

## ProAdvice Pty Ltd Terms Of Trade

To the fullest extent legally permissible all dealings between the client (including all related and/or associated companies and/or other entities, all successors and/or assigns and in its own capacity and as trustee of each and every trust of which it is trustee) (**Client**) and **ProAdvice Pty Ltd ACN 130 471 153** (and/or any related and/or associated companies, trusts and/or other entities and/or any successors and/or assigns) whether trading as **ProAdvice** and/or otherwise (**Company**) relating to any services (**Services**) and/or goods (**Goods**) are subject to the following terms and conditions (**Terms**) unless otherwise expressly agreed in writing:

**1. General:** The Company will offer to perform the Services to the Client by submitting any of the following documents (**Offer Document**):

- (a) Fee Proposal Agreement
- (b) Client Service Agreement (CSA)
- (c) Quotation

The Client may accept the Company's offer by signing and returning the Offer Document. Once accepted, the Offer Document, in conjunction with these Terms, shall then exclusively form the agreement between the parties (**Agreement**). In the event of any inconsistency between any of the documents comprising the Agreement, these Terms shall prevail. Once the Client has accepted an offer, the Company will commence providing the Services referred to in the Offer Document and will use its best efforts to comply with any deadlines referred to in the Agreement.

**2. Confidentiality:** **a)** For the purpose of these Terms Confidential Information means all non-public information or documents which either party receives or produces in connection with Services and includes the Companies working papers, any proposals or tender documents, information and methodologies, but does not include any information which is: i) or becomes generally available to the public other than as a result of a breach of this clause; ii) known to either party prior to the engagement of Services; iii) received from a third party who owes no obligation of confidence in respect of the information; or iv) developed by either party independently of the Services to which this Agreement relates. **b)** Neither the Company nor the Client may disclose Confidential Information about or belonging to the other without the other's consent. **c)** Notwithstanding the above, either party may disclose Confidential Information: i) to its insurers or legal advisors, provided that the Confidential Information remains confidential; ii) if required to do so by law; or iii) if required for the proper performance of the Services. **d)** Subject to Clauses a) and b) the Company may cite the performance of the Services to clients as an indication of their experience.

**3. Intellectual Property:** **a)** Unless otherwise specified in the Offer Document, Intellectual Property rights in all documentation, systems, materials, methodologies and processes brought to the engagement of the Company or created in the course of the engagement the Company shall remain and be vested in the Company. **b)** Subject to clause 2, the Company will not be restricted by the Terms from developing and using in the future any techniques, methodologies, ideas, concepts, information or general know-how. **c)** The Client must not use the Company name or logo on any website or in any public statement, (including filing all or part of a report with a regulator or including all or part of a report in any public document) without obtaining prior written consent. **d)** The working papers for Service, including electronic documents and files, are property of the Company and constitute Confidential Information.

**4. Performance of the Services:** **a)** To perform the Services successfully, the Company requires timely co-operation from the Client, including; i) providing in a timely fashion all information and documents the Company reasonably require to enable provision of the Service, including co-operation from the Clients staff in working with the Company; ii) arranging access to third parties where applicable; iii) ensuring that appropriate backup security and virus checking procedures are in place for any computer facilities provided; iv) being available for consultation on request; v) providing reasonable working facilities for the Company if required; and vi) making decisions promptly to facilitate the performance of the Services. **b)** Unless both parties agree otherwise in writing, dates in any timetable set out in the Offer Document or otherwise advised are intended for planning and estimating purposes only and are not contractually binding. The timely completion of the Services requires co-operation from the Client in provision of information and explanations relevant to the Services. Estimates of time from completion of the Services are given on the assumption that the Company receive this co-operation. The Company may charge additional fees and expenses which result from delays in providing this co-operation. **c)** The scope of the Services is limited to the work specified in the Offer Document. Unless expressly stated otherwise in the Offer Document the Services are not legal services and do not constitute legal advice. Either

party may request changes to the Services but no changes take effect unless agreed in writing. **d)** The Services will be based on the documentation and information provided to, or obtained by the Company. The Company relies on the Client to bring to their attention any changes in the documentation and information as originally presented, as it may affect the Services. The Client will ensure documentation and information supplied by the Client or on behalf of the Client, to the best of the Client's knowledge and belief, is not false or misleading and does not omit material particulars. Unless otherwise stated in the Offer Document the Company will not verify the accuracy and completeness of such documentation or information. **e)** In the course of providing the Services, the Company may provide oral comments or draft reports, presentations, letters, schedules and other documents. No reliance shall be placed on such oral comments or draft documents, conclusions or advice as they may be subject to further work, revision and other factors which may mean such drafts are substantially different from any final report or advice issued. The final results of the Service will be set out in the final report or advice. **f)** Changes in the law may take place before advice from the Service is acted upon or may be retrospective in effect. Unless specifically stated in the Offer Document the Company accept no responsibility to inform the Client of changes in the law or interpretations affecting advice previously given by the Company. **g)** The Client acknowledge that information made available by the Client or by others on the Client's behalf, to employees of the Company who are not engaged in the performance of the Services or information relating to you which is otherwise know by them, shall not be deemed to have been made available to the individuals within the Company who are engaged in the provision of the Services.

