

Standard Terms of Business

These terms of business apply to the engagement of Nexia ASR Pty Ltd and any associated entities ("NASR") by you ("you"), both collectively referred to as the "parties". These terms and the Engagement Letter form the Contract ("Contract") between the parties for the Services.

Engaging or continuing to engage NASR to provide its services, will confirm your acceptance of these standard terms.

1. Services

NASR will provide the Services described in the Engagement Letter.

Timescale

NASR will endeavour to carry out our obligations in accordance with the timescales set out in the Engagement Letter. However, unless both parties specifically agree otherwise in writing, the dates contained in the Engagement Letter are indicative dates intended for planning and estimating purposes only and are not contractually binding. Any estimates of time for completion of the Services are given on the assumption NASR receives co-operation and commitment from you. For the avoidance of doubt, NASR will not be liable for any failure or delay in performing the services if that failure or delay arises from anything beyond its control – including the untimely provision of information by you.

Changes to Services

Either of the parties may request changes to the Services as set out in the Engagement Letter. Both parties agree to work together to enable both parties to assess the impact of any requested changes on the cost, timing and any other aspect of the Services.

NASR Engagement Team

Where specific NASR partners and staff are named in the Engagement Letter, NASR will use reasonable efforts to ensure that these people are available to provide the Services. Where any changes are necessary, NASR will give you reasonable notice of the changes. Staff have been allocated to the engagement based upon NASR assessment of the levels of experience, skills and responsibility involved.

2. Information

You agree to provide in a timely fashion all information and documents reasonably required to enable NASR to provide the Services. Unless otherwise stated in the Engagement Letter, NASR will not independently verify the accuracy of such information and documents and will not be liable for any loss or damage arising from any inaccuracy or other defect in any information or documents supplied by you.

3. Fees and Payment

How fees will be calculated

NASR fees are calculated on the basis of time spent on the assignment by our partners and staff in accordance with hourly rates current at the time the services are performed. A schedule of rates for staff allocated to this engagement and / or rates for all NASR employees can be provided upon written request.

Unless otherwise stated, any total quantum of fees indicated in the Engagement Letter are indicative estimates only based upon the preliminary information provided by you and our experience with similar and / or your previous engagements. Any fees quoted are not fixed, unless otherwise stated, and NASR reserves the right to render fee invoices for an amount based upon time spent, greater than any quantum indicated in the Engagement Letter.

Performance

NASR's performance is dependent on you carrying out your responsibilities as set out in this Terms of Business and the Engagement Letter and you providing all information reasonably requested by NASR in a complete and timely manner. Should this not occur, it may lead to an increase in fees depending upon the extent to which NASR has to perform more work or reschedule commitments to deliver the agreed Services. Alterations to the scope of works or delays beyond the control of NASR may require a reallocation of engagement staff and a renegotiation of fees.

Expenses

All charges are exclusive of expenses unless the Engagement Letter states otherwise. You agree to pay NASR's reasonable travel, subsistence and document handling costs (photocopying, scanning and imaging, printing, fax and courier, etc) incurred in connection with the Services. Any special expense arrangements will be agreed and set out in the Engagement Letter.

Payment of invoices

NASR invoices will be issued on a monthly basis or as set out in the Engagement Letter. NASR reserves the right to issue invoices at more or less frequent intervals. All invoices will be due for payment as stipulated on the invoice but in no event greater than within 14 days of the date of the invoice. All invoices will be rendered with relevant client details and a summary of work performed. Detailed time records will not be provided on the invoice. Time detail may be requested in writing within 14 days of issue of invoice. Any dispute in relation to time will not be recognised unless notified within 7 days of receiving details of time incurred.

NASR retains the right to charge interest on invoices which are not paid by the due date. Interest will be calculated daily at a rate of 2% above the rate prescribed under the Penalty Interest Rate Act.

NASR reserves the right to recover all default costs and enforcement expenses in the event invoices are not paid by the due date and recovery action is necessary.

NASR reserves the right to exercise a lien over all client files and documents until all invoices, interest, default costs and enforcement expenses are paid in full.

GST

NASR's fees and charges referred to in the Contract are exclusive of GST, unless stated otherwise. Any applicable GST will be added to your bill, which you will be responsible for paying.

4. Term and Termination

Duration of Contract

This Contract will apply from the date of the Engagement Letter, or where specified, from the date of acceptance of the Contract as specified in the Engagement Letter. This Contract will continue until it is terminated in writing by either party or in accordance with the terms set out below.

Termination

The Contract may be terminated by either party by written notice if either party fails to remedy a material breach of these Terms of Business.

If the Contract is terminated prior to completion, NASR shall be entitled to be paid for work that has been carried out or where expenses have been incurred.

5. Confidentiality

Both parties agree to take reasonable steps to maintain (within the respective organisations) the confidentiality of any proprietary or confidential information of the other. The NASR privacy policy is contained on the NASR website. If you wish to provide third parties with copies of NASR reports, letters, information or advice, you must first obtain the written permission of NASR to disclose the document(s) or information. NASR also reserves the right to:-

- a) set the terms on which those copies are given or used; or
- b) require the third party to enter into direct relationship with NASR.

