

EfficientSee Pty Ltd
ACN 138 130 319
Terms & Conditions of Engagement

1. **(Agreement)** You will have 30 days from the date of the Proposal or such further period as agreed by Us to accept the Proposal. If You accept the Proposal, then this Contract governs the agreement between Us and You in respect of the Engagement and sets out the terms and conditions which will apply to the Services We propose to supply to you. Any instructions You provide to Us to proceed after receiving this Contract and/or Your acceptance of the Proposal, the Services or any other services We supply constitutes acceptance of this Contract, so You should read these terms and conditions carefully.
2. **(Engagement)** We agree to undertake, and You agree to enter into, the Engagement on the terms and conditions of this Contract.
3. **(Fees and expenses)** You must pay Our fees specified for the Services in the amount or amounts as set out in the Proposal. In addition to Our fees, We will charge you for the out of pocket expenses incurred by Us or paid on Your behalf. The total costs of the fees and expenses to provide the Services will vary depending on the extent and complexity of Services provided. For these reasons, there may be occasions where the total costs of fees and expenses cannot be predicted accurately in advance and therefore any estimate given is not a fixed quote unless expressly so stated. Other than our fees and expenses for training Services, which must be paid in full before such Services are provided, You must pay Our fees and expenses within fourteen days from the date of invoice relating to those fees or expenses or the part of those fees or expenses unless We agree otherwise in writing. If our invoices are not paid within fourteen days then until paid in full We may cease to provide any further Services and may charge interest on the account at a rate equal to the applicable OD Rate increased by three percentage points and with interest on Your account to accrue daily from that date being fourteen days after the date of the invoice. We may in our sole discretion require You to pay a non-refundable deposit before commencing the Engagement. Should You not pay the whole or any portion of our fees and expenses invoiced to you, We have the right to refer recovery of those unpaid sums to a mercantile agent and/or a solicitor. You agree that any and all mercantile agent and/or solicitor's costs incurred in recovery of these unpaid sums shall also be paid by You (on a full indemnity basis).
4. **(Commencement and completion)** You must provide Us with copies of the signed Proposal and Letter of Authority (if applicable). We do not have to commence the Engagement until after You have paid any deposit required by us under clause 3, have paid in full Our fees and expenses for training Services (if applicable) and have returned to Us copies of the Letter of Authority and Proposal, both of which have been properly executed by You. Once We start the Engagement, We will endeavour to ensure that the Engagement is completed and the Services delivered to You by the estimated completion dates set out in the Proposal, or if no dates are set out in the Proposal by the dates We agree with You in writing. If no dates are agreed in writing, then We will endeavour to provide them to you within a timeframe that We consider reasonable to provide the Services. However, if the Engagement is not completed and/or the Services are not completed by then You agree that to the fullest extent permitted by law We will not be liable for claims, actions, proceedings, damages, costs, losses, liabilities or expenses in respect of such delay.
5. **(Information and access)** You must, upon request, provide us with such information, documents and records which We consider may be relevant to the Engagement, as well as reasonable access to such information, documents, records, systems, servers, infrastructure, networks, persons involved in or connected with Your business and otherwise provide us access to anything else, as We reasonably require for the purposes of the Engagement. You must notify Us as soon as possible if You become aware that any information or records You have provided to us are incorrect, require updating or of any change that might alter the effectiveness of the Services We provide. We will not be performing any independent verification or the accuracy or completeness of any records, documents or information You provide to us. We are not responsible for any consequences if We relied on the records, documents or information You provided in performing the Services, and such records, documents or information are inaccurate or incomplete.
6. **(Access to Premises)** You must allow Us access to Your Premises at the times We reasonably require so that We can undertake the Engagement and provide the Services. If you fail to do so, We will not be liable for any consequent failure or delay to perform the Services. You must ensure that the Premises is safe and suitable for access by Us in order to provide the Services.
7. **(Reliance on Services and Deliverables)** The Services We provide to You under the Engagement are provided on a good faith basis. We provide no guarantees as to any outcomes from the Services or any Deliverables. Whilst We will endeavour to provide You with the Services with reasonable care, to the maximum extent permitted by law, We make no representation or warranty, express or implied, as to the accuracy, reliability or completeness of the information We provide You. It is Your responsibility to ensure that any action you take in reliance on our Services and any Deliverables will comply with all relevant laws and regulatory requirements that apply to Your business. All reliance on the Services and any Deliverables is at Your own risk. You are responsible for Your own business decisions and must make Your own independent assessment of the risks, benefits and suitability of any act, action, undertaking, venture or transaction contemplated by the Services or Deliverables, and any information, recommendation, analysis or advice provided in connection with the Services or Deliverables. Where We provide advisory Services, You agree and acknowledge that any report or advice We provide is a summary of the key issues for consideration and therefore may not be a comprehensive analysis of all of the issues relevant to You or Your business within the scope of our Engagement. Whilst We will also endeavour to provide You with recommendations to address those issues, You agree and acknowledge that such recommendations may assist in addressing those issues but may not completely resolve or eliminate such issues. You agree and acknowledge that You are responsible for implementing and maintaining on an ongoing basis, the solutions We recommend.
8. **(Restricted use of Deliverables)** Any Deliverables We prepare and provide to You in connection with the Services are provided to You on a good faith basis for use only in connection with the purposes specified in the relevant Deliverables. Such Deliverables are for your use and information only. They may not be relied on by others. You agree that You will not disclose any such Deliverables to any third party (except Your professional advisers to the extent that they need to know for the purposes of providing services to You and except as required by law, regulation, judicial or administrative process) or summarise or refer to such Deliverables without Our written consent.
9. **(Consent)** You acknowledge, agree, consent and authorise Us to do all things and perform all acts that We consider necessary for the purposes of the Engagement, to deliver the Services and to provide the Deliverables. To the maximum extent permitted by law, We do not accept any liability or responsibility, and You agree not to seek to sue or hold Us liable, for any loss or damage whatsoever suffered by You or any other person howsoever caused.

