

This page sets out the Terms and Conditions upon, which Axient Pty Ltd ABN 14 090 510 848 (Hereinafter known as “Axient, Axient’s We, Our”) will provide services to its customers (Hereinafter known as “Customer”). The Terms and Conditions agreed to form an Agreement, which create important legal rights and obligations upon Axient, as well as the Customer. The Customer must agree to these Terms and Conditions prior to use of our services.

1 Definitions

In these Terms and Conditions:

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

“**Customer Material**” means any Material provided to Axient by the Customer (or at the Customer’s direction) in connection with the Services.

“**Fee**” means the fees set out in the Quote or Proposal payable by the Customer to Axient.

“**Force Majeure**” means a circumstance beyond the reasonable control of the Parties, which results in being unable to observe or perform on time an obligation in our Terms and Conditions, including: (a) Acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires, power supply disruptions (howsoever caused), internet downtime and any natural disaster; (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and (c) industrial action or strikes.

“**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 the Quote or Proposal and any additional services agreed between the parties.

“**Term**” means the duration of these Terms and Conditions set out in the Quote or Proposal.

2 Interpretation

2.1 In these Terms and Conditions, unless the context otherwise requires:

- (a) A reference to dollars or \$ means Australian dollars.
- (b) References to the word ‘include’ or ‘including’ are to be construed without limitation.
- (c) A reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment.
- (d) A reference to any party to these Terms and Conditions, where that party is made up of more than one person, includes each of them severally.

- (e) Any agreement, covenant, representation, warranty, undertaking or liability arising under these Terms and Conditions on the part of two or more persons is to be taken to be made or given by such persons jointly and severally.
- (f) In these Terms and Conditions, 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 these Terms and Conditions.

Part A General Provisions

3 Services

- 3.1 The Customer appoints Axient to provide the Services to the Customer.
- 3.2 It is understood and agreed that the Services may include advice and recommendations, but subject to the provisions contained in these Terms and Conditions and any rights the Customer 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 Customer.

4 Terms of Service

- 4.1 The Terms of Service will commence on the Commencement Date set out in the Quote or Proposal and will remain in force for the Term unless terminated earlier in accordance with these Terms and Conditions.

5 Payment of Fees

- 5.1 The Customer will compensate Axient for the Services in the amounts and at the times as set out in the Quote or Proposal and as otherwise invoiced by Axient. Axient's standard terms of trade require payment within thirty [30] days of receipt of any invoice.
- 5.2 Where the Customer has agreed to pay Axient on an instalment basis, the Customer agrees to provide Axient with valid and up-to-date purchase order or similar and the Customer authorises Axient to invoice against said purchase order or similar in accordance with the amounts and times set out in the Quote or Proposal.
- 5.3 If payment for the Services is not received within 30 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 45 days of the invoice date.

6 GST

- 6.1 All fees and amounts due under these Terms and Conditions are, unless otherwise stated, exclusive of all taxes. Customer 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 these Terms and Conditions, 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.
- 6.2 If a party is required under these Terms and Conditions 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.

- 6.3 If an adjustment event results in the GST on a taxable supply being different from the GST recovered by Axient, it may refund to Customer any excess and will recover from Customer any shortfall. The recovery of any money from any party is conditional on an Adjustment Note being given first.

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

7 Confidentiality

- 7.1 To the extent that, in connection with these Terms and Conditions, 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 these Terms and Conditions, and will not disclose such Confidential Information to any third party without the other party's prior written consent.
- 7.2 Confidential Information includes but is not limited to the details of the Services, Axient's pricing information for the Services, the terms of these Terms and Conditions, 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.
- 7.3 Confidential Information excludes any information that:
- (a) is in or becomes part of the public domain, other than through a breach of these Terms and Conditions or an obligation of confidence owed to Axient; or
 - (b) was known to Customer at the time of disclosure, unless such knowledge arose through breach of an obligation of confidence; or
 - (c) Customer can prove was independently acquired or developed without breaching any of the obligations set out in these Terms and Conditions.

