

## TERMS OF TRADE

### 1. INTRODUCTION

#### 1.1 Interpretation

In these Terms and Conditions:

“**Associated documents**” means the Quote

“**Business Day**” means a weekday other than a public holiday

“**Momentum**” means MOMENTUM PTY LTD (ACN 127 502 710)

“**Goods**” means any product or service supplied by Momentum as part of the Works

“**Items**” means the equipment, the subject of the Works

“**GST**” means *A New Tax System (Goods and Services) Act 1999*

“**Interest Rate**” means the aggregate one and a half per-cent (1.5%) per month

“**Quote**” means the cost of the Work required to be done in order to fulfil the Customer’s instructions on the reverse of these Terms and Conditions or as otherwise agreed in writing between the parties

“**Works**” means the service provided by Momentum to the Customer in accordance with the Customer’s instructions

**1.2** If the day on which any act, matter or thing is to be done under this agreement is not a Business Day, that act, matter or thing must be done on the next Business Day

**1.3** For the avoidance of any doubt, “writing”, includes correspondence contained in email or facsimile form.

### 2. FEES AND CHARGES

#### 2.1 Quote

Momentum may give the Customer a Quote specifying:

- (a) the work required to be done in order to fulfil the Customer’s instructions; and
- (b) an estimate of Momentum’s charge for the performance of such work

#### 2.2 Acceptance by the Customer

Where Momentum has given the Customer a Quote:

- (a) The Customer shall accept the Quote by instructing Momentum (in writing) to commence the Works by signing and returning a true copy of the Quote;
- (b) Momentum need not commence work until the Quote has been accepted by the Customer;
- (c) Acceptance by the Customer of the Quote will constitute acceptance by the Customer of these Terms and conditions
- (d) The customer shall pay for the work in accordance with the Terms and Conditions herein.

In acceptance of the Quote, the Customer warrants that it has not relied on any representation by Momentum and its employees and agents other than as supplied in writing in the Quote or the Associated Documents.

### **3. CHARGES**

**3.1** If Momentum does not give the Customer a Quote for the Works, then the Customer shall be charged on an hourly basis or as otherwise agreed in writing between the parties.

#### **3.2 Invoice**

Subject to Clause 5.1, when the Works have been completed, Momentum will issue an Invoice to the Customer for the amount of the Quote or for the balance owing (or if no Quote was made, for an amount representing Momentum's charge for the Work in accordance with Clause 2.1) *and* for any of the additional charges as detailed in Clause 3.3.

#### **3.3 Additional Charges**

In addition to the amount of the Quote, or where no Quote was given, in addition to the amount representing Momentum's charge for the Work done, Momentum may charge to the Customer:

- (a) fees for any preliminary Work performed at the Customer's request;
- (b) fees for additional Work required to be done as a result of the Customer changing its instructions;
- (c) fees for Work which involves complex works not notified to Momentum before the Quote was prepared;
- (d) fees and other charges for Work required to be done urgently, including any overtime cost;
- (e) other charges, fees or disbursements referred to in these terms and conditions not specified in this clause.

### **4. RISK**

**4.1** The risk in the Items remains with the Customer at all times.

### **5. PAYMENT**

#### **5.1 Time for Payment**

The Customer must, within seven (7) days of the Customer receiving Momentum's Invoice, pay Momentum the total amount set out in the Invoice or in accordance with any other payment terms agreed to by Momentum in writing.

#### **5.2 Interest**

Momentum may charge interest at the interest rate on amounts not paid within the time specified in Clause 5.1.

#### **5.3 Advance and Progress Payments**

- (a) Momentum may, if it is of the view that completing the Works will take more than one (1) month, at any time before the Works are completed, issue one (1) or more Invoices for a proportion of the amount of the Estimate and require that proportion of the Estimate to be paid in advance of any further Work being done.
- (b) If the Works are suspended for more than thirty (30) days at the request of the Customer or as a result of something for which the Customer is responsible, Momentum may issue an Invoice for a particular sum (to be specified by Momentum) for the Work already done and for other costs incurred by Momentum (such as storage costs).

#### **5.4 Deposit**

Momentum may require a deposit from the Customer and, if such deposit is so requested by Momentum, the Customer acknowledges Momentum is under no obligation to commence any Works as requested by the Customer until the deposit is received by Momentum. In the event of default on the part of the Customer, Momentum shall be entitled to forfeit the deposit and claim for the balance owing on the order and for any other loss suffered by Momentum by way of any remedy available to it as provided in these Terms and Conditions or at law or in equity generally.

