

Terms and Conditions - DLTX

We've tried to make our terms and conditions as straightforward and fair as possible. Let us know if you have any questions or need any detail clarified. It's important that you seek your own legal advice if you have any doubt about where you stand or your obligations.

Acceptance

1. DLTX will perform the Services described in the accompanying proposal, tender, quotation, or email to the you (the **Proposal**), which together with these terms and conditions forms an agreement between DLTX and you (the **Agreement**).
2. This Agreement will be binding on you from the date the Agreement is accepted by you in writing (including by email), through the placement of a purchase order for the Services, or receipt of instructions from you to perform the Services based on the Proposal. You acknowledge and agree that DLTX will not commence the performance of any Services whatsoever until this Agreement is accepted by you.
3. This Agreement supersedes any terms and conditions issued by you or attached to any purchase order issued by you.

Scope of Services

4. The scope of Services is as outlined in the Proposal. DLTX will use its reasonable endeavours to complete the Services in accordance with the timetable stated in the Proposal or as soon as practicable (where no timetable is stated).
5. DLTX will advise you in writing of any change to the scope of Services and will not perform any revised scope without your prior written approval. DLTX will not be liable for any costs associated with any delay in the performance of the Services if you fail to give timely instructions.
6. Notwithstanding any other provision of this Agreement, DLTX will have no liability to you whatsoever for failing to complete the Services by a specified time.
7. All work is quoted by DLTX in days, with the minimum engagement term for any task to be no less than two (2) hours (i.e. 0.25 days).

Performance of Services

8. DLTX will perform the Services in a diligent and professional manner.
9. You acknowledge that it is your sole responsibility to make your own assessment of the suitability of the Services for your intended purpose.
10. DLTX may subcontract all or part of the Services to a subcontractor and you consent to DLTX disclosing your information (including Confidential Information) to that subcontractor necessary for the performance of the Service.

Fees and Payment

11. In consideration for DLTX providing the Services, you must pay DLTX the Fees at the times specified in the Proposal, or if no time is stated then in accordance with clauses 12 and 13.
12. You must pay to DLTX the Initial Deposit on acceptance of this Agreement and prior to DLTX starting to perform the Services.
13. Subject to clause 12, DLTX will issue to you a tax invoice at the end of each calendar month for the Services performed but not yet invoiced. Payment terms are 7 days from the date of invoice (**Due Date**).

14. All Fees quoted by DLTX are exclusive of GST unless stated otherwise. You must pay the amount of GST specified in an invoice issued by DLTX pursuant to *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
15. DLTX reserves the right to review prices at any time if significant changes to DLTX's costs are incurred that are beyond DLTX's control, such changes may include, but are not limited to, changes in legislative requirements, variation to scope of Services, or turnaround required.
16. All Fees due and payable after the Due Date (**Outstanding Amount**) will be subject to the payment of interest at a rate of 1.5% per month of the Outstanding Amount from the Due Date up to and including the date of payment. An administration fee of up to 10% of the Outstanding Amount may also be charged if the Outstanding Amount remains unpaid for 30 days after the Due Date.
17. You will indemnify DLTX for any costs and fees incurred by DLTX to recover the Outstanding Amount, including any solicitor fees, or collection agency fees.

Contract Management

18. Each party must appoint a representative to fulfil its obligations in relation to governance of their commercial arrangements and notify the name of its representative to the other party in writing.
19. DLTX will only take instructions from your nominated representative with respect to variations to this Agreement (including any change to the scope of Services).
20. Either party may replace its representative by notice in writing to the other party.

Your Obligations

21. You acknowledge and agree that during the performance of the Services you must:
 - (a) give DLTX access to your systems, hardware, data, and records as required by DLTX to enable it to perform the Services;
 - (b) ensure that your site or any location where the Services will be performed by DLTX are safe and free of any hazards;
 - (c) provide all pertinent information to DLTX that is necessary for DLTX to perform the Services; and
 - (d) give DLTX in a reasonable and timely manner any decision, approval, consent or any other communication DLTX requires from you to perform the Services.
22. You also acknowledge and agree that to enjoy the full benefit of our Services, you will need to continue to maintain and support your software, systems, licences, and infrastructure as implemented at the date the performance of our Services commenced.
23. DLTX will not be liable to you whatsoever for any cost or loss that arises from your failure to perform your obligations under clauses 21 and 22.

Intellectual Property and Confidential Information

24. All DLTX IP will remain the property of DLTX.
25. Subject to clause 26 and the payment of the Fees, DLTX grants to you a world-wide, non-exclusive, royalty free licence to use DLTX IP for the purpose agreed to between you and DLTX to the extent that it is needed by you for the enjoyment and benefit of the Services.
26. DLTX will not licence to any third party any DLTX IP created exclusively for you during the performance of the Services if so stipulated in the Proposal without your prior written consent.

27. Neither party will disclose Confidential Information of the other party to any third party without the prior written consent of the other party, unless required by Law or the rules of a relevant stock exchange. Each party will only use Confidential Information of the other party for the performance of the Services and obligations under this Agreement.
28. To the extent the Services are performed based on any data, materials, information, or documents provided by you, you agree to indemnify and hold harmless DLTX, its officers, employees, agents and subcontractors for any claim whatsoever in relation to any loss or damage arising from unclear, erroneous, incomplete, incorrect, misleading or false data, materials, information, or documents provided by you.

