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Gunners
Business
Solutions

General Terms of Service

GUNNERS BUSINESS SOLUTIONS

TERMS OF SERVICE

1. GENERAL

The following Terms of Service (Terms) govern the terms on which Gunners Business Solutions Pty Ltd ABN 67 656 195 738 as Trustee for Gunners Business Solutions Trust ABN 51 963 713 878 (the Service Provider) agrees to provide the Services (as defined below) to you (the Client). If you are agreeing to these Terms on behalf of someone or entity, you represent and warrant that you have the irrevocable authority and agreement of that person or entity to be bound by these Terms.

These Terms and each accepted Statement of Work, together with any other terms we provide to you, set out the terms of our offer to provide Services to you and constitutes our agreement (together the Agreement).

2. APPLICATION

(a) This Agreement applies to all Services provided by the Service Provider to the Client at any time following the Commencement Date and will continue until terminated (Term).

(b) This Agreement, will become binding on the Client on the earlier of the date that:

(i) the Client indicates their acceptance to the terms (such as by accepting a Statement of Work);

(ii) the Client instructs the Service Provider to proceed with any Services; or

(iii) the Client pays any amount to the Service Provider in respect of the Services,

(iv) (the date being the Commencement Date).

(c) The Client cannot terminate this Agreement except to the extent as expressly permitted by this Agreement.

(d) Unless otherwise agreed all quotes are valid until the last business day of the month in which the quotation is dated, and will only become binding on the Service Provider when the Service Provider expressly acknowledges acceptance. Any fees stated in a quote are provided on the basis of the information current to the Service Provider at the date of the invoice. The Service Provider reserves the right to increase the fees where applicable in accordance with the terms of this Agreement.

(e) The Client acknowledges and agrees that the supply of Services remains subject to availability and if, for any reason the Service Provider is unable to proceed with the supply, the Service Provider reserves the right to cancel the Services (and issue a refund for the cancelled Services if applicable). This is the Client's only remedy in these circumstances and the Service Provider will not be liable to pay any other amount to the Client.

(f) No invoice, terms or other document issued by or on behalf of the Client (including the terms on any warranty or other agreement given to the Service Provider) will vary or form part of this Agreement unless otherwise agreed by the Service Provider in writing. This Agreement replaces and supersedes any invoice, terms or other document given by the Client to the Service Provider whether before or after the time that this Agreement is supplied to the Client.

3. SERVICES

3.1 ENGAGEMENT OF SERVICE PROVIDER

The Client engages the Service Provider, and the Service Provider accepts that engagement, to provide the services in accordance with the Agreement during the Term (Services).

3.2 SCOPE OF SERVICES

(a) The scope of the Services being provided is as agreed by the parties in a Statement of Work and/or as otherwise agreed in writing in accordance with the other terms of this clause. The Services may include:

(i) those Services quoted and set out in a Statement of Work; or

(ii) the provision of personnel of the Service Provider to provide Services as requested by the Client from time to time.

(b) The Client may request the Service Provider to provide extra services or make changes to the scope, which the Service Provider may accept or reject in its sole discretion. The Service Provider will advise the Client of any additional fees payable in respect of any extra services or changes and payment of fees is to be made in the same manner as Fees are due under this Agreement.

(c) The Statement of Work may contain additional terms which form part of this Agreement. In the event of any inconsistency between this Agreement and any Statement of Work, the terms contained in the Statement of Work will prevail to the extent of such inconsistency.

3.3 PERFORMANCE OF SERVICES

(a) The Services will be performed in the manner as set out in the Statement of Work and on and from the date as specified in the Statement of Work, or where no date is specified, then from a date as agreed between the parties.

(b) Although the parties may have agreed on the delivery schedule, the parties acknowledge and agree that:

(i) any times provided by the Service Provider to the Client in respect of the provision of the Services are variable and estimates only and are non-binding on the Service Provider. Whilst the Service Provider attempts to provide all Services at the agreed times, sometimes delays are inevitable and the Service Provider will not be responsible for any Losses suffered by the Client in the event of delay; and

(ii) failure of the Service Provider to meet any delivery date will not constitute a breach of this Agreement by the Service Provider or entitle the Client to any damages or other remedy.

4. PAYMENT

4.1 FEES

(a) In consideration of the Service Provider providing the Services to the Client, the Client agrees to pay the Service Provider the fees and any other consideration:

(i) in the amounts and in the manner as set out in a Statement of Work; or

(ii) if there is no fee amount set out or no Statement of Work is provided, then the fees will be determined based on the Service Provider's then current rate card on a time and materials basis,

(iii) (the Fees).

