

# GENERAL TERMS

## 1 DEFINITIONS

**Aggregated Data** means anonymously aggregated information or data (including statistical information and data sets relating to customer usage profiles, purchasing behaviours and patterns) derived or generated in connection with the provision of the Services;

**Agreement** means the General Terms, applicable Product Terms and the Statement of Work;

**Business Day** means a day that is not a Saturday, Sunday, national public holiday or national bank holiday in the place within Australia where the Services are being provided;

**Client** is the party to whom Salmat is supplying the Services;

**Client Materials** means:

- (a) all text, data, images, documents, reports, logos, trademarks, copy, electronic files, proofs, designs, product descriptions and other materials, whether electronic or in hard copy form, submitted to Salmat by or on behalf of the Client for the purposes of providing the Services, and
- (b) any information or data that is imported by or on behalf of the Client in connection with the provision of the Services or the Client's use of technology services hosted by or on behalf of Salmat;

**Confidential Information** of a party (or a Related Body Corporate of a party), regardless of its form and whether the other party becomes aware of it before or after the date of this Agreement, means:

- (a) information that is by its nature confidential to that party;
- (b) information treated or designated as confidential by that party;
- (c) information the other party knows, or ought to know, is confidential to that party;

and includes but is not limited to: (i) legal, financial and business information; (ii) business plans, models, processes, trade secrets, reports and market projections; (iii) names of existing and potential customers and partners; (iv) customer information and data; (v) proposed business deals and contract arrangements; (vi) accounting and management information systems; and (vii) all technologies owned or being developed by a party or in which a party has an interest;

but does not include information:

- (a) lawfully in the public domain or which enters the public domain other than as a result of a breach of this Agreement;
- (b) already known to the other party free of any obligation to keep it confidential; or

- (c) proven beyond reasonable doubt to have been independently developed by the other party without use, directly or indirectly of Confidential Information.

**Fees** means the service fees payable by the Client as may be specified in the SOW;

**Force Majeure** means any event or circumstances beyond a party's control, including: acts of God, strikes, lockouts, third party service provider failures, telecommunications or equipment failures, network faults, power or water outages, unscheduled maintenance and repair or legislative changes;

**General Terms** means these general terms which are applicable to all of the Services being supplied;

**Intellectual Property** includes copyright, and all rights conferred under statute, common law or equity in relation to inventions (including patents), trademarks, designs, circuit layouts, domain names, rights in databases, confidential information, trade secrets, know-how, and all other proprietary rights, whether registered or unregistered, and all equivalent rights and forms of protection anywhere in the world, together with all right, interest or licence in or to any of the foregoing;

**Law** means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in in the jurisdiction in which the Services are being supplied;

**Master Services Agreement (MSA)** means a formal agreement executed by an authorised representative of each party setting out the terms and conditions upon which the Services will be supplied, if any;

**Personal Information** has the meaning as defined in the Privacy Laws from time to time;

**Privacy Laws** means:

- (a) the *Privacy Act 1988* (Cth) and the Australian Privacy Principles contained in that Act, as amended from time to time;
- (b) legislation in force in any jurisdiction and affecting privacy, personal information or the collection, handling, storage, processing, use or disclosure of data (to the extent that such legislation applies to Salmat or the Client); and
- (c) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under such instruments, as amended from time to time.

**Product Terms** mean the unique service terms applicable to the Services being supplied, available at [www.salmat.com.au](http://www.salmat.com.au) or upon request;

**Related Body Corporate** has the meaning given to it in section 50 of the *Corporations Act 2001* (Cth);

**Salmat** means the Salmat company group member supplying the Services;

**Salmat Affiliate** means a Salmat Related Body Corporate or any other Salmat company group member specified in the Product Terms;

**Services** means the services and any deliverables set out in the SOW and any further services agreed in writing between the parties;

**Statement of Work (SOW)** means a document setting out service requirements and the commercial terms including fees and pricing, set out in a quotation, proposal, client brief, order or a statement of work, as the case may be;

**Term** means the term specified in the SOW, including any renewals.

## 2 TERMS OF SERVICE

- 2.1 Upon acceptance by Salmat of an order or the execution by both parties of a SOW, an individual contract for the supply of Services will be formed incorporating these General Term and any applicable Product Terms.
- 2.2 If there is any conflict of meaning between information contained in the documents which form part of the Agreement, the order of precedence will be as follows:
  - (a) the Statement of Work;
  - (b) the Product Terms;
  - (c) the General Terms.
- 2.3 Salmat may make commercially reasonable changes to the General Terms and the Product Terms (together the “**Terms of Service**”) from time to time. The Client will remain governed by the Terms of Service in effect on the Agreement commencement date until the end of the then-current term. If the Agreement is renewed, it will be renewed under Salmat's then current Terms of Service.

