



Terms and Conditions

1. Operation

- 1.1. The Client ("You") is required to sign an Engagement Letter, which together with these Terms and Conditions ("Terms"), form the Agreement to obtain Services from ProYou Advisory ("We, Us, Our").
- 1.2. All Services provided by ProYou Advisory are provided in accordance with these Terms.
- 1.3. By signing the Engagement Letter, the Client will be deemed to agree and be bound by these Terms.

2. Interpretation

- 2.1. In these Terms unless the contrary intention appears:
 - (a) **Additional Charges** includes all goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Price, payable by the Client to ProYou Advisory arising out of the supply of the Services.
 - (b) **Agreement** means these Terms and the Engagement Letter signed by the Client.
 - (c) **Corporations Act** means the *Corporations Act 2001* (Cth).
 - (d) **Client** means the person to or for whom the Services are to be provided to.
 - (e) **Engagement Letter** means the letter of engagement provided to the Client or quote or any other document provided to the Client by ProYou Advisory to initiate the agreement of Services.
 - (f) **Force Majeure Events** means any act, event or circumstance outside the reasonable control of ProYou Advisory, including but not limited to, lockdowns, war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kinds.
 - (g) **Insolvency Event** means, in relation to a party to the Terms, any one or more of the following events or circumstances occurring in relation to the party (or any person comprising the party):
 - i. being in liquidation or provisional liquidation or under administration;
 - ii. having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property;
 - iii. being taken under s 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
 - iv. being unable to pay its debts or being otherwise insolvent;
 - v. becoming an insolvent under administration, as defined in section 9 of the Corporations Act;
 - vi. entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; and
 - vii. any analogous event or circumstance under the laws of any jurisdiction.
 - (h) **Price** means the price for the Services as charged by ProYou Advisory pursuant to the supplied tax invoice or such other price as may be agreed by ProYou Advisory and the Client.
 - (i) **ProYou Advisory** means ProYou Business Advisory Pty Ltd (ACN 641 021 221), and each of its related body corporate, agents, successors and assigns (as applicable).
 - (j) **Services** mean the financial services provided by ProYou Advisory to the Client and any other good associated with the service as outlined in the Engagement Letter.

3. ProYou Advisory Obligations

- 3.1. ProYou Advisory warrants that it will provide the Services set out in the Engagement Letter in accordance with the Client's initial instructions, unless otherwise agreed between the parties.
- 3.2. ProYou Advisory will endeavour to use all reasonable commercial efforts to provide the Services in an efficient and timely manner, using the necessary skill and expertise to an appropriate professional standard, subject to the Client fulfilling their obligations under this Agreement.

4. Client Obligations, Warranties and Acknowledges

- 4.1. You as the Client warrant, acknowledge and accept that:

- (a) ProYou bases the scope, estimated costs, timetable and other aspects of Your matter on Your initial instructions, documents, material;
- (b) You will provide ProYou Advisory promptly with such information as may reasonably be required for the proper performance of the Services, including access to appropriate members of Your staff, records, information, technology, systems and premises;
- (c) If You do not provide the requested information, documentation, and/or clarification, You accept that the advice and/or other Services We provide You may not be accurate and/or reliable and our costs may likely increase;
- (d) You shall retain responsibility for the use of, or reliance on, advice or recommendations supplied by us in the delivery of the services;
- (e) ProYou Advisory shall be entitled to rely upon the accuracy of all information provided by You, or by others on Your behalf, without independently verifying it;
- (f) You will undertake that, if anything occurs after information is provided by You to ProYou Advisory, to render such information untrue, unfair or misleading, You will promptly notify ProYou Advisory and, if required by ProYou Advisory, take all necessary steps to correct any announcement, communication or document issued which contains, refers to or is based upon, such information;
- (g) Information made available by You, or by others on Your behalf, to, or which is otherwise known by, partners or staff of ProYou Advisory who are not engaged in the provision of the Services shall not be deemed to have been made available to the individuals within ProYou Advisory who are engaged in the provision of the Services;
- (h) The Price may increase if further or more extensive work has to be done in Your matter which may be due to variations to the scope of services, if You provide instructions requiring the further work or if Your matter requires the work to carry out the scope of services;
- (i) ProYou Advisory may charge at an hourly rate ProYou Advisory deems reasonable for work at their sole discretion;
- (j) You will pay for the Services in accordance with these Terms;
- (k) You are not insolvent and will advise ProYou Advisory immediately if You are suffering an Insolvency Event;
- (l) If a dispute arises, or You are not satisfied with the Services provided by ProYou Advisory, You hereby warrant and agree to contact ProYou Advisory to advise of any dispute and/or negative feedback; and
- (m) You will not to denigrate or bring into disrepute the reputation of ProYou Advisory by posting negative feedback or comments on any forum, including but not limited to social media.

