



CLEAR PATH accounting

Standard Terms of Engagement

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Standard Terms of Engagement

1. Introduction

These terms and conditions (**Terms**) apply to work performed for you by Clear Path Accounting Pty Ltd ABN 56 606 561 611 (**Clear Path Accounting /we/us**). These Terms will apply except where we have otherwise agreed with you in writing.

“You” means our client as identified in an engagement letter or otherwise agreed. A list of the entities and individuals for whom we act (**the Group**) is also set out in the engagement letter.

These Terms, the Engagement Letter (including all Appendices) and any Price Proposal and Price Agreement (together called **this Agreement**) will apply to all work we undertake for you with respect to this engagement. You accept and agree to this Agreement by continuing to instruct us.

If there is any conflict between these Terms and the Engagement Letter, then these Terms will prevail (except in circumstances where the Engagement Letter refers to and modifies a specific provision of these Terms). If there is any inconsistency between these Terms and any Price Agreement, the Price Agreement will prevail.

2. Our Services and Third Parties

We will provide the services as specified in our Engagement Letter (**Services**). We will use all reasonable commercial efforts to provide the Services in an efficient and timely manner and maintain the appropriate professional standard, using reasonable care, skill and expertise.

Clear Path Accounting is a CPA Australia Practice. The Services provided by Clear Path Accounting under this Agreement, will be conducted in accordance with all relevant professional and ethical standards applicable to Certified Practising Accountants (**CPA**) Practices. This includes those of the Accounting Professional & Ethical Standards Board Limited.

Where applicable the Services will be conducted in accordance with the rules governing Australian Securities and Investments Commission registered Agents and the *Tax Agents Services Act 2009* Code of Professional Conduct.

We can report to you regularly and a completion date can be provided if necessary. Unless otherwise agreed in writing, any timetables set will be for planning and management purposes only and will not be binding upon us.

You cannot rely on the engagement of Clear Path Accounting to disclose irregularities in your accounts including fraud or other illegal acts. No audit or review is provided as part of the Services (unless expressly stated otherwise) and accordingly no assurance as to the truth and fairness of any Financial Statements or other Documents produced by us can be expressed. We will however advise you of any irregularities or any material weaknesses in the accounting or internal control systems that come to our attention during the course of our engagement.

Documents prepared as part of our Services will be prepared for distribution to you and any third parties indicated in the documents for the agreed purpose(s). The documents prepared must not be relied upon by any third party not indicated in the document and no assumption will arise as to our responsibility for reliance on our report by such parties. The documents will not be inferred or used for any purpose other than for which it was specifically prepared. Accordingly, our reports may include a disclaimer to this effect.

3. Advice

Any advice given will be based on our understanding of the statute, case law and practice as at the date of the advice. Therefore, any subsequent changes in the law and practice may affect its conclusions. It is also possible that others, including the Australian Taxation Office and the Courts, could reach conclusions that differ from those expressed in our advice. This is particularly relevant for tax advice due to the nature of tax law.

We are under no legal obligation to update the advice for events occurring after the advice has been given. This includes subsequent changes in law, judicial decisions or Australian Taxation Office policy changes. You should ask us to confirm advice previously given if you want to repeat a transaction, or if an action that we have advised on is delayed. We accept no responsibility for different outcomes arising from such changes.

It is our policy to set out in writing (which may be by e-mail) any advice on which you may wish to rely. In many cases, our advice will include a summary of our understanding of the facts or background on which our advice is based. It is important that you tell us if you think this summary does not accurately reflect the facts since our analysis of the transaction, and resulting advice may then change.

During the supply of our Services, we may supply oral, draft, interim or ad hoc advice, reports or presentations but in such circumstances our written advice or final written report will take precedence. No reliance should be placed by you on any oral, draft, interim or ad hoc advice, reports or presentations. We accept no liability for any such oral, draft, interim or ad hoc advice, reports or presentations. Where you wish to rely on oral advice or an oral presentation, you must inform us at the time the oral advice or oral presentation is given and we will provide written confirmation of the advice.