## 3 FEES AND PRICING

- 3.1 In the event of an increase in the costs of providing the Services, including without limitation the imposition of a new direct or indirect tax or impost, legislative change (including changes that directly impact minimum employee entitlements and employer obligations), exchange rate fluctuations or supplier cost increase, Salmat reserves the right to review and request a variation to the Fees to take into account the impact of such changes.
- 3.2 In addition to clause 3.1, Salmat may review and adjust its Fees and charges (including its freight rates) for any Services, once each year on or after each anniversary of the date from which those Services are first provided with reference to the Consumer Price Index (All Groups Weighted Average of eight capital cities) as published by the Australian Bureau of Statistics. Any Fee increase will be limited to the percentage increase during the immediately preceding year or 2%, whichever is the greater.

- 3.3 The Fees cover work set out in a SOW. Any change to a SOW pursuant to clause 14 (Change Request) may lead to an adjustment in the Fees.
- 3.4 The parties will negotiate in good faith any variation to the Fees and in the event that they are unable to agree on the amount of a variation pursuant to clauses 3.1, then either party may terminate the relevant SOW(s) by providing the other party with 90 days written notice.

## **4 PAYMENT TERMS**

- 4.1 Payment terms are granted subject to the Client's successful application for commercial credit. The Client acknowledges and agrees that in granting credit Salmat reserves the right to:
- (a) withdraw or suspend credit at any time in its sole discretion;
  - (b) charge interest at the rate of 1.5% per calendar month on all overdue amounts;
  - (c) recover any expenses incurred in recovering outstanding monies; and
  - (d) collect, disclose and exchange Personal Information for the purpose of assessing the credit worthiness of the Client or any Client guarantor in accordance with Salmat's [Credit Reporting Privacy Policy](http://www.salmat.com.au) found at [www.salmat.com.au](http://www.salmat.com.au).

Where payment terms have not been approved or have been withdrawn or suspended, then the provision of Services will be subject to payment upfront.

- 4.2 In consideration for the provision of the Services, subject to clauses 4.1 and 4.3, the Client must pay the Fees for the full amount invoiced without set off or deduction within 30 days of the date of invoice unless the relevant Product Terms provide otherwise.
- 4.3 If the Client wishes to dispute an invoice, it must notify Salmat promptly upon becoming aware of the circumstances giving rise to the dispute. Payment of an invoice or failure by the Client to dispute an invoice prior to the due date for payment will not prejudice the Client's right to raise a valid invoice dispute. The Client may dispute an invoice for up to 12 months from the date of invoice. The Client must pay any undisputed portion of the invoice in accordance with clause 4.2.
- 4.4 If an undisputed invoice is not paid when due Salmat may, in its sole discretion, suspend supply of the Services.
- 4.5 The Client acknowledges and agrees that invoices must be paid to the Salmat group member supplying the Services unless a different Salmat Affiliate is stipulated in the SOW.
- 4.6 Where an invoice is paid by credit card, the payment will incur a credit card payment surcharge.
- 4.7 All pricing is exclusive of goods and services tax ("GST"). Salmat reserves the right to recover from the Client all GST payable in respect of the supply of Services to the Client.

4.8 Any credits granted to the Client are valid for a period of 6 months from the date of grant and must be used within that timeframe. Any monies held on account for the Client will be held for a period of 6 months, after which time those amounts will be converted to a credit held in favour of the Client.

## 5 WARRANTIES

5.1 Each of the parties warrants to the other that:

- (a) it has full power and authority to enter into and perform the Agreement;
- (b) it shall comply and shall ensure that its employees and agents comply, with any Law; and
- (c) it has or will acquire all Intellectual Property rights needed to perform its obligations under the Agreement.

