

**HIBBS & ASSOCIATES PTY LTD**  
**GENERAL CONDITIONS OF CONTRACT**

**1. Definitions and Interpretation**

1.1 In these General Conditions of Contract, Proposals and Contracts, unless the context otherwise requires:

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Sydney, New South Wales;

**Claim** includes any claim, demand, proceeding, suit, litigation, action or cause of action in contract, tort, under statute or otherwise;

**Client** means a person who requests Services, or on whose behalf Services are requested, from Hibbs & Associates Pty Limited;

**Confidential Information** means information concerning the provision of Services that is by its nature confidential and the party receiving the information knows or ought know is confidential, or information that is designated by the disclosing party as confidential, but does not include information that is or becomes public knowledge other than by breach of the Contract or by any other unlawful means, or is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party or has been independently developed or acquired by the receiving party;

**Contract** means a contract between Hibbs & Associates Pty Limited and a Client for the provision of Services to the Client which is constituted by a Proposal, the Purchase Order accepting that Proposal and the General Conditions;

**Force Majeure Event** means any event which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of and not reasonably foreseeable by a party, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the party so prevented or of any other party), acts of nature, war, riot, civil commotion, act of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, action or inaction of any government, quasi-government or competent authority, accident, breakdown of plant or machinery, fire, flood or default of suppliers or sub-contractors;

**General Conditions** means these general conditions of contract;

**GST** means Good and Services Tax under the GST Act;

**GST Act** means a New Tax System (Goods and Service Tax) Act 1999 (Cth) (as amended);

**Intellectual Property Rights** means all current and future registered and unregistered rights in respect of copyright, designs, trade-marks, know-how, patents, inventions and discoveries;

**Proposal** means a proposal issued by Hibbs & Associates Pty Limited to a Client for the provision of Services to the Client;

**Purchase Order** means a written order issued by or on behalf of a Client to Hibbs & Associates Pty Limited ordering Services in accordance with the terms and conditions in a Proposal and the General Conditions;

**Services** means the services described in a Proposal.

1.2 In the General Conditions, Proposals and the Contract, unless the context otherwise requires:

- (a) one gender includes the others;
- (b) the singular includes the plural and vice versa;
- (c) a person includes:
  - (i) an individual, firm, body corporate, partnership, joint venture, unincorporated body or association or any statutory or government body or agency;
  - (ii) a person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (d) a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) a reference to "dollars" or "\$" is to Australian currency;
- (f) "including" and similar expressions are not words of limitation;
- (g) headings and underlining are for convenience only and do not affect interpretation;
- (h) references to a party or the parties are references to Hibbs & Associates Pty Limited and/or the Client.

1.3 No provision in a Contract will be construed adversely to a party on the ground, irrespective of whether or not it is the only ground, that the party was responsible for the preparation of the provision or the inclusion of a specific provision in a Contract.

**2. Application of General Conditions**

- 2.1 The General Conditions form part of all Contracts.
- 2.2 If there is any inconsistency between the General Conditions and a term in a Proposal then the term in the Proposal will prevail to the extent of the inconsistency.

**3. Proposals**

The Client acknowledges that a Proposal will be construed as an offer by Hibbs & Associates Pty Limited to provide Services to the Client on the terms and conditions in the Proposal and the General Conditions. A Purchase Order will constitute the Client's acceptance of the Proposal that is accepted by the Purchase Order.

**4. Use of Reports and Advice**

- 4.1 Any report or advice issued or given by Hibbs & Associates Pty Limited to a Client pursuant to a Contract is provided solely for the Client's use and only for the purpose specified in the Contract. No responsibility or liability is accepted by Hibbs & Associates Pty Limited to the Client for any use or reliance upon any report or advice or any part thereof in any other context or for any other purpose.
- 4.2 Unless required by law, the Client must not disclose or otherwise make available to any third party any report or advice, or any copy or extract, or refer to Hibbs & Associates Pty Limited, without the prior written consent of Hibbs & Associates Pty Limited which it may, at its discretion, grant, withhold, or grant subject to conditions, including as to the form and content of the disclosure.
- 4.3 Regardless of whether consent has been given, Hibbs & Associates Pty Limited will not accept any responsibility or liability to any third party to whom such report or advice, or any copy or extract, is disclosed or otherwise made available (whether by the Client or any other person) for any use or reliance upon such report or advice, or any copy or extract, even if Hibbs & Associates Pty Limited has been advised of the possibility of such use or reliance.

4.4 The Client agrees that it will not place any reliance on any draft report or draft advice, whether oral or written, issued or given by Hibbs & Associates Pty Limited as it may be subject to further work or revision and may be significantly different to any final report or advice.

