Dapth Terms & Conditions

Dapth

Contents

1. Standard Terms and Conditions

1.1. Definitions

In these Terms and Conditions and any associated Dapth documentation:

"Additional Work" includes any work undertaken by Dapth as a consequence of the Client's variation, alteration or modification of its requirements in relation to the agreed Quote and associated Scope of Works.

"Business Day" means between 8.00am – 5.00pm Monday to Friday, excluding Saturday, Sunday and public holidays in Western Australia.

"Client" means any person or business who purchases services from Dapth and includes New Clients and Existing Clients and any agents and permitted assigns of Clients, New Clients and Existing Clients.

"Dapth" also referred to as the Company, ACN 625 522 376, with registered office address of Level 1/220 St Georges Terrace, Perth 6000 in the state of Western Australia.

"Deliverables" means the Services and work product specified in any Scope of Works to be delivered by Dapth to the Client, in the form and media specified in the Scope of Works.

"Existing Clients" are clients that have an ongoing relationship with Dapth and have had previous deliverable work.

"Force Majeure" means, but is not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, a pandemic declared by the World Health Organisation as a "public health emergency of international concern", acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

"GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999.*

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"Intellectual Property Rights" means intellectual property rights at any time protected by statute or common law, including copyright, trademarks, patents and registered designs.

"Invoice" means an invoice issued by Dapth to the Client that meets the requirements to constitute a Tax Invoice and does not include any statement of account that is not a valid Tax Invoice.

"Loss" includes, but is not limited to, costs (including party to party legal costs and Dapth's legal costs), expenses, lost profits, award of damages, personal injury and property damage.

"New Clients" are those that have not had any previous deliverable work from Dapth.

"Open-Source Software" means computer software that is available in source code form for which the source code and certain other rights normally reserved for copyright holders are provided under a software licence that permits users to study, change, and improve the software.

"Payment Schedule" the structured plan outlining the dates and amounts for payments that need to be made by the Client.

"Preliminary Work" means any and all work performed by Dapth at the Client's express or implied request, of which the work was necessary to enable the required Services to commence, and which the work was not within the reasonable contemplation of Dapth at the time when Dapth supplied the Quote.

"Quote" means a written description of the Services to be provided, an estimate of Dapth's charges for the performance of the required work and an estimate of the time frame for the performance of the work, as described in clause 3 of these Terms and Conditions.

"Scope of Works" is a formal document that defines the entire scope of the work involved for the Client and clarifies associated deliverables, costs, and approximate timeframes.

"Services" means the services to be provided by Dapth to the Client in accordance with a Quote/Scope of Work and these Terms and Conditions.

"Terms and Conditions" means the terms and conditions of Services as set out in this document, and any special terms and conditions agreed in writing by Dapth.

"Trademarks" means trade names, words, symbols, designs, logos or other devices or designs used in the final Deliverables.

"Website" means dapth.com, or as directed from time to time.

1.2. Interpretation

In these terms and conditions, unless the context otherwise requires:

(a) a reference to writing includes email and other written communications (if any);

(b) the singular includes the plural and vice versa.

(c) a reference to a clause or paragraph is a reference to a clause or paragraph of these Terms and Conditions;

(d) a reference to a party to these Terms and Conditions or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;

(e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

(f) headings are for ease of reference only and do not affect the meaning or interpretation of these Terms and Conditions; and

(g) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:

    (i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and

    (ii) in all other cases, must be done on the next Business Day.

1.3. General

(a) These Terms and Conditions shall apply to all work agreed to in writing by the Client for the supply of Services by Dapth to the Client and shall prevail over any other documentation or communication from the Client.

(b) Any variation to these Terms and Conditions shall be inapplicable unless agreed in writing by Dapth.

(c) The Client authorises Dapth to perform the Services outlined in the Quote/Scope of Works on the Client's behalf, which may include, but is not limited to, accessing the Client's hosting account and disk space, creating databases and applications and submitting the project to search engines.

(d) The Client agrees to be bound by these Terms and Conditions where it continues to request Services from Dapth, and the Client has previously agreed to be bound by the Terms and Conditions in the manner acceptable to Dapth.

(e) Dapth may amend any details in a Quote by notice in writing to the Client before such time as the Quote has been accepted by the Client. Such amended details supersede any relevant prior detail in dealings between the parties.