5. Benefit of Advice

- 5.1. Employees of ProYou Advisory are not legal practitioners and as such, We recommend that independent legal advice be sought if there are any concerns about the advice We provide You, prior to implementation or action of that advice.
- 5.2. ProYou Advisory provides accounting and financial services only and these services are not of a legal nature and should not be relied on as such.
- 5.3. Unless otherwise specifically stated in the Engagement Letter, any advice or opinion relating to the Services is provided solely for Your benefit and may not be disclosed in any way, including any publication on any electronic media, to any other party and is not to be relied upon by any other party.
- 5.4. During the supply of our services, We may supply oral, draft or interim advice, reports or presentations but in such circumstances our written advice or final written report shall take precedence. No reliance should be placed by the Client on any oral, draft or interim advice, reports or presentations. Where You wish to rely on oral advice or an oral presentation, You shall inform ProYou Advisory and We will provide documentary confirmation of the advice.
- 5.5. ProYou Advisory shall not be under any obligation in any circumstance to update any advice or report, oral or written, for events occurring after the advice or report has been issued in final form.

6. Electronic Mail

- 6.1. If the Client asks ProYou Advisory to transmit any document to it electronically, the Client agrees to release ProYou Advisory from any claim it may have as a result of any unauthorised copying, recording, reading or interference with that document after transmission, for any delay or non-delivery of any document and for any damage caused to the Client's system or any files by the transmission (including by any computer virus).
- 6.2. The Client may not rely on electronically transmitted advice or opinion unless it is subsequently confirmed by fax or letter signed by a partner or authorised signatory of ProYou Advisory.

7. Price and Payment

- 7.1. The Client must pay the Price and the Additional Charges to ProYou Advisory by the date stipulated on any tax invoice or other written document provided by ProYou Advisory to the Client.
- 7.2. The time based fees, if any, quoted in the Engagement Letter or as separately quoted in a fee letter will remain in force for 30 days or as agreed in writing between the Client and ProYou Advisory. Although, the Price may increase if further or more extensive work has to be done in Your matter which may be due to variations to the scope of services, if You provide instructions requiring the further work or if Your matter requires the work to carry out the scope of services;
- 7.3. The Client will be charged for any out-of-pocket expenses incurred in connection with the Services will be charged to the Client.
- 7.4. Payment can be made by the following methods:
 - (a) Direct Credit (EFT);
 - (b) Cheque;
 - (c) Bpay;
 - (d) Credit Card (plus, at the sole discretion of ProYou Advisory, a surcharge of up to three percent (3%) of the invoiced amount, or four and a half (4.5%) of the invoiced amount if payment is made by American Express card); or
 - (e) By any other method as agreed between the Client and ProYou Advisory in writing.
- 7.5. If the Client fails to make a payment by the due date identified on a tax invoice, quote or any form supplied requesting payment, or in accordance with these Terms or any other agreement between ProYou Advisory and the Client, after demand for payment by ProYou Advisory, or if ProYou Advisory believes that the Client cannot fulfill their obligations under these Terms, then ProYou Advisory reserves its rights to do some or all of the following:
 - (a) suspend performance of its obligations under the agreement between ProYou Advisory and the Client until all amounts owing by the Client to ProYou Advisory are paid in full;
 - (b) cancel a contract without prejudice to any of its existing rights;
 - (c) charge interest on the outstanding balance at a maximum rate of the Cash Rate Target set by the Reserve Bank of Australia plus 2% from the due date for payment until full payment is received by ProYou Advisory;
 - (d) charge the Client for all costs and expenses incurred or considered against the Client whether for debt, re-possession of the Goods or otherwise, for the recovery of the outstanding amounts;
 - (e) ProYou Advisory is entitled to claim the sum of \$200.00 or 10% of the purchase price (whichever is lower) from the Client as the reasonable costs of recovering any outstanding amount and the Client acknowledges that this is a fair and reasonable amount incurred by ProYou Advisory;
 - (f) lodge a caveat over any charged property of the Client in accordance with clause 7.6; and/or
 - (g) ProYou Advisory may further claim from the Client all costs relating to any action taken by ProYou Advisory to recover money or Goods, including but not limited to, any legal costs and disbursements on an indemnity basis.
- 7.6. The Client expressly agrees that if the Client is in default of any payments owing to ProYou Advisory pursuant to clause 7, this creates an equitable interest over all real and/or personal property in the Client's name (held in its name or jointly). The Client expressly authorises ProYou Advisory to lodge a caveat over any real and/or personal property in the Client's name and/or register a security interest under the *Personal Property Security Act 2009*.
- 7.7. All amounts payable by the Client under these Terms must be paid without set-off or counter claim of any kind.
- 7.8. If ProYou Advisory incurs processing fees as a result of any payments made by the Client which are subsequently dishonoured, then ProYou Advisory may charge the Client the amount of such processing fees and the Client must pay that amount to ProYou Advisory immediately on request.

