

# Terms and Conditions

These terms and conditions (Terms) apply in respect to professional services (Services) to be performed for the client identified in the engagement letter or proposal (Client or you and Engagement Letter and Engagement) by the Rebus Capital Partners entity identified in the Engagement Letter (Rebus Capital Partners or we or us) herein collectively referred to as the 'parties'. These Terms will also apply to any subsequent Engagement letter or proposal (including any update schedule which advises any changes to material terms contained in an Engagement Letter for a subsequent income year in which we provide services to you (Update Schedule). These Terms together with the Engagement Letter and any Update Schedule constitute a contract (Contract) between the parties in relation to the Services.

Engaging or continuing to engage Rebus Capital Partners to provide the Services, will suffice to evidence your acceptance of the Contract. However, for administration purposes we prefer that the Client Acknowledgement shown at the end of the Engagement Letter be signed, dated and returned to the relevant Rebus Capital Partners office either electronically or by post. You should note however, that if you do not return the Client Acknowledgment, but you continue to provide instructions to us then you will be deemed to have accepted the Contract in relation to the provision of the Services.

## 1. Services

Rebus Capital Partners will provide the Services described in the Engagement Letter.

### 1.1 Timescale

Rebus Capital Partners will endeavour to carry out our obligations in accordance with the timescales set out in the Engagement Letter, where stated. However, unless both parties specifically agree otherwise in writing, any dates contained in the Engagement Letter are indicative dates intended for planning and estimating purposes only and are not contractually binding. Any estimates of time for completion of the Services are given on the assumption that Rebus Capital Partners receives co-operation, diligence and commitment from you or your designated representatives (including employees, contractors and consultants) who are required to provide us with accurate and complete information in a timely manner as requested by us from time to time in relation to the provision of the Services. For the avoidance of any doubt, Rebus Capital Partners will not be liable for any failure or delay in performing the Services if that failure or delay arises from anything beyond Rebus Capital Partners reasonable control – including the untimely provision of information or the provision of incomplete or incorrect information by you or your designated representatives.

### 1.2 Changes to Services

Either of the parties may request changes in writing to the scope of Services as set out in the Engagement Letter. Both parties agree to work together to enable both parties to assess the impact of any requested changes on the cost, timing and any other aspect of the Services.

## 1.3 Rebus Capital Partners Engagement Team

Where specific Rebus Capital Partners partners, directors, employees or consultants (Rebus Capital Partners Personnel) are named in the Engagement Letter, then we will use reasonable efforts to ensure that these people are available to provide the Services. Rebus Capital Partners Personnel have been allocated to your Engagement based upon Rebus Capital Partners' assessment of the levels of experience, skills and responsibility required to perform the Engagement

## 2. Information and Access

You agree to provide in a timely fashion all information, documents and access reasonably required to enable us to provide the Services. Such documents, information and access may include, without limitation, files, records, accounts, data, access to your information technology systems and management and other staff or third party service providers where relevant. Unless otherwise stated in the Engagement Letter or directly requested by you in a written communication at a later time, we will not independently verify the accuracy of such information and documents and we will not be liable for any loss or damage (including direct or indirect and consequential loss) arising from any inaccuracy or other defect in any information or documents supplied by you. You agree to promptly notify Rebus Capital Partners if, after providing information to us, you become aware that the information contains untrue, inaccurate or misleading content.

## 3. Fees and Payments

### 3.1 How fees will be calculated

Rebus Capital Partners fees are generally calculated on the basis of time spent on the assignment by our Rebus Capital Partners Personnel in accordance with hourly rates current at the time the Services are performed. Any total quantum of fees indicated in the Engagement Letter for time based billing matters are indicative estimates only based upon the preliminary information provided by you and our experience with similar Engagements and we reserve the right to render tax invoices for the actual time spent on your assignment by Rebus Capital Partners Personnel. Rebus Capital Partners also provide Services on a fixed fee or other basis and if so, your Engagement Letter will specify which Services are to be performed for a fixed fee or will otherwise set out the basis for billing.