2. Quotes

(a) Dapth to Supply Quote

Dapth may, if requested by the Client, give the Client a quote specifying:

- the work required to be done in order to fulfill the Client's instructions;
- an estimate of Dapth's costs for the delivery of the work. All costs, costs estimates and Quotes are exclusive of GST; and
- an approximate production schedule outlining the approximate timeframe expected to complete the Services.

(b) Acceptance by Client

Where Dapth has given the Client a Quote:

- In order to accept the Quote, the Client must sign the quote.
- Once accepted, the Quote and these Terms & Conditions define the agreement for your project and the initial Scope of Works. Any prior arrangements, agreements, representations or undertakings in relation to the Quote are superseded and any modification or alteration to any provision of the quote will not be valid unless made in writing and signed by Dapth and the Client.
- By signing and accepting the Quote, as the Client Representative, you confirm that you possess the authority on behalf of the business to enter into this agreement and consent to these terms and conditions.

- On accepting a Quote, the Client commits to pay for the work in accordance with the details in the Quote, or Payment Schedule in accordance with these Terms and Conditions.
- The Client understands and acknowledges that where a Quote or Scope of Works provides an approximate timeframe for the provision of Services, this is an estimate only and not a fixed timeframe. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding upon Dapth.
- On acceptance and signature of the Quote, Dapth will schedule in the work required to perform the Services and will inform the Client of the approximate commencement date. Dapth will not commence work until this time. Dapth may request a percentage of the total amount of the Quote before commencing the Services. Work will not commence until Dapth has received the required amount, see clause 8(a).
- Dapth's pricing as per a Quote is valid for 30 days.

(c) Estimated Costs in Quote
- Dapth in some instances will provide estimated costs when an initial scoping piece of work is required before any other works can be quoted accordingly, or where the Client's requirements are ambiguous in nature and therefore offer degrees of variability until an initial workshop can take place.
- In these instances, a Quote will represent the cost for the initial scoping or workshop work, and the Client is required to instruct Dapth in writing to commence this work. Once the initial work has taken place, then Dapth will produce a full Quote for the work required to be done in order to fulfill the Client's requirements. This Quote may then be accepted pursuant to the requirements in clause 2(b) of these Terms and Conditions.

(d) Variations and Additional Costs
In addition to the Quote, or an estimated Quote where an estimate is provided in accordance with clause 2(c) of these Terms and Conditions, Dapth may charge to the Client:
- Fees for any Preliminary Work performed at the Client's request.
- Fees for Additional Work required to be done as a result of the Client changing their instructions. The Client will be advised of all costs, changes and additions in writing before commencement of any Additional Work.
- Fees and other charges for work required to be done urgently, including any associated overtime costs.
- The Quote/Statement of Works will name the Client's business project/account managers ("Client Representatives") that Dapth will be working with while providing the Services to the Client. In the event that the Client elects to change their Client Representative, or engage a third party or third parties to manage the project being undertaken by Dapth, and this change results in extra time spent or expenses incurred by Dapth (for example, where Dapth are required to attend meetings with the new project manager to discuss matters already discussed with the Client Representatives), Dapth reserves the right to charge additional fee.
- The Quote will specify how many meetings with Client Representatives are required in order for Dapth to undertake the Services. In the event that the Client requires additional meetings not provided for in the Quote or requires Dapth to travel distances to attend meetings that were not anticipated and provided for in the Quote, Dapth will charge additional costs associated with such meetings.
- Production schedules will be established and adhered to by both the Client and Dapth. Where production schedules are not adhered to by the Client, the final delivery date or dates for completion of the Services will be adjusted where possible. Additional Costs may be charged for Client delays if the delays result in an increase in time to manage or deliver the Services.

- Unless specified in the Quote, fees for Services do not include outside purchases such as, but not limited to, software licensing, hosting, copyright licensing, printing, photography, content writing and content/imagery upload. Expenses where incurred will be itemised on each Invoice (and are subject to GST).
- Any hardware or software purchases will be the responsibility of the Client unless instruction is given to Dapth to undertake this, for which an associated cost will be charged to the Client.
- Products purchased directly by the Client without prior consultation with Dapth or that are ordered incorrectly by the Client from external supplier/s may create delays to the performance of the Services. Where possible Dapth will remain flexible to accommodate issues arising from the delivery or quality of external products. However, significant delays may require a variation document to be raised against the Scope of Works as Additional Costs may be incurred.