4.2 TIME FOR PAYMENT

The Service Provider will invoice the Client at those periods as specified in a Statement of Work, and payment of Fees is due in accordance with the payment terms specified in the Statement of Work, or where no times are stated then payment is due within 14 days of invoice.

The Client acknowledges that the Service Provider may not commence the provision of the Services until the first payment of the Fees is received.

4.3 LATE PAYMENT

If the Client fails to pay any amount when due under this Agreement, the Client acknowledges that the Service Provider may in its discretion:

(a) suspend the provision of the Services to the Client, and the Service Provider will not be responsible for any loss suffered by the Client because of this; and/or

(b) charge the Client interest calculated at 12% per annum which shall accrue daily and compound monthly in respect of the overdue amount from the due date for payment up to the date of actual payment of all amounts owed.

4.4 INCREASE IN FEES

On each anniversary of the Commencement Date, the Service Provider reserves the right to increase the Fees by way of a Fee review. The Service Provider will provide the terms of such increase to the Client not less than 90 days' prior to the expiry of the then current Term.

4.5 EXPENSES

Unless otherwise agreed:

(a) the Client will bear all travel, accommodation, computer storage, media and related expenses reasonably incurred by the Service Provider in connection with the Services at the rates as specified in the Statement of Work; and

(b) any third-party costs incurred by the Service Provider in the course of performing the Services may be billed to the Client, unless specifically otherwise provided for in the Statement of Work,

provided such expenses are approved by the Client in writing prior to their incursion.

4.6 SOFTWARE PURCHASES AND TERMS

(a) Where the Service Provider is purchasing software on behalf of the Client, the price for such software is as specified in the Statement of Work or as otherwise advised by the Service Provider to the Client from time to time.

(b) The Client acknowledges and agrees that third party terms & conditions may apply to any purchase of software (Third Party Terms).

(c) The Service Provider will endeavour to notify the Client of Third Party Terms that apply to the Services, in which case:

(i) the Client must immediately notify the Service Provider if they do not agree to the Third Party Terms; and

(ii) if the Service Provider does not receive a notice in accordance with this clause the Client will be taken to have accepted those Third Party Terms, and the Service Provider will not be liable for any loss or damage suffered by the Client in connection with such Third Party Terms.

(d) The Client acknowledges and agrees that if the Client does not agree to any Third Party Terms, this may affect the Service Provider's ability to perform the Services.

4.7 GENERAL

All Fees must be paid into the bank account nominated by the Service Provider or by any other means specified by the Service Provider.

The Client must pay the Service Provider all Fees and other amounts without set-off or claim under any circumstances, including if a dispute exists in relation to the Services provided.

To the extent permitted by law, all Fees are non-refundable.

4.8 DEFAULT IN TERMS

The Client will also pay to the Service Provider, on demand, on a full indemnity basis, all amounts that the Service Provider may, at its absolute discretion, expend or incur (including legal costs on a solicitor and own client basis) as a result of the Client defaulting on any of the terms of this Agreement.

4.9 GST

Unless otherwise indicated, amounts stated in the Statement of Work do not include GST. In relation to any GST payable for a taxable supply by Service Provider, the Client must pay the GST at the same time as payment of the Fees and any other amounts payable.

4.10 CARD SURCHARGES

The Service Provider reserves the right to charge a small administrative fee in the event payments are made using a credit, debit or charge card (including Visa, MasterCard, American Express or Diners Club).

5. SOFTWARE

5.1 If the provision of the Services includes the implementation and/or licence of software provided by third parties, then the following terms apply (together with the Third Party Terms). Such software is owned (or licenced) and operated by third party providers. To the extent permitted by law, such third party providers will be deemed to supply the third party software to the Client and not the Service Provider.

5.2 Any Third Party Terms are solely between the Client and the third party provider, the Service Provider is not a party to such arrangements.

5.3 As a result of the foregoing, the Service Provider has no control over and does not ensure, guarantee or provide any warranty or representation in respect of the quality, suitability, reliability, availability, fitness for purpose, legality, accuracy, completeness or otherwise of:

(a) the third party software; or

(b) the third party provider's ability to undertake their respective obligations.