5.2 The Client warrants that:

- (a) it will not do, and it will not direct or request Salmat to do, anything which may breach any Law or applicable industry code;
- (b) it will make any decisions and provide any approvals, data, documentation and information reasonably required by Salmat, promptly;
- (c) it will carry out any tasks assigned to it and its agents or contractors in a timely manner and in such a way as to not delay Salmat in the provision of the Services;
- (d) the Client Materials
  - (i) do not contain any matter which is obscene, defamatory, or illegal;
  - (ii) are not false, misleading or deceptive or likely to mislead or deceive;
  - (iii) are up to date, technically accurate, complete and correctly formatted for any distribution or use by Salmat in the provision of the Services;
  - (iv) are free from viruses and do not contain malware, spyware or any other code which could alter or disrupt any program, product, service or device;
- (e) the use of the Client Materials by Salmat for the purposes of providing the Services and all matters incidental thereto will not breach any Law or infringe the Intellectual Property rights or other rights of any person or entity; and
- (f) it will pay to Salmat any additional costs incurred by Salmat in converting or processing Client Materials which are not in compliance with this clause 5.2.

5.3 Salmat warrants that it will:

- (a) use commercially reasonable endeavours to ensure that the Services:
  - (i) are free from material defects in design, materials and workmanship;
  - (ii) are provided substantially in accordance with any specification set out in a SOW; and

- (iii) are carried out in accordance with the lawful instructions and directions of the Client;
  - (b) only store and use Client Materials:
    - (i) to the extent necessary to provide the Services to the Client (and any back-ups for those Services);
    - (ii) to the extent necessary to perform its obligations or enforce its rights under this Agreement; and
    - (iii) where required or authorised by Law;
  - and
  - (c) implement reasonable and appropriate information security practices regarding the protection of Client Materials as required by Law, including administrative, technical and physical security processes.
- 5.4 To the extent that the law permits and except as expressly provided in the relevant Product Terms, Salmat makes no other representations or warranties of any kind, express or implied, with respect to the Services.
- 5.5 The Client acknowledges and agrees that:
- (a) Salmat makes no guarantee regarding the results, outcomes or profitability of any Services or campaigns conducted or provided by Salmat for or on behalf of the Client; and
  - (b) the Client remains liable and responsible for any loss or damage suffered or incurred by Salmat (including the provision of compensation to any third party carriers) in connection with Salmat's use of the Client Materials in accordance with the Agreement.

## **6 PRIVACY**

- 6.1 If a party is provided with, or has access to Personal Information in connection with the Services, it must comply with the Privacy Laws and any other applicable law in respect of that Personal Information. Neither party must do anything (or omit to do anything) that causes the other party to fail to comply with its obligations under Privacy Laws. Nothing in this Agreement must be treated as preventing any party from taking the steps it reasonably considers necessary to comply with Privacy Laws.
- 6.2 If Personal Information is provided to Salmat by or on behalf of the Client, then the Client:
- (a) must do all things necessary, including but not limited to: (i) obtaining all appropriate consents from individuals; (ii) providing notifications to individuals; and (iii) maintaining accurate, up to date and complete records; to ensure that Salmat may lawfully use, process and disclose the Personal Information (and any changes made to any of them) in connection with the provision of the Services;

- (b) acknowledges and agrees that except as may be required by this Agreement, Salmat is not required to take steps to ensure that any Personal Information has been collected in accordance with the Privacy Laws;
- (c) must do all things reasonably requested by Salmat to assist Salmat to comply with the Privacy Laws in the course of its provision of the Services under this Agreement including: (i) assisting Salmat in the updating of an individual's records in circumstances where an individual elects to "opt out" and not receive direct marketing materials and services; (ii) providing Salmat with access to information held by the Client in respect of an individual when the individual makes a request for such access; and (iii) providing Salmat with the policies and procedures the Client has put into effect pursuant to the Privacy Laws if requested to do so by Salmat.

6.3 If Salmat collects Personal Information in the name of or on behalf of the Client:

- (a) the Client must provide to Salmat such collection statements, scripts for use, privacy policies and other materials necessary to ensure compliance with the Privacy Laws in the collection of such Personal Information; and
- (b) the Client acknowledges and agrees that where Salmat is authorised or required by the Client to collect or otherwise deal with Personal Information in the name of or on behalf of the Client in connection with providing the Services, that Salmat does so as agent for the Client.