4.5 Hibbs & Associates Pty Limited reserves the right to review and amend any report or advice in the light of any information that becomes known to Hibbs & Associates Pty Limited after a report or advice has been issued or given if additional information becomes known to it or if additional sources of information are provided to it.

**5. Intellectual Property**

Intellectual Property Rights in all material and methodologies belonging to Hibbs & Associates Pty Limited that are utilised in providing the Services or are incorporated in any report or advice that is provided to the Client shall remain vested in Hibbs & Associates Pty Limited.

**6. Information and Assistance**

- 6.1 The Client agrees to:
  - (a) Supply, in a timely manner, all information, documents and particulars reasonably requested by Hibbs & Associates Pty Limited to enable it to provide the Services;
  - (b) use reasonable skill, care and attention to ensure that all information, documents and other material provided to Hibbs & Associates Pty Limited by or on behalf of the Client is accurate and complete;
  - (c) make senior executives or other relevant personnel available for consultation on request by Hibbs & Associates Pty Limited;
  - (d) give such access to the site identified in the Proposal as Hibbs & Associates Pty Limited reasonably requires to perform the Services;
  - (e) promptly notify Hibbs & Associates Pty Limited if the Client learns that any information, documents or particulars provided to Hibbs & Associates Pty Limited by or on behalf of the Client is incomplete or inaccurate or otherwise should not be relied upon.
- 6.2 Hibbs & Associates Pty Limited will be entitled to assume that any information, documents or particulars provided to it by or on behalf of the Client is accurate and complete. Hibbs & Associates Pty Limited assumes no responsibility and makes no representation with respect to the accuracy or completeness of such information, documents or particulars.

**7. Confidential Information**

- 7.1 The parties must not disclose to any person other than the other party any Confidential Information relating to the Contract or the Services without the prior written approval of the party who disclosed the Confidential Information. This obligation will not be taken to have been breached where the disclosing party is required by law to disclose the Confidential Information to a third party.
- 7.2 The obligation in clause 7.1 will survive the expiration or termination of the Contract.

**8. Terms of Payment**

- 8.1 The fees of Hibbs & Associates Pty Limited for the Services will be charged on the basis set out in the Contract.
- 8.2 Unless specified otherwise in a Proposal, the terms of payment for Services are net thirty (30) days from date of invoice.
- 8.3 Invoices will be issued monthly at the end of each month during the Contract.
- 8.4 If the Client defaults in the due payment of any monies owing to Hibbs & Associates Pty Limited under a Contract or otherwise, Hibbs & Associates Pty Limited shall have the right, in addition to any other rights under the General Conditions or at law, to charge the Client interest which shall accrue daily on the outstanding amount at the rate of 1.5% per month or such other rate, if any, specified in a Proposal calculated from the due date for payment of the outstanding amount until the date of payment by the Client. Any payment made by the Client to Hibbs & Associates Pty Limited will be credited first against any accrued interest.
- 8.5 Title to any report issued by Hibbs & Associates Pty Limited to a Client pursuant to a Contract shall remain with Hibbs & Associates Pty Limited and shall not pass to the Client until payment in full for the Services the subject of the Contract has been received by Hibbs & Associates Pty Limited.

**9. GST**

- 9.1 The fees of Hibbs & Associates Pty Limited for the Services specified in any Contract are exclusive of GST.
- 9.2 The Client must pay to Hibbs & Associates Pty Limited the applicable GST that is payable in respect of a taxable supply (as defined in the GST Act) under the Contract upon receipt from Hibbs & Associates Pty Limited of a tax invoice (as defined in the GST Act) in relation to the taxable supply.

**10. Warranties**

- 10.1 Hibbs & Associates Pty Limited warrants that the Services will be provided to the Client with due care and skill and that any materials supplied in connection with the Services will be reasonably fit for the purpose for which they are supplied.
- 10.2 Other than the warranty in Clause 10.1 and any non-excludable statutory warranties, to the maximum extent permitted by applicable law, Hibbs & Associates Pty Limited excludes all warranties, express or implied (whether by statute, custom or otherwise), in relation to the Services or anything else under or in connection with the Contract.
- 10.3 The liability of Hibbs & Associates Pty Limited to the Client for breach of the warranty in Clause 10.1 or any non-excludable statutory warranty will, to the maximum extent permitted by applicable law, be limited, at the option of Hibbs & Associates Pty Limited, to:
  - (a) supplying the Services again; or
  - (b) paying the cost of having the Services supplied again.
- 10.4 The Client agrees that if Hibbs & Associates Pty Limited complies with Clause 10.3 then, to the maximum extent permitted by applicable law, this will be the Client's sole remedy for the breach of warranty and Hibbs & Associates Pty Limited will have no further liability to the Client for the breach.