### 3.2 Performance

Rebus Capital Partners' performance is dependent on you carrying out your responsibilities as set out in the Contract and you providing all information reasonably requested by us in a complete and timely manner. Should this not occur, it may lead to an increase in fees depending upon the extent to which we have to perform more work or reschedule commitments to deliver the Services. Alterations to the scope of Services or delays beyond the control of Rebus Capital Partners may also necessitate a reallocation of Rebus Capital Partners Personnel for the Engagement and a renegotiation of fees with you.

### 3.3 Expenses

All professional fees are exclusive of expenses and disbursements unless the Engagement Letter states otherwise. You agree to pay Rebus Capital Partners' reasonable travel, accommodation and document handling costs (such as photocopying, scanning and imaging, printing, fax and courier) incurred in connection with the Services. Any special expense arrangements will be as agreed and set out in the Engagement Letter.

### 3.4 Payment of invoices

Rebus Capital Partners' tax invoices will be issued on a monthly basis or as set out in the Engagement Letter in relation to a particular deliverable or completion of a stage of the Services. We reserve the right to issue tax invoices at more or less frequent intervals. All tax invoices will be due for payment in accordance with the payment terms shown in your Engagement Letter. All tax invoices will be rendered with relevant client details and a summary of Services performed and the time period over which the Services have been performed.

Detailed time records however, will not be provided on the tax invoice. If you wish to receive a break-down of time entries this may be requested in writing within seven (7) days of the issue of the tax invoice. Except where you are a consumer, as defined in the Competition and Consumer Act 2010 (Clth) (CCA) (Consumer) any dispute in relation to time entries or records will not be recognised and acted upon unless notified to us within fourteen (14) days of you receiving details of the time incurred and invoiced.

We retain the right to charge interest on tax invoices which are not paid by the due date. Interest will be calculated compounded daily at a rate of 6% above the prevailing Reserve Bank of Australia official cash rate. We reserve the right to recover all default costs and enforcement expenses in the event tax invoices are not paid by the due date and recovery action is necessary.

You agree that Rebus Capital Partners will hold a general common law lien over all files, papers and documents relating to the Engagement (Documents) which are in Rebus Capital Partners' possession or control as security for all outstanding amounts owed by you to Rebus Capital Partners including without limitation unpaid tax invoices, interest, default costs and enforcement expenses (Outstanding Amounts) until all Outstanding Amounts are paid in full to Rebus Capital Partners.

Before we proceed with your matter we may require that you deposit funds in advance into our trust account on account of anticipated costs. In these circumstances, we will issue an invoice and draw funds from the trust account to pay towards such invoice as fees are incurred. If insufficient funds are held in the trust account, you will still be required to pay the remaining amount owing on the invoice. We may also request further deposits as our matter proceeds.

Where all funds held on trust are not used in a matter, we will refund the unused funds to you within [30] days of completion of the matter.

### 3.5 GST

Rebus Capital Partners' fees and charges referred to in the Contract are exclusive of GST, unless stated to be GST-free where you are a non-resident and our Services are provided to you whilst you are overseas or are otherwise not a taxable supply under the GST legislation. Any applicable GST will be added to our professional time and shown in your tax invoice and must be paid at the same time that you pay for the GST-exclusive professional time charged in your tax invoice.

## 4. Term and Termination

### 4.1 Duration of Contract

This Contract will apply from the date that you sign and return the Client Acknowledgment contained at the end of the Engagement Letter or you commence to provide instructions for us to proceed with the Engagement (Commencement Date).

The Contract will continue until it is terminated in writing by either party or in accordance with the terms set out below.

### 4.2 Termination

Subject to any statutory provisions that apply to the Services and unless otherwise provided in the Engagement Letter, either party may terminate the Contract at any time by giving 14 days written notice to the other. A party may terminate the Contract immediately if the other party commits a material or persistent breach of its obligations under the Contract (which, in the case of a breach capable of remedy has not been remedied within 7 days of receipt by the party in breach of a notice identifying the breach and requesting its remedy) or if the other party becomes insolvent.

In addition, we may terminate the Contract on reasonable written notice if any of the following circumstances occur:

- (a) you fail to pay our account (including any default interest under clause 3.4) within 30 days of the account becoming due; or
- (b) you fail to provide us with adequate instructions; or
- (c) your instructions involve Rebus Capital Partners taking action which is contrary to the interests of another existing Rebus Capital Partners client or otherwise creates a conflict of interest such that we cannot continue to act for you; or
- (d) we are no longer able to provide all or part of the Services to you because of applicable auditor independence rules, Accounting Standards or other legislation; or
- (e) for any other just cause.