6.4 If Salmat processes any Personal Information in the name of or on behalf of the Client:

- (a) the Client acknowledges and agrees that the Personal Information may be disclosed or stored outside Australia in order to provide the Services. The Client consents for Salmat to receive, share and disclose Personal Information arising from use of the Services with telecommunication or other providers used in conjunction with the Services, or as may be required by Law;
- (b) Salmat shall process the Personal Information in with this Agreement and any lawful instructions reasonably given by the Client from time to time; and
- (c) each party shall take appropriate security and organisational measures against unauthorised or unlawful processing of the Personal Information or its accidental loss, destruction or damage.

6.5 Where Salmat has reasonable grounds to believe that there has been unauthorised loss, alteration, or disclosure of, or access to, any Personal Information of the Client that is in Salmat's custody or control in connection with the provision of the Services ("**Privacy Incident**"), Salmat shall notify the Client promptly and without unreasonable delay. Each party shall take all appropriate action necessary to identify, remedy or mitigate the effects of the Privacy Incident and shall provide each other with such information as the other may reasonably require to ensure that any obligations under the Privacy Laws (including, if applicable, mandatory notification requirements) are met.

- 6.6 Salmat's [Privacy Policy](#) found at [www.salmat.com.au](http://www.salmat.com.au) will apply to any Personal Information that it collects, processes and holds.

## 7 INTELLECTUAL PROPERTY

Except as expressly provided:

- 7.1 Nothing in this Agreement conveys to either party any right, title or interest in the other party's pre-existing Intellectual Property.
- 7.2 Intellectual Property in all items, information, materials, and works (including software developments and enhancements, modifications to applications or data insights) developed or produced by Salmat in connection with the provision of the Services will be the sole and exclusive property of Salmat.
- 7.3 Rights in Intellectual Property owned by Salmat remain at all times the sole and exclusive property of Salmat and no licence of these rights is granted to the Client except a right to use the same to the extent required for the Client's enjoyment of the Services.
- 7.4 Rights in third party Intellectual Property licensed or procured by Salmat in connection with the provision of the Service remain at all times the sole and exclusive property of that third party and no licence of these rights is granted to the Client except a right to use the same during the Term to the extent required for the Client's enjoyment of the Services, subject always to any third party end user terms and payment of any applicable third party licence fees.
- 7.5 All Intellectual Property rights in the Client Materials remain at all times the sole and exclusive property of the Client and no licence of these rights is granted to Salmat except for a right to use and reproduce the same for the purposes of providing the Services or as may be otherwise specified in the Agreement.

## 8 CONFIDENTIAL INFORMATION

- 8.1 A party (the "**receiving party**") who obtains the Confidential Information of the other party (the "**disclosing party**") in connection with the Services or this Agreement, shall, and shall ensure that its officers, employees and agents, keep the Confidential Information of the disclosing party confidential and not use or disclose the Confidential Information to any third party other than:
- (a) in confidence to the receiving party's professional advisers to obtain professional advice;
  - (b) as may be properly required for the purpose of the provision of the Services and the performance of any obligations under the Agreement but subject to any such person being made aware of, and undertaking to comply with, the obligations in relation to the Confidential Information as set out in this Agreement;

- (c) with the consent of the disclosing party; or
  - (d) as may be required by any Law, the rules of any stock exchange under which a party is listed or any court of competent jurisdiction.
- 8.2 Upon termination or expiration of this Agreement, the receiving party must cease using the Confidential Information of the disclosing party and subject to clause 8.3, destroy or return the Confidential Information and if requested by the disclosing party, certify in writing that the Confidential Information and all copies of the Confidential Information in the receiving party's possession or control has been destroyed or returned.
- 8.3 The receiving party: (i) will not be required to destroy copies made as part of the receiving party's normal back up and disaster recovery policies and procedures and which cannot be reasonably deleted (which copies will be destroyed in the normal course pursuant to such policies); and (ii) will be entitled to retain any documents which need to be retained by the receiving party for legal record purposes. The parties acknowledge and agree that any Confidential Information which is retained pursuant to parts (i) and (ii) will be held and kept confidential by the receiving party in accordance with the terms and conditions of this Agreement.
- 8.4 Each party acknowledges that in the event of any alleged breach of this clause 8, damages may not be an adequate remedy and the disclosing party will be entitled to seek equitable relief in the nature of specific performance and injunctive relief, in addition to damages.