4. Tax Agent Services Act (2009)

With effect from 1 March 2010, a regime for the regulation of tax agents took effect under the *Tax Agent Services Act 2009* and accompanying legislation (TASA). This regime has implications for registered tax agents and their clients.

An important feature of TASA is the provision of a safe harbour protection from penalties in certain circumstances for taxpayers who engage registered tax agents.

To obtain the benefits of safe harbour protection, the legislation requires the taxpayer to provide the registered tax agent with all relevant taxation information to enable accurate statements to be provided to the Australian Taxation Office. This requirement may be important to both parties in identifying and understanding the purpose and scope of the engagement as set out below and may also affect other matters discussed below.

You will find further discussion on the safe harbour protections in the document entitled **Clients' rights and obligations under the taxation laws** available upon request.

5. Fees

We operate fixed fees, quoted in advance. Please refer to your Fees Schedule for a breakdown of these. Any fixed price given will be binding on us in accordance with the terms of any **Price Agreement**.

We can provide a fixed price or estimate for particular tasks or projects which can be adequately defined. Fixed prices or estimates will depend on the accuracy, timeliness, completeness, relevance, and reliability of records and information provided by you.

However, for services not quoted in advance, it is important to us that you understand the basis upon which our fees are calculated, the times when fees and disbursements will be invoiced and our expectations for payment. These include:

- the time and labour expended;
- the levels of skill, specialised knowledge and responsibility involved;
- the importance of the matter to you and the results achieved;
- the urgency and circumstances in which your matter is carried out;
- the complexity of the matter and the difficulty or novelty of the issues involved;
- the number and importance of the documents prepared and considered; and
- the reasonable costs of running a practice.

6. Expenses and Disbursements

We will charge you for disbursements incurred by us on your behalf. Unless otherwise stated, our fees are exclusive of general disbursements. Disbursements may include software costs, new entity establishment costs, reasonable travel, subsistence and document handling costs (photocopying, printing, facsimile and courier etc.). Our fees and disbursements are exclusive of GST and we will be entitled to recover any applicable GST from you.

7. Invoices

Invoices will be rendered after our Services have been completed, **unless** a fixed price agreement has been established. For those not on a fixed price agreement, in instances where the Services have not been completed within 3 months, a progress invoice will be rendered.

Invoices are due for payment in accordance with the terms specified on the invoice unless otherwise agreed in writing.

If your account remains unpaid and there is no satisfactory explanation for non-payment, we may do any or all of the following:

- charge interest on overdue amounts at the rate of 5 percent over the current 90-day bank bill rate or such other rate as may be stipulated in the Engagement Letter;
- start proceedings to recover the amount owed, plus default interest and any collection costs incurred; and/or
- cease to do any further work for you, and will not release your papers and files until all accounts are paid.

If we agree to address an invoice to another person, you will be required to pay that invoice if the other person does not.

We are always prepared to discuss the amount of any invoice with you. If you have any questions or concerns, please contact the person responsible for the management of your matter.

8. Guarantee for Payment of Fees

Where the Client is a Corporation or a Trust with a Corporate Trustee, we require the Directors of the Corporation, or Corporate Trustee to personally guarantee payment of our fees and out of pocket expenses. By signing the engagement letter you acknowledge that guarantee liability.

9. Information

You will provide us promptly with accurate and complete information reasonably required for the proper performance of the Services, including access to appropriate members of your staff, records, information technology, and systems.

We will be entitled to rely upon the accuracy of all information provided by you, or by others on your behalf, without independently verifying it.

You must notify us promptly if any information provided by you is rendered untrue, unfair or misleading. If required, you must take all necessary steps to correct any communication or document issued which contains, refers to or is based upon such information.

We have no duty to disclose information to you which is not actually known by those working on your matter, even though that information may be relevant to you.

10. External Information

In advising you we may rely on, or provide you with external information or public records (e.g., government agencies or registers). This information may not always be accurate or complete. We do not accept responsibility and will not be liable for any direct or indirect damage or loss caused by errors or omissions in external information or public records.

11. Conflict of Interest

We are not aware of any conflict of interest which would affect our ability to provide the Services to you except as disclosed in the Engagement Letter.