6. Exclusions and limitations of liability

- 6.1 NASR will use reasonable skill and care in the provision of the Services.
- 6.2 To the extent permitted by law, NASR excludes all warranties, conditions or terms other than those expressly set out in these terms. However, if the Trade Practices Act 1974 (Cth) (or any other legislative provision) prohibits the restriction, modification or exclusion of any statutory condition, warranty, guarantee, right, remedy or other benefit, then this clause 6 does not restrict, modify or exclude it.
- 6.3 Where NASR is not entitled to exclude a warranty, condition or term NASR's total aggregate liability for loss or damage is limited (to the extent permitted by law) to an amount equal to three times its fees (excluding GST) rendered for providing the Services.
This limitation:
- applies to all liability – whether (without limitation) for negligence or for breach of section 52 of the Trade Practices Act 1974 (Cth) or under the Corporations Act 2001; and
 - may be modified, or expanded in 6.4 and 6.5 below.
- 6.4 Where NASR is not entitled to exclude a warranty, condition or term in the circumstances set out in 6.3, NASR may, in its absolute discretion, choose either to re-supply the Services, or to pay you the cost of having the Services re-supplied if:
- 6.4.1 the price of the Services is no more than \$40,000; and
- 6.4.2 the Services are not of a kind ordinarily acquired for personal, domestic or household use; and
- 6.4.3 Division 2 of Part IV of the *Trade Practices Act 1974* (Cth) applies to this agreement and NASR breaches any term implied by the Act; and
- 6.4.4 it is fair and reasonable for NASR to make that choice.
- 6.5 NASR is not liable:
- 6.5.1 for any processing deficiency (in any system) that is caused (in whole or in part) by input data that contains any date that is ambiguous as to the year, or is otherwise inaccurate;
- 6.5.2 for any defect or deficiency in any system or service that is not developed or provided by NASR under this agreement. That includes (without limitation) your production and legacy systems and systems that receive data from systems produced by NASR; and
- 6.5.3 to the extent that you or any associates are responsible for an act or omission that contributed to the loss.
- 6.6 This clause 6.6 and clause 6.7 only apply to the extent that clauses 6.3, 6.4 and 6.5 do not apply. Where the Institute limitation of liability scheme approved under the Professional Standards Act 2003 (Vic) apply, if the reasonable cost of the Services NASR supplies:
- 6.6.1 is less than \$100,000, the total liability of NASR partners and employees to you is limited to 1,000,000; or
- 6.6.2 is \$100,000 or more, the total liability of NASR partners and employees to you is limited to 10 times the engagement fee up to a maximum cap for the category of service.
- Should you require further information on the operation of the Scheme in relation to this agreement, please ask us to provide you with information before completing this contract.
- 6.7 In jurisdictions where the *Professional Standards Act* does not apply then the parties agree that NASR's liability is limited as if the Act applied.

7. Indemnity for Liability to third parties

- 7.1 You agree to indemnify NASR against all liabilities, claims, costs or expenses (including legal fees and disbursements) incurred by NASR in respect of any third party claim which is related to, arises out of, or is in any way associated with, this engagement. However, the indemnity does not apply to any costs, charges and expenses in respect of any matters which are finally determined to have resulted from NASR's negligent, wrongful or wilful acts or omissions.
- 7.2 You also agree to indemnify NASR, its partners, associates, employees, contractors and any other person who may be sought to be made liable in excess of the limit of liability described above in respect of any activity arising from or connected with the Contract in respect of any claim of whatever kind, including negligence, that may be made by any person and any costs and expenses that may be incurred by us.

8. General

Representations

You acknowledge that NASR has made no warranties or representations in relation to this engagement other than those set out in these Terms of Business and the Engagement Letter.

Intellectual Property Rights

All copyright and other intellectual property rights in all materials and tools (including software and working papers), data, designs, models, methodologies, analysis frameworks, practices, ideas, concepts and techniques brought to the engagement or created in the course of the engagement shall remain and be irrevocably vested in NASR.

Severance

The parties agree each of the provisions of the Contract is independent from one another and severable. If any provision of the Contract is found to be illegal, unenforceable or otherwise invalid then, despite that invalidity:

- (a) the Contract will remain in full force and effect; and
- (b) that provision will be deemed to be deleted and substituted by a valid one which in its economic effect comes so close to the invalid provision that it can be reasonably assumed that the parties would have contracted also with this new provision.

Variation

These terms may only be varied by written agreement of the parties.

Non-Solicitation of Personnel

During the Contract, and for six (6) months after it ends, you agree not to solicit for employment, or to independently contract the services of, any NASR partner or staff member or sub-contractor who is involved with performing the Engagement.

On any breach of this term, NASR shall have the right to charge you a fee up to 35% of the annual remuneration package paid by NASR to the employee.

Miscellaneous

NASR will provide the Services as an independent contractor. Nothing shall be construed to create a partnership, joint venture or other relationship. No party has the right, power or authority to oblige or bind the other in any manner.

Governing Law & Jurisdiction

All aspects of the Services and the Engagement Letter are governed by, and construed in accordance with, the laws of the State of Victoria and the parties irrevocably submit to the exclusive jurisdiction of the Courts of that state or territory.

Dispute Resolution

If there is a dispute relating to the Services or this agreement, the parties will submit to mediation before having recourse to any other dispute resolution process. Written notice of the dispute will be given for it to be submitted to mediation before a mediator chosen by the parties or, where the parties cannot agree, by the Australian Commercial Disputes Centre (ACDC). The parties will use their best endeavours to settle the dispute promptly. The mediation will be conducted in accordance with the ACDC Mediation Guidelines to the extent that they do not conflict with the provision of this clause. If the dispute is not resolved within 60 days after notice of the dispute, the mediation will terminate.

**Electronic Communication**

NASR may communicate with you electronically. Electronically transmitted information cannot be guaranteed to be secure or error free and it can be adversely affected or unsafe to use. NASR will use commercially reasonable procedures to check for the most commonly known viruses before sending information electronically, but will not be liable to you or any associates in respect of any error or omission arising from or in connection with the electronic communication of information. You may elect, in writing, not to permit NASR to communicate electronically with it.

Entire Agreement

This Contract comprising the Engagement Letter and Terms of Business forms the entire agreement between the parties relating to the Services. It replaces and supersedes any previous proposals, correspondence, understandings or other communications whether written or oral.