5.4 Subject to the other terms of this clause and to the maximum extent permitted by any applicable laws, third party software is supplied by the Service Provider without warranty of any kind and the Service Provider expressly exclude such warranties. The Client acknowledges and agrees that:

(a) third party software is provided subject to the terms of the applicable third party provider;

(b) third party software is covered by the applicable third party provider's warranty and the Client must refer to the warranty details of such third party provider. The Service Provider does not provide any warranties in addition to the third party provider's warranty;

(c) the Client is solely liable for the Client's compliance with any copyright, trade mark and any other proprietary restrictions relating to such third party software;

(d) the Client must not misuse the third party software and must ensure use is compliant with such Third Party Terms;

(e) the Client assumes all responsibility and risk of use of any third party software;

(f) the Service Provider does not make any representations in relation to the continuing availability of the third party software and will not be liable for the third party software being unavailable or discontinued;

(g) the Service Provider does not promise that the third party software will be error-free, or that the Client's use of the third party software will provide any specific results; and

(h) the Service Provider does not represent or warrant that the third party software will be virus free or free of performance anomalies or be operational without interruption.

6. CLIENT OBLIGATIONS

6.1 PROVIDE INFORMATION

The Client must promptly provide the Service Provider with all documentation, information and assistance reasonably required by the Service Provider to perform the Services. Any delays may delay the provision of the Services and may incur additional charges. Where the Client fails to supply this information to the Service Provider, and that prevents the progress of the Services, the Client remains liable for all Fees.

6.2 ACCESS

The Client agrees to provide the Service Provider with access to the following (to the extent required for the performance of the Services):

(a) the Client's premises, systems and equipment (including through remote connection as required);

(b) the Client's source libraries, test systems and test data;

(c) the Client's personnel (as necessary to understand the current business systems and environments);

(d) the Client's digital account details (including login details and passwords);

(e) any other third party or other accounts used by the Client (including login details and passwords),

as reasonably required by the Service Provider to perform the Services.

Where the Client fails to grant the Service Provider with access in accordance with this clause, the Client remains liable for all Fees notwithstanding that the Service Provider may have been unable to provide the Services.

6.3 COMPLIANCE WITH LAWS

The Client agrees that it will not by receiving or requesting the Services:

(a) breach any applicable laws, rules and regulations (including any applicable privacy laws); or

(b) infringe the intellectual property rights or other rights of any third party or breach any duty of confidentiality.

7. PERSONNEL

7.1 The Client approves the Service Provider providing the Services through the Service Provider's directors, agents, employees and contractors/consultants (the Personnel).

7.2 In certain circumstances specific Personnel may not be able to attend to the provision of the Services (including those on site Services), and as such, the Service Provider reserves the right to replace Personnel in its discretion.

8. NON-SOLICITATION OF EMPLOYEES

(a) During the Term and for a period of 12 months thereafter, the Client must not, without the Service Provider's prior written approval:

(i) canvass, solicit, approach, interfere, or entice away, or attempt to canvass, solicit, approach, interfere, or entice away (or be knowingly involved in either employing or engaging) any officer, employee or contractor of the Service Provider (Restricted Staff), to leave their employment or engagement with the Service Provider or with a view to engage such Restricted Staff;

(ii) interfere in any way with the relationship between the Service Provider and its Restricted Staff; or

(iii) engage in any combination of the above activities.

(b) The Client acknowledges and agrees that:

(i) any combination of the acts in this clause would be unfair and calculated to damage the Service Provider;

(ii) the restraint provisions of this clause are reasonable in scope, duration and time, and reasonably necessary to protect the Service Provider's goodwill and legitimate interests and are not greater than is reasonably necessary for the proper protection of the legitimate interests of the Service Provider, given the nature of their business;

(iii) the Client has sought independent legal advice regarding the effect of the restraints provisions of this clause (or has had a reasonable opportunity to do so and has elected not to).

9. CONFIDENTIALITY

Except as contemplated by this Agreement, a party must not and must not permit any of its officers, employees, agents, contractors or related entities to use or to disclose to any person any Confidential Information disclosed to it by the other party without its prior written consent.

This clause does not apply to:

(a) information which is generally available to the public (other than as a result of a breach of these terms or another obligation of confidence);

(b) information required to be disclosed by any law; or

(c) information disclosed by Service Provider to its subcontractors, outsourced workers, employees, cloud storage providers or agents for the purposes of performing the Services or its obligations under this Agreement.

