



CONDITIONS OF AGREEMENT

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this agreement:

CCA means Schedule 2 to the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the applicable fair-trading legislation in the State or Territory in which this agreement is entered into, as applicable.

Additional Provisions means the additional provisions set out in item 8.

Business Day means:

- (a) for the purposes of clause 13.5, a day on which banks are open for business in the city where the notice or other communication is received excluding a Saturday, Sunday or public holiday; and
- (b) for all other purposes, a day on which banks are open for business in the State excluding a Saturday, Sunday or public holiday.

Claim means any claim or cause of action in contract, tort, under any legislation or subordinate legislation, or otherwise.

Client Group means the Client and each of its Related Bodies Corporate and **Client Group Member** means any member of the Client Group.

Client's Obligations all of the liabilities, obligations and requirements (whether express or implied) from time to time imposed on, or assumed by, the Client:

- (c) under this deed, or arising from this deed; or
- (d) under any law relating to;
 - (1) this deed; or
 - (2) anything the Client must do under this deed.

Confidential Information means any information:

- (e) relating to the products and services, business and affairs, or any customers, clients, employees, subcontractors or other persons doing business with or of that party;
- (f) relating to the provisions of this agreement or the commercial arrangements between the parties;
- (g) that is by its nature confidential, designated as confidential by that party, or which the other party knows, or ought to know, is confidential.

Commencement Date means the date in item 3.

Consumer has the same meaning as in section 3 of the CCA.

Consumer Guarantee means a consumer guarantee (as defined in the CCA) applicable to any contract under the CCA.

Corporations Act means the Corporations Act 2001 (Cth).

Default means a breach by a party of, or failure by a party to comply with, that party's obligations under, any of the provisions of this agreement including a failure by the Client to comply with the Client's Obligations or by Wilson to comply with Wilson's Obligations.

Excluded Services means the matters listed in item 4

Fair or Reasonable means 'fair or reasonable' for the purposes of section 64A of the CCA.

Force Majeure Event means any storm, earthquake, strike, lock-out, labour dispute, act of God, war (whether declared or not), act (administrative or legislative) of any Government or Government Agency, riot or civil commotion, fire, explosion or mechanical break-down but does not include lack of funds for any reason.

Government Agency means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, local government, authority, tribunal, agency or entity.

Initial Period means the period specified in item 3.

Insolvency Event in the context of a person means:

- (a) a receiver, receiver and manager, official manager, trustee, administrator, other controller (as defined in the Corporations Act) or similar official is appointed, or steps are taken for such appointment, in respect of that person or over any of the equipment or undertaking of the person;
- (b) the person is or becomes insolvent, is unable to pay its debts when they are due, or is or becomes unable to pay its debts or is presumed to be insolvent within the meaning of the Corporations Act;
- (c) the person ceases or threatens to cease to carry on business; or
- (d) an application or order is made for the liquidation of the person or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the person.

Item means an Item set out in the Reference Table at the beginning of this agreement.

Liability Limit means the amount specified in item 6.

Loss means any liability, cost, expense, loss or damage.

Money Payable means all and any money payable by the Client to Wilson from time to time under or relating to this agreement, including for any Losses.

Option Period means the period specified in item 3.

Related Body Corporate has the meaning given in section 9 of the Corporations Act.

Service Fee means the amount specified in item 5 as it may be altered from time to time.

Services means the services to be provided by Wilson to the Client listed in item 4, but do not include any Excluded Services.

Site means the site/s specified in item 7.

State means State or Territory of the Commonwealth of Australia specified in Item

Tax Invoice includes any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.

Term the Initial Period, as extended in accordance with clause 8.1.

Wilson Group Wilson and each of its Related Bodies Corporate and **Wilson Group Member** means any member of the Wilson Group.

Wilson's Obligations the obligations of Wilson under this agreement, or imposed by law, in relation to the provision of the Services.

1.2 Interpretation

In this agreement:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this agreement.
- (b) Other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning.
- (c) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (d) A reference to a party to this agreement includes that party's successors and permitted assignees.
- (e) A promise on the part of 2 or more persons binds them jointly and severally.



- (f) A reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.
- (g) No provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of this agreement or that provision.

1.3 Interpretation of inclusive expressions

Specifying anything in this agreement after the words 'include' or 'for example' or similar expressions does not limit what else is included.

1.4 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

2 APPOINTMENT OF WILSON

- (a) The Client engages Wilson to provide the Services, and Wilson accepts that engagement and must perform the Services in accordance with this agreement.
- (b) Wilson will provide the Services on an exclusive basis and the Client must not engage other parties to provide equivalent services instead of the Services.
- (c) The Services to be provided by Wilson under this agreement do not include any Excluded Services.

