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## 1. INTERPRETATION

In these Terms of Business, the following words have the following meanings:

Conditions: these Terms of Business (as may be varied from time to time).

Day: a day (other than a Saturday, Sunday or a bank or public holiday in Western Australia, Australia).

We/Us: ELLIOT RAMSAY (ABN 844 042 588 52) domiciled at:

11 Acapulco Road, Safety Bay, Western Australia, 6169 Australia.

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## 2. BASIS OF CONTRACT

- 2.1 If you ask us to perform services for you, we will give you a proposal and/or estimate (the "SOW") that will include a statement of work and/or a timing plan setting out the services which we propose to perform for you (the "Services") and the deliverables which we propose to deliver to you (the "Deliverables").
- 2.2 If you communicate acceptance of our SOW, this will be an offer from you to purchase the Services and the Deliverables on the terms of the SOW and these Conditions (an "Order").
- 2.3 Your Order will only be deemed to have been accepted by us when we issue you with a written acceptance of your Order, or when we start to perform the related Services, whichever happens first. At this point a formal contract between you and us on the terms of the Order will be formed (a "Contract").
- 2.4 The Contract is the entire agreement between you and us in relation to the Order. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of us which is not part of the Contract.

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## 3. OUR OBLIGATIONS

- 3.1 We will supply the Services and deliver the Deliverables in accordance with the SOW.
- 3.2 We will try to meet any performance dates specified in the SOW, but these dates are only an estimate.
- 3.3 We may make any changes to the Services and the Deliverables which are necessary to comply with any rules, regulations, laws or safety requirements, or which do not significantly affect the nature or quality of the Services and we will notify you of these changes.
- 3.4 We promise that the Services will be carried out with reasonable skill and care and to the standards that it is usual to expect from someone performing services like the Services.

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## 4. YOUR OBLIGATIONS

- 4.1 You must:
  - 4.1.1 ensure that the SOW sets out everything that you need us to do;
  - 4.1.2 provide us, our employees, agents, consultants and subcontractors, with such access to information about you and access to your employees as we may reasonably require and in time to enable us to provide the Services in accordance with the estimate performance dates;
  - 4.1.3 provide us with the name and contact details of the person responsible for managing the Contract on your behalf to whom all Contract related matters will be directed ("Your Contact");
  - 4.1.4 obtain and maintain all necessary licences, permissions and consents in relation to your receipt and use of the Services and the Deliverables; and
  - 4.1.5 keep and maintain all our materials, equipment, documents and other property ("Our Materials") at your premises in safe custody at your own risk and not dispose of or use Our Materials other than by our written instructions or authorisation.
- 4.2 To the extent permitted under law, if you prevent or delay us from performing any of our obligations to you under the Contract:
  - 4.2.1 we will not be in breach of the Contract for our related failure to perform, or delay in performing, our obligations to you ("Our Failure").
  - 4.2.2 we will not be liable to you for any costs or losses sustained or incurred by you as a result of Our Failure.

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**5. CHARGES AND PAYMENT**

- 5.1 The charges for the Services are as set out in the SOW (the "Charges").
- 5.2 Any breakdown of the Charges as between stages is only an estimate as to how the charges may be broken down and does not restrict the amount chargeable for each stage.
- 5.3 The Charges only cover the Services and Deliverables set out in the SOW. We may also charge you a reasonable amount for any work that you request us to carry out in addition to the Services and Deliverables ("Additional Charges").
- 5.4 In addition to the Charges and any Additional Charges, we may also charge you for:
  - 5.4.1 any expenses reasonably incurred by our employees or anyone we engage in connection with the Services and in respect of which we will provide you with an estimate on your request. This includes (but is not limited to) travelling expenses, hotel costs, living costs and any associated expenses;
  - 5.4.2 the cost of any services and materials provided by third parties which are required by us for the performance of the Services and the delivery of the Deliverables and in respect of which we will seek your prior approval before incurring, (the "Expenses").
- 5.5 We may also charge you a handling fee equal to 15% of the cost of the Expenses.
- 5.6 Unless you pay in advance, where we have agreed to invoice you on a staged basis we shall invoice you on completion of each stage.
- 5.7 You must pay each invoice submitted by us:
  - 5.7.1 within 14 days of the date of the invoice; and
  - 5.7.2 in full and in cleared funds to a bank account nominated in writing by us.
- 5.8 If you would like to dispute any of our invoices, you must let us know within 5 Days of receipt of the invoice, otherwise the invoice will be deemed to be accepted by you.
- 5.9 All amounts payable by you under the Contract are exclusive of GST, which shall be paid by you in addition to and at the same time as the Charges.
- 5.10 Without limiting any of our other rights or remedies, if you fail to make any payment due to us under the Contract by the due date for payment (the "Due Date"), we may charge interest on the overdue amount at the rate of 2 per cent per annum above the then current Business Finance Reference Rate (or equivalent rate) of ANZ accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 5.11 You must pay all amounts due to us in full without any deduction or withholding except as required by law and you cannot assert any credit, set-off or counterclaim against us in order to justify withholding payment of any such amount.
- 5.12 This clause 5 shall survive termination of the Contract.

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**6. INTELLECTUAL PROPERTY RIGHTS**

- 6.1 The copyright, design rights, trade marks and other intellectual property rights in the Services and the Deliverables will fall into the following categories:
  - 6.1.1 they will have been created by us before commencement of the Services or will be created by us during the provision of the Services and will form the constituent parts of the Services and the Deliverables ("Elliot Ramsay IPR"); or
  - 6.1.2 they will be created by third party sub-contractors that we engage to assist with the provision of the Services ("Third Party IPR").
- 6.2 Except where we agree otherwise in writing, the Elliot Ramsay IPR will be owned by us and the Third Party IPR will be owned by the relevant third party.
- 6.3 The Deliverables themselves will either be non-final works ("Non-Final Works") or will be the final, clientapproved version of the works ("Final Works").
- 6.4 Subject to your full payment of the Charges, we grant you a royalty free, non-transferable perpetual licence to use the Elliot Ramsay IPR in the Deliverables to enable you to use the Deliverables only for the purpose for which they were originally intended and strictly on the following basis:
  - 6.4.1 in relation to Elliot Ramsay IPR in the Non-Final Works, this will be a non-exclusive licence for evaluation purposes only and is without prejudice to our right to use and to commercially exploit such Elliot Ramsay IPR for any other purpose; and
  - 6.4.2 in relation to Elliot Ramsay IPR in the Final Works, this will be an exclusive licence. Elliot Ramsay.
- 6.5 Subject to your full payment of the Charges, we will also seek to obtain a non-exclusive, royalty free,

nontransferable perpetual licence to use any Third Party IPR in the Final Works to enable you to use the Final Works only for the purpose for which they were originally intended, either by way of direct licence to you or by way of sub-licence from us.

- 6.6 All Our Materials are our exclusive property.
- 6.7 We warrant that as far as we are aware your use of the Elliot Ramsay IPR in accordance with these Conditions will not infringe the intellectual property rights of any third party. Unless otherwise agreed in writing, we will have no responsibility to undertake any legal due diligence and you will be responsible for undertaking any necessary IP clearances to ensure that the Deliverables can be used in the territories that they are intended to be used.
- 6.8 You are not permitted to modify any of the Deliverables without our prior written consent and, if you do modify them, you must ensure that the modifications are not attributed to us.

## 7. CONFIDENTIALITY

A party ("Receiving Party") must keep in strict confidence all information which is of a confidential nature and has been disclosed to the Receiving Party by the other party, its employees, agents or subcontractors ("Disclosing Party"). The Receiving Party must restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of fulfilling the Receiving Party's obligations under the Contract, and must ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 7 shall survive termination of the Contract.

## 8. LIMITATION OF LIABILITY

- 8.1 Nothing in the Contract excludes our liability for:
  - 8.1.1 death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors; or
  - 8.1.2 fraud or fraudulent misrepresentation.
- 8.2 Subject to clause 8.1 and to the extent permitted under law:
  - 8.2.1 we shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:
    - 8.2.1.1 any loss of profits, business or goodwill; or
    - 8.2.1.2 any indirect or consequential loss arising under or in connection with the Contract; and
  - 8.2.2 our total liability to you in respect of all other losses arising under or in connection with the Contract shall not exceed the aggregate amount paid by you to us under the Contract.
- 8.3 Except as set out in the Contract, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.4 You are responsible for ensuring that the Deliverables and your use of them comply with the law of any country for which they are intended and in which they are used, including any relevant legislation, regulations, codes of conduct, industry standards and/or intellectual property laws.
- 8.5 This clause 8 shall survive termination of the Contract.

## 9. TERMINATION

- 9.1 Without limiting any of our other rights or remedies we may terminate the Contract with immediate effect by giving you written notice if the following happens:
  - 9.1.1 you breach any of these Conditions; or
  - 9.1.2 you are or become involved in any kind of insolvency proceedings whatsoever; or
  - 9.1.3 you put the Contract on hold for a period of time exceeding six months; or
  - 9.1.4 you fail to pay any amount due under this Contract on the due date for payment.
- 9.2 Without limiting our other rights or remedies, each of us shall have the right to terminate the Contract by giving the other party at least 20 Days written notice.

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**10. CONSEQUENCES OF TERMINATION**

- 10.1 On termination of the Contract for any reason:
- 10.1.1 you must immediately pay all of our outstanding unpaid invoices and interest and you must immediately pay for Services and Deliverables supplied and incurred or non-cancellable Expenses incurred but for which no invoice has been submitted, we will submit an invoice which shall be payable by you immediately on your receipt;
  - 10.1.2 you shall return to us all of Our Materials and any Deliverables which have not been fully paid for. If you fail to do so, then we may enter your premises and take possession of them. Until they have been returned, you must ensure their safe keeping and will not use them for any purpose not connected with the Contract;
  - 10.1.3 the accrued rights, remedies, obligations and liabilities of each of us as at expiry or termination shall not be affected; and
  - 10.1.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

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**11. GENERAL**

- 11.1 We will not be in breach of any of our obligations to you under the Contract or liable for any delay or anything else if it is your fault, or if it results from something outside of our control including (but not limited to) industrial action, failure of a utility service or transport network, act of God, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors (a "Force Majeure Event").
- 11.2 If a Force Majeure Event prevents us from providing any of the Services for more than 4 weeks, we may terminate the Contract immediately by giving written notice to you.
- 11.3 We may subcontract or delegate our obligations to you under the Contract to any third party and we may transfer our rights under the Contract. However, any subcontract or transfer will not relieve us of being responsible for our obligations under the Contract. Our subcontractor will also be entitled to subcontract its obligations on the same basis.
- 11.4 Unless we agree in writing you cannot transfer, assign or sub-licence your rights under the Contract to someone else.
- 11.5 We agree that any notice under this Contract must be made in writing. We will assume it has been received 2 Days after the date it was posted. We will also assume that any notice given by fax shall be deemed to have been received at the beginning of the next working Day, so long as a confirmation of sending receipt is received. Notices sent to you will be addressed to Your Contact at the address that you give us when you place your Order. Notices to us must be sent to Elliot Ramsay, 11 Acapulco Road, Safety Bay, Western Australia, 6169 Australia.
- 11.6 A waiver of any right under the Contract is only effective if it is in writing and it shall not be deemed to be a waiver of any subsequent breach or default.
- 11.7 If at any time we have a claim against you and we do not pursue that claim quickly, that does not mean the claim cannot be pursued when we are ready.
- 11.8 Any rights which arise under the Contract are cumulative and do not exclude any rights which are provided by law.
- 11.9 If a court says that part of a Contract is not enforceable in law that does not mean the rest of the Contract is not.
- 11.10 The Contract does not create any partnership or joint venture of any kind between us, and you have no right to contract in our name or make any promises on our behalf.
- 11.11 A person or company who is not a party to the Contract shall not have any rights under or in connection with it.
- 11.12 The Contract cannot be varied without our written consent.
- 11.13 If things go wrong and there is a dispute, Australian law will apply and each party submits to the nonexclusive jurisdiction of the courts exercising jurisdiction in the state of Western Australia, Australia, and any court that may hear appeals from any of those courts.

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**Next steps**

We recommend you carefully read the Quote/Estimate and these Terms. Whilst your continuing instruction on this matter will constitute your acceptance Elliot Ramsay would be grateful if you could please sign below and return to us.

The appointment of Elliot Ramsay (ABN 844 042 588 52) is agreed.

For and on behalf of \_\_\_\_\_  
(insert Client legal name)

Signature of Authorised Representative: \_\_\_\_\_

Name of Authorised Representative: \_\_\_\_\_

Date: \_\_\_\_\_