(e) Revision of Works and Change Management
In line with this Agreement, if the Client requests changes or additional works beyond the original Scope of Works, the following terms will apply:
- Time required by Dapth to prepare a revised Quote for any Revision of Works will be considered part of the project timeline.
- Any changes necessitate a new, independent Quote, outlining the revised scope, timeline adjustments, and additional costs. This Quote forms a standalone agreement, requiring the Client's signed acceptance.
- Upon acceptance of the additional Quote, Dapth will reschedule the project, considering current resource availability and project commitments. This will result in an adjusted project timeline.
- The Client may request that any additional works or revisions occur post the main project's completion to avoid impacting the original timeline. In such cases, these works will be scheduled accordingly, following the completion of the main project.

The Client acknowledges that revisions will result in adjustments to the project timeline and will incur additional costs, as detailed in the new quote. All provisions in clause 2(b) of these Terms and Conditions will apply to the Revision of Works.

(f) Project Methodology and Pricing Structure
Dapth employs two distinct project methodologies, each with its own pricing structure:
- Agile/Time-and-Materials approach projects are managed using agile principles, allowing for flexibility in scope and deliverables. Costs are based on the time and materials used, invoiced at regular intervals as detailed in the Quote. This approach is suited for projects where the scope is expected to evolve over time.
- Fixed Cost Approach projects consist of a well-defined scope and deliverables. The total cost is agreed upon in advance and detailed in the Quote. This approach provides certainty in budgeting and is ideal for projects with clear, unchanging requirements.

For details on how revisions to the project scope, including changes or additional works, are managed under each methodology, refer to Clause (e) "Revision of Works and Change Management". This clause outlines the process and implications of scope changes, including the impact on project timelines, costs, and the need for a revised quote, in accordance with the selected project methodology.

3. Client Responsibilities

(a) Update, Editing or Altering of Digital Solutions
If the Client or an agent or employee of the Client attempts to update, edit or alter any of the digital solutions delivered by Dapth in a way that causes damage and requires time to repair the issues caused, this will be assessed by Dapth and charged accordingly.

(b) Non-Standard Hardware and Software
Appropriate non-standard hardware and software where required as stated in the Quote will be procured by the Client and made available to Dapth staff working on the project. Unless instruction is given to Dapth to undertake this, for which an associated cost will be charged to the Client.

(c) Remote Access
Remote access and appropriate privileges will be granted by the Client to allow Dapth to configure and monitor the digital services as required, and/or access to the relevant staff members of the Client to undertake the work on Dapth's behalf depending on security implications.

(d) Key Project Resources
Key project resources from the Client must be readily available, and information and approval of decisions must be provided by the appropriate staff or Client Representative in a timely manner.

(e) Access to Client Staff
Dapth must have access to the Client's key stakeholders for review and sign-off of key decisions and documents in a timely manner.

(f) Access to Documentation
Dapth requires access to any functional or technical documentation relating to any current technical environments if applicable. Access is to be provided to the relevant Client documentation in a timely manner to elicit or confirm requirements, design, or implementation aspects of digital solutions.

(g) Access to Technical Environments
Dapth will be provided with access to the relevant technical environments to review any existing systems pertaining to any proposed solutions. This will be subject to compliance with data privacy and confidentiality obligations under law and any Client customer contracts.

(h) Access to Internal and External Client Suppliers
Dapth may require access to or be dependent on the Client's internal and external suppliers ("third parties") for certain information and services. It is the responsibility of the Client to manage a continuous and effective interface with these third parties to ensure that Dapth are able to provide their Services, and not impact on the Scope of Works.

(i) Domain Names
Where relevant, the Client warrants that all domain names used by the Client are legally owned by the Client. The Client agrees to manage their domain(s) and pay all associated fees unless the Client requests in writing that Dapth manage the domain name(s) on behalf of the Client. Where this is part of the Scope of Works, Dapth will invoice the Client when fees are due. The Client acknowledges that all domain name registrations are subject to availability and registration rules.

(j) Management of Domain Names
The Client acknowledges that Dapth employs a third-party service for domain name management. In cases where Dapth handles the Client's domain name(s), the Client agrees to comply with the third party's 'Domain Name Registration Terms'. Additionally, the Client indemnifies Dapth against any loss incurred, directly or indirectly, due to any failure of services provided by the third party.