3 PROVISION OF SERVICES

3.1 Supply of Services

Wilson must provide the Services to the Client at the Site and, subject to clause 3.4, the services as listed in item 4 are the only Services that Wilson must provide.

3.2 Acknowledgement of Services

The parties acknowledge and agree that:

- (a) the Service Fee is based solely on the value of the Services provided by Wilson and is unrelated to the value of the Client's property located or held at the Site or the property of others located in the vicinity of the Site; and
- (b) Wilson delivers and the Client accepts the Services on the basis that they are of a deterrent nature only.

3.3 Shared Services

- (a) The Client acknowledges that:
 - (1) the Services may be shared with other clients of Wilson located in the vicinity of the Site; and
 - (2) any interruptions or delays (or both) caused by break-ins at any other client's premises, other emergencies including fire, flood, accident, police or emergency service activities, busy periods or other unforeseen circumstances, or any other similar causes, may alter the Services provided by Wilson (including delay in, or preventing a response or a reduction to, any the agreed number of inspections).
- (b) Wilson will not be liable for any non-performance or delay due to any reasons referred to in clause 3.3(a)(2).

3.4 Additional Services

- (a) The Client, by written notice, may request that:
 - (1) Wilson make reasonable changes to the Services (including additions, omissions or reductions); or
 - (2) the size, scope, nature or part of the Site in respect of which the Services are to be performed be changed, (Additional Services).
- (b) Where the Client requests Wilson to perform Additional Services not covered by the provisions of this agreement, and Wilson agrees to do so, then the provisions of this agreement will apply to the Additional Services unless expressly otherwise provided and the Service Fee will be increased by the amount quoted for such extra work, or if no fee is quoted, an amount calculated by Wilson at Wilson's standard rates.

3.5 Assignment and subcontracting

Wilson may assign its rights under this agreement and subcontract Wilson's Obligations without need to obtain any consent or approval from the Client but any assignment or subcontracting will not relieve Wilson of Wilson's Obligations.

4 WILSON'S GENERAL OBLIGATIONS

- (a) Wilson will perform the Services to the Client's reasonable satisfaction and in conformity with the Client's reasonable directions.
- (b) In performing the Services, Wilson must:
 - (1) use its reasonable endeavours to not unreasonably interfere with the normal use of the Site by the Client or the tenants or other permitted occupiers or users of the Site;
 - (2) subject to clause 10, make good any damage to the Site caused by any negligence or willful default of Wilson in carrying out the Services; and Wilson must comply with all laws and mandatory industry codes relevant to the supply of the Services and, when on the Site, comply with all the Client's reasonable policies relating to occupational health and safety and security that the Client first notifies Wilson in writing of.

5 CLIENT'S GENERAL OBLIGATIONS

The Client must, at the Client's cost, duly and diligently provide Wilson with all such information material and assistance, and safe and sufficient access to, and use of, all parts of the Site (including access to and use of, electricity, water and other utility services, as Wilson requests and to enable Wilson to provide the Services.

6 SERVICE FEES AND OTHER MONEY PAYABLE

6.1 Service Fees

- (a) The Client must pay the Service Fees and any other Money Payable to Wilson or a Wilson Group Member. In the event that the Client requests Wilson to perform any Services for a third party and Wilson does not have a direct contractual relationship with that third party, the Client must pay the Service Fees incurred by Wilson in the performance of those Services for that third party as if the Services were performed for the Client under this agreement.
- (b) The Service Fee may be varied by Wilson from time to time by the percentage equal to the percentage increase in the total of all wages, vehicle acquisition and maintenance costs and other costs whether direct or indirect involved in the performance of the Services by Wilson. Such variations will be determined by Wilson in its absolute discretion, and apply from the date such increase in costs occurred. Wilson will give reasonable written notice of such variations.

6.2 Payment invoice

- (a) Subject to clause 6.3, Wilson will provide the Client with an invoice for the Services Fee which the Client must pay within [7] days of the date of the invoice.
- (b) The Client must pay to Wilson on demand all costs, charges and expenses, including legal costs on a full indemnity basis, incurred by Wilson in the collection of any overdue account, or incurred by Wilson due to any breach of this agreement by the Client.



6.3 Payment terms

- (a) Time will be of the essence in respect of the payment of Money Payable.
- (b) If the Client fails to pay to Wilson any Money Payable (including any Unpaid Amounts), Wilson may do all or any one or more of the following:
 - (1) suspend the Services;
 - (2) immediately terminate this agreement by providing written notice to the Client;
 - (3) terminate any credit facilities; and
 - (4) institute legal action for recovery of outstanding amounts and costs incurred.

