



Terms & Conditions of Business

1. Introduction

- 1.1. EVERGENT have set out in this document our basic terms and conditions of business (the "Terms"), which, together with our Engagement letter (together called "this Agreement"), will apply to all work EVERGENT undertakes for you with respect to this engagement. If there is any conflict between these Terms and our Engagement letter, then the Engagement letter shall prevail.
- 1.2. For the purposes of the Terms, "EVERGENT" includes its owner, employees and all its related entities.

2. Our services

- 2.1. EVERGENT will provide the services set out in our Engagement Letter (the "Services") and will 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.

3. Your obligations

- 3.1. You agree to pay for the Services in accordance with this Agreement.
- 3.2. You will provide EVERGENT 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.
- 3.3. EVERGENT shall be entitled to rely upon the accuracy of all information provided by you, or by others on your behalf, without independently verifying it.
- 3.4. You shall retain responsibility for the use of, or reliance on, advice or recommendations supplied by us in the delivery of the services.
- 3.5. You undertake that, if anything occurs after information is provided by you to EVERGENT, to render such information untrue, unfair or misleading, you will promptly notify EVERGENT and, if required by EVERGENT, take all necessary steps to correct any announcement, communication or document issued which contains, refers to or is based upon, such information.
- 3.6. You acknowledge that information made available by you, or by others on your behalf, to, or which is otherwise known by, an owner or staff of EVERGENT who are not engaged in the provision of the Services shall not be deemed to have been made available to the individuals within EVERGENT who are engaged in the provision of the Services.

4. Confidentiality

- 4.1. You 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. you 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.

5. Staff

- 5.1. You agree that during the provision of the Services, and for a period of six months thereafter, you will not make any offer of employment to any EVERGENT, without our prior consent.

6. Benefit of advice

- 6.1. 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.
- 6.2. 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 you 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 us and we will provide documentary confirmation of the advice.
- 6.3. EVERGENT 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.

7. Electronic mail

- 7.1. For those documents sent to you electronically, you agree to release us from any claim you 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 your system or any files by the transmission (including by any computer virus).
- 7.2. You may not rely on electronically transmitted advice or opinion unless it is signed by Lucas Helmke or authorised signatory of EVERGENT.

8. Fees, expenses and payment terms

- 8.1. Out-of-pocket expenses incurred in connection with the engagement will be charged to you.
- 8.2. The consideration payable for any supply made or to be made under this Agreement is exclusive of any goods and services tax ("GST"). If GST is payable on any supply made or to be made under this Agreement, you agree that the consideration payable for any such supply shall be increased by an amount equal to the amount of GST payable by EVERGENT in respect of that supply.
- 8.3. The services provided by EVERGENT that are subject to a monthly fee arrangement will be billed via direct debit and are subject to Integrapay's fees and terms and conditions. The fees and, terms and conditions can be found at www.integrapay.com.au to which you acknowledge and agree.
- 8.4. All other accounts are to be paid within 14 days of the billing date. If they are not paid by this date, we may charge you an additional amount for the Services equal to interest on the unpaid balances at a rate equal to 2% over the 180 Day Bank Bill Rate.

- 8.5. If we are required (pursuant to any order, subpoena, directive or other legal or regulatory process) to produce documents and/or information, answer enquiries, attend court or meetings or deal with any similar requests in relation to the Services for, or by, any judicial, regulatory, administrative or similar body or entity (including without limitation, any foreign regulator or similar), you shall reimburse us at standard billing rates for our professional time and expenses, including reasonable legal fees, incurred in dealing with those matters.

9. Problem resolution

- 9.1. If at any time you would like to discuss with us how the Services can be improved or if you have a complaint about them, you are invited to telephone EVERGENT, as identified in the Engagement Letter. We will investigate any complaint promptly and do what we can to resolve the difficulties. The preferred channel for any problem resolution is to email lhelmke@evergent.com.au so as it can be properly documented and resolved.
- 9.2. If the problem cannot be resolved, the parties agree to enter into mediation, or some other form of alternative dispute resolution, before commencing legal proceedings.
- 9.3. In the event of a dispute, or where fees remain unpaid beyond the due date, we reserve the right to suspend the provision of the Services until such time as the dispute is resolved or the fees are paid. Suspension of the Services will not affect your obligation to pay us for Services rendered to the date of suspension.

10. Termination of Agreement

- 10.1. Each of us may terminate this Agreement if: the other commits any material or persistent breach of its obligations under this Agreement (which, in the case of a breach capable of remedy, shall not have been remedied within 14 days of receipt by the party in breach of a notice identifying the breach and requiring its remedy); or the other becomes insolvent; or the Services are suspended under clause 9.3 for more than 10 normal working days.
- 10.2. Termination must be effected by written notice served on the other.
- 10.3. EVERGENT may terminate this Agreement immediately by providing written notice to you if there has been a change of law, rule, regulation or professional standard or a change in circumstance that would cause the continued provision of these Services under this Agreement by EVERGENT to violate such law, rule, regulation or professional standard or would otherwise, in the reasonable opinion of EVERGENT, prejudice EVERGENT's ability to comply with any applicable auditor independence requirement.
- 10.4. Termination under this clause shall be without prejudice to any rights that may have accrued for either of us before termination and all sums due to us shall become payable in full when termination takes effect.