(k) Hosting
The Client is responsible for contacting the chosen host for support relating to hosting matters relevant to Dapth performing the Services. If Dapth is required to liaise with the hosting company directly, Dapth will charge additional amounts for costs incurred liaising with the hosting company and supporting the Client with hosting related issues.

(l) Differences or Restrictions to Hosting Environments
Dapth places estimates on deployment of software based on complete, unrestricted access to the deployment environment. Dapth will charge additional amounts for costs incurred due to differences in hosting environments, or restrictions applied by the Client on Dapth if installation and management exceeds estimated timeframes.

(m) Testing and Acceptance of Digital Solutions
Within each Quote, or as a standalone document, associated functional and non-functional requirements will be produced. Once the testing of these requirements has been completed, Dapth will support the Client through the User Acceptance Testing ("UAT") stage, where the Client will be responsible to test and review the functionality delivered. This needs to be completed within the specified timeframe as outlined in the Quote. If a delivered requirement does not satisfy the functional requirement as detailed in the signed off functional and non-functional requirements document, Dapth agrees to carry out any necessary and reasonable modifications to rectify the requirement without extra charge. If, however, it is identified that the failed requirement is the result of actions taken by the Client, the resolution of the requirement will be charged and invoiced accordingly.

(n) Errors and omissions
Dapth is not liable for errors or omissions due to lack of information provided by the Client. It is the Client's responsibility to check the validity of, and review all associated documentation provided to Dapth, to ensure it conforms to the Client's expectations. The Client indemnifies Dapth against any Loss arising directly or indirectly from any errors and omissions due to lack of information, misinterpretation, or miscommunication. If any errors or omissions are caused by Dapth, then Dapth shall take steps at no additional cost to the Client to rectify such errors or omissions.

(o) Content
Unless otherwise stipulated in the Quote, Dapth is not responsible for content being added to any digital solution during the course of, or on the completion of, the Deliverable(s) nor accountable for incorrect use of the content provided. Dapth will add enough content to a digital solution to demonstrate specific functionality only.

(p) Branding
Where required, all logos and branding provided to Dapth by the Client must be provided in an industry standard vector format (preferences are EPS, PDF, Illustrator).

(q) Technical
Unless otherwise stipulated in the Quote, the Client is responsible for all technical licencing, environments, and services utilised by any digital solution delivered. Dapth will provide required, relevant technical information to the Client based on the solution to be implemented for the purpose of procuring the required licences to be used with the associated solution. Dapth recommends that the Client undertake independent security, penetration and vulnerability testing after the deployment to

production of any digital solution, and to continue security testing periodically, unless otherwise requested by the Client that Dapth undertake these on behalf of the Client, at the cost to the Client. Dapth will adhere to common security practices in relation to the development of all solutions.

(r) Decommissioning
In the event that a commissioned digital solution replaces an existing digital solution, the decommissioning of the current solution is entirely the responsibility of the Client unless otherwise specified in the Quote.

(s) Open-Source Software
Dapth makes extensive use of Open-Source Software and components to supply solutions and perform the Services for the Client. Dapth will not charge additional licensing fees on Open-Source Software. The Client indemnifies Dapth against any Loss arising directly or indirectly from any failure of Open-Source Software supplied to the Client. All software and components not developed by Dapth retain the original licence and terms associated with them. Dapth cannot assign any rights to the Client and the Client agrees to be bound by the original author's terms.

(t) Promotion
The Client agrees to allow Dapth to retain credit and a link to Dapth's website from a page nominated by the Client. The Client acknowledges that Dapth reserves the right to reference the Client's solution, associated graphics and any unused ideas and development in the promotion of Dapth's Services subject to adherence to the Client's logo style guide, unless a Client customer contract prohibits such association, in which case the Client shall so inform Dapth.

4. Agency and Assignment

(a) Dapth reserves the right to use subcontractors, external suppliers or agents ("third parties") in performing the Services. Any such third parties will be bound to these Terms and Conditions. Where any such third parties will have access to personal information of the Client or its customers, Dapth will obtain consent from the Client before any third parties view such information.

