

Axetis Pty Ltd

General Terms and Conditions of Service

1. Definitions

"**Agreement**" means these Terms and Conditions and the Proposal.

"**Terms and Conditions**" means the terms and conditions set out herein.

"**Proposal**" means the proposal for provision of the Services as provided by Axetis to the Client, accompanying these Terms and Conditions. In the event of any inconsistency, the terms of the Proposal shall prevail. Any written quotations or proposals provided by Axetis shall be valid for a period of thirty days unless otherwise indicated in writing.

"**Axetis**" means Axetis Pty Ltd, ABN 91 505 337 239, 284 Tucker Rd, Ormond Vic 3204, Australia

"**Client**" means the other party to this agreement requesting the Services as specified in the Proposal.

"**Services**" means the services to be provided by Axetis as set out in the Proposal.

"**Electronic Deliverables**" means the files or software resulting from the Services as set out in the Proposal.

"**Material Deliverables**" means the physical output resulting from third-party production of the Electronic Deliverables.

"**Deliverables**" means all output, electronic or material resulting from the Services as set out in the Proposal.

"**Fees**" means all fees and charges for provision of the Services as set out in the Proposal, in the manner specified in Section 3 herein.

"**Client's Specifications**" means the specifications of Services to be provided as set out in the Proposal or mutually agreed subsequent amendments.

"**Confidential Information**" means the terms of this Agreement and any other information relating to the technical, inventive, financial, or business activities of the Client or Axetis that is disclosed by one party (disclosing party) to the other (receiving party), but does not include information which (1) is in the public domain as of the date of this Agreement or becomes in the public domain after the date of this Agreement through no fault of the receiving party, (2) was known to the receiving party at the time of disclosure by the disclosing party, (3) was developed independently by the receiving party without reliance on Confidential Information of the disclosing party, (4) is lawfully received by the receiving party from a third party having the right to disclose the information, or (5) is required to be disclosed by the receiving party by law, rule, or order, provided the receiving party gives prior written notice of the requirement to the disclosing party and allows sufficient time for discussion of the requirement and the possibility of limiting disclosure.

"**Intellectual Property Rights**" means any and all intellectual and industrial property rights throughout the world by whatever name known including, without limitation, rights in respect of any Confidential Information, copyright, inventions, know how, patents and trademarks whether or not registered or registrable, or patented or patentable, and include any right to apply for the registration or patenting of such rights and include all renewals, reissues, and extensions thereof.

The Client wishes to engage Axetis to provide the Services. Axetis has agreed to provide the Services upon and subject to the terms and conditions set out in the Agreement.

2. Services to be provided

- 2.1. **Commencement** - A purchase order or written authorisation from the Client is required for Axetis to commence providing the Services. Axetis will reserve the right not to undertake any work until such authorisation is received.
- 2.2. **Performance** - Axetis shall reasonably endeavor to perform the Services as set forth in the Proposal. The Client understands and agrees, however, that the provision of the Services may be subject to unknown and unforeseeable risks and delays, and that notwithstanding reasonable endeavors Axetis will not be liable for the financial or other consequences of any delay in the provision of the Services or any failure to provide the Services.
- 2.3. **Minimum fee** – Unless otherwise agreed, any work undertaken will incur a minimum fee equivalent to 1hr of labor.
- 2.4. **Late changes fee** - Unless otherwise agreed, late changes to job may incur late fees.
- 2.5. **Completion of Services** – Services are completed when Axetis has delivered the Deliverables, as set forth in the Client Specifications.
- 2.6. **Third party contractor management**
 - a. **Choice of third party** - Axetis may work in conjunction with third party contractors of its own recommendation or those specified by the Client.
 - b. **Third party pricing** - Axetis can entirely handle third party subcontractor management for an additional fee.
 - c. **Third party delays** - Axetis will not be accountable for delays incurred by third parties subcontracted by Axetis or the client for the provision of Services.
 - d. **Third party liability** - Axetis will not be held liable for defective output or services provided by third parties subcontracted by Axetis or the client for the provision of Services. Any disputes caused by factors not due to negligence on the part of Axetis and that lead to additional expenses requested by the third party to provide the Services will be settled between the Client and the Third Party directly.