10. **(Confidentiality and Information)** During the Engagement, You may send confidential information to Us or We may get access to that Information. We do not claim ownership of such information. You will continue to own such confidential information. We will not disclose any information You give to Us regarding Your business that is confidential to any person, other than Our officers, employees, contractors or advisers, or unless You consent to the disclosure, that information comes into the public domain or We are required to disclose it by law. However, We may use internet email access as a further means of communication and a cloud based storage system as a means of storing data and We cannot guarantee the total security of these forms of communication and storage due to the internet being a public unregulated network. Further, any loss/damage incurred to Your computer system, network or infrastructure caused during the Engagement or Our provision of Services or Deliverables, by You using material sent to You via the internet, or by You accessing information uploaded to a cloud based storage system by Us, is not to the maximum extent permitted by law, Our responsibility. In any event, to the maximum extent permitted by law, Our entire liability will be limited to resupplying the material and no warranty is made that any material, report, analysis or advice sent to You is correct, free from computer virus or defect.
11. **(Intellectual Property Rights)** We grant You a non-exclusive, non-assignable, royalty-free, limited licence to use such of Our Intellectual Property Rights in and to the Services and any Deliverables for the sole purpose of enabling You to enjoy the benefits of the Services and Deliverables as intended under this Contract. We may revoke this licence at any time if Our fees and expenses remain overdue for a period of fourteen days or if there is a dispute between You and Us. You agree that all Intellectual Property Rights in and to the Services, Deliverables and any reports, advice, spreadsheets and other information We provide to You, whether before or after the date of this Contract, remain with Us and that other than the limited licence described above You do not have any rights or licence to use any or part of such intellectual property, nor to copy, reproduce or provide to any third party any documents evidencing such intellectual property without Our prior written consent. For the avoidance of doubt, We may provide services, advice, reports, presentations, systems, training packages, media plans, content, spreadsheets or other information or materials similar to the Services or Deliverables for any purpose as We see fit.
12. **(Privacy Policy)** The type of information We access and collect may include but is not limited to information You provide Us at Our request, Your name and address, Your domain name, email address and information about other persons We collect in the course of providing Services to You. We will only use such personal information for the purpose of providing and marketing our Services to You, conducting Our business and contacting You for marketing purposes unless You have consented to Us using such personal information for other purposes or its use for another purpose is required or permitted by law. If You do not wish Us to use such information in any of these ways, please contact Us. We will assume that any such personal information is free from errors and omissions, is not misleading or deceptive and complies with all relevant laws. We may rely on such personal information. We will not check or verify the accuracy of any personal information We obtain from You or other persons or during the course of the Engagement. You should provide us with details of any changes to such personal information as soon as reasonably practicable following such change. We do not permit the personal information We hold to be distributed to third parties unless We consider it necessary to be disclosed in order that the Services can be properly carried out, where We have been given consent (expressly or impliedly), where We receive a request to provide such personal information to a third party and We are required or permitted by law to provide information to a third party.
13. **(Variations to Engagement or Services)** You agree that any revisions or additions You request in relation to the Engagement or Services must be agreed in writing by Us. You agree that We may charge You for such revisions or additions at the costs We notify to You. If We determine that any additional services are required as part of the Engagement or Services due to unforeseen circumstances or complexities arising after We have commenced the Engagement, We will let You know as soon as possible. You agree that We may charge You for any such additional services at the reasonable costs We notify to You.
14. **(Limitation of liability)** To the maximum extent permitted by law, Our liability to You is limited (at Our option) to: (i) the supply of the Services again, or (ii) the payment of the cost of having the Services provided again.
15. **(Exclusion of liability)** To the maximum extent permitted by law, We exclude all liability for any claims, expenses, losses, damages and costs (including any incidental, special and/or consequential damages or loss of profits) made, suffered or incurred by You or any third party (either directly or indirectly) in connection with the Engagement, the Services or the Deliverables.
16. **(Release and Indemnity)** You agree, to the maximum extent permitted by law, to irrevocably release, indemnify and hold harmless, Us and Our respective officers, employees and contractors (**Indemnified Party**), against all claims, actions, proceeding, damages, costs, losses, liabilities or expenses (including legal costs of a full indemnity basis) of whatever nature and in whatever jurisdiction, howsoever caused (including without limitation negligence, error, misstatement, omission, misrepresentation) and which refer or relate to or arise from, directly or indirectly, whether foreseeable or known at the date of this Contract, the Engagement or the Services provided under this Contract, or any breach of these terms by You, of any rights of a third party, or of any applicable law. We enter into this clause 16 for Our self and as trustee of the other Indemnified Parties that are not a party to this Contract and accept the full benefit of this clause on behalf of those Indemnified Parties.
17. **(Publicity and Marketing)** Without limiting clause 11, You agree that We may make and/or release promotional or marketing material that refers or relates to the Services and Deliverables and that those Services and Deliverables were provided by Us.
18. **(Pre-Engagement services and information)** Any information, materials or services We provide to You before the date of this Contract are subject to the terms and conditions of this Contract.
19. **(Term and termination)** This Contract is valid from the date of signing for an ongoing basis. Either You or Us may terminate this Contract with or without cause by providing one month's written notice, or We may terminate this Contract if Our fees and expenses remain overdue for a period of fourteen days by providing written notice, without liability or continuing obligation but You remain liable for, and must pay, any and all of our fees or expenses up to the date when We cease to provide Services to You. If We cease to provide Services to You, We will not incur any liability as a result and We retain the right to keep all documents.
20. **(Relationship)** You agree that We are a contractor independent of Your control and that the Engagement will not give rise to any fiduciary, agency, trust, employment or other relationship recognised at law or in equity as giving rise to forms of specific rights and obligations.
21. **(Inconsistency with Proposal)** If there is any inconsistency between these terms and conditions and the Proposal, the provisions of these terms and conditions will prevail to the extent of the inconsistency.
22. **(GST)** Any fees and expenses specified for the Services in the Proposal are quoted exclusive of any applicable GST unless they provide otherwise. If GST is applicable to any supply (including the supply of any goods, services, other rights, benefits or other things) made under or in connection with this Contract, We may, in addition to any amount or consideration payable or to be provided under this Contract, recover from You an additional amount on account of GST, such amount to be calculated by multiplying the value of the consideration payable or to be provided by You for the relevant supply by the prevailing GST rate. You will be provided with a tax invoice.