(b) Where third parties are engaged or consulted to provide information and/or services in order for Dapth to provide the Services outlined in the Quote, Dapth does not warrant or guarantee any work undertaken by such third parties and will not be responsible for any loss suffered by the Client as a result of any failure or delay by a third party.

(c) Dapth has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these Terms and Conditions provided that the assignee agrees to assume any duties and obligations of Dapth owed to the Client under these Terms and Conditions.

(d) The Client is not to assign, or purport to assign, any of its obligations or rights under these Terms and Conditions without the prior written consent of Dapth.

5. Intellectual Property

The Client acknowledges that Dapth owns all intellectual property rights in the material, ideas, concepts, or techniques shared with the Client throughout the delivery of Services and that the Client will not use, copy, reproduce or disclose the material, ideas, concepts or techniques of Dapth without Dapth's prior approval in writing.

6. Copyright

(a) General
The Client is responsible for ensuring it has permission to use all Trademarks, service marks, copyright and patents necessary for Dapth to perform the Services. The Client is also responsible for arranging, prior to publication, any necessary legal clearance of materials Dapth uses in performing the Services. The Client indemnifies Dapth against

any Loss arising directly or indirectly from any unauthorised use of photographs, text, or other Intellectual Property not under copyright ownership of the Client. Dapth shall ensure that all staff have waived any claims of moral rights over any Intellectual Property created for or on behalf of the Client.

(b) Project Copyright
After acceptance of the Quote and the payment of all sums due by the Client, Dapth agrees to irrevocably assign exclusive perpetual and unrestricted copyright to use any materials produced by Dapth as outlined in the Quote to the Client including exclusive usage rights to unique graphics.

7.   Limitation of Liability

(a) Dapth shall not be liable for any Loss suffered by the Client howsoever caused, as a result of any negligence, breach of contract or otherwise of the Client or a third party in performance of the Services.

(b) Dapth shall not be liable under any circumstances to the Client or any third party for any indirect or consequential loss of profit or other economic loss suffered by the Client howsoever caused, as a result of any negligence, breach of contract, misrepresentation or otherwise by the Client or any third party.

(c) The Services and the work produced by Dapth are sold "as is." In all circumstances, the maximum liability of its designers, directors, officers, employees, design agents and affiliates ("**Dapth Parties**"), to the Client for damages for any and all causes whatsoever, and the Client's maximum remedy, regardless of the form of action, whether in contract, tort or otherwise, shall be limited to the net cost of this project as specified in the Quote.

(d) In no event shall Dapth be liable for any lost data or content, lost profits, business interruption or for any indirect, incidental, special, consequential, exemplary, or punitive damages arising out of or relating to the materials or the Services provided by Dapth, even if Dapth has been advised of the possibility of such damages, and notwithstanding the failure of essential purpose of any limited remedy.

8.   Invoicing and Payment

(a) Invoices
- The Client agrees to pay Dapth in accordance with the terms specified in the Quote, Payment Breakdown, Payment Schedule, or Statement of Works, irrespective of any client-side delays.
- For new clients or as deemed necessary by Dapth, an invoice for a percentage of the total quote will be issued before commencing services. Work will not commence until this deposit is received.
- Dapth will issue invoices regularly, based on the time and resources utilised as the project progresses. At any point before the completion of the Services, Dapth may issue one or more interim invoices, proportionate to the amount of work completed as per the Quote. The specific proportion and timing of these invoices are at Dapth's discretion. The Client is expected to settle these invoices as per the specified terms to facilitate the ongoing progress of the work.
- Once the Services are complete and associated testing has passed, the Client is required to pay the final Invoice.
- If User Acceptance Testing (UAT) is delayed due to the Client's actions or inactions, the invoice must still be paid within the terms specified.
- Under no circumstances shall a client be permitted to defer payment on an invoice in the event of work delays resulting from actions by the client. The payment schedule and terms specified in the original quote must be strictly observed and adhered to.
- The Client and Dapth agree to comply with their obligations in relation to the GST Act and any other applicable legislation governing GST.

(b) Invoicing and Overdue Amounts

Overdue amounts shall be charged at the rate of 7% per annum which interest will begin to accrue 30 days from the date of issue of an Invoice calculated daily.