## 5. Confidentiality

### 5.1 Disclosure of Confidential Information

Subject to clause 5.2, both parties agree to take reasonable steps to maintain (within their respective organisations or otherwise) the confidentiality of any proprietary or confidential

information of the other party. If you wish to provide third parties with copies of Rebus Capital Partners reports, letters, information or advice, you must first obtain written permission from us to disclose the document(s) or information (please note our copyright as referred to in clause 13.1 herein).

We also reserve the right to:-

- (a) set the terms upon which those copies are given or used by you or by a third party; or
- (b) require the third party and any employees or contractors of the third party to enter into a standard form deed poll of confidentiality.

## 5.2 Personal Property Securities Act 2009 (Clth)

Subject to section 275(7) of the Personal Property Securities Act 2009 (Clth) (PPSA), it is hereby agreed that neither party will disclose information of the kind mentioned in section 275(1) of the PPSA to a third party. Please see section 8 of these Terms for further agreed provisions regarding the application of the PPSA to our Services. You can also view section 275(7) and the PPSA more broadly by following this link:

[http://www.austlii.edu.au/au/legis/cth/consol\\_act/ppsa2009356/s275.html](http://www.austlii.edu.au/au/legis/cth/consol_act/ppsa2009356/s275.html)

## 6. Exclusions and Liability

### 6.1 Skill and Care

In providing the Services, Rebus Capital Partners will use the objective standard of reasonable skill and care required by law referable to the types of Services provided.

### 6.2 Exclusion of liability

Except only for those rights and remedies that you have as a Consumer in respect of the Services under the CCA (and corresponding State and Territory laws applicable to Consumers) which cannot lawfully be excluded, restricted or modified:

- (a) all conditions, warranties and consumer guarantees, whether statutory or otherwise, are excluded in relation to the Services; and
- (b) subject to clause 6.3 and otherwise to the greatest extent allowed by law, the liability of Rebus Capital Partners in respect of all claims, actions, demands, proceedings, liabilities, damages, amounts, costs, losses and expenses (including legal costs and disbursements on a solicitor and own client basis) arising, paid, suffered or incurred by you (directly or indirectly) as a result of or in connection with a negligent act or omission by Rebus Capital Partners, or any breach or non-performance of any express or implied obligations by Rebus Capital Partners under these Terms shall be limited, at Rebus Capital Partners' option, to either re-supplying the Services or paying the cost of having the Services re-supplied by another service provider (Liability Cap).

### 6.3 Limitation of Liability

If you are a Consumer, the liability of Rebus Capital Partners will not be limited to the Liability Cap contained in clause 6.2 if it is not 'fair and reasonable' for Rebus Capital Partners to rely on such limitations in accordance with sections 64A(3) and (4) of Schedule 2 of the CCA. However, this only applies if the Services supplied are services 'of a kind ordinarily acquired for personal, domestic or household use or consumption' as that expression is used in Schedule 2 of the CCA or in relation to any guarantee pursuant to any of sections 51, 52 and 53 of Schedule 2 of the CCA.

## 7. Indemnity for liability to third parties

You agree to indemnify Rebus Capital Partners against all actions, demands, liabilities, proceedings, claims, costs, losses, suits or expenses (including legal fees on a solicitor and own client basis and disbursements) incurred by Rebus Capital Partners in respect of any third party claim and whether grounded in tort, contract or statute law (Claim) which is related to, arises out of, or is in any way associated with, the Contract. However, this indemnity does not apply to any Claim in respect of any matters which are finally determined by a court or through agreement to have resulted solely and directly from Rebus Capital Partners' negligent or wilful acts or omissions.

You agree to indemnify Rebus Capital Partners, the Rebus Capital Partners Personnel and any other person who may be sought to be made liable in excess of the Liability Cap on a full indemnity basis, in respect of any Claim arising from or connected with the Engagement where you or persons for whom you are vicariously liable cause any of the loss, costs or damages arising under the Claim.

We hold the benefit of the indemnity in this clause 7 on trust for Rebus Capital Partners and its partners, Rebus Capital Partners Personnel, associated entities and contractors.