8. Termination

- 8.1. ProYou Advisory may terminate the Terms with immediate effect by giving notice to the Client:
 - (a) if the Client breaches any of its obligations under any agreement with ProYou Advisory;
 - (b) if the Client fails to provide ProYou Advisory with adequate instructions to progress the matter;
 - (c) on ethical grounds;
 - (d) if ProYou Advisory considers it no longer appropriate to provide You with Services; or
 - (e) for any other reason ProYou Advisory deems fitting to terminate the engagement.
- 8.2. Termination will not affect any rights or obligations which may have accrued prior to termination.
- 8.3. On termination, all monies owing by the Client to ProYou Advisory become immediately due and payable.

9. Confidentiality and Privacy

- 9.1. Parties to these Terms acknowledge that they may, in the course of the engagement, be exposed to or acquire information that is proprietary or confidential to the other party. Both parties agree to hold such information in strict

confidence, and not to divulge such information except as may be required by law or judicial process, by any persons or bodies responsible for regulating that party's business (including any regulatory or accounting profession supervisory authorities in Australia or elsewhere), as required by a party's internal policies or as the party reasonably determines is necessary to protect its own legitimate interests.

- 9.2. ProYou Advisory is committed to maintaining the privacy and confidentiality of personal information (as defined in section 6(1) of the *Privacy Act 1988* (Cth). We will adhere to the Australian Privacy Principles 2014 ("APP") established under the Act when collecting, using, disclosing, securing and providing access to personal information. Our Privacy Policy is available on our website.
- 9.3. The Client consents to providing personal information to ProYou Advisory.

10. Liability and Indemnity

- 10.1. To the full extent permitted by law, the Client will indemnify ProYou Advisory and keep ProYou Advisory indemnified from and against any liability and any loss or damage ProYou Advisory may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms by the Client or its agents, invitees to use, third parties or representatives.
- 10.2. Subject to this clause, and to the maximum extent permitted by all applicable Law, ProYou Advisory is not liable to the Client or to any third party for any loss, damage, liability, expense, injury or death sustained or incurred by the Client or any other party, including without limitation any loss of profits, or economic, special, indirect or consequential loss or damage, whether resulting directly or indirectly out of any negligence of ProYou Advisory, the supply, performance or use of any Services or out of any breach of ProYou Advisory under any contract incorporating these Terms, even if notified of the possibility of that potential loss or damage.
- 10.3. In any event, the parties agree that the liability of ProYou Advisory to the Client will not exceed the Price of the Services.

11. Force Majeure

- 11.1. The obligations of ProYou Advisory will be suspended during the time and to the extent that ProYou Advisory and/or its related body corporates is/are prevented from or delayed in complying with those obligations as a result of the Force Majeure Event.
- 11.2. The Client acknowledges and agrees that ProYou Advisory is not liable for any delay, costs, loss or damage as a result of a Force Majeure Event and these Terms can be used as a bar to proceedings.

12. Intellectual Property

- 12.1. The Client acknowledges and agrees that each Intellectual Property Right is owned or entitled to be owned by ProYou Advisory and/or its related body corporates.
- 12.2. The Client's supply of the Services does not confer on the Client any licence or assignment of any patent, design, trademark, or any other Intellectual Property Rights that exist in the Services.
- 12.3. The Client must:
- (a) only use the Intellectual Property Rights in accordance with the reasonable written directions of ProYou Advisory;
 - (b) not license any of the Intellectual Property Rights to or allow the use of any of the Intellectual Property Rights by any other person in any circumstances;
 - (c) immediately notify ProYou Advisory of, and comply with ProYou Advisory's directions in relation to, any issue, claim, demand, threat, notice of proceedings, or cause of action (whether contingent, accrued or otherwise) against or involving the Client relating to any Intellectual Property Rights; and
 - (d) do all other acts and things that may be reasonably required by ProYou Advisory to ensure the protection of the Intellectual Property Rights.

13. General Provisions

- 13.1. These Terms are governed by and construed in accordance with the laws of New South Wales.
- 13.2. Each party to these Terms irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.
- 13.3. ProYou Advisory may suspend the Client from requesting Goods and/or Services at its sole discretion, without liability to the Client, if the Client breaches these Terms or if ProYou Advisory reasonably suspects that these Terms has been breached, or if suspension is required for technical reasons.
- 13.4. ProYou Advisory may license, sub-contract or assign all or any part of its rights and obligations without the Client's consent and in so doing ProYou Advisory is fully discharged from its obligations to the Client.

- 13.5. The Client may not assign its obligations under these Terms without ProYou Advisory's written consent.
- 13.6. The Client warrants that it has the power to enter into these Terms and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that these Terms create binding and valid legal obligations on it.
- 13.7. These Terms shall prevail to the extent of any inconsistency with any other document or agreement between the Client and ProYou Advisory.
- 13.8. A provision of these Terms or a right created under it may not be waived or varied except in writing, signed by ProYou Advisory.
- 13.9. The failure by ProYou Advisory to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect ProYou Advisory right to subsequently enforce that provision.