3. Fees

- 3.1. Unless otherwise set out in the Proposal, the Client shall pay to Axetis:
 - a a non-refundable up-front payment of 40% of the Fees due for the provision of Services upon the signing of the Agreement;
 - b the remainder of the Fees due for the provision of Services within 14 days of delivery of the Deliverables and the accompanying invoice by Axetis to the Client; and
 - c The reimbursement of additional expenses that may be incurred for the provision of Services. Client's written consent will be sought prior to engaging such expenses.
- 3.2. Where Axetis is not able to fully comply with the Client's Specifications, Axetis may, at its sole and complete discretion, reduce the Fees payable as set out in the Proposal.
- 3.3. If the Client fails to pay any amount of the Fees due:
 - a Interest at a rate of 15% per annum shall be payable by the Client on the amount of the Fees due until paid. Interest will be calculated on a daily basis from the date on which such amount payable fell due to the date received by Axetis; and
 - b Axetis shall have the right to suspend the provision of the Services until any amount due is paid.

4. GST (for Services provided to Australian clients)

- 4.1. In this Agreement the terms "GST", "supply", "recipient", "tax invoice", "taxable supply", "consideration", "input tax credits" and "adjustment note" have the meaning given in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999.
- 4.2. The consideration payable (or to be provided) or the supply to be made under this Agreement is expressed on a GST exclusive basis.
- 4.3. Where a party making a Taxable Supply ("the supplier") is or becomes liable to pay GST in respect of that Taxable Supply, the recipient of the Taxable Supply must pay to the supplier an additional amount equal to the amount of the GST payable by the supplier (taking into account any input tax credits that the supplier is entitled to claim in respect of the relevant Taxable Supply), in respect of that Taxable Supply.
- 4.4. The GST payable must be paid on the later of the due date for payment (or provision) of the relevant consideration and the date the recipient receives a valid tax invoice in respect of that taxable supply (or adjustment note, if applicable).
- 4.5. The Supplier must at the same time as issuing an invoice for the Taxable Supply, provide the recipient with a valid tax invoice in respect of that Taxable Supply.
- 4.6. The Supplier must then remit the amount of the GST payable to the appropriate authority.

5. Client Support - The Client shall cooperate with Axetis generally, and provide to Axetis all data and other relevant information and materials ("Information") as are reasonably required by Axetis to enable Axetis to provide the Services.

6. Confidential Information - Neither party shall disclose any Confidential Information of the other party to any third party unless expressly permitted under this Agreement or in writing by the disclosing party. The parties shall have the right to disclose Confidential Information of the other party to its affiliates, officers, contractors and employees whose duties in relation to the provision of Services reasonably require such disclosure.

7. Ownership and Intellectual Property

- 7.1. Subject to Section 7.4, all final artwork that is part of the deliverables becomes the property of the Client, having unlimited and royalty-free use of the artwork upon payment of all fees.
- 7.2. All Intellectual Property Rights, artwork, designs, edits, revisions and other work product created while providing the Services (other than the final design accepted by the Client as being the subject of this agreement) (the "Preliminary Work Product") remain the exclusive copyright and intellectual property of Axetis. Any use of the Preliminary Work Product by the Client is strictly prohibited without written, prior permission by Axetis.
- 7.3. All Intellectual Property Rights created while providing the Services shall be owned exclusively by Axetis. Nothing in this Agreement shall be construed as conferring on the Client any express or implied license or option to license any technology or Intellectual Property Rights owned by Axetis.
- 7.4. Axetis retains the right to utilize any artwork, designs, edits, revisions and Preliminary Work Product for advertising, promotion and other, not-for-pay display, except where otherwise agreed. In addition, Axetis reserves the right to use for its own promotional purpose any comment, feedback and testimonial that the client sends to Axetis.

8. Copyrights and trademarks

- 8.1. It is the responsibility of the client to ensure that the designs provided by Axetis do not infringe on any copyrights or trademarks. Axetis expects the Client to perform research in relation to its company, products or services names to be sure names or marks are not already in use. Axetis recommends the Client secures a trademark or service mark to protect the Client's legal rights to any name, brand or image.

- 8.2. Axetis makes no representation that the materials resulting from the service provided will not infringe any patent or other proprietary rights of third parties. Axetis will not be held liable should the Client be found to be infringing on an already existing copyright, trademark or service mark relating to the materials or services provided.
- 8.3. Axetis reserves the right to decline the provision of any Services that may conflict with its own interests or that may place it at legal risk. Axetis reserves the right to cancel any order at any time and refund any amount paid by the Client.

9. Termination

- 9.1. Either party may terminate this Agreement immediately in the event that the other party commits a breach of the Agreement and fails to remedy such a breach within 30 days of receipt of a notice in writing requiring such breach to be remedied.
- 9.2. For the avoidance of doubt, a breach does not include the failure to provide the Services by the due date specified in the Proposal or the failure to provide the services in accordance with the specifications notwithstanding the use of reasonable efforts.
- 9.3. The failure of Axetis to perform any obligation under this Agreement by reason of acts of God, acts of governments, riots, wars, strikes, accidents or deficiencies in materials or transportation or other causes of any nature beyond its control for the duration thereof and for thirty (30) days thereafter shall not be deemed to be a breach of this Agreement.
- 9.4. Upon termination of this Agreement the Client will pay Axetis all Fees due up until the date the termination takes effect, which shall be prorated to account for work performed and costs incurred, even if not completed.
- 9.5. The failure of any party to enforce at any time the provisions of this Agreement or any rights it has in relation to this Agreement shall not be considered a waiver of such provisions or rights and shall not otherwise affect the validity of this Agreement.