We will advise you if we become aware of any potential conflict of interest, and work with you to find a suitable solution. Where conflicts are identified which cannot be managed in a way that protects your interests then we regret that we will be unable to provide further services.

If there is a conflict of interest that is capable of being addressed successfully by the adoption of suitable safeguards to protect your interests then we will adopt those safeguards. Where possible this will be done on the basis of your informed consent. We reserve the right to act for other clients whose interests are not the same as or are adverse to yours subject of course to the obligations of confidentiality referred to above.

12. Cloud Computing

Clear Path Accounting operates on a paperless basis, meaning that we store your records electronically.

In addition to our own IT infrastructure, we use off site email storage, online banking facilities, and we use online and cloud based accounting systems and document storage facilities including, but not limited to, the Tax Agent Portal, ASIC Portal, CCH iFirm, QuickBooks Online, Xero, Reckon Hosted, MYOB, BGL360, Panalitix, Dropbox and One Drive. The cloud storage facilities and IT servers operated by these providers may be located outside of Australia.

By engaging our services, you give consent that your information may be provided and stored using these systems to provide our services to you.

While we make every reasonable effort to maintain data stored in these platforms securely, using methods such as firewalls, anti-virus software, encryption, digital certificates, Auskey, password protection and two step identification where available, and our vendors have covenanted to us that they will also make such reasonable efforts, we advise you that no computer system is free from risk of data breach.

Accordingly, as part of these terms of engagement you agree to indemnify and release Clear Path Accounting from all claims for damages arising from the use of cloud based storage or cloud based accounting services arising or resulting from the provision of our services to you.

13. Confidentiality

In the course of the engagement, you (and other parties where we are acting on your behalf) may provide us with proprietary and confidential information. We agree to hold such information in strict confidence, and not to disclose such information, except:

- as required by law or professional regulation;
- as is or becomes public knowledge, otherwise than as a result of a breach, by the party disclosing or using that confidential information;
- as authorised by you in writing;
- to the extent reasonably required by this Agreement (and, without limiting the effect of this clause, a party may disclose confidential information only to those of its officers, employees or professional advisers, on a "need to know" basis, as is reasonably required for the implementation of this Agreement).

As a practice entity with members of CPA, we are subject to and bound by its disciplinary procedures and rules. Our work and files are subject to the practice review rules of CPA under which compliance with professional standards by members is monitored. These procedures and rules require us to disclose to CPA, its reviewers and its disciplinary bodies our files and work papers including client information. By allowing us to undertake any engagement (whether or not an engagement letter is signed by you), you acknowledge that, if requested, our files relating to any

engagement will be made available to CPA, its reviewers and its disciplinary bodies. CPA and its reviewers are obliged to keep all information confidential.

You agree not to disclose confidential information about us or our concepts or techniques unless required to do so by law.

Where appropriate, we may use in internal and external publicity material the credentials obtained in doing work for you. We will only publicly claim credit for our work for you where we have your permission to do so, which may be given generally for the work we do for you. However, unless you expressly forbid us doing so, we may refer to our work for you in proposals (or other similar submissions to prospective clients).

Clear Path Accounting will use your personal information to continually enhance the range of value-added products and services that we can provide to you.

In using and sharing your personal information Clear Path Accounting will take all practical steps to ensure that it is de-identified and aggregated so that your personal information and privacy is protected.

The use of your personal information, and the products and services that arise from that use, is solely for the benefit of Clear Path Accounting clients. Clear Path Accounting will not sell or trade personal information to third parties, or allow such third parties to use that personal information. Clear Path Accounting will not disclose identifiable confidential information acquired in the course of conducting professional work unless required by law or where there is a professional right or duty to disclose the information.

We may, on occasions, subcontract work on your affairs to other tax or accounting professionals. The subcontractors will be bound by our client confidentiality terms.

14. Workpapers and client documents

All papers (including workpapers), documents, concepts and techniques we produce in the course of our work for you, regardless of whether they form part of the finished product, are and will remain our property. We also retain the copyright and all intellectual property rights in all original material provided to you.

Where reasonably possible we will:

- inform you if any other person requires access to your workpapers; and
- ask your permission before granting access to any person unless we are compelled to do otherwise by law.

