



**BUSINESS AND TAXATION CONCEPTS PTY LTD
TRADING AS BTC ACCOUNTANTS & BUSINESS ADVISORS
TRADING TERMS AND CONDITIONS**

1. DEFINITIONS

- 1.1. **The Practitioner** is Business and Taxation Concepts Pty Ltd (ACN 003 811 514) trading as BTC Accountants & Business Advisors of 1st Floor, 147 Northumberland Street, Liverpool 2170 in the State of New South Wales.
- 1.2. **The Client** includes any person engaging the Practitioner on behalf of and with the authority of the person or entity that the Services are to be provided for.
- 1.3. **The Services** are the accounting, auditing, bookkeeping, taxation, consultancy and associated services to be carried out by the Practitioner, and includes any advice or recommendations given.
- 1.4. Reference to **loss and damage** includes indirect, reliance, special or consequential loss and/or damage including i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.
- 1.5. **Major failure** is as defined under the *Competition and Consumer Act 2010 (Cth)*.
- 1.6. **GST** refers to Goods and Services tax under the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

2. GENERAL

- 2.1. These terms and conditions together with the Practitioner's letter of engagement and/or engagement brochure (if any) constitute the whole agreement between the Practitioner and the Client ("**the agreement**").
- 2.2. The agreement may not be varied unless expressly agreed to by the parties in writing. In the event that an inconsistency exists and/or arises between these terms and a request of the Client it is acknowledged that these terms and conditions will prevail.
- 2.3. The terms and conditions are binding on the Client and the Client's heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 2.4. In these terms and conditions, the singular shall include the plural, the neuter gender shall include the masculine and feminine and words importing persons shall apply to corporations and vice versa.
- 2.5. Where more than one Client completes this agreement, each shall be liable jointly and severally.

- 2.6. 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 and the offending provision shall be deemed as severed from these terms and conditions.
- 2.7. The failure by a party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision.
- 2.8. The Client acknowledges that the Practitioner may detail these terms and conditions on its website. In this event, the terms and conditions on the Practitioner's website shall apply to any future dealings as between the Parties and the Client is deemed to have notice of any such terms and conditions and/or amendments.

3. LETTER OF ENGAGEMENT/ENGAGEMENT BROCHURE

- 3.1. The Practitioner may provide to the Client a letter of engagement or engagement brochure (collectively referred to herein as "**letter of engagement**") detailing *inter alia* the scope of the Services ("**the scope**") to be provided to the Client, an estimate of the cost for providing the Services included in the scope and disclosing the Practitioner's prevailing rate(s) for the Services.
- 3.2. Any estimation provided by the Practitioner included in the letter of engagement and scope therein is an estimate of the likely costs of providing the Services only and does not bind the Practitioner. The estimate may be revised by the Practitioner at any time at its discretion and the Client will be informed of such revision.
- 3.3. The Practitioner does not represent that it will provide any Services except those Services expressly included in the letter of engagement and scope therein however the Practitioner may agree to provide on request from the Client, additional Services not included or expressly excluded in the scope. In this event, the Practitioner will be entitled to charge its prevailing rate(s) for any such additional Services.
- 3.4. The Client acknowledges and agrees that any Services performed by the Client after the letter of engagement has been provided are performed on the basis that the Client agrees to the terms of the agreement as disclosed in the letter of engagement and the Practitioner's prevailing rate for the Services.
- 3.5. The Client acknowledges and agrees that the Practitioner may vary its prevailing rate(s) for Services from time to time by providing written notice to the Client. Any subsequent request for Services (whether or not such Services are included in the scope) shall be charged to the Client at the Practitioner's new prevailing rate(s).