## 8. Personal Property Securities Act 2009 (PPSA)

For the purposes of this clause 8, PPSA means:

- (a) the PPSA;
- (b) any regulations made at any time under the PPSA;
- (c) any provision of the PPSA or regulations referred to in (b) above;
- (d) any amendment to any of the above, made at any time; or
- (e) any amendment made at any time to any other legislation as a consequence of amendments referred to in (a) and to (d) above.

If at any time we determine that this Contract (or any of the transactions contemplated by or under it) creates a 'security interest' (as defined under the PPSA) over any of your personal property granted or deemed to be granted in our favour, then you must promptly, upon our request, do all things necessary (including, without limitation, completing, signing and providing documents, obtaining consents and supplying information) to:

- (a) protect any right, title and/or interest of ours in the relevant personal property under the security interest;

- (b) ensure that any such security interest in favour of Rebus Capital Partners;
  - (i) is enforceable and perfected (including, where applicable, by control as well as by registration), maintained and otherwise fully effective; and
  - (ii) ranks as a first priority security interest however that is possible;
- (c) enable us to prepare and register a financing statement or a financing change statement; and
- (d) enable us to exercise any of our rights or perform any of our obligations in connection with any such security interest or under the PPSA.

## 9. Access to working papers

The working papers for the Engagement, including electronic documents and files, are the property of Rebus Capital Partners and constitute confidential information.

The Australian Taxation Office (ATO) has broad powers to access information and documents. The exercise of those powers is subject to an administrative concession made in the ATO's Guidelines to Accessing Professional Accounting Advisers' Papers (Guidelines). In summary, the Guidelines state that the ATO will only request access to restricted source and non-source documents prepared by independent external professional accounting advisors in exceptional circumstances. Importantly, such documents may not otherwise be protected from disclosure to the ATO by legal professional privilege. The administrative concession contained in the Guidelines will be lost if you do not use the Guidelines in the spirit in which they were formulated, you make a document available to the ATO or if a document loses its confidential status because of disclosure to a third party in circumstances where that disclosure to that third party was not agreed to between you and us. To preserve the application of the administrative concession, you must comply with clause 5.1 to ensure that any disclosure of documents by us is only made on a confidential basis agreed between you and us to specific nominated third parties.

We will notify you as soon as practicable (unless restricted by law) where we receive a legally mandatory notice or request for access to our working papers from a third party (for example, the Australian Taxation Office or the Australian Securities & Investments Commission). If legal advice is required as to whether any information or documents may be subject to either legal professional privilege or the accountants' privilege concession and may be retained and not provided to the third party, then all costs for such advice will be the Client's responsibility.

## 10. Privacy

### 10.1 Privacy Act 1988 (Clth)

We understand the importance of protecting the privacy of your personal information. In handling personal information, we comply with the Privacy Act 1988 (Clth) (Privacy Act), as amended from time to time, and with the Australian Privacy Principles.

### 10.2 Collection and Use of Personal Information

We collect, use, disclose, store and otherwise handle your personal information in accordance with our Privacy Policy, a copy of which can be found on our website (see clause 10.4 below) or otherwise made available to you upon request.

Generally, we collect and use your personal information for the purposes of providing you with the Services and any associated accounting, taxation and financial professional services or other lawful and reasonable business uses as set out in our Privacy Policy. A failure to provide your personal information may affect our ability to assist you. Generally, the kinds of personal information we collect include your name, address, date of birth, place of birth, telephone number, email address, financial information, and details of superannuation arrangements, where relevant and necessary for the provision of the Services to you.

We may also use your personal information for the purpose of providing marketing or training information to you. This may include newsletters and invitations to seminars or other events. Please let us know if you do not want this information to be sent to you.

### 10.3 Disclosure of Personal Information

To provide the Services, we may disclose your personal information to our business partners and associates and to third parties engaged to perform administrative or other services. Any disclosure is always on a confidential basis. We may also disclose your personal information if required or authorised by law. By accepting these Terms you consent to us disclosing your personal information to our business partners and associates and to third parties when required by us to complete the Services.

By accepting these Terms you consent to Rebus Capital Partners referencing your company name and logo in proposals, submissions, tenders and marketing materials as an indication of our experience. Any such disclosure will not however disclose any information which is confidential or commercial in confidence and not in the public domain as at the date of the proposal, submission, tender or marketing collateral being prepared and issued.