7 CONFIDENTIAL INFORMATION

7.1 Confidentiality

- (a) Each party (recipient) must keep confidential, and not to use or disclose, other than as permitted by this agreement, any Confidential Information of the other party (discloser), including Confidential Information provided to or obtained by the recipient prior to entry into this agreement.
- (b) The obligations in clause 7.1(a) do not apply to Confidential Information that is:
 - (1) required to be disclosed by applicable law, in the public domain otherwise than as a result of a breach of this agreement or other obligation of confidence; or
 - (2) already known by, or rightfully received, or independently developed, by the recipient free of any obligation of confidence.

Usage and disclosure

Each party may use and disclose Confidential Information of the other only on a 'need to know' basis:

- (a) with the prior written consent of the other party;
- (b) in the case of Wilson, to its directors, agents, professional advisers, employees, contractors and permitted subcontractors solely for the exercise of rights or the performance of obligations under this agreement; or
- (c) in the case of the Client:
 - (1) to Client Group Members and their directors, agents, professional advisers, employees and contractors; or
 - (2) any party who is a bona fide purchaser of the Site.

8 TERM AND TERMINATION

8.1 Term

- (a) This agreement starts on the Commencement Date and continues for the Initial Period and for any extended periods under clause 8.1(b) unless it is terminated in accordance with this clause 8(c) or otherwise at law.
- (b) Unless this agreement is terminated in accordance with clause 8(c) it shall extend for a further 12 months at the expiry of the initial period and any subsequent extension periods resulting from 8(b).
- (c) Either party may terminate the agreement at the conclusion of either the initial period or any subsequent extension periods by giving no less than [90] days written notice.

8.2 Termination

- (a) Either party may terminate this agreement by giving the other party [30] days' notice in writing.
- (b) If a party:
 - (1) breaches any provision of this agreement and fails to remedy the failure after receiving [14] Business Days' notice from the other party to do so; or
 - (2) commits a material breach of this agreement which in the reasonable opinion of the other party is not capable of being remedied,
 - (3) then the other party may terminate this agreement by giving notice to the party in breach of this agreement of the termination which is effective immediately on receipt of that notice or such other date as is specified in the notice.
- (c) If an Insolvency Event occurs in relation to the Client, then Wilson may terminate this agreement by giving Notice to the Client of the termination which is effective immediately on receipt of that Notice by the Client or such other date as is specified in the Notice by Wilson.

9 INDEMNITY

Subject to the provisions of clauses 10 and 13.1, each party indemnifies the other for any Loss suffered or incurred by the other party, arising out of:

- (a) any failure to perform that party's obligations under this agreement; and
- (b) any negligence, or willful default by that party.

10 LIMITS ON LIABILITY

10.1 Damages and consequential Loss

- (a) Subject to the other provisions of this clause 10 and clause 13.1:
- (b) if any Default gives a party a right to damages, those damages will be limited to damages for direct loss and damage attributable to such Default;
- (c) the rights of a party to damages for indirect and consequential loss or damage are excluded; and
- (d) neither party will be liable to any other for any failure to realise anticipated savings, loss of revenue or profits, loss of opportunity or goodwill, loss of or inability to use equipment, loss of use, economic loss, special losses or damages suffered by a party to this agreement or any other person.

10.2 Further limitation on Claims

Subject to the other provisions of this clause 10 and clause 13.1, Wilson is not liable to the Client for any Loss, caused by any reason beyond Wilson's reasonable control however caused, including:

- (a) a Force Majeure Event;
- (b) an act or omission of the Client, its employees or persons otherwise engaged by them; and
- (c) any Loss, damage or liability suffered or incurred by the Client except to the extent to which such Loss, damage or liability is caused by the negligence of Wilson or any of its employees acting within the scope of their employment.

10.3 Liability Limit

Subject to the other provisions of this clause 10 and clause 13.1, to the maximum extent permitted by law, Wilson's total liability and that of its directors, employees and agents, to the Client for all Claims, including interest on any Claim is limited in the aggregate to the Liability Limit.

10.4 Liability of employees and agents

Every exemption from, and limitation of, liability, defence and immunity of whatever nature that applies to a party, or to which a party is entitled, including those set out in this agreement, will also be available and extend to protect every one of its employees or agents acting under this agreement or in any way connected with or relating to it, or making or giving statements, representations, information, or advice relating to this agreement, and the benefit of this clause is held by each party on its own behalf and as agent or trustee on behalf of or for the benefit of all persons who are its employees or agents from time to time as well as on its behalf, and all those persons are to this extent parties or deemed to be parties to this agreement.