4. PROVISION OF THE SERVICES

- 4.1. The Practitioner reserves its right to decline requests for any Services requested by the Client not included in the scope or to cancel or postpone appointments at its discretion.
- 4.2. Unless specified by the Practitioner to the contrary in the letter of engagement or otherwise in writing the Practitioner does not warrant that it will be capable of providing the Services at or before specific times requested by the Client.
- 4.3. Subject to otherwise complying with its obligations under the Agreement, the Practitioner shall exercise its independent discretion as to its most appropriate and effective manner of providing the Services and of satisfying the Client's expectations of those Services.
- 4.4. The Practitioner may license or sub-contract all or any part of its obligations (i.e. to perform the Services) without the Client's consent but the Practitioner acknowledges that it remains at all times liable to the Client in accordance with the terms of the Agreement.
- 4.5. The Practitioner may dispose of any records held by it after seven (7) years.

5. INVOICING, PAYMENT AND PRIVACY

- 5.1. The Practitioner will send to the Client an invoice for each calendar month in which Services are provided detailing the Services performed and requesting payment of the Practitioner's prevailing rate(s) for those Services.
- 5.2. GST will be charged on the Practitioner's prevailing rate(s) for the Services that attract GST at the rate applicable at the time the Practitioner raises its tax invoice for the Services provided.
- 5.3. The Client irrevocably consents to allow the Practitioner to withdraw any monies received by the Practitioner and held on trust for the Client ("**trust monies**") and apply such trust monies to any invoice or invoices for the Services rendered by the Practitioner to the Client.
- 5.4. Clients must make full payment to the Practitioner within fourteen (14) days from the date of issue of the Practitioner's invoice, unless otherwise agreed between the parties in writing.
- 5.5. The Client acknowledges and agrees that the Practitioner may use the services and/or software of a third-party debtor management provider to assist with its internal document management system and/or accounting process including the Practitioner's invoicing and receipt of payments.

Clients' Privacy

- 5.6. The Client agrees:
 - 5.6.1. For the Practitioner to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the Practitioner.
 - 5.6.2. That the Practitioner 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.
 - 5.6.3. The Client consents to the Practitioner being given a consumer credit report to collect overdue payment on commercial credit (pursuant to the *Privacy Act 1988*).

6. DEFAULT

- 6.1. In this clause the "**default date**" is the day after the date by which payment of the Practitioner's invoice was due to be made by the Client to the Practitioner and the "**outstanding balance**" is the amount detailed on the Practitioner's invoice less any payments made by the Client prior to the default date.
- 6.2. The Client will be liable for a dishonoured cheque fee of \$40.00 for each cheque issued by the Client and rejected by the Practitioner's bank.
- 6.3. If the Practitioner does not receive the outstanding balance by the default date the Client will be liable for:
 - 6.3.1. Interest on the outstanding balance from the default date at the rate of ten per centum (10%) per annum calculated on a daily basis;
 - 6.3.2. An account keeping fee of \$15.00 to be charged at the end of each calendar month after the default date until the outstanding balance has been paid;
 - 6.3.3. Any debt collection or recovery costs incurred by the Practitioner; and if the Practitioner's debt collection agency ("**the agency**") charges commission on a contingency basis then the Client shall pay as a liquidated debt the commission payable by the Practitioner to the agency, at the agency's prevailing rate as if the agency achieved one hundred per cent recovery and the following formula shall apply:

$$\frac{\text{Total Debt including Commission and GST}}{\text{Original Debt} \times 100} = \frac{100 - \text{Commission \% charged by the agency (including GST)}}{100}$$

(n.b. in the event where the agency is Prushka Fast Debt Recovery the applicable commission rate for the amount unpaid is as detailed on www.prushka.com.au).

- 6.3.4. Any charges reasonably made or claimed by the Practitioner's or the agency's lawyer for legal costs on the indemnity basis.
- 6.4. A signed statement from a duly authorised representative stating the amount due by the Client is sufficient proof of the amount owing by the Client to the Practitioner unless proven otherwise by the Client.