## 9 INDEMNIFICATION

- 9.1 Each party (the "**indemnifying party**") will, at its expense, defend or settle any third-party claim against the other party (the "**indemnified party**") caused by the indemnifying party's failure to comply with the warranty in clause 5.1(c), to the extent such claim results in liability, damages, and costs (including reasonable legal costs) to the indemnified party. The indemnifying party will pay (in relation to such claim) any:
- (a) negotiated settlement amounts (to the extent the indemnifying party is permitted to settle); or
  - (b) damages, fines or penalties finally awarded by a court or regulatory authority, to the extent directly attributable to the indemnifying party's conduct.
- 9.2 The indemnifying party will have no obligations or liability under clause 9.1 to the extent such claim arises from:
- (a) the indemnified party's use of any Intellectual Property of the indemnifying party in a modified form not approved by the indemnifying party in writing or in combination with materials not furnished by the indemnifying party,
  - (b) the indemnified party's use of materials, data or information provided by the indemnifying party in a way that breaches any Laws or this Agreement;

- (c) any act or omission of the indemnified party that impedes or prevents the indemnifying party's ability to comply with its obligations under this Agreement.
- 9.3 A party's indemnity obligation are conditional upon the indemnified party (to the extent permitted by Law):
- (a) giving prompt written notice of the claim;
  - (b) permitting the indemnifying party to have full and complete control over the defence and settlement of the claim;
  - (c) providing assistance in connection with the defence and settlement of the claim as the indemnifying party may reasonably request; and
  - (d) complying with any settlement or court order made in connection with the claim (e.g., relating to the future use of any infringing materials).
- 9.4 To the extent permitted by law, the remedies in clause 9.1 are the sole and exclusive remedies and the indemnifying party's sole liability regarding the subject matter giving rise to any such claim.

## 10 LIMITATION OF LIABILITY

- 10.1 To the extent that any Law (including the *Competition and Consumer Act 2010*(Cth)) implies certain non-excludable conditions, guarantees or warranties into the Agreement, Salmat limits its liability in relation to those non-excludable conditions, guarantees or warranties to the supplying of the Services again or the payment of the costs of having the Services supplied again.
- 10.2 Except as otherwise provided in the Agreement, the maximum aggregate liability of a party to the other party for any damages, losses, claims and expenses arising out of or in connection with this Agreement, whether in contract, tort (including negligence), under product liability legislation, under any other statute, under any indemnity or otherwise, , shall be limited to the equivalent of twelve times the average monthly Fees payable by the Client to Salmat specified in the SOW under which the liability arose.
- 10.3 In no event shall either party be liable for any incidental, indirect, punitive, exemplary, or consequential damages or any loss of any of the following - profit, revenue, goodwill, bargain, anticipated savings, use of products or equipment, software, data or management time, incurred or awarded against the other party under or in any way connected with this Agreement.
- 10.4 The Client acknowledges that Salmat does not control the transfer of data over communications facilities, including the internet, and that the Services may be subject to limitations, delays and security issues inherent in the use of such communications facilities ("**service limitations**"). Salmat is not responsible for any delays, service level failures or data breaches caused by such service limitations including: corruption, piracy or malicious third

party attacks (including DDoS attacks), which are beyond the reasonable control of Salmat. The Client expressly waives any claim against Salmat for compensation, service credits, damages or loss of data arising from the service limitations and agrees their occurrence will not constitute a breach of this Agreement.

- 10.5 The liability of a party is reduced proportionately to the extent to which the liability is caused, or contributed to, by the other party and each party must do what is reasonable in the circumstances to mitigate and minimise any costs, damages, expenses and/or losses incurred or suffered by it in connection with any claim under the Agreement.
- 10.6 The limitations of liability in this clause 10 shall not apply where prohibited by applicable law, but shall be restricted only to the minimum extent required to satisfy that law.