11. Limitation of liability

- 11.1. In this section, we set out, and you accept, the limitations which apply to our liability to you should you have reason to make a claim against us. The limitations and exclusions are accepted by both of us to be fair and reasonable, given the duties we are undertaking, the sums to which we are entitled and the availability (and cost) of insurance.
- 11.2. Nothing in these Terms excludes, restricts or modifies the application of the provisions of any statute (including the Trade Practices Act 1974) where to do so would contravene that statute or cause any part of these Terms to be void.
- 11.3. These Terms and the Engagement Letter are the only communications governing our relationship. Subject to clause 11.2, EVERGENT expressly excludes and will have no liability for any statements, representations, guarantees, conditions or warranties, including any which may be implied by statute, common law or custom or which arise from oral or written communications with you, which are not expressly contained in this Agreement. If any representations are of importance to you, you should ensure that they are expressly set out in the Engagement Letter before signature.
- 11.4. Without limiting clauses 11.2, 12.1 and 12.2, EVERGENT's liability in relation to the Services is limited under an Institute of Chartered Accountants in Australia Scheme approved under the relevant Australian States and Territories professional standards legislation, including, where applicable, the Treasury Legislation Amendment (Professional Standards) Act 2004 (Cth) ("PSL Scheme"). A copy of the relevant PSL Scheme is available from your EVERGENT representative or at <http://www.professionalstandardscouncil.gov.au>.
- 11.5. Where a PSL Scheme does not apply, and subject to clauses 11.2 and 11.6, you agree that EVERGENT's liability for any loss or damage suffered by you (whether direct, indirect or consequential) in connection with the Services, including (without limitation) liability for any negligent act or omission or misrepresentation of EVERGENT, shall be limited to an amount equal to ten (10) times the reasonable charge for the Services. You agree to release EVERGENT from all claims arising in connection with the Services to the extent that EVERGENT's liability in respect of such claims would exceed that sum.
- 11.6. If EVERGENT is liable for a breach of any warranty implied by section 74 of the Trade Practices Act, 1974 in respect of Services not of a kind ordinarily acquired for personal, domestic or household use or consumption, EVERGENT's liability under that section is limited to the supplying of the Services again or the payment of the cost of having the Services supplied again, whichever EVERGENT, in its absolute discretion, elects.
- 11.7. To the extent permitted by law, you agree that to the extent that any loss or damage suffered by you is attributable to negligence, fault or lack of care on your part or on the part of any person for whom you are responsible, EVERGENT is not liable (in contract, tort or otherwise) for the loss or damage.

12. Indemnities

- 12.1. You agree to indemnify and hold harmless EVERGENT against any and all losses, claims, costs, expenses, actions, demands, damages, liabilities or any other proceedings, whatsoever incurred by EVERGENT in respect of any claim by a third party arising from or connected to any breach by you of your obligations under this Agreement.
- 12.2. EVERGENT shall not be liable for any losses, claims, expenses, actions, demands, damages, liabilities or any other proceedings arising out of reliance on any information provided by you or any of your representatives, which is false, misleading or incomplete. You agree to indemnify and hold harmless EVERGENT from any such liabilities we may have to you or any third party as a result of reliance by EVERGENT on any information provided by you or any of your representatives, which is false, misleading or incomplete.
- 12.3. In the event of any inconsistency between clauses 11 and 12, clause 12 shall prevail.

13. Privacy

- 13.1. EVERGENT is committed to complying with the Federal Privacy Act 1988 and National Privacy Principles when collecting, holding or disclosing personal and sensitive information concerning your shareholders, members, customers, employees and other individuals with whom you have dealings ('stakeholders').
- 13.2. A party can disclose confidential information where:
 - a) Disclosure is expressly permitted in by this agreement;
 - b) To the extent it is required by law; or
 - c) Risk management purposes.
- 13.3. We can disclose or share your confidential information:
 - d) To any third party assisting us with the services we provide;
 - e) To our insurers, legal or other professional advisers, financiers or auditors; or
 - f) For internal or external quality assurances or risk management purposes.
- 13.4. Our Privacy Policy is available at www.evergent.com.au. You agree that we may collect, hold, use and disclose personal information as set out in our privacy policy.
- 13.5. You agree that information relating to you or that you provide to us, including confidential information and personal information, may be transferred or disclosed to, or stored and accessed by, any third party assisting us in our services to you either within Australia or outside Australia.
- 13.6. You agree and warrant that you have provided all necessary notifications for, and obtained all necessary consents to, the disclosure and use of any information to us as contemplated by clause 13 and our Privacy Policy.
- 13.7. If your stakeholders have not been made aware of the possible collection, holding, use or disclosure of their personal and sensitive information by EVERGENT as part of this engagement, you agree to inform EVERGENT so that should this be necessary, EVERGENT may take action to raise the awareness of your stakeholders about the same.
- 13.8. We wish to draw your attention to our firm's system of quality control which has been established and maintained in accordance with the relevant APESB standard. As a result, our files may be subject to review as part of the quality control

review program of the Chartered Accountants Australia & New Zealand which monitors compliance with professional standards by its members. We advise you that by accepting our engagement you acknowledge that, if requested, our files relating to this engagement will be made available under this program. Should this occur, we will advise you.