8 Intellectual Property

- 8.1 The Customer acknowledges that Axient owns the Axient Materials and all intellectual property rights in the Axient Materials.
- 8.2 Axient grants to the Customer, a non-exclusive, limited, non-transferable licence for the Term to use the Axient Materials, and all Intellectual Property Rights in them, for Customer's internal business purposes only and subject to any limitations set out in writing by Axient. This licence is contingent upon the Customer's full and final payment to Axient of all sums due under these Terms and Conditions.
- 8.3 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.

9 Customer Material

- 9.1 The Customer may contribute Customer Material to the Services. If so, the Customer grants to Axient a royalty-free, non-exclusive and perpetual licence to use, reproduce, sublicense, disclose, modify and adapt the Customer Material for the purpose of providing the Services.
- 9.2 The Customer warrants that it has obtained all necessary approvals, consents and permissions to provide the Customer Material to Axient, and that Axient's use of the Customer Material, including incorporation of the Customer Materials into the Services and the Axient Materials, will not infringe:
- (a) the rights of any person, including the privacy rights or the intellectual property rights of any person; and
 - (b) any other laws, including without limitation, a breach of the Australian Consumer Law.

10 Compliance with the Privacy Act

- 10.1 Each party warrants to the other that it will comply with privacy laws with respect to Personal Information.

11 Personal Information

- 11.1 The Customer warrants to Axient in relation to any Personal Information disclosed by the Customer to Axient, that:
- (a) 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)*;
 - (b) 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
 - (c) Axient is authorised to collect the information from the Customer and use the information for the purposes of these Terms and Conditions and delivering the Services generally.
- 11.2 In relation to any Personal Information that Axient discloses to the Customer under these Terms and Conditions, the Customer must:
- (a) not use, disclose, store, transfer, or handle the information except in accordance with the *Privacy Act 1988 (Cth)*;
 - (b) take all reasonable steps to ensure that the information is protected from misuse, loss, unauthorised access, modification, or disclosure;
 - (c) take all reasonable steps to destroy or permanently de-identify the information when the information is no longer needed for a purpose connected with these Terms and Conditions;
 - (d) use or disclose the information only for a purpose connected with these Terms and Conditions or as required by law; and
 - (e) 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)*.

- 11.3 The Customer must promptly inform Axient in writing of any complaint the Customer 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

12 Termination

- 12.1 A party may terminate these Terms and Conditions 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:
- (a) a breach by the Defaulting Party of one of its material obligations under these Terms and Conditions, and where the Defaulting Party has failed to remedy the breach within fourteen (14) days of receipt of the notice; or
 - (b) 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.
 - (c) The Customer has determined they no longer wish to use the service.
- 12.2 If these Terms and Conditions is terminated by Axient, then Axient will stop performing the Services and may, in addition to terminating these Terms and Conditions:
- (a) retain any fees and allowances paid;
 - (b) be regarded as discharged from any further obligations under these Terms and Conditions;
 - (c) pursue any additional or alternative remedies provided by law;
 - (d) the Customer 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 these Terms and Conditions; and
 - (e) the Customer must indemnify Axient in relation to its unavoidable and unrecoverable costs directly arising from the termination.
- 12.3 In the event of termination, access to the service will be withdrawn on the effective date of termination. 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 these Terms and Conditions.

13 Return of Materials

- 13.1 Upon termination of these Terms and Conditions each party will promptly return to the other all materials and other property of the other held by it.

14 Force Majeure

- 14.1 Neither Party shall be liable for any delay or failure to perform its obligations pursuant to these Terms and Conditions if such delay is due to Force Majeure.
- (a) If a delay or failure of a Party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that Party's obligations will be suspended.

- (b) If a delay or failure by a Party to perform its obligations due to Force Majeure exceeds sixty (60) days, either Party may immediately terminate the Agreement on providing notice in writing to the other Party.