**5. Payment, Fees and Expenses:** **a)** Fees for the Service will be charged on the basis set out in the Offer Document. Where applicable, Goods and Services Tax (GST) at the prevailing rate will be added to and form part of the fees. **b)** Payment shall be made by cash, cheque, bank cheque or direct deposit, without deduction and within 14 days from the date of each invoice. **c)** If the Client disputes any part of an invoice, it must pay all undisputed parts within the timeframe specified above. Failure to make payment within twenty eight (28) days of the invoice date constitutes a material breach of this Agreement. **d)** The Client agrees to pay an administration fee of 2% as the liquidated processing cost on credit card payments and/or on payments made outside the credit period stipulated in each invoice or statement. **e)** The Client will be charged for any reasonable out-of-pocket expenses such as travel, subsistence and document handling costs (photocopying, printing, fax and courier etc) incurred in connection with the Services. The charges will be calculated as the amounts the Company incur (net of any GST input tax credit to which the Company is entitled) plus GST as applicable. **f)** Fees are payable within 14 days after date of issue of the invoice. Any fee estimate is given in good faith but not contractually binding. **g)** The Company revises the fee scale annually. Rates quoted remain in force until the next 30 June, as appropriate, and fees may increase for any work performed after that date. The Client will be notified in writing of any changes to fees, however Offer Documents will only be re-issued in the event of changes to the Service, not the fee. **h)** Under no circumstance will a credit facility be available to the Client from the Company. **i)** If the Company receive any legally enforceable notice or demand issued by any third party, including the Australian Securities & Investments Commission, the Australian Taxation Office, the Australian Stock Exchange, any government statutory body or instrumentality or any court or tribunal in relation to or in connection with the Services, the Client agrees to pay the Company's reasonable professional costs and expenses (including solicitor client expenses) in complying with or challenging any such notice or demand to the extent that the Company costs and expenses are not recovered or recoverable from the party issuing the notice or demand. The Company will notify the Client as soon as practicable (unless restricted by law) when any such legally enforceable notice or demand is received.

**6. Interest:** The Company reserves the right to charge interest on overdue accounts at the *Penalty Interest Rates Act 1983 (Vic)* Interest rate plus 2%.

**7. Liability:** **a)** The Company will use reasonable skill and care in providing the Services. **b)** The liability of the Company for loss or damage arising from or in relation to the Services, whether arising from breach of contract, tort (including negligence) or otherwise, is limited to an amount equal to three times the fees payable by the Client in respect of the Services to which the claim relates (**Liability Cap**). **c)** The Liability Cap does not apply if prohibited by the Corporations Act 2001. **d)** To the extent permitted by law, the Company excludes all liability for any indirect, incidental or consequential expense, loss, damages or cost, loss of profits or revenue, business interruption, loss of data, or failure to realise anticipated savings or benefits whatsoever incurred by or awarded against the Client (whether or not the Company has been advised of the possibility of such expense, loss, damage or costs) arising in any way out of or in relation to the Services. **e)** The Client agrees that if they make any claim against the Company for loss arising out of or in connection with the Services or these Terms, and the Client has contributed to the loss by their own actions, liability for the Client's loss will be apportioned having regard to the

respective responsibility for the loss and the amount the Client may recover from the Company if successful in the claim will be reduced to the extent of the Clients contribution to the loss. **f)** The Client agrees to indemnify and hold harmless the Company, and its respective directors and employees, from and against any liabilities, losses, claims, costs, damages, or expenses (or actions that may be asserted by any third party) that may result from any third party claims arising out of or in relation to the provision of the Services or any use by the Client of any deliverable under this Offer Document, and will reimburse the Company for all costs and expenses (including legal fees on a solicitor/client basis) incurred by the Company in connection with any such action or claim. This indemnity does not apply if prohibited by the Corporations Act 2001. **g)** The Client accepts and acknowledges that the Company have not made any, and to the extent permitted by law, we exclude, all warranties, conditions or guarantees of any nature in respect of the Services or the satisfactory conclusion of the Services or with respect to the economic, financial or other results which the Client may experience as a result of the provision of the Services. **h)** Where warranties, conditions or guarantees or any other rights are implied in the Offer Document or otherwise conferred by the *Trade Practices Act 1974 (Cth)* or other laws, and it is not lawful or possible to exclude them, then those warranties, conditions or guarantees or other rights will (but only to the extent required by law) apply to these Terms. To the extent permitted by law, the Company limits its liability in respect of such warranties, conditions or guarantees to the supply of the Services again or the payment of the cost of having the Services supplied again. **i)** The Client agrees not to bring any claim (whether in contract, tort (including negligence) or otherwise) arising out of or in connection with the Services against any of the Company's employees personally, but this will not limit or exclude any liability the Company may have for their acts or omissions. The provision of this clause is expressly for the benefit of the Company's employees, and the Client agrees that each employee is entitled to rely on this clause as if they were parties to the Offer Document.