In certain circumstances the Practice Review Board of the CPA and the Australian Taxation Office may request access to information and workpapers and we may be legally obliged to allow such access.

We will keep your file and documents for the minimum period stipulated by any relevant legislation. We reserve the right to destroy correspondence and other papers once we (reasonably) believe they need no longer be retained, unless you write to us telling us not to do so.

If we are provided with custody of any documents by you or on your behalf, including share registers or constitution documents, those documents will be retained during the course of our appointment and will be returned to you at the end unless separate arrangements have been made. Those documents remain owned by you. We will be entitled to retain copies.

15. Ownership

We retain ownership of the copyright and all other intellectual property rights in the product of the Services.

You will acquire ownership of any end product of the Services on payment of our fees, including financial statements, tax returns and any other document which we are specifically engaged to prepare. Subject to our obligations of confidentiality, for the purposes of delivering Services to you or other clients, we will be entitled to use, develop or share with others any knowledge, experience, skills, methodologies, systems, spreadsheets, databases or know how gained through performing the Services without an obligation to account to you.

We may provide you with software, spreadsheets and other intellectual property for use with, or to assist with the provision of, the product of our Services. Any software, spreadsheets and other intellectual property provided by us is for your own use and must not be copied, distributed or used for any other purpose. We do not provide any warranties in relation to these items and will not be liable for any damage or loss incurred by you in connection with your use of them.

We reserve the right to exercise a lien over any documents and files belonging to you, which may be in our possession. If our services are terminated (by either party), each client separately agrees that we shall be entitled to retain all documents owned by that client until payment in full of all outstanding fees, from all members of the Group on any account, has been received by us.

16. Benefit of advice

Any advice or opinion relating to the Services is provided solely for your benefit and may not be disclosed in any way.

Any deliverables issued in the course of our work (including but not limited to services, reports, advice or other information and any parts of those documents) cannot be passed on to third parties unless prior approval has been given in writing by us.

If we consider it necessary, we will withhold approval. We accept no liability to any third party who does obtain and rely on any advice or opinion relating to the Services.

The name or logo used by Clear Path Accounting at any time, as part of a deliverable, should not be distributed to a third party (including by way of electronic distribution) without our prior written consent, other than where used solely for referral of our professional services to other potential clients.

17. Communication

During our performance of the Services we may wish to send messages and documents electronically. You acknowledge that electronic communication carries with it the possibility of inadvertent misdirection, interception or non-delivery of confidential material. If you do not consent to the use of electronic communication in the course of providing the Services, you should notify us in writing.

We do not accept responsibility and will not be liable for any damage or loss caused in connection with the interception or corruption of an electronic communication or if it contains a virus. We will not be liable for any damage or loss arising as a result of any unauthorised copying, recording, reading or interference with that document, for any delay or non-delivery of any document and for any damage caused by your system or any files by that message or document.

Data about individuals and entities provided to you through our client portal is confidential. You must ensure that unauthorised persons do not have access to that data.

We will not be liable for any direct, indirect, incidental, special, consequential or exemplary damages (including the loss of profits, goodwill, information, data or other intangible losses) resulting from either:

- the use or inability to use our client portal or website
- unauthorised access or alterations of your transmissions to or from our client portal
- activities resulting from the loss or misuse of your user ID, password or access mechanism
- statements or conduct of any third party
- any other matter relating to our client portal

We produce electronic newsletters and conduct seminars for clients, which cover a range of topics. We may add you to our database so that you will receive newsletters and invitations to seminars that we consider will be useful to you. However, please let us know if you do not want to receive any such correspondence.

18. Problem resolution

We aim to provide a high quality of service at all times. If you would like to discuss how the Services can be improved or you would like to make a complaint, you can contact Suzanne Walker, the Director of Clear Path Accounting Pty Ltd. We undertake to investigate any complaint promptly to resolve the difficulties.

In the event of a dispute, or where fees remain unpaid beyond the due date, we reserve the right to suspend provision of the Services until such time as the dispute is resolved or the fees are paid. The suspension of the Services will not affect your obligation to pay us for Services rendered to the date of suspension.