23. **(No Assignment)** You may not assign Your rights under this Contract to a third party or cause any of Your obligations under this Contract to be assumed by a third party without the prior written consent of Us.
24. **(Exclusion of implied terms)** Subject to any law to the contrary, and except as expressly provided in this Contract, all terms or conditions that would otherwise be implied by law regarding the services to be supplied under this Contract are excluded.
25. **(Severability)** If and to the extent any provision or part of a provision is illegal or unenforceable, such provision or part of a provision will be severed from this Contract and will not affect the continued operation of the remaining provisions of this Contract.
26. **(Governing Law)** This Contract shall be governed by the laws of South Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of South Australia.
27. **(Entire Agreement)** This Contract sets out the entire agreement between the parties.

Definitions

The terms set out below have the following meanings when used throughout this Contract:

Contract means these terms and conditions, the Proposal and the Letter of Authority (if applicable), and includes any other documents annexed to or accompanying these terms and conditions;

Deliverables means any advice, recommendation, reports, presentations, systems, training packages, content, spreadsheets or other information or materials We provide to You as part of or in connection with the Services or the implementation of any technical solutions;

Engagement means the engagement between Us and You for the supply of the Services;

GST means goods and services taxes and other similar taxes;

Intellectual Property Rights means any and all:

1. copyrights and other rights associated with works of authorship, including without limitation all moral rights;
2. trademarks, trade names, logos and service marks and all associated goodwill;
3. trade secrets, processes, methodologies and know-how;
4. inventions (patentable and unpatentable), patents, designs, drawings, plans or specifications;
5. rights to apply for registration, renewal or extension under any law in respect of the above rights;

Letter of Authority means any letter of authority attached to these terms and conditions which grants Us access to utility data such as electricity;

OD Rate means the interest rate quoted in the Australian Financial Review by the Commonwealth Bank of Australia as its corporate overdraft reference rate;

Premises means Your address where We agree to deliver the Services or carry out the Engagement as specified in the Proposal or agreed with You in writing;

Proposal means the proposal attached to these terms and conditions;

Services means the services to be supplied as part of the Engagement as described in the Proposal;

We, Us, Our means EfficientSee Pty Ltd ACN 138 130 319;

You, Your means the person named in and to whom, the Proposal is addressed.