10.5 Notification of Claims

- (a) Claims against Wilson must be made by the Client to Wilson in writing within 30] days of the day that the existence of the claim came or should have come to the notice of the Client and must state the nature, grounds and amount of the claim.
- (b) Time is of the essence in respect of this clause 0 and claims not notified within [30] days will not be allowable or admitted and will be deemed waived or abandoned by the Client.

11 FORCE MAJEURE EVENT

- (a) If as a result of a Force Majeure Event a party is rendered unable, wholly or in part, to carry out its obligations under this agreement then those obligations are suspended as long as the Force Majeure Event subsists.
- (b) If that Force Majeure Event lasts for more than 3 months, the party whose obligations are not suspended may (without affecting the accrued rights and obligations of the parties as at the termination date) terminate this agreement forthwith by Notice to the other party.

12 COSTS, STAMP DUTY AND GST

12.1 Taxes

Subject to clause 12.2, Wilson must pay all taxes, duties and Government charges imposed or levied in Australia or overseas in connection with the performance of the Services.

12.2 Goods and services tax (GST exclusive prices)

- (a) Unless expressly included, the consideration for any supply under or in connection with this agreement does not include GST.
- (b) To the extent that any supply made under or in connection with this agreement is a taxable supply, the consideration for that supply is increased by an amount determined by the supplier, not exceeding the amount of that consideration (or its market value) multiplied by the rate at which GST is imposed in respect of the supply.
- (c) Whenever an adjustment event occurs in relation to any taxable supply made in connection with this agreement, the supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid in accordance with clause (b), the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (d) If a party is entitled under this agreement to be reimbursed or indemnified by another party for a cost or expense incurred in connection with this agreement, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the party entitled to be reimbursed or indemnified, or by its representative member, and then, if the amount of the payment is consideration or party consideration for a taxable supply, it must be increased on account of GST in accordance with clause (b).

13 GENERAL

13.1 Application of the CCA

- (a) Nothing in this agreement is to be construed as excluding, restricting or modifying the application of any liability of Wilson to the extent that it cannot by operation of law (including the operation of the CCA) be excluded, restricted or modified.
- (b) If the Client is a Consumer:
 - (1) clause 10 does not apply to any liability of Wilson for failure to comply with a Consumer Guarantee;
 - (2) in respect of any goods supplied under this agreement, subject to clause (4), the liability of Wilson for Loss, however caused (including by the negligence of Wilson), suffered or incurred by the Client because of a failure to comply with a Consumer Guarantee is limited to Wilson (at its election):
 - replacing the goods or supplying equivalent goods;
 - repairing the goods;
 - paying the cost of replacing the goods or of acquiring equivalent goods; or
 - paying the cost of having the goods repaired;
 - (3) in respect of the Services, subject to clause (4), unless the services are Excluded Services, the liability of Wilson for Loss, however caused (including by the negligence of Wilson), suffered or incurred by the Client because of a failure to comply with a Consumer Guarantee is limited to Wilson (at its election):
 - resupplying the Services; or
 - paying the cost of having the services supplied again; and
 - (4) clauses (2) and (3) do not apply if it is not Fair or Reasonable for Wilson to rely on them.

13.2 Additional Provisions

The Additional Provisions are included in and form part of this agreement.

13.3 Governing law and jurisdiction

- (a) This agreement is governed by the law in force in the State or Territory in which it is entered into.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in that State or Territory and any courts of appeal from them in respect of any proceedings in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process in the courts on the basis that the process has been brought in an inconvenient forum.

13.4 Money Payable

The Client must pay all Money Payable to Wilson on the due dates for payment in full, without any deduction, reduction, withholding, set-off, or counterclaim.

13.5 Notice

- (a) A notice or other communication to a party under this agreement (**Notice**) must be in writing and in English, signed by or on behalf of the sending party and addressed to that party in accordance with the details nominated in the Reference Table.
- (b) A Notice may be served by hand, registered post, by facsimile or by email and is regarded as given and received at the time set out in the table below.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address
By pre-paid post to the nominated address	At 9.00am (addressee's time) on the second Business Day after the date of posting
By fax to the nominated fax number	At the time indicated the sending party's transmission equipment produces a transmission report indicating that error free transmission has occurred.

13.6 Waiver

No waiver of any or all of the provisions of this agreement, failure to enforce any provision of this agreement, or any time or indulgence granted, by Wilson will prejudice any rights Wilson has in respect of any subsequent breach of this agreement.

13.7 Variation

Subject to clauses 3.4 and 6.1(b), this agreement may not be varied or modified except as agreed by the parties in writing.

13.8 Entire agreement

This agreement states all the express provisions of the agreement between the parties in respect of its subject matter and any provisions which appear on any purchase order or other document produced by the Client will be void and of no effect.