**8. Quality Control:** The Company is subject to the Quality Control Review Program conducted by The Institute of Chartered Accountants in Australia. The work the Company performs for the Client may be selected by the examiners for review. The Client acknowledges that, if requested, the Company files relating to this Service will be made available. If the Client objects to being included in any of these review processes, the Client must advise the Company in writing and the Company will use their best endeavours to exclude this Service from such review.

**9. Services Solely for Client Benefit:** The Services will be provided solely for the Client's benefit and use unless provided otherwise in the Offer Document. Except as required by law, the Client must not provide any documentation or deliverables in respect of the Services to any third party (including without limitation, the filing of information containing or referring to any reports with regulators or the inclusion of report in any public document) without written consent from the Company. The Company accept no liability or responsibility to any third part in respect of the Services.

**10. Use of Software:** The Company may use or develop software, including spreadsheets, databases and other electronic tools (**Tools**) in providing the Services. If the Company provides these Tools to the Client, the Client acknowledges that (except where these Tools are a specific deliverable under the Offer Document) the Tools are not the Clients Property, were developed for the purposes without consideration of any purpose for which the Client might use them, are made available on an "as is" basis for the Client's use only and must not be distributed to or shared with any third party. To the full extent permitted by law, the Company makes no representations or warranties as to the sufficiency or appropriateness of the tools for any purpose for which the Client or a third party may use them.

**11. Electronic Communications:** The Company may communicate with the Client electronically. Electronically transmitted information cannot be guaranteed to be secure or virus or error free and consequently such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. The Company will use commercially reasonable procedures to check for the then most commonly known viruses before sending information electronically, but will not be liable to the Client in respect of any error, omission or loss of confidentiality arising from or in connection with the electronic communication of information to the Client. The Client remains responsible for protecting their own systems and interests in relation to electronic communications. If the Client does not accept these risks, the Client should notify the Company in writing that they do not want communicate electronically.

**12. Documents:** Subject to any statutory provisions to the contrary, it is the Company's practice to destroy documents after they are more than seven years old. The Client's acceptance of these Terms includes consent for the Company to destroy any documents belonging to the Client which have been filed amongst the Company's papers.

**13. Subcontractors and Third Parties:** **a)** The Company reserves the right to employ subcontractors, and any reference to the Company's staff includes subcontractor staff. Subject to any contrary provision in the Offer Document the Company will remain liable to the Client for any of the Services provided by subcontractors employed by the Company. **b)** Unless otherwise expressly agreed in writing, the Company will not engage a third party to act on behalf of the Client in connection with the Services. The Client will undertake any such engagement directly with the third party as principal, and the Client will be solely responsible for the work and fees of any other party engaged by the Client to participate in the Services regardless of whether such party was introduced to Client by the Company.

**14. Privacy of Personal Information:** **a)** The Client agrees to only disclose personal information (as that term is defined under the *Privacy Act 1988 (Cth)* (**Privacy Act**) to the company if necessary for the Company to perform the Services, and only if such disclosure by the Client will not infringe protections afforded by the Privacy Act to individuals about whom the personal information relates. **b)** If the performance of the Services requires a third party to the Offer Document to supply personal information to the Company on the Client's request, it is the Client's obligation to ensure the third party has satisfied the requirement of the Privacy Act and is permitted by the Privacy Act to disclose such personal information to the Company. **c)** If the Service requires the Company to collect personal information from a third party the Client will ensure such collection of personal information complies with the Privacy Act, and do and be responsible for, all things necessary (including obtaining appropriate consents) for the Company to collect such personal information. **d)** In the course of providing the Service the Company will collect personal and other information about the Client. This information may be shared between the Companies related entities and may also be disclosed to third parties where necessary to provide the Service. These third parties may include the Client's staff, associated entities, government departments, other professional advisors and Cloud based service providers. It may also be necessary to disclose personal information about the Client as a result of legal requirement. **e)** By engaging the Company to provide the Service, the Client consents to the collection and disclosure of personal information on the above terms, unless the Client informs the Company to the contrary.