(c) Non-Payment
- If the Client fails to pay an Invoice by the due date, Dapth reserves the right to withhold the provision of further Services, withdraw the solution reached through their performance of the Services, as well as remove or withdraw all associated materials or refuse completion and/or delivery of work until past due balances are paid. All materials or property belonging to the Client, as well as work performed, may be retained by Dapth as security until all just claims against the Client are satisfied.
- In the event of cancellation of the project prior to completion of the Services, the Client must pay Dapth a fee for work completed, based on the accepted Quote price and any expenses already incurred by Dapth, such amount to be calculated by Dapth.
- Dapth may in its complete discretion apply any payment received from the Client to any amount owing by the Client to Dapth.
- All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of Dapth, are to be paid by the Client as a debt due and payable under these Terms and Conditions.
- The Client is not entitled to retain any money owing to Dapth notwithstanding any default or alleged default by Dapth of these Terms and Conditions, including (but not limited to) the provision of Services to what the Client considers to be an inadequate standard or a delay in the provision of Services. Nothing in this paragraph affects the Client's rights for any alleged failure of a guarantee under the Australian Consumer Law.

9. Termination
(a) Either party may terminate the Services by giving 30 days written notice to the other of such termination.
(b) In the event that the Services are postponed or terminated at the request of the Client, Dapth shall have the right to pro rata Invoice for work completed through to and including the date of that request, while reserving all rights under these Terms and Conditions.
(c) In the event that the Services are terminated by Dapth, Dapth will issue an Invoice to the Client for the portion of the Services performed up to and including the date of the termination. The Client shall have no further recourse to Dapth relating to Dapth's termination of the Services.
(d) If additional payment is due by the Client on termination of the Services by either the Client or Dapth, this shall be payable within 14 days of the termination.
(e) Any amounts due by the Client to Dapth pursuant to clauses 10(b) and 10(c)of these Terms and Conditions that remain unpaid within 14 days of the issue of an Invoice will accrue interest at the amount of 7% per annum, calculated daily.
(f) All costs and expenses incurred by Dapth associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of Dapth and interest, are to be paid by the Client as a debt due and payable under these Terms and Conditions.

10. Warranties
Each of Dapth and the Client warrants to the other that:
(a) it has good and sufficient corporate power and authority to execute the Quote and perform the associated and required obligations;
(b) the Quote has been duly authorised and executed and when signed by the Client, constitutes a legally binding agreement in accordance with these Terms and Conditions; and
(c) the Deliverables provided or performed by Dapth pursuant to the Quote will be provided or performed with due care and skill.

11. Confidentiality and Communications

(a) Confidentiality

The parties agree to hold each other's Proprietary or Confidential Information in strict confidence. "**Proprietary or Confidential Information**" shall include, but is not limited to, written or oral contracts, trade secrets, know-how, business methods, business policies, memoranda, reports, records, computer retained information, notes, or financial information. Proprietary or Confidential Information shall not include any information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of the receiving party; (ii) was previously known to the receiving party or rightly received by the receiving party from a third party; (iii) is independently developed by the receiving party; or (iv) is subject to disclosure under court order or other lawful process. The parties agree not to make each other's Proprietary or Confidential Information available in any form to any third party or to use each other's Proprietary or Confidential Information for any purpose other than as specified in these Terms and Conditions. Each party's Proprietary or Confidential Information shall remain the sole and exclusive property of that party. The parties agree that in the event of use or disclosure by the other party other than as specifically provided for in these Terms and Conditions, the non-disclosing party may be entitled to equitable relief. Notwithstanding termination or expiration of this these Terms and Conditions, Dapth and the Client acknowledge and agree that their obligations of confidentiality with respect to Proprietary or Confidential Information shall continue in effect for a total period of three (3) years from the date the Quote is accepted by the Client.

(b) Electronic communications

- As part of our services, Dapth may communicate with the Client and with others on the Client's behalf by email or other electronic means. Information which is electronically transmitted cannot be guaranteed to be secure or error free. Dapth will take all steps necessary to ensure that documentation is sent to the Client in the most secure method available to us.
- Dapth acknowledges that our website contains links to other websites over which Dapth has no control, and which are governed by their own privacy and other policies.
- Dapth are not liable to the Client in respect of any loss, damage, error or omission arising from or in connection with the electronic communication of information to or from the Client.

    The Client agrees to indemnify and release Dapth from all claims arising from the use of email and electronic communications with the Client or the communications we undertake in the course of acting for the Client on this matter with other parties.