### 10.4 Access and Correction

If you would like to access, or seek correction of, the personal information we collect and hold about you, or otherwise enquire or complain about our approach to privacy, please contact our privacy compliance officer at [admin@rebuscap.com.au](mailto:admin@rebuscap.com.au). Our Privacy Policy contains further information about these processes and is contained on the Rebus Capital Partners website ([www.rebuscap.com.au/privacy-policy](http://www.rebuscap.com.au/privacy-policy)) or can be provided to you upon request (Privacy Policy).

You acknowledge that you have read and understood our Privacy Policy and you agree to us collecting, storing, using, correcting, disclosing and otherwise handling your personal information for the purposes of providing the Services to you

and/or for any other purpose set out in the Privacy Policy or otherwise in accordance with law.

### **11. Relationship with other clients**

We provide Services to other clients, some of whom may be in competition with you or have interests which conflict with your own. We will not disclose to any other Rebus Capital Partners client any of your personal information, or any confidential personal or business related information that may come into our possession as a result of the Contract. However, our relationship with you, and our provision of the Services to you under the Contract does not and will not prima facie prevent or restrict us from providing Services to other clients.

### **12. Use of software**

We may use or develop software, including spreadsheets, databases and other electronic tools (Tools) in providing the Services. If we provide these Tools to you, you acknowledge that except where these Tools are a specific deliverable under the Contract and where ownership passes to you on payment of any fees due to us, they are not your property, were developed for our purposes and without consideration of any purpose for which you might use them, are made available on an "as is" basis for your use only and must not be distributed to or shared with any third party.

We make no representations or warranties as to the sufficiency or appropriateness of the Tools for any purpose for which you or a third party may use them. Any Tools developed specifically for you will be covered under a separate Engagement Letter.

### **13. General**

#### **13.1 Intellectual Property Rights**

All copyright and other intellectual property rights in all materials and tools (including software Tools and working papers), data, designs, models, methodologies, analysis frameworks, practices, ideas, concepts and techniques brought to the Engagement or created in the course of the Engagement of Rebus Capital Partners shall remain and be irrevocably vested in Rebus Capital Partners' ownership and control absolutely.

#### **13.2 Severance**

If a provision in these Terms is held by a court to be wholly or partially void, illegal or unenforceable, then that provision or part thereof must, to that extent, be treated as deleted and severed from these Terms. This severance will not affect the validity or enforceability of the remainder of the provisions contained in the Contract.

#### **13.3 Variation**

These terms may only be varied by written agreement of the parties.

#### **13.4 Non-Solicitation of Personnel**

During the Contract, and for six (6) months after it ends, you agree not to solicit for employment or contractual consultancy purposes, whether on a part time, full time or casual basis, or to independently contract the services of, any Rebus Capital Partners director, employee or contractor who is involved with performing the Services, without Rebus Capital Partners' prior written consent. This prohibition applies to both contracts of service (employees) and contracts for services (contractors). If:

- (a) we provide you with our prior written consent;
- (b) you offer an employment or consultancy contract to one of our directors, employees or contractors; and
- (c) the director, employee or contractor accepts your offer, then you agree to pay a recruitment fee to us, calculated at 30% of the relevant director's, employee's or contractor's gross annual salary package (including superannuation).

#### **13.5 Miscellaneous**

Rebus Capital Partners will provide the Services as an independent contractor. Nothing in the Contract shall be construed as creating a relationship at law of partnership, joint venture, trust or other relationship between the parties except as independent contracting parties operating under the Contract. No party has the right, power or authority to oblige or contractually bind the other in any manner unless expressly agreed in writing.

#### **13.6 Governing Law & Jurisdiction**

All aspects of the Services and the Contract are governed by, and construed in accordance with, the laws of the State in which this Engagement Letter is issued and the parties irrevocably submit to the exclusive jurisdiction of the Courts of that State including Federal Courts entitled to consider appeals from those State courts where relevant within that State.