14. Force majeure

- 14.1. If the performance of this Agreement by a party, is prevented or restricted by reason of fire, storm, flood, earthquake, war, labour dispute, transportation embargo, law, order, or directive of any government in matters relating to this Agreement, or any other act or condition beyond the reasonable control of that party, then the party is excused from such performance to the extent of the same, but will use their best efforts to avoid or remove the causes of non- performance and to cure and complete performance with the utmost dispatch.

15. Governing law and jurisdiction

- 15.1. Unless otherwise specified in the Engagement Letter, this Agreement and all aspects of our engagement and our performance of the Services are governed by and construed in accordance with, the laws applicable in the State or Territory of the EVERGENT office entering into this Agreement. Both you and we agree to irrevocably submit any disputes arising under this agreement to the exclusive jurisdiction of the Courts of that state.

16. Variation

- 16.1. No variation of this Agreement will be valid unless confirmed in writing by authorised signatories of both parties, or the packaged offering is updated electronically and the acceptance of terms & conditions for the new packaged offering are accepted on or after the date of signature (digital or otherwise) of the Engagement Letter.

17. Reliance on Advice, Reports and Tax Returns

- 17.1. You acknowledge and agree that any advice, recommendations, information or work product provided to you by EVERGENT in connection with this engagement are for your sole use. You agree that if you make such advice, recommendations, information or work product available to any third party, you will notify such third party, in writing, that EVERGENT's advice, recommendations, information and work product is for your sole benefit based on the specific facts and circumstances and the scope of EVERGENT's engagement with you and is not intended to be relied upon by any other person. In the event of a claim by any third party relating to our services under this engagement that arises out of a breach by you or any of your personnel of this paragraph, you agree to indemnify and hold harmless EVERGENT and our personnel from all such claims, liabilities, costs and expenses (including legal fees and disbursements).

17.2. Where included in the scope of the engagement letter Financial statements and income tax returns will be prepared for distribution to you for the agreed purpose. There is no assumption of responsibility for any reliance on our report by any person or entity other than yourself and those parties prescribed in section 1. The report shall not be inferred or used for any purpose other than for which it was specifically prepared. Accordingly, our report may include a disclaimer to this effect.

18. Intellectual Property

- 18.1. General: Title to, and all Intellectual Property Rights in the Services, the Website and any documentation relating to the Services remain the property of EVERGENT (or its licensors).
- 18.2. Ownership of Data: Title to, and all Intellectual Property Rights in, the Data remain Your property. However, Your access to the Data is contingent on full payment of the EVERGENT Access Fee when due. You grant EVERGENT a licence to use, copy, transmit, store, and back-up Your information and Data for the purposes of enabling You to access and use the Services and for any other purpose related to the provision of services to You.
- 18.3. Backup of Data: You must maintain copies of all Data inputted into the Service. EVERGENT adheres to its best practice policies and procedures to prevent data loss, including a daily system data backup regime but does not make any guarantees that there will be no loss of Data. EVERGENT expressly excludes liability for any loss of Data no matter how caused.
- 18.4. Third-party applications and your Data. If You enable third-party applications for use in conjunction with the Services, You acknowledge that EVERGENT may allow the providers of those third-party applications to access Your Data as required for the interpretation of such third-party applications with the Services. EVERGENT shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by third-party application providers.
- 18.5. The firm has a policy of exploring a legal right of lien over any client documents in our possession in the event of a dispute.

19. Access conditions

- 19.1. You must ensure that all usernames and passwords required to access the Service are kept secure and confidential. You must immediately notify the software provider in question of any unauthorised use of Your passwords or any other breach of security and the software provider will reset Your password and You must take all other actions that EVERGENT and the software provider reasonably deems necessary to maintain or enhance the security of EVERGENT's/the Software Provider's computing systems and networks and Your access to the Services.
- 19.2. As a condition of these Terms, when accessing and using the Services, You must: not attempt to undermine the security or integrity of EVERGENT's or the software provider's computing systems or networks or, where the Services are hosted by a third party, that third party's computing systems and networks;
- 19.3. not use, or misuse, the Services in any way which may impair the functionality of the Services or Website, or other systems used to deliver the Services or impair the ability of any other user to use the Services or Website;

- 19.4. not attempt to gain unauthorised access to any materials other than those to which You have been given express permission to access or to the computer system on which the Services are hosted;
- 19.5. not transmit, or input into the Website, any: files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in violation of any law (including Data or other material protected by copyright or trade secrets which You do not have the right to use); and
- 19.6. not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Services or to operate the Website except as is strictly necessary to use either of them for normal operation.