For the purposes of this clause, "Confidential Information" means information of or provided by a party to the other party under or in connection with this Agreement that is by its nature confidential information, is designated by the party as confidential, or the other party knows or ought to know is confidential, but does not include information which is or becomes, without a breach of confidentiality, public knowledge.

10. INTELLECTUAL PROPERTY

10.1 SERVICE PROVIDER IP

Unless otherwise expressly agreed in a Statement of Work, the Client will not under these terms or any Statement of Work acquire any Intellectual Property Rights in any Service Provider IP. The Service Provider retains ownership of all Service Provider IP at all times.

10.2 CLIENT CONTENT

The Client grants to the Service Provider (and its subcontractors, employees or agents) a non-exclusive, royalty free, non-transferable, worldwide and irrevocable licence to use the Client Content to the extent reasonably required to perform any Services.

The Client:

(a) warrants that the Service Provider's use of Client Content as part of the Services will not infringe any third-party Intellectual Property Rights; and

(b) will indemnify the Service Provider from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of such infringement.

10.3 DEVELOPED IP

The Client acknowledges and agrees that unless otherwise agreed by the parties in writing, all Developed IP (other than the Client Content) shall remain the sole and exclusive property of the Service Provider, whether such property is tangible or is in the nature of industrial and intellectual property rights.

The Service Provider grants to the Client a non-exclusive, royalty free, non-transferable, worldwide and irrevocable licence to use the Developed IP for the purposes for which the Developed IP was created for. This licence will not expire on termination of this Agreement.

10.4 DEFINITIONS

For the purposes of this clause 10 (and where used elsewhere in this Agreement):

(a) "Client Content" means any documents or materials supplied by the Client to the Service Provider under or in connection with this Agreement, including any Intellectual Property Rights attaching to those materials.

(b) "Developed IP" means any works, items, materials or information of whatever nature specifically produced or developed by the Service Provider or the Client directly in connection with the Services during the Term.

(c) "Intellectual Property Rights" means any and all present and future intellectual and industrial property rights throughout the world, including copyright, trade marks, designs, patents or other proprietary rights, confidential information and the right to have information kept confidential, or any rights to registration of such rights whether created before or after the date of this Agreement, whether registered or unregistered.

(d) "Service Provider IP" includes but is not limited to copyright, trade marks, patents, processes, know-how, designs and other like rights whether recorded in writing or otherwise and includes any of the following:

(i) anything created independently of the Services or prior to the Commencement Date;

(ii) information or data, source codes and other information technology relating to or connected with the Services;

(iii) advices, manuals and records relating to or connected with the Services;

(iv) technical information, including trade secrets, drawings, plans, encryptions, codes and product descriptions and information relating to or connected with the Services.

11. INSURANCES

11.1 The Service Provider represents and warrants that it will obtain and maintain for the Term those insurances contained in the Statement of Work.

12. LIMITATION OF LIABILITY

(a) To the maximum extent permitted by law and subject to the other terms of this clause, the total liability of each party in respect of loss or damage sustained by the other party in connection with this Agreement is limited to the amount paid by the Client to the Service Provider in the 3 months preceding the date of the event giving rise to the relevant liability.

(b) Nothing in this Agreement is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the ACL, or the exercise of a right conferred by such a provision, or any liability of the Service Provider in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of services.

(c) Where any law (including the ACL) implies a condition, warranty or guarantee which may not lawfully be excluded, then, to the maximum extent permitted by applicable law, the Service Provider's liability for breach of that non-excludable condition, warranty or guarantee will, at the Service Provider's option, be limited to the supply of the services again, or the payment of the cost of having them supplied again.

(d) To the maximum extent permitted by law, neither party will be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue in connection with this Agreement or any goods or services provided by the Service Provider, except:

(i) in relation to a party's liability for fraud, personal injury, death or loss or damage to tangible property; or

(ii) to the extent this liability cannot be excluded under the ACL.

(e) In this clause, "ACL" means the Australian Consumer Law (as set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth)).

13. TECHNICAL DISCLAIMERS

13.1 CLIENT CONTENT BACKUP

The Service Provider makes no guarantees that there will be no loss or corruption of Client Content at any time (including in any backups that it makes). Unfortunately, data loss happens and the Client holds harmless and releases the Service Provider for any loss the Client suffers in the event that the Client Content is lost.

13.2 CLIENT CONTENT DELETION

Although the Service Provider endeavours to provide Client Content to the Client on termination. The Service Provider may remove or delete the Client Content that it holds without notice to the Client following the termination or expiry of this Agreement. It is the Client's responsibility to backup or copy such data or request it prior to termination.