## 11 TERMINATION

- 11.1 Either party may terminate the Agreement without prejudice to its other remedies by notice in writing to the other (the “**Defaulter**”):
- (a) if the Defaulter commits a material breach of the Agreement (which shall include payment default by the Client) and the Defaulter has not remedied the breach within 30 days of having been given notice in writing specifying the breach and requiring it to be remedied;
  - (b) if the Defaulter is or becomes insolvent or bankrupt, becomes an externally-administered body corporate under the Corporations Act 2001 or steps are taken by any person towards external administration; or
- 11.2 On termination of the Agreement:
- (a) the Client’s right to use the Services ceases;
  - (b) except for Fees that are the subject of a genuine dispute notified to Salmat in accordance with clause 4.3, the Client must immediately pay to Salmat, without deduction or set off, all outstanding Fees and any other amounts payable to Salmat under the Agreement at the date of termination; and
  - (c) Salmat will, upon Client request and subject to clause 11.3, return any proprietary information or data of the Client (“**Client Data**”) generated in connection with the Services and/or stored on Salmat systems.
- 11.3 Salmat shall be entitled to recover its costs in connection with the retrieval of Client Data pursuant to clause 11.2(c), including any data conversion costs. Salmat will have no obligation to maintain or make available any Client Data for longer than ninety (90) days following termination and may thereafter, unless legally prohibited or otherwise specified otherwise in a Statement of Work, permanently delete all such Client Data.
- 11.4 At any time prior to the termination or expiry of the Agreement, the Client may submit a written request for disengagement services and/or assistance with transitioning to a new

provider. Unless these services are agreed, scoped and costed pursuant to a Change Request or a separate SOW, such services are provided in Salmat's absolute discretion at Salmat's then current rates and charges.

11.5 Termination of the Agreement does not affect the accrued rights or liabilities of either party.

## **12 FORCE MAJEURE**

12.1 Neither party will be responsible for any delay, non-performance or degradation of performance of any of the obligations under the Agreement caused by or resulting from a Force Majeure, except for an obligation to make any payment. The affected party will notify the other party as soon as reasonably practicable in the case such an event causes a delay in the provision of the Services and the cause of the delay.

12.2 If a party is prevented from carrying out its obligations under the Agreement pursuant to clause 12.1 for a period of 30 days, either party may terminate the Agreement by giving 7 days' notice to the other party, without prejudice to any of the rights of either party accrued prior to the date of termination.

## **13 DISPUTES**

13.1 The parties must, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with this Agreement (a "dispute") prior to commencing any proceedings in any court or otherwise in respect of that dispute ("proceedings").

13.2 If a party requires resolution of a dispute it must do so in accordance with the provisions of this clause 13 and the parties acknowledge that compliance with those provisions is a condition precedent to any entitlement to claim relief or remedy by way of proceedings in respect of a dispute.

13.3 If a party requires resolution of a dispute it must immediately submit full details of the dispute to its managing director or equivalent officer (each called a "responsible party").

13.4 On submission of details of a dispute in accordance with clause 13.3 the parties must procure each of their responsible parties to meet and try, on a bona fide basis, to resolve that dispute.

13.5 If a dispute is not resolved within 20 Business Days of submission of the dispute in accordance with clause 13.3 or within such other longer period as they agree, the provisions of clauses 13.6 and 13.7 will apply.

13.6 A dispute must be submitted to mediation at the option of the party requiring resolution of that dispute in Sydney, NSW in accordance with the ACDC's standard rules before a mediator to be agreed. If the parties cannot agree on a mediator, the chief executive for the time being of the Australian Commercial Dispute Resolution Centre (ACDC) (or nominee) will be requested to appoint a mediator within 10 Business Days of the request.

- 13.7 A party may not commence proceedings in respect of a dispute unless that dispute is not settled by mediation within 20 Business Days of submission to mediation or within such other longer period as the parties agree.
- 13.8 Each party will pay its own costs associated with this dispute resolution procedure unless the mediator determines otherwise.
- 13.9 While any dispute remains unresolved, the parties agree to continue to perform the Agreement to the extent that such performance is possible, given the nature of the dispute.
- 13.10 This clause 13 does not limit in any way a party's right to seek any form of equitable relief including, without limitation, injunctive relief.