19. Limitation of liability

We will be liable to you for net losses, damages, costs or expenses (**losses**) caused by our gross negligence or wilful default, except:

- we will not be liable if such losses are due to the provision of false, misleading, incorrect or incomplete information or documentation by you, our reliance on instructions provided by you, or due to any acts or omissions of any person other than Clear Path Accounting;
- we will not be liable to you for accidental, incidental, indirect, special, punitive or consequential damages or for loss of profits or savings, even if Clear Path Accounting has been advised of, knew or should have known of the possibility of such damage or loss;
- we will have no liability for any statements, representations, guarantees, conditions or warranties (together **representations**) arising from communications (oral or written) which are not expressly contained in this Agreement. All representations to exercise reasonable care or render our Services with due care and skill which may otherwise be implied by statute, common law or custom are expressly excluded; and
- the aggregate liability of Clear Path Accounting, whether to you or any third party, of whatever nature, whether in contract, tort or otherwise, for any losses (including interest) whatsoever and howsoever caused arising from or in any way connected with this engagement shall not exceed 5 (five) times the fees invoiced under this engagement letter.

We will have no other liability of any nature, whether in contract, tort or otherwise, for any losses, caused, arising from or in any way connected with our engagement.

You agree that our liability for any and all loss or damage suffered by you (in aggregate) (whether direct, indirect or special) in connection with our engagement will be limited to the amount of professional fees paid to us for the Services or such other maximum amount as stated in our Engagement Letter. You agree to release us from all claims arising in connection with the Services to the extent that our liability in respect of such claims would exceed this amount.

If the Services were provided in respect of more than one financial year, the fee on which the liability amount is based will be the fee paid in respect of the financial year in respect of which the act or omission occurred.

You agree that all claims against us, whether in contract, tort, negligence, equity or otherwise, must be formally commenced within two years after the party bringing the claim becomes aware (or ought reasonably to have become aware) of the fact which gave rise to the action and in any event no later than three years after any alleged breach of contract, tort, negligence, equity or other cause of action arises.

Where this Agreement applies to more than one Client, the limitation of liability contained in this clause must be allocated among these Clients. Such allocation is a matter to be resolved by those Clients.

You agree to look only to Clear Path Accounting Pty Ltd or the insurance maintained by us to satisfy our obligations or liabilities to you under this Agreement or otherwise.

None of our officers, partners or Personnel will be liable for our obligations to you. You will not commence any action or proceeding against any such persons for the purposes of enforcing your rights under this Agreement. This clause may be amended without the need to obtain the consent of any of those persons.

Our liability is limited by a scheme approved under Professional Standards Legislation. Further information on the scheme is available from the Professional Standards Councils' website: <http://www.professionalstandardscouncil.gov.au>

20. Indemnities

You agree to indemnify us:

- against any and all losses, claims, costs, expenses, actions, demands, damages, liabilities or any other proceedings, incurred or suffered by us, including in respect of any claim by a third party (whether in contract, tort, or otherwise), arising from any breach by you of your obligations under this Agreement or by reason of any action we take in good faith;
- against any and all losses, claims, costs, expenses, actions, demands, damages, liabilities or any other proceedings, incurred or suffered by us in respect of any claim by a third party (whether in contract, tort, or otherwise) from your use of our work product; and
- from any liabilities we may have to you or any third party as a result of reliance by us on any information provided by you or any of your representatives, which is false, misleading, incorrect or incomplete or as a result of the failure to provide information which was material information held in your possession or control.

The indemnities in this clause will include all costs incurred by us in regard to such liability or claim, including legal costs, the time of Clear Path Accounting personnel and the costs of any expert engaged by us to assist in dealing with the claim or liability in any way.

21. Health and Safety

We are required to comply with the provisions of the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulations 2011, by taking all practical steps to ensure the health and safety of our people. The Act places responsibility for their safety on you when they are visitors to your site.

It may be appropriate for your Health and Safety representative to hold a safety briefing at the beginning of the assignment for those involved, regarding the hazards, provision of any appropriate equipment, awareness of accident reporting procedures and emergency procedures.