**15. Term and Termination:** **a)** These Terms will apply from the commencement date stated in the Offer Document, or where no commencement date is specified, from the date of acceptance of the Offer Document. **b)** Subject to any statutory provisions that apply to the Services, either party may terminate the Service at any time by giving at least 30 days written notice to the other. On termination, the Client shall immediately pay on request all fees and expenses due in respect of the Service provided up to the date of termination and unless the Service is terminated for cause, the Client will pay the Company's reasonable costs and expenses incurred in connection with the termination of the Service. **c)** For the avoidance of doubt, the date of termination shall be the date on which any period of notice expires. **d)** On termination or completion of the Service, the Company may retain all working papers and documentation or software prepared by the Company and any other documentation on which the Services are based to enable the Company to maintain a professional record of its involvement. The Client may retain their originals and any copies of reports and letters made in accordance with the provisions of the Service. **e)** Termination of the Service shall be without prejudice to any accrued rights of both parties. **f)** The terms of the Offer Document which expressly or by implication are intended to survive any termination or expiry will survive and continue to bind the parties.

**16. Engagement Team:** **a)** The Company will use reasonable efforts to ensure individuals name in the Offer Document are available to perform the Services. If these persons are unable to perform the Service the Company will provide the Client with details of replacement staff. **b)** For the duration of the Service, and for a period of 12 months after its termination or completion, the Client will not; i) interfere or seek to interfere with the Company's relationship with any of its clients, employees or suppliers; and/or ii) employ, or procure a third party to employ, any employee of the Company who has taken part in the performance of the Service. **c)** If the Client offers employment to such an employee, and if the Company give consent and the employee accepts the offer, then the Client will pay a recruitment fee to the Company. The recruitment fee will be calculated at 30% of the relevant employee's gross annual salary package.

**17. Relationship with Other Clients:** The Company provides services to other clients, some of whom may be in competition with the Client or have interests which conflict with the Client. The Company will not be prevented or restricted by virtue of the Service under the Offer Document from providing services to other clients.

**18. Relationship with the Client:** The Client acknowledges and agrees the relationship with the Company is that of an independent contractor and is not a partnership, joint venture, fiduciary or employment relationship. Neither party may claim or make any representation whatsoever to any third party that it is an agent of, or in partnership with the other party and each party acknowledges that it has no power or authority to bind the other in respect of any matter whatsoever and it will not represent to any person that it has such power or authority.

**19. Client Restructure:** The Client shall notify the Company in writing of any change in its structure or management including any change in director, shareholder and /or management and /or any change in partnership and/or trusteeship within 7 days of each change. Until such notice is received the Client guarantees the performance of all obligations passing to any third party and fully indemnifies the Company against all loss (including all legal costs on an indemnity basis).

**20. Insolvency, Administration or Receivership:** **a)** If the Client commits or is involved in any act of insolvency, administration or receivership the Client shall be deemed to be in default under these Terms; **b)** An act of insolvency is deemed to include the appointment of any insolvency practitioner and the calling of any formal meeting of creditors.

**21. Waiver:** A failure or delay by a party in exercising a power or right given to it under these Terms does not operate as a waiver of that power or right; nor does a single or partial exercise of a power or right prevent any other or further exercise of it. A waiver by a party of a power or right given to it under these Terms does not affect any other provision of these Terms.

**22. Address for Service:** Any written notice to be given to a party may be delivered in person, by letter or by facsimile transmission, to: i) in the case of notices to the Company, to the address, clearly marked for the attention of the Client Manager, appearing in the Offer Document; and ii) in the case of notices to the Client, to the address last notified by the Client.

**23. Governing Law:** These Terms shall be governed by and interpreted in accordance with the laws of the State of in which the client resides and the Courts of that State shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning the Contract and any matter arising from it. The parties irrevocably waive any right they may have to object to any action being brought in those Courts, to claim that the action has been brought in an inconvenient forum or to claim that those Courts do not have jurisdiction.

**24. Disputes:** If any dispute arises between the parties, the parties will attempt to resolve the dispute in good faith by senior level negotiations. Where both parties agree that it may be beneficial, the dispute will be resolved through mediation.

**25. No Assignment:** Neither party may transfer, charge or otherwise seek to deal with the Company's rights or obligations under these Terms without prior written consent of the other party, except that either party may transfer their respective rights and obligations to any partnership or legal entity authorised to take over all or part of each parties business.

**26. Entire Agreement:** These Terms form the entire agreement between the parties relating to the Service. It replaces and supersedes any previous proposals, correspondence, understandings or other communications (written or oral).

**27. Validity of Terms and Severance:** If any provision of these Terms are held to be invalid, in whole or in part, such provision shall be deemed not to form part of, and will be severed from the Terms. The enforceability of the remainder of the Terms will not be affected.

**28. Conflicting Terms:** In the event of any conflict between the Offer Document these Terms, the Offer Document will take precedence.

**29. Other Terms and Conditions:** No terms and conditions sought to be imposed by the Client upon the company shall apply unless with the Company's prior written consent.