7. RISK AND LIABILITY

- 7.1. The Client will ensure that there is sufficient information and documentation to enable the Practitioner to perform the Services and the Practitioner takes no responsibility in the event the Client fails to provide any information or documentation in a timely manner or if such information provided by the Client is incomplete, incorrect or inaccurate.
- 7.2. The Client acknowledges that the Practitioner shall not be liable for and the Client releases the Practitioner from any loss and damage (including any penalty imposed by any State revenue authority or Australian Taxation Office) incurred as a result of delay or failure to observe any of these conditions or to perform the Services due to the failure by the Client to provide information and documentation on request and in timely manner or due to an event of force majeure, being any cause or circumstance beyond the Practitioner's reasonable control.
- 7.3. The liability of the Practitioner is limited by a scheme approved under professional standards legislation. Further information on the scheme is available from the Professional Standards Council website <http://professionalstandardscouncil.gov.au>.

8. WARRANTY

- 8.1. The Practitioner warrants that the Client's rights and remedies in the Agreement arising from a warranty against defects are in addition to other rights and remedies under any applicable law in relation to the goods and services to which the warranty relates.
- 8.2. The Practitioner does not purport to restrict, modify or exclude any liability that cannot be excluded under the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* as may be amended from time to time.

Warranty for Services

- 8.3. Provided that the Client reports any defect in any Service provided, preferably within fourteen (14) days from the date that the defect became apparent, the Practitioner will rectify any defect in the Services within a reasonable period of time.
- 8.4. The Supplier provides the following warranty to Customers in respect of Services supplied:
"Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service you are entitled:
- *To cancel your service contract with us; and*
 - *To a refund for the unused portion, or to compensation for its reduced value.*

You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, you are entitled to have problems with the

service rectified in a reasonable time and if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.”

- 8.5. The Practitioner shall not be liable to compensate the Client for any reasonable delay in remedying any defective Services or in assessing the Client’s claim.
- 8.6. The Client warrants that it will use its best endeavours to assist the Practitioner with identifying the nature of the defective Service claim.

Claims made under Warranty

- 8.7. Claims for warranty should be made in one of the following ways:
 - 8.7.1. The Client must send the claim in writing to the Practitioner’s postal address of PO Box 121, Liverpool, NSW 1871.
 - 8.7.2. The Client must email the claim to the Practitioner to admin@btconcepts.com.au.
 - 8.7.3. The Client must contact the Practitioner on the Practitioner’s business number (02) 9602 1100.

9. TERMINATION AND CANCELLATION

Cancellation by the Practitioner

- 9.1. Without prejudice to the Practitioner’s other remedies at law, the Practitioner shall be entitled to cancel all or any part of any Services of the Client which remain unperformed and all amounts owing to the Practitioner shall, whether or not due for payment, become immediately due and payable in the event that:
 - 9.1.1. Any money payable to the Practitioner becomes overdue for payment; or
 - 9.1.2. 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
 - 9.1.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 9.2. The Practitioner shall not be liable for any loss or damage whatsoever suffered by the Client arising from the cancellation.

Cancellation by the Client

- 9.3. The Client may cancel any request for Services by providing written notice to the Practitioner. The Client acknowledges and accepts that the Practitioner will be entitled to charge its prevailing rate(s) for any Services performed up to the time of cancellation.

Cancellation Generally and WIP

- 9.4. In the event of termination by either the Practitioner or Client pursuant to the above clauses, the Practitioner reserves the right to charge the Client for any unbilled Work in Progress (WIP) at the time of termination of the Practitioner’s services.

10. CHARGE/CAVEAT

- 10.1. The Client agrees to charge in favour of the Practitioner its legal and beneficial interest in any real and/or personal property, both present and in future, with the amount of its indebtedness to the Practitioner.

11. ENTIRE AGREEMENT

- 11.1. The agreement as defined herein constitutes the whole agreement between the Client and the Practitioner.

- 11.2. The agreement is deemed to be made in the State of New South Wales and all disputes hereunder shall be determined by the appropriate courts of New South Wales.
- 11.3. All prior discussions and negotiations are merged within this document and the Practitioner expressly waives all prior representations made by it or on its behalf that are in conflict with any clauses in this document in any way.
- 11.4. Nothing in these terms and conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia.