

## Think Bespoke Pty Ltd (Think Bespoke) Terms and Conditions (Terms)

The Client has read, understood and agrees to these Terms. The parties agree these Terms, together with the Engagement Letter and any Services Schedule form the contract under which THINK BESPOKE agrees to provide and the Client agrees to accept the Services.

Terms not defined below have the same meaning as in the Engagement Letter or the Services Schedule as appropriate.

### THINK BESPOKE and the Client agree:

1. THINK BESPOKE agrees to provide the Services set out in the Services Schedule signed by both parties.
2. The Client agrees to pay to THINK BESPOKE the Fees for the Services in accordance with these Terms and the applicable Services Schedule.
3. The Client confirms it must meet its obligations under item 5 of the Services Schedule to enable Think Bespoke to provide the Services.
4. These Terms will apply to each Services Schedule entered into by the parties.
5. The Client acknowledges Think Bespoke may change these Terms from time to time and any such changes will be published on its website. The Client agrees to regularly check the Think Bespoke's website for changes to the Terms. If the Client does not agree to changes to the Terms on becoming aware of the change, the Client may terminate this Agreement by giving 14 days' written notice to Think Bespoke. The Client must pay any Fees for Services provided and any Disbursements incurred up to and including the termination date.

### Think Bespoke's Obligations

6. Think Bespoke must:
  - a. exercise all due care, skill and expertise in carrying out the Services;
  - b. provide the Services to a professional standard;
  - c. use its reasonable endeavours in its performance of the Services, to not act in any way that, in the reasonable opinion of the Client, adversely affects the reputation or good standing of the Client;
  - d. provide the Services using personnel who have the relevant expertise and technical skills necessary to properly perform the Services in a manner consistent with generally accepted industry standards for the performance of such Services.
7. Think Bespoke may use subcontractors to perform the Services. Think Bespoke will remain responsible for the Services provided by its subcontractors;

### Services

8. Think Bespoke will:
  - a. provide the Services under the Services Schedule to the Client in exchange for payment of the Fees;
  - b. determine the time and place and method of delivery for performance of the Services at its absolute discretion and within any parameters in the Services Schedule;

- c. commence providing the Services from the Commencement Date, subject to the Client's compliance with clauses 9 and 10 and its rights under clause 11.

### Deposit

9. On acceptance of the proposal set out in the Engagement Letter and/or Services Schedule, the Client must pay any Deposit set out in the Services Schedule before Think Bespoke is required to commence providing the Services. The Deposit should be paid to:

THINK BESPOKE Pty Ltd: BSB: 033 070 Account: 425 902

### Invoices

10. Invoices will be issued at the completion of each Stage set out in the Services Schedule and if no Stages, then following the End Date. Invoices are payable within 7 days of the invoice date.

### Non Payment of Invoices

11. If an invoice for an earlier stage or an invoice issued following the End Date, has not been paid in full within 7 days of the invoice date, THINK BESPOKE may suspend or cease to provide any further Services under this Agreement until payment is received in full.
12. If an invoice remains unpaid 7 days after the Client receives it, THINK BESPOKE may charge you interest at a rate not exceeding the Cash Rate Target, as fixed by the Reserve Bank of Australia, plus 2%, at the date the invoice is issued.

### Disbursements

13. In addition to the Fees, any expenses required to be incurred in connection with the Services will be agreed with Client in advance. The Client must reimburse Think Bespoke any pre-agreed expenses. (Disbursements).

### Intellectual Property

14. Think Bespoke retains ownership of its Think Bespoke Materials and Intellectual Property existing whether before, during or after the date of this Agreement.
15. The Client acknowledges that Think Bespoke may incorporate its Think Bespoke Materials and/or Intellectual Property in whole or part into the Services Materials and where it does so, Think Bespoke on payment of the Fees and Disbursements in full, will grant a non-exclusive licence to the Client to use the Think Bespoke Materials and Intellectual Property incorporated into the Services Materials for the purpose of the Client using the Services Materials for its sole benefit. Other than this limited licence, the Client acknowledges the Client is not permitted to copy, reproduce or use Think Bespoke's Materials and/or Intellectual Property without the express written consent of Think Bespoke.
16. Subject to clause 15 and payment in full of the Fees and Disbursements, ownership of the Services Materials will pass to the Client.
17. If during or after the provision of the Services, the Client develops, discovers or reduces to, a concept, a product, process or improvement to the Think Bespoke Materials or Intellectual Property, then such concept, product process or improvement, shall be the sole property of Think Bespoke and the Client is not to use, infringe or appropriate same other than for its personal use in connection with the Services Materials and agrees it will not use it for the benefit of any third party.

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18. The Client agrees not to copy, reproduce, alter in any way and/or use for its own or a third party's benefit, any of Think Bespoke's Materials and/or Intellectual Property and, without limitation, its copyright in any of the Think Bespoke Materials at any time and agrees, without limitation, to pay damages to Think Bespoke for breaching this clause and to account to Think Bespoke for any monies received through its copying, adaptation, use (whether in whole or in part) or breach of any of Think Bespoke's Materials or Intellectual Property.

### Confidentiality

19. During the course of providing the Services, the parties may have access to each other's Confidential Information.
20. Each receiving party must keep confidential the disclosing party's Confidential Information and must not disclose the Confidential Information to any third party except for a permitted under this Agreement, as required by law, with the prior written consent of the disclosing party or to an associate of the third party to the extent they need to know that information for a permitted purpose under this Agreement but only on the basis the associate is subject to the same obligations to keep the Confidential Information confidential.
21. The Client acknowledges and agrees Think Bespoke may pass on its contact details such as email address to permit a third party to contact the Client on Think Bespoke's behalf.

### Liability and Limitation of Liability

22. Think Bespoke provides no warranty that any result or objective can or will be achieved or attained by the Services but will use due skill and care in performing the Services.
23. This document does not exclude, restrict or modify the application of any statutory provision (including a provision of the Competition and Consumer Act (Cth) (2010)) where to do so would:
- (a) contravene that statute; or
  - (b) cause any part of Agreement to be void.
24. Except in relation to liability for personal injury (including sickness and death), property damage or infringement of confidentiality or intellectual property rights of a third party, the liability of Think Bespoke in damages (excludes special, indirect or consequential damages, loss of revenue, loss of profit and opportunity loss) in respect of any act or omission of Think Bespoke in connection with its obligations under this Agreement and will not exceed the total amount of the Fees specified in the relevant Services Schedule, even if Think Bespoke has been advised by the Client as to the possibility of such losses being incurred.

### Indemnity

25. The Client indemnifies and will keep indemnified Think Bespoke from and against all Liabilities arising from any loss, damage, liability, injury to the Client or its officers, employees or any third parties, infringement of a third party's intellectual property, or third party Liability suffered or incurred by reason of or arising out of the provision of the Services or any additional Services by Think Bespoke to the Client, its employees, consultants, officers or agents or any other third party whether within or outside the scope of this Agreement.

### Termination

26. This Agreement may be terminated by either party on the expiration of 30 days' written notice.
27. If a party is in default under this Agreement, the non-defaulting party may give the defaulting party written notice to rectify the default (**Default Notice**). If the defaulting party does not rectify the default within 7 days of receipt of a Default Notice, the non-defaulting party may immediately terminate this Agreement.
28. Either party may terminate this Agreement immediately on the happening of any of the following events:
- a. the other party enters into a deed of arrangement or an order is made for it to be wound up;
  - b. if an administrator, receiver or receiver/manager or a liquidator is appointed to the other party pursuant to the Corporations Act (Cth) 2001;
  - c. the other party would be presumed to be insolvent by a court in any of the circumstances referred to in the Corporations Act (Cth) 2001.
29. On the termination date, THINK BESPOKE must be paid the Fees for any Services completed up to and including the termination date and any Disbursements paid prior to the termination date. Where this contract is terminated by the Client, other than because of Think Bespoke's default, or is terminated by THINK BESPOKE because of the Client's default, THINK BESPOKE is entitled to reimbursement for any Disbursements reasonably incurred by THINK BESPOKE in contemplation of providing the balance of the Services as set out in this Agreement.

### GST

30. Except for terms which are defined in these Terms, capitalised expressions set out in the clauses below bear the same meaning as those expressions in the *A New Tax System (Goods and Services Tax) Act 1999*.
31. Any Fees specified in this Agreement are exclusive of GST unless stated otherwise.
32. The Client must reimburse to Think Bespoke any GST payable by Think Bespoke on a taxable supply, made by Think Bespoke to the Client.
33. A party's right to payment under these clauses is subject to a valid Tax Invoice being delivered to the Recipient of the Taxable Supply.
34. Any amount payable under clause 32 must be without deduction or set off.

### Severability

35. If any term or provision of the documents forming this Agreement are held to be invalid or unenforceable, they are to be read down so as to be valid or enforceable or, if such reading down is not possible, severed and the remaining terms will not be affected but will be valid and enforced to the fullest extent permitted by law

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## Rule of Construction

36. In the interpretation of this document, no rule of construction applies to the disadvantage of the party preparing this document on the basis that it put forward this document or any part of it.

LinkedIn commentary, precedents and similar items, however recorded.

47. **Think Bespoke Materials** means any Materials created by Think Bespoke and made available to the Client by Think Bespoke or its employees, agents or contractors.

## Amendments

37. This Agreement cannot be modified or waived except in writing and signed by the parties.

## Entire Agreement

38. This document, the Engagement Letter and any Services Schedule entered into by the parties, contain everything the parties have agreed on in relation to the matters dealt with.

## Counterparts

39. This document, the Engagement Letter and any Services Schedule may be executed in any number of counterparts.

## Jurisdiction

40. This Agreement is governed by the law applicable in Victoria, Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.

## Definitions

41. **Claims** means all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise).

42. **Confidential Information** means:

any information in respect of the disclosing party, whether disclosed before or after the date of this Agreement, other than information that:

- a. at the date of this document, was generally and publicly available, or subsequently becomes so available other than by breach of any duty or obligation owed to the disclosing party; or
- b. at the time it was disclosed to the receiving party, was in the possession of the receiving party lawfully and without breach of any duty or obligation owed to the disclosing party; or
- c. subsequently becomes so available from another source, not subject to any duty or obligation as to confidence,

and includes any copy made or created by the receiving party or any third party on its behalf.

43. **Intellectual Property** means all intellectual property and proprietary rights owned by Think Bespoke and any used or created during the provision of the Services and includes, without limitation, trade marks, signs, trade names, brand names, copyright works, designs, patentable inventions, digital strategy, logos, symbols, get up, know how, databases, methods, confidential information or trade secrets (whether registered or unregistered or the subject of applications).

44. **Liabilities** means all Claims, losses, damages, legal costs and other expenses of any nature.

45. **Services Materials** means the Materials created during provision of the Services.

46. **Materials** means (without limitation) contracts, advices, reports, presentations, notes, slides, training booklets,