Limitation of Liability

29. To the extent permitted by Law, DLTX excludes all other terms, conditions, warranties and guarantees which might be implied into this Agreement. Where any Law implies any other terms, conditions, warranties and guarantees in this Agreement that cannot be modified or excluded (**Implied Terms**), then such Implied Terms will be deemed to be included. However, to the full extent permitted by Law, DLTX's liability to you for any breach of any Implied Term that cannot be excluded by Law is limited at DLTX's option to the re-performance of the Services or the refund of all or part of the Fee for the Services.
30. You agree to release and indemnify and will continue to release and indemnify DLTX, its officers, employees and agents from and against all actions, claims (actual or threatened), proceedings (including proceedings where DLTX is joined pursuant to any proportionate liability regime) or demands (including any costs and expenses in defending or servicing same) which may be brought against it or them, in respect of any loss (including Indirect Loss), death, injury, illness or damage to persons or property, and whether direct or indirect and in respect of any breach of any industrial or intellectual property rights, howsoever arising out of the use of, reliance on, or benefit of the Services, except to the extent that the loss, death, injury, illness or damage to persons or property was directly caused by the negligence, wilful acts or omissions of DLTX or its employees.
31. Notwithstanding any other provision of the Agreement, and except to the extent that liability cannot be limited or excluded by law:
 - (a) DLTX will not be liable to you, your Associated Entities, or any third party for any Indirect Loss;
 - (b) DLTX's cumulative liability to you, your Associated Entities, or any third party for any loss or damage whatsoever which arises under or in connection with this Agreement or the provision of Services (excluding loss or damage to real or personal property, or personal injury to persons), and whether by way of an indemnity or statute, in tort (for negligence or otherwise), or on any other basis in law or equity, is limited to the value of the Services provided; and
 - (c) DLTX's cumulative liability to you, your Associated Entities, or any third party for any loss or damage to real or personal property whatsoever which arises under or in connection with this Agreement or the provision of Services, and whether by way of an indemnity or statute, in tort (for negligence or otherwise), or on any other basis in law or equity, is limited to \$1 million in aggregate.

Termination

32. DLTX may immediately suspend or terminate its obligations under this Agreement if:

- (a) monies payable by you to DLTX are outstanding 60 days or more after the Due Date; or
 - (b) you have otherwise materially breached your obligations under this Agreement and failed to remedy that breach within 5 days of written notice from DLTX.
33. DLTX may terminate this Agreement for convenience by giving you 30 days written notice.
34. You may terminate your obligations under this Agreement where DLTX has materially breached its obligations under this Agreement and failed to remedy that breach within 10 days of written notice from you.
35. If DLTX, acting reasonably, suspects that you are insolvent or are having difficulties paying your debts as and when they become due, or you are insolvent, DLTX may give written notice to you of DLTX's intention to immediately suspend or terminate its obligations under this Agreement.
36. In the event of termination, DLTX is entitled to be paid for all work performed up to the date of termination and for any unavoidable commitments entered into by DLTX before the date of termination.

Miscellaneous

37. Any provision of this Agreement that is illegal, invalid or unenforceable will be severed to the extent that it is illegal, invalid or unenforceable, with the remainder of the Agreement continuing in full force.
38. This Agreement is governed by the law of the state or territory in which the Services are provided, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place.
39. To the extent any Personal Information is collected by DLTX in the performance of the Services, DLTX will collect, hold, and use that Personal Information in accordance with DLTX's Privacy Policy (available on request).

Definitions

40. In this Agreement:
- (a) **Associated Entities** has the meaning given to that term in section 50AAA *Corporations Act 2001* (Cth).
 - (b) **DLTX** means DLTX Pty Ltd (ABN 24 634 696 978).
 - (c) **DLTX IP** means all intellectual property and proprietary rights (whether registered or unregistered) owned or licenced by DLTX prior to performance of the Services, developed by DLTX in performance of the Services, or developed by DLTX outside of, or after, performance of the Services, and without limitation includes business names, trade or service marks, any right to have information (including Confidential Information) kept confidential, patents, patent applications, drawings, discoveries, inventions, improvements, trade secrets, technical data, formulae, databases, know-how, logos, designs, design rights, copyright and similar industrial or intellectual property rights.
 - (d) **Confidential Information** means all information in relation to a disclosing party, its business, operations, products, processes, customers, suppliers or contractors which is or might reasonably be considered by the disclosing party to be confidential, including all technical data, intellectual property rights, formulae, specifications, diagrams, plans, drawings, sketches, designs, business plans and reports, business methods and systems, business records, production information, unpublished financial accounts and reports, discount and supply agreements, subcontractor lists, customer lists,

except to the extent that such information is lawfully in the public domain.

- (e) **Fees** means the fees payable by you to DLTX as outlined in the Proposal for the Services.
 - (f) **Indirect Loss** means losses which do not arise naturally (that is, according to the usual course of things) from the relevant breach of this Agreement, including but not limited to loss of profits or revenue, loss of goodwill or reputation, loss of anticipated benefits or savings, loss of any prospect or business opportunity, loss of production or other business interruption loss or corruption of data or wasted management or administrative time.
 - (g) **Initial Deposit** means the amount specified in the Proposal.
 - (h) **Law** means any Commonwealth, State, Territory or local government legislation in force in Australia or any law of a foreign jurisdiction applicable to the Services, including regulations, by-laws, declarations, ministerial directions and other subordinate legislation; common law; and government agency requirement or authorisation (including conditions in respect of any authorisation).
 - (i) **Personal Information** has the meaning given to that term in section 6 *Privacy Act 1988* (Cth).
 - (j) **Services** means the services described in the Proposal.
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