13.3 CLIENT CONTENT SECURITY

The Service Provider will maintain appropriate technical and organisational measures to protect the security of the Client Content. The Service Provider does not guarantee that unauthorised third parties will never be able to defeat those measures to access the Client Content for improper purposes. The Client acknowledges that there are risks inherent in internet connectivity that could result in the loss of privacy, confidential information and Client Content. Accordingly, any Client Content that is transmitted by the Client is transmitted solely at the Client's risk.

14. TERMINATION

14.1 TERMINATION WITH CAUSE

Either party may terminate this Agreement immediately by written notice to the other party if:

(a) the other party is in breach of any term of this Agreement and:

(i) fails to rectify the breach upon being given 7 days' written notice to do so; or

(ii) the breach is unable to be rectified;

(b) the other party becomes subject to any form of insolvency or bankruptcy administration.

14.2 EFFECT OF TERMINATION

(a) Upon termination of this Agreement:

(i) all amounts payable by the Client to the Service Provider become immediately due and owing (Outstanding Amounts); and

(ii) the Service provider will endeavour to provide all Client Content to the Client and then remove such Client Content.

(b) Once the Outstanding Amounts have been paid, the Service Provider will hand over any completed deliverables.

14.3 SURVIVAL

Any provision of this Agreement which, by its nature, would reasonably be expected to be performed after the termination, shall survive and be enforceable after such termination.

Termination of this Agreement shall be without prejudice to the rights and liabilities of the parties which arose prior to the termination.

15. DISPUTE RESOLUTION

(a) The parties shall endeavour to settle any dispute arising out of or relating to this Agreement, including with regard to its existence, validity or termination, by mediation administered by the Australian Disputes Centre (ADC) before having recourse to arbitration or litigation.

(b) The mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to ADC (Guidelines).

(c) The terms of the Guidelines are hereby deemed incorporated into this Agreement.

16. NOTICES

16.1 FORM OF NOTICE

A notice or other communication to a party under this Agreement must be:

(a) in writing and in English; and

(b) addressed to that party to:

(i) the postal address of that party; or

(ii) the email address of that party that has been regularly used by the parties to correspond during the term of this Agreement (unless such email address is known to be inactive by the party giving notice).

16.2 HOW NOTICE MUST BE GIVEN

A notice must be given by one of the methods set out in the table below and is regarded as given and received at the time set out in the table below.

Method	When Notice is regarded as given and received
By hand	On delivery
By pre paid post in the same country	On the third Business Day after the date of posting
By pre paid post in another country	On the fifth Business Day after the date of posting by airmail

By email to the nominated email address	Unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address, 24 hours after the email was sent.

17. FORCE MAJEURE

17.1 If a party (**Affected Party**) becomes unable, wholly or in part, to carry out an obligation under this Agreement or a Statement of Work (other than an obligation to pay money) due to an event beyond its reasonable control (**Force Majeure**), the Affected Party must give to the other party prompt written notice of:

(i) reasonable details of the Force Majeure; and

(ii) so far as is known, the probable extent to which the Affected Party will be unable to perform or be delayed in performing its obligation.

17.2 Subject to compliance with clause 17.1, the relevant obligation will be suspended during the Force Majeure to the extent that it is affected by the Force Majeure.

17.3 The Affected Party must use its best endeavours to overcome or remove the Force Majeure as quickly as possible.

18. GENERAL

18.1 GOVERNING LAW

This Agreement is governed by the law applying in Victoria, Australia.

18.2 JURISDICTION

Each party irrevocably submits to the exclusive jurisdiction of the courts of Victoria and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

18.3 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior consent of each other party (such consent not to be unreasonably withheld).

18.4 SEVERABILITY

If a clause of this Agreement or a Statement of Work is void or unenforceable it must be read down to the extent necessary to give it legal effect or severed from if it cannot be read down and the remaining part and provisions shall remain in full force and effect.

18.5 AMENDMENTS

This Agreement may only be amended by a document signed by each party.

18.6 WAIVER

No party to this Agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

18.7 FURTHER ACTS AND DOCUMENTS

Each party must promptly do all further acts and execute and deliver all further documents required by law or reasonably requested by another party to give effect to this Agreement.

18.8 CORPORATIONS ACT

Terms defined under the Corporations Act 2001 (Cth) assume the definition provided for such terms.

18.9 ENTIRE AGREEMENT

This Agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this Agreement.