## 11. Limitation of Liability

11.1 Hibbs & Associates Pty Limited shall not, in connection with the provision of Services, be liable to the Client for loss of profits, loss of sales, loss of business, loss of revenue, loss of or damage to reputation or goodwill, loss of opportunity, wasted management or other staff time, losses or liabilities under or in relation to any other contract, or special, indirect or consequential loss or damage, whether arising in contract, tort (including negligence), misrepresentation, indemnity, strict liability or otherwise, even if Hibbs & Associates Pty Limited has been advised of the possibility of such loss or damage.

For the purpose of this Clause, the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.

11.2 Subject to Clauses 10.3, 11.1, 11.3 and 14, the total liability of Hibbs & Associates Pty Limited in connection with provision of Services, whether such liability arises due to breach of contract, tort (including negligence), misrepresentation, indemnity, strict liability or any other reason, shall be limited to 150% of the fees paid or payable by the Client to Hibbs & Associates Pty Limited in respect of that portion of the Services that are the subject of a Claim.

11.3 Clauses 10.2, 10.3, 10.4, 11.1, 11.2 and 14 do not limit or exclude liability on the part of Hibbs & Associates Pty Limited:

- (a) that cannot be limited or excluded under applicable law; or
- (b) that is due to wilful or reckless misconduct by Hibbs & Associates Pty Limited; or
- (c) to the extent that (ignoring the application of Clauses 10.2, 10.3, 10.4, 11.1, 11.2 and 14) Hibbs & Associates Pty Limited is entitled to be and is indemnified for that liability under a policy of insurance that Hibbs & Associates Pty Limited has taken out and maintained.

11.4 The Client agrees not to bring any Claim in respect of loss or damage suffered by the Client arising out of or in connection with the provision of Services (including but not limited to delay or non-performance of the Services) against any director, employee, contractor or agent of Hibbs & Associates Pty Limited even where the director, employee, contractor or agent has been negligent. This restriction shall not operate to exclude any liability that cannot be excluded under applicable law or the liability of Hibbs & Associates Pty Limited for the acts or omissions of its directors, employees, contractors and agents.

11.5 If, notwithstanding Clause 4.3, Hibbs & Associates Pty Limited is liable to a third party in relation to any report or advice given or issued by Hibbs & Associates Pty Limited to a Client, then the provisions in Clause 10 and Clauses 11.1 to 11.4 inclusive shall apply to the third party as if the references to the Client in those clauses were references to the third party.

## 12. Entire Agreement

12.1 Subject to Clause 12.2, a Contract constitutes the entire agreement between the parties in relation to the provision of the Services described in the Contract and excludes all prior or subsequent communications or understandings between the parties concerning the provision of the Services or the applicable conditions of contract including any inconsistent terms or conditions proposed at any time by the Client.

12.2 Clause 12.1 does not exclude any terms or conditions implied by law or any variation to the Contract agreed to by the parties in writing.

12.3 The Client acknowledges that it has not entered into any Contract in reliance upon any representation, warranty or promise (other than those expressly set out in the Contract) and no such representation, warranty or promise is to be implied in any Contract whether by virtue of any usage or course of dealing or otherwise except as expressly set out in the Contract.

12.4 If Hibbs & Associates Pty Limited has made or given any representation, warranty or promise then, except to the extent that it has been expressly set out in the Contract, the Client waives any rights or remedies which it may have in respect of it.

## 13. Termination

13.1 In clause 13.3, "Insolvency Event" means any of the following events in relation to a party:

- (a) the party commits an act of bankruptcy or an order is made for the party to be wound up (other than for the purpose of solvent restructuring or amalgamating);
- (b) a controller, receiver, receiver/manager, administrator, liquidator or provisional liquidator is appointed to the party;
- (c) the party is placed under official management;
- (d) the party takes any step such as calling a meeting of its shareholders or creditors or both or an application is made to a court with the aim of effecting one of the circumstances in paragraphs (a), (b) or (c) above;
- (e) any event analogous to the events in paragraphs (a), (b), (c) or (d) above occurs.

13.2 Either party may by notice to the other party terminate a Contract if the other party fails to remedy a material breach of a Contract within the time specified in the notice (being not less than fourteen (14) days).

13.3 Either party may terminate a Contract with immediate effect by notice to the other party if an Insolvency Event occurs in relation to the other party.

