limitation.

19.1.4 A reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment.

19.1.5 A reference to any party to this agreement, where that party is made up of more than one person, includes each of them severally.

19.1.6 Any agreement, covenant, representation, warranty, undertaking or liability arising

under this agreement on the part of two or more persons is to be taken to be made or given by such persons jointly and severally.

- 19.1.7 In this agreement, unless the context otherwise requires, a reference to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in the place whose laws govern the construction of this agreement.