Part D Issues relating to liability and Customer cooperation

15 Limitation on Damages

- 15.1 Axient, its agents and subcontractors, and each of their officers, or employees will not be liable to the Customer for any actions, claims, damages, liabilities, costs, expenses, or losses in any way arising (including a breach of these Terms and Conditions 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 Customer to Axient under these Terms and Conditions.
- 15.2 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.

16 Limitation on Warranties

- 16.1 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 the Quote or Proposal.
- 16.2 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 these Terms and Conditions 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:
 - (a) the resupply of the Services; or
 - (b) the reasonable cost of having the Services resupplied.
- 16.3 Both parties will be under a duty to mitigate any damages or loss suffered or incurred as a result of any breach of these Terms and Conditions by the other party.

17 Customer Cooperation, Warranty and Indemnity

- 17.1 In addition to the Customer's responsibilities as set out in the Quote or Proposal, the Customer 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 Customer.
- 17.2 The Customer acknowledges and agrees that:
 - (a) Axient's performance is dependent upon the timely and effective satisfaction of the Customer's responsibilities under these Terms and Conditions and timely decisions and approvals of the Customer in connection with the Services. Axient is entitled to rely on all decisions and approvals of the Customer;

- (b) Information provided by Axient to the Customer as part of the Services (whether through Materials or otherwise) does not represent, and must not be relied upon as, legal advice; and
- (c) While Axient will try to ensure information provided to the Customer is accurate, adequate and complete, it does not represent or warrant its accuracy, adequacy or completeness.

18 Indemnity

- 18.1 The Customer 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:
- (a) a breach of these Terms and Conditions by the Customer (or any of its officers, employees, contractors or agents);
 - (b) any warranty given by the Customer being, or subsequently becoming, untrue; and
 - (c) any negligent act or omission by the Customer or any of its officers, employees, contractors or agents.
- 18.2 Where this clause refers to a person who is not a party to these Terms and Conditions Axient holds the benefit of this clause on trust for that person.

19 Limitation on actions

- 19.1 No action, regardless of form, arising under or relating to these Terms and Conditions, 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 these Terms and Conditions.

Part E Miscellaneous matters and definitions

20 Other terms

- 20.1 **Date for performance.** Axient agrees to use all reasonable efforts to meet any dates that may be set out in the Quote or Proposal. 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 these Terms and Conditions. Axient will notify the Customer if it expects or encounters delays.
- 20.2 **Variations.** If the parties agree to change or extend the scope of the Services or Axient is required to perform additional services, these Terms and Conditions will be varied to include such additional services as agreed or as required to be performed by Axient.
- 20.3 **Payment for additional services.** Axient is entitled to charge, and Customer 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 these Terms and Conditions.
- 20.4 **Special Conditions.** The parties will perform their responsibilities (if any) in respect of any special conditions listed in the Quote or Proposal. To the extent of any inconsistency between

the special conditions and the provisions of these Terms and Conditions, the special conditions will prevail.

- 20.5 **Authority.** Each party warrants that the person signing these Terms and Conditions is authorised to execute these Terms and Conditions on their behalf.
- 20.6 **Assignment.** Customer may not assign these Terms and Conditions without the written consent of Axient. Axient may subcontract or delegate its obligations and responsibilities under these Terms and Conditions, provided that Axient will not be relieved of its obligations.
- 20.7 **Entire agreement.** These Terms and Conditions 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.
- 20.8 **Governing law.** These Terms and Conditions takes effect, is governed by and will be construed in accordance with the laws of the State of New South Wales.
- 20.9 **Independent Contractor.** It is understood and agreed that each of the parties to these Terms and Conditions 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.
- 20.10 **Notices.** Notices under these Terms and Conditions 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 these Terms and Conditions. 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.
- 20.11 **Severability.** If any provision of these Terms and Conditions 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.
- 20.12 **Survival.** All clauses in these Terms and Conditions 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 these Terms and Conditions, to the extent allowed at law.