## **14 CHANGE REQUESTS**

- 14.1 The parties will follow the change request process described in this clause 14 to initiate and consider:
- (a) new Services that are not within the scope of a SOW; or
  - (b) changes to the Services (including any changes to the nature or scope of the Services or to the timing or the delivery of the Services) which cannot be accommodated by another process in this Agreement, each being referred to in the Agreement as a **"Change Request"**.
- 14.2 A Change Request must
- (c) contain a detailed description of the proposed change;
  - (d) detail the effect (if any) on the Services (including the functionality and performance of any deliverables);
  - (e) detail impact on the Fees;
  - (f) detail the impact to any agreed service levels; and
  - (g) contain a timeline for implementation of the change, including any significant milestones.
- 14.3 Each party will cooperate with the other party as necessary to enable the preparation of a Change Request, including by providing information, documents and details.
- 14.4 The Client will, within a reasonable period of time from receipt of the relevant information provided pursuant to 14.2, notify Salmat of its decision in respect of a Change Request including, without limitation, whether it:
- (a) accepts the Change Request;
  - (b) wishes to renegotiate any aspect of the Change Request;
  - (c) withdraws the Change Request, if initiated by the Client; or
  - (d) does not accept the Change Request, if initiated by Salmat.

- 14.5 A party must not unreasonably refuse (directly or indirectly) any Change Request by the other party.
- 14.6 Neither party has any obligation to proceed with any Change Request unless and until the parties have agreed in writing on the necessary variations to the Services, the Fees, any applicable timeframes and/or any other relevant terms of the Agreement to take account of the change.
- 14.7 Where:
- (a) the Change Request is relatively minor (in terms of cost and impact) and is fairly routine; or
  - (b) if agreed by the parties (agreement not to be unreasonably withheld), a truncated change request process (acceptable to both parties) may be adopted to deal with any particular Change Request.

## 15 GENERAL

- 15.1 **Rebate Disclosure.** Salmat may be the recipient of rebates and commissions as a result of volume based incentives and preferred supplier arrangements negotiated with some of its suppliers.
- 15.2 **Relationship.** This Agreement constitutes a relationship between the Client and Salmat of principal and independent contractor. Without prejudice to clause 6.3(b), nothing in the Agreement shall constitute any relationship of agency, partnership or joint venture. Neither party, unless expressly stated in the Agreement, shall enter into or have authority to enter into any engagement or make any representation or warranty on behalf of or pledge the credit of or otherwise bind or oblige the other party.
- 15.3 **Insurance.** During the Term and at all times that Salmat performs the Services for the Client, Salmat must take out and maintain with a reputable insurer, sufficient insurances relevant to the provision of the Services, including:
- (a) public risk and liability insurance in an amount of not less than \$10 million;
  - (b) professional indemnity insurance in an amount of not less than \$5 million; and
  - (c) Workers Compensation insurance in compliance with each State's (or Territory's) legislative requirements.
- 15.4 **Variation.** This Agreement may only be varied, modified, amended or added to in writing executed by the parties in the manner that the Agreement is executed.
- 15.5 **No Waiver.** No delay by a party in exercising any right under this document will operate as a waiver of that right nor will any waiver by a party of any right under this document operate as a waiver of any other right of that party, nor will any single or partial exercise of any right preclude any further exercise of that or any other right under this document.

- 15.6 **Counterparts.** This Agreement may be executed in two counterparts which, when taken together, will constitute one single Agreement between the parties.
- 15.7 **Severability.** If any provision of the Agreement is unenforceable it will be read down so as to be enforceable or, if it cannot be so read down, the provision (or where possible, the offending part) will be severed from the Agreement without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of the Agreement which will continue in effect.
- 15.8 **Survival.** The provisions of the Agreement which are capable of having effect after termination of the Agreement will remain in full force and effect following the termination of the Agreement.
- 15.9 **Entire Agreement.** This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of the Agreement.
- 15.10 **Notices.** If either party gives or is required to give a notice to the other party under the Agreement, that notice must be in writing and hand delivered, sent by pre-paid post or emailed to the address specified in the SOW.
- 15.11 **Use of logos.** Unless the Client expressly specifies otherwise, in writing, Salmat may use and publish the Client's logo for marketing purposes and otherwise disclose that the Client is a customer of Salmat.
- 15.12 **Aggregated Data.** Salmat shall be permitted to use Aggregated Data for any purpose or disclose Aggregated Data to any third party.
- 15.13 **Governing Law.** This Agreement is governed by the laws of New South Wales and the parties submit to the exclusive jurisdiction of the courts of that State.