22. Privacy

Over the course of our engagement with you, we may collect and hold personal information concerning you.

We will comply with the Privacy Act 1988 and Privacy and Personal Information Protection Act 1998 (NSW) when collecting, holding or disclosing personal information concerning you, your shareholders, members, customers, employees and other individuals with whom you have dealings (**Stakeholders**). You have the right of access to and correction of, your personal information held by us.

We may also use contact details and other information (e.g., subjects you are interested in) to keep you informed about developments in areas relevant to the Services, other accounting or financial services or seminars we offer. If you do not want your personal information used for this purpose, please let us know.

If your Stakeholders have not been made aware of the possible collection, holding, use or disclosure of their personal information by us as part of this engagement, please inform us. If necessary, we may take action to raise the awareness of your Stakeholders.

23. Force Majeure

Neither party to these terms and conditions shall be liable in any way for failure to perform, or delay in performing, its obligations under these terms and conditions if the failure or delay is due to a cause outside the reasonable control of the party that has failed to perform.

In the event of any such occurrence, that party must notify the other as soon as reasonably practicable and that other party will have the option of immediately suspending or terminating this Agreement.

24. Governing law and jurisdiction

This Agreement is governed by Australian law. Both parties agree to irrevocably submit any disputes arising under this Agreement first to mediation and then to the exclusive jurisdiction of the Courts of Australia.

25. Disputes

The parties undertake to use all reasonable efforts in good faith to resolve any dispute which arises between them.

If the parties fail to resolve the dispute, then the parties will try to settle their dispute by mediation before resorting to litigation. Either party may initiate mediation by giving written notice to the other party. The mediator should be agreed by the parties. Before the mediation commences, the parties and the mediator must sign a mediation agreement in an agreed form.

26. Variation

No variation of this Agreement will be valid unless confirmed in writing by authorised signatories of the parties on or after the date of signature of the Engagement Letter, provided that these Terms may be amended by us and the amended Terms shall apply to any engagement entered into after we notify you of the amended Terms.

27. Term

This Agreement will apply from the commencement date stated in the Engagement Letter or, where no commencement date is stated, from the date on which you accept the Engagement.

28. Termination and Assignment

If either party commits a breach of this Agreement and fails to remedy the breach within 14 days of receiving written notice, the party giving the notice may cancel this Agreement on written notice, without prejudice to any other right it may have in the circumstances.

In any case this Agreement may be terminated by either party on written notice to the other party.

You must pay our fees for work done and for other charges incurred up to the time of termination.

You may not assign or transfer any of your rights or obligations under this Agreement.

If we have custody of any documents owned by you that are otherwise required by law to be held at our premises, you will ensure that the place at which they must be held is changed to your or some other address prior to the end of our appointment unless otherwise agreed.

Should we have no contact with you for a period of 6 months or more we may issue a disengagement letter and hence cease to act.

29. Entire agreement

These Terms, the Engagement Letter or Brochure, and any Price Proposal and Price Agreement record our entire understanding and agreement relating to the matters dealt within them. This Agreement supersedes all previous understandings or agreements (whether written, oral or both) between us relating to such matters.

30. Partial invalidity

If any provision of this Agreement is or becomes invalid or unenforceable, that provision will be deemed deleted from this Agreement. The invalidity or unenforceability of that provision will not affect the other provisions of this Agreement. All the other provisions will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.

Definitions

Words not defined elsewhere in these Terms have the meaning set out below.

Appendices mean the appendices or attachments to the Engagement Letter.

Client means you and all other entities and group companies you instruct us to act for under this Agreement.

Engagement Letter means the engagement letter in any form including email and any Appendices.

Engagement Brochure means the engagement brochure given to individual clients upon engagement of our services.

Price Proposal means a proposal to provide specific services to you at a fixed price. Once accepted, or approved, it becomes a valid Price Agreement.

Price Agreement means an agreement to provide specific services to you at a fixed price and which is expressly stated to be a fixed price agreement. It includes a Price Proposal.

Personnel means principals, other employees, consultants and contractors.

Services means the services set out in our Engagement Letter or Brochure.

[End of Document]