## 5.5 Damages

The Customer must pay to Momentum any costs, expenses or losses incurred by Momentum as a result of the Customer's failure to pay to Momentum all sums outstanding from the Customer, including and without limiting the generality of the foregoing, any debt collection and legal costs incurred in enforcing payment on a Solicitor and own client basis.

## 6. NON-PAYMENT

### 6.1 Retention of Ownership

Until the Customer has paid all sums outstanding in relation to the Works:

- (a) Title in any Goods shall not pass from Momentum to the Customer.
- (b) If the Items/Goods are in the Customer's possession, the Customer shall hold the Items/Goods as trustee for Momentum.
- (c) Momentum may call for and recover possession of the Goods (for which purposes Momentum's employees or agents may enter the Customer's premises and take possession of the Goods without liability to the Customer) and the Customer must deliver the Goods to Momentum if so directed by Momentum.
- (d) If the Items/Goods are in Momentum's possession, Momentum may retain possession of the goods indefinitely and/or sell the Items/Goods as set-off for moneys owed by Customer.

## 7. NO RELATIONSHIP OF AGENCY

The Customer acknowledges that at no time is there any relationship of agency with Momentum and that the Customer does not act as Principal and Momentum does not act as the Customer's Agent.

## 8. DISCLOSURE OF REFERRAL FEE/GRATUITY

The Customer acknowledges and accepts that Momentum may be offered a referral fee/gratuity by the contractor which may be up to 5% of the contract price.

## 9. LIABILITY

### 9.1 Non-Excludable Rights

The parties acknowledge that, under applicable State and Commonwealth law, certain conditions and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the Customer in relation to the provision of the Goods or of Services which cannot be excluded, restricted or modified by the Agreement ("Non-excludable Rights").

### 9.2 Disclaimer of Liability

(a) Momentum disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Customer, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-Excludable Rights. To the extent permitted by law, the liability of Momentum for a breach of a Non-Excludable Right *is limited*, at Momentum's option, to planning, liaising with Government and funding bodies, development of funding submissions and administrative support.

(b) Where the Customer alleges that Momentum is liable for negligence in relation to any services in accordance with this Clause 7.2, the Customer must provide to Momentum, reasonable proof that the loss and/or damage complained of was directly attributable to an act and/or omission of Momentum or to defective Goods supplied by Momentum, before any liability may be attributed to Momentum or any proceedings may be commenced against Momentum.

### 9.3 Indirect Losses

Notwithstanding any other provision of these Terms and Conditions, Momentum is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Customer for:

- (a) any increased costs or expenses on the part of the Customer;
- (b) any loss of profit, revenue, business, contracts, opportunity or anticipated savings;
- (c) any loss or expense resulting from a claim by a third party; or
- (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by Momentum's failure to complete or delay in completing or to deliver the Goods or in anyway connected to the supply of goods and/or services.

## 10. GENERAL MATTERS

### 10.1 No Waiver

A power or right is not waived solely because the party entitled to exercise that power or right does not do so. A single exercise of a power or right will not preclude any other or further exercise of that power or right or of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

### 10.2 Severability

Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

### 10.3 Governing Law and Jurisdiction

These Terms and Conditions are governed by the law in force in the State or Territory in which Momentum's premises are located and the parties submit to the non-exclusive jurisdiction of the courts of that State or Territory and any Courts which may hear appeals from those Courts in respect of any proceedings in connection with these Terms and Conditions.

## 11. GOODS AND SERVICES TAX

### 11.1 All Amounts are GST Inclusive Amounts

Unless otherwise stated, all amounts expressed or described in these Terms and Conditions are GST inclusive amounts.

### 11.2 Out-of-Pocket Expenses are GST Inclusive

All out of pocket expenses referred to in these Terms and Conditions are GST inclusive out of pocket expenses.

### 11.3 Momentum to Assist Customer

Momentum will do all things reasonably available to it to assist the Customer to claim on a timely basis any input tax credits (if any) the Customer may be entitled to claim for any acquisition of Goods and services from Momentum. This includes Momentum maintaining its registered status for GST purposes, and issuing tax invoices for supplies made under these Terms and Conditions on a timely basis as reasonably requested by the Customer.

## **12. SECURITY AND CHARGE**

The Customer hereby charges all property, both equitable and legal, present or future of the Customer in respect of any moneys that may be owing by the Customer to Momentum under the Terms and Conditions or otherwise and hereby authorises Momentum or its Solicitors to execute any consent form as its Attorney for the purpose of registering a Caveat over any real property owned by the Customer at any time or to register this Charge over assets of the Customer with the Australian Securities and Investments Commission.