#### **13.7 Dispute Resolution**

If there is a dispute relating to the Services or the Contract, the parties will firstly attempt to resolve such dispute in good faith and failing that submit to mediation before having recourse to any other dispute resolution process. Written notice of the dispute must be given to the other party for it to be submitted to mediation before a mediator chosen by the parties or, where the parties cannot agree on the identity or terms of engagement of a mediator, then as selected by the Australian Commercial Disputes Centre (ACDC). The parties will use their best endeavours to settle the dispute promptly. The mediation will be conducted in accordance with the ACDC Mediation Guidelines to the extent that they do not conflict with the provision of this clause.

If the dispute is not resolved within 90 days after notice of the dispute is first made or such further period agreed between Rebus Capital Partners and the Client, then the mediation will terminate.

#### **13.8 Electronic Communication**

We may communicate with you electronically from time to time, including sending you Commercial Electronic Messages

(as that term is defined in the SPAM Act 2003 (Clth)). You consent to us sending Commercial Electronic Messages to you and you may opt out at any time if you no longer wish to receive these Commercial Electronic Messages from us. To opt out of any marketing communications please select the unsubscribe link contained within our marketing communications.

Rebus Capital Partners may communicate with you electronically. Electronically transmitted information cannot be guaranteed to be secure or error or virus free and it may be unsafe to use or cause damage to the effectiveness of your software or computer network or systems. Rebus Capital Partners will use commercially reasonable procedures to check for the most commonly known viruses before sending information electronically, but will not be liable to you or any of your associates in respect of any error, virus or omission or loss of confidential information arising from or in connection with the electronic communication of information to you. You may elect, in writing, not to permit Rebus Capital Partners to communicate electronically with you.

### 13.9 Force Majeure

No party will be liable to the other for any delay or failure to fulfil their obligations under the Contract to the extent that such delay or failure arises from causes beyond their control including but not limited to fire, floods, acts of God, terrorist acts, strikes or lock outs, war, riot or any governmental act or regulation.

### 14. Other Firms and entities part of Rebus Capital Partners network

#### 14.1 Claims against Rebus Capital Partners network

You will not bring any claim (whether in contract, tort (including negligence) or otherwise) against any other Rebus Capital Partners network Firm or its personnel in respect of the Services. The Rebus Capital Partners network includes firms which are associated under the Rebus Capital Partners banner but are not economically associated or under any common control. Any Partner or employee of another Rebus Capital Partners network Firm who deals with you in connection with the Services does so solely on our behalf. This clause does not apply if prohibited by the Corporations Act 2001 (Clth). The only firm you can commence a claim against is the Rebus Capital Partners firm identified in your Engagement Letter. The benefit of clause 14.1 is expressly held by Rebus Capital Partners for the benefit of other Rebus Capital Partners network Firms and their personnel (together "the beneficiaries"). You agree that each of the beneficiaries has the right to rely on this clause as if they were parties to this Contract. Each Rebus Capital Partners network Firm which agrees to assist in the provision of the Services does so in reliance on the protections afforded to it by this clause 14.

### 15. Health and safety

We are required to comply with the provisions of relevant occupational health and safety legislation (OHS Laws) by taking all practical steps to ensure the health and safety of our employees and the Rebus Capital Partners Personnel. However,

the OHS Laws place the responsibility for their safety on you when our employees visit your business site or another site which is at law deemed to be under your control.\

### 16. Contract

#### 16.1 Clauses 16.1(a) and 16.1(b) shall not apply to a Consumer under the CCA.

These Terms:

- supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Services including, but not limited to, those relating to the performance of the Services or the results that ought to be expected from using the Services; and
- override any quotes, invoices or other documentation exchanged between the parties whether or not such documents expressly provide that they override these Terms.
- Unless Rebus Capital Partners otherwise agrees in writing, these Terms are the only terms which shall apply to the Services supplied by us. The specific terms of any Engagement Letter and/or Update Schedule issued to advise of material variations from a previous Engagement Letter for subsequent income years that we are engaged to provide Services for, will be deemed to be incorporated into and subject to these Terms. In the event of any inconsistency, the specific terms contained in the Engagement Letter or Update Schedule will override these Terms but only to the extent of that inconsistency. In all other cases these Terms and the terms of an Engagement Letter or Update Schedule are to be read and construed as forming one contract at law.

### 17. Successors and Assigns

This Contract binds and ensures for the benefit of the parties and their respective legal representatives, successors and assigns.