10. Warranty

- 10.1. Axetis warrants that:
 - a Axetis has the authority to enter into this Agreement and perform its obligations under this Agreement; and
 - b Axetis will perform the Services required under this Agreement in a professional and workmanlike manner.
- 10.2. The Client acknowledges that:
 - a nothing in this Agreement prevents Axetis from using its knowledge, experience and intellectual property to provide similar services for third parties; and
 - b the Services are provided in good faith and no warranty or condition, express or implied, has been given by or on behalf of Axetis in relation to their utility, merchantability or fitness for any particular purpose.
- 10.3. Warranty period – For a period of 3 months after completion of services, Axetis will make all reasonable efforts to amend any errors or defects found in the Electronic deliverables. All obligations between the Client and Axetis cease at the expiration of Warranty. Axetis' warranties are independent of third-party warranties.

11. Release, Indemnification and Insurance

- 11.1. The Client hereby represents, covenants, and warrants that the services or deliverables will only be used in compliance with this Agreement and all applicable laws (including but not limited to policies and laws related to spamming, privacy, obscenity, or defamation).
- 11.2. The Client hereby releases and forever discharges Axetis from and in respect of all suits, actions and claims of any kind whatsoever and howsoever arising in respect of the Client's use of the Deliverables or Services provided using, directly or indirectly, the Deliverables ("Claims") including, without limitation, any Claims arising out of (a) any breach of contract or statute or (b) the negligence of Axetis, its employees, servants or agents.
- 11.3. The Client indemnifies and agrees to keep Axetis indemnified from and against all claims, liabilities, losses and expenses (including but not limited to all legal expenses, including solicitor and attorney fees) by reason of any claim, proceeding or action of any nature whatsoever arising out of or relating to:
 - a any breach of this Agreement by Client;
 - b any infringement or alleged infringement of third party Intellectual Property Rights in the Deliverables;
 - c any use of the Deliverables by (i) Client or (ii) any third party that has had the Deliverables provided to it by Client either directly or indirectly; and
 - d any use of the Deliverable created by a third party during the course of the provision of Services, unless said third party is contracted by Axetis as a 'work-for-hire' vendor, or in direct professional consultation with Axetis.
 - e any claim resulting to any unlawful use of the deliverables or services
- 11.4. The Client shall effect and maintain at its expense adequate insurance to protect Axetis against public and product liability in respect of claims for death, injury or accident arising from the Services. Copies of such policies shall be made available to Axetis on request. In the event Axetis reasonably requests that it be a named insured on a Client insurance policy, Client shall take reasonable steps to do so.

12. Exclusion of Conditions and Warranties

- 12.1. All statutory or implied conditions and warranties which are applicable to the Services or supply of the Deliverables under this Agreement are excluded to the extent permitted by law.

12.2. To the extent permitted by law, the liability of the parties for breach of any condition or warranty which cannot be legally excluded is limited to either one of the following, which selection shall be at Axetis' discretion:

- a in the case of Deliverables, the replacement of the relevant Deliverable, the supply of an equivalent Deliverable or the refund of any Fees paid that are directly attributed to anticipated procurement of that Deliverable; and
- b in the case performance of the provision of Services, the re-supply of services or the refund of any Fees paid that are directly attributed to supply of those services.

13. Governing Law - This Agreement shall be governed by and construed in accordance with the law of the State of Victoria, Australia and the parties submit to the jurisdiction of the courts of that state.

14. Authorization to Execute - Any individual executing this Agreement on behalf of either party, represents and warrants that he or she has been fully empowered to execute this Agreement and that all necessary action to authorize the execution of this Agreement has been taken.

15. Assignment - The Client may not assign or otherwise deal with its rights under this Agreement without the prior written consent of Axetis which shall not be unreasonably withheld.

16. General

16.1. If any provision of this Agreement is held to be invalid, unenforceable or illegal for any reason, this Agreement shall remain otherwise in full force apart from such provision which shall be deemed deleted.

16.2. This Agreement constitutes the entire Agreement for these particular Services between the Client and Axetis. Any prior arrangements, agreement, representations or undertakings are superseded. No modification or alteration of any clause of this Agreement will be valid except in writing signed by each party.