12. Conflict Resolution

(a) These Terms and Conditions are reliant upon the goodwill of both parties. Attempts will be made by both parties to resolve any disputes, misunderstandings or disagreements amicably and in the best interests of both parties.

(b) Where, in the opinion of Dapth, a conflict is not able to be resolved by the Client and Dapth, Dapth may terminate their Services with the Client and the Client shall be liable to pay all fees up to and including the date of termination, plus any additional fees incurred by Dapth in seeking recovery of all outstanding amounts.

(c) If the Client and Dapth are unable to resolve a dispute between the parties, the following procedure applies:

> > **(i)** A party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this clause.
> >
> > **(ii)** A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this paragraph.
> >
> > **(iii)** A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this paragraph.
>
> **(d)** If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within twenty Business Days (or other period as agreed).
>
> **(e)** Unless otherwise agreed by the parties, where any dispute cannot be settled by negotiation between the parties or their representatives, the parties expressly agree to endeavour to settle the dispute by mediation administered by the Australian Disputes Centre ("**ADC**") before having recourse to arbitration or litigation. The mediation must be conducted in accordance with the ADC Guidelines for Commercial Mediation ("**Guidelines**") which operate at the time the matter is referred to the ADC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated into these Terms and Conditions. This paragraph survives termination of these Terms and Conditions.
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> **(f)** Notwithstanding the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these Terms and Conditions.
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> **(g)** The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

13. Indemnity

> **(a)** The Client indemnifies and keeps indemnified Dapth, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Client) against Dapth, or for which Dapth is liable, in connection with any Loss arising from or incidental to the provision of Services or the subject matter of these Terms and Conditions.
>
> **(b)** This includes, but is not limited to, any legal costs incurred by Dapth in relation to meeting any claim or demand or any party/party legal casts for which Dapth is liable in connection with any such claim or demand.
>
> **(c)** This provision remains in force after the termination of these Terms and Conditions.

14. Miscellaneous

> **(a)** These Terms and Conditions are governed by the laws of Western Australia and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that state.
>
> **(b)** These Terms and Conditions and any Quotes and written variations agreed to in writing by Dapth represent the whole agreement between the parties relating to the subject matter of these terms.
>
> **(c)** These Terms and Conditions supersede all oral and written negotiations and communications by and on behalf of either of the parties.
>
> **(d)** Dapth may in its absolute discretion at any time and from time to time without notice to the Client amend or vary these Terms and Conditions by posting the amended or varied terms and conditions on the Website. The amended or varied terms and conditions will take effect 14 days after they are posted on the Website or such longer period as may otherwise be advised. Any amendment or variation of the Terms and

Conditions will not adversely affect a Client with respect to a valid Quote or Order that has already been entered into with Dapth as at the time of the amendment or variation.

(e) In entering into these Terms and Conditions, the Client has not relied on any warranty, representation or statement, whether oral or written, made by Dapth or any of its employees or agents relating to or in connection with the subject matter of these Terms and Conditions.

(f) If any provision of these Terms and Conditions at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.

(g) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

(h) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quote (or as varied pursuant to this paragraph) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Quote, or sent by email to the email address of the addressee specified in the relevant Quote with acknowledgement of delivery.

(i) A notice or other communication is taken to have been given (unless otherwise proved), if delivered personally (including by courier), when given to the intended recipient or left at the address specified in the Quote, if mailed, on the fifth Business Day after posting, if sent by fax on acknowledgment of receipt from the facsimile machine of the addressee, or if sent by email the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email.

(j) A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.

(k) In the event of any clause or part of a clause of these Terms and Conditions being invalid, illegal, unlawful or otherwise being incapable of enforcement, that clause or part of that clause shall be deemed to be severed from these Terms and Conditions and of no force and effect, however all other clauses and parts of clauses of these Terms and Conditions shall nevertheless prevail and remain in full force and effect and be valid and fully enforceable and no clause or part of a clause of these Terms and Conditions shall be construed to be dependent upon any other clause of part of a clause unless so expressed herein. If a Force Majeure event occurs and due to this event, Dapth is unable to provide the agreed Services, Dapth is free from any obligation to provide the Services while those circumstances continue. Dapth may elect to terminate their agreement with the Client or keep the agreement afoot until such circumstances have ceased.