13.4 If a Contract is terminated pursuant to clause 13.2 or clause 13.3, the Client must pay Hibbs & Associates Pty Limited for work completed and expenses incurred by it up to the date of termination.

13.5 Termination of a Contract shall be without prejudice to any accrued rights of either party under the Contract or at law.

## 14. Force Majeure

14.1 If by reason of a Force Majeure Event a party is unable, wholly or in part, to perform any obligation under a Contract (not being an obligation to pay money) that party:

- (a) must give the other party prompt notice of the Force Majeure Event with reasonable particulars and an estimate of the likely duration of the Force Majeure Event;
- (b) will be relieved of that obligation to the extent and for the period that it is unable to perform the obligation and will not be liable to the other party in respect of such inability;
- (c) must use reasonable efforts to remove or overcome the Force Majeure Event as quickly as possible.

14.2 The requirements under this Clause will not require the party seeking to rely on the Force Majeure Event to settle any strike, lockout or other labour dispute or claim or demand by any Government, quasi-government or competent Authority on terms

contrary to its wishes or to contest the validity or enforceability of any law, regulation, decree or order by way of legal proceedings.

14.3 Where a Force Majeure Event ceases, the parties must as soon as is reasonably practicable commence performing the obligations that were affected by the Force Majeure Event.

14.4 If the Force Majeure Event continues for more than 90 days, either party may terminate the Contract on 30 days notice to the other party in which event the provisions of Clause 13.4 shall apply.

## 15. Waiver

Any failure or delay by Hibbs & Associates Pty Limited to insist upon strict performance by a Client of any right under a Contract shall not operate as a waiver of the right.

## 16. Notices

16.1 Any notice under or in connection with a Contract must be in writing and delivered by hand, by mail (postage pre-paid), by facsimile transmission or by electronic mail (e-mail);

16.2 A notice delivered in accordance with clause 16.1 is deemed to have been received:

- (a) if delivered by hand, on the date it is delivered to the addressee;
- (b) if mailed to an Australian address, three (3) days after posting or in any other case ten (10) days after posting;
- (c) if sent by facsimile transmission, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages, the correct destination facsimile machine and confirming that the transmission was successfully sent;
- (d) if sent by e-mail, at the time shown in the delivery confirmation report generated by the sender's e-mail system or if the sender's e-mail system does not generate a delivery confirmation report within twelve (12) hours after the time the e-mail is sent, unless the sender receives a return e-mail notification that the e-mail was not delivered, undeliverable or similar, at the time which is twelve (12) hours from the time the e-mail was sent.

16.3 A notice received, or deemed to have been received, on a day that is not a Business Day in the place of receipt or after 5:00pm (recipient's time) is taken to be received on the next Business Day in the place of receipt.

## 17. Severance

17.1 If the whole or any part of a provision in a Contract is declared void, unenforceable or illegal then:

- (a) where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature, it must be read down to the extent necessary to achieve that result; and
- (b) in any other case the offending provision must be severed from the Contract.

17.2 Where a provision is read down or severed pursuant to Clause 17.1, the remainder of the Contract has full force and effect.

17.3 A provision must not be read down under Clause 17.1(a) if the reading down of the provision alters the basic nature of the Contract or is contrary to public policy.

## 18. Non-assignment

A party must not assign, in whole or in part, its rights or obligations under a Contract without the prior written approval of the other party.

## 19. Dispute Resolution

19.1 If a dispute or difference arises between the parties at any time as to the construction of a Contract or as to any matter or thing under a Contract or in connection with the Contract, then either party may give a notice to the other party identifying the matters the subject of the dispute or difference and the giving of such notice is a condition precedent to the commencement by either party of proceedings by way of litigation with regard to the matters the subject of the dispute or difference as identified in the notice.

19.2 Within 10 business days after service of a notice referred to in clause 19.1, the parties must confer at least once to attempt to resolve the dispute or difference and failing resolution of the dispute or difference, to explore and, if possible, agree on methods of resolving the dispute or difference by other means including mediation. At each conference each party must be represented by a person having authority to resolve the dispute or difference.

19.3 In the event that the dispute or difference cannot be resolved in accordance with the provisions of clause 19.2, or if at any time either party considers that the other party is not making reasonable efforts to resolve the dispute or difference, either party may by further notice to the other party refer the dispute or difference to litigation. The service of the further notice under this clause is also a condition precedent to the commencement by either party of proceedings by way of litigation in respect of the dispute or difference.

## 20. Governing Law

Proposals, the General Conditions and Contracts will be governed by and construed in accordance with the laws of the State of New South Wales and the parties submit to the exclusive jurisdiction of the courts of the State of New South Wales and the courts entitled to hear appeals from those courts.