

## Bremmar General Terms and Conditions

### 1) ORDER OF PRECEDENCE

If there is any inconsistency between any parts of the Client Agreement the order of precedence will be the Client Agreement Supplementary Terms, Service Specific Terms and Conditions, General Terms and Conditions.

### 2) VARIATION

These Terms and Conditions may only be varied by the written authorised agreement of both Bremmar and the Client.

### 3) SEVERABILITY

If any term of this Agreement is found to be unenforceable or contrary to law, it will be modified to the least extent necessary to make it enforceable, and the remaining portions of the Client Agreement will remain in full force and effect.

### 4) PAYMENT AND INVOICING

- a. Invoices are payable within 30 days of the date on the invoice unless otherwise stated on the invoice or as separately agreed in writing.
- b. Invoices will be sent to the Client by email. Invoices will be deemed to have been received by the Client at the date and time of when the computer from which the email is sent, reports that the email has been sent.
- c. Payment Terms will be strictly enforced by Bremmar. Bremmar will charge for the costs of any recovery action owing to late payment.
- d. Queries or requests for further information do not extend the payment terms for invoices. Where there is a genuine dispute between Bremmar and the Client in relation to any part of an invoice Bremmar may grant extended payment terms for the item in dispute subject to all other items on the disputed invoice and all other invoices being paid with the payment terms. Any extension to payment terms must be in writing by an authorised Bremmar representative.
- e. Bremmar reserves the right to charge interest at 15% per annum and/or an administrative charge of \$15 per month for any account with invoices outstanding outside of the payment terms.
- f. Bremmar reserves the right to suspend or cancel all Services provided to the Client if any invoice owing by the Client remains unpaid 30 days after the invoice date.
- g. Bremmar retains a right of lien over all Client property held by Bremmar including but not limited to data and intangibles until all outstanding payments are made.
- h. If a Quotation or Proposal exceeds the total amount of AU\$10k:
  - i. A 50% deposit is due upon Proposal or Quotation acceptance for the total equipment and licensing component. The remaining 50% is due on delivery.
  - ii. A 20% deposit is due upon Proposal or Quotation acceptance for the total implementation Labour component. The remaining implementation Labour is progress billed monthly, normally payable 14 days from invoice date.
  - iii. Or as per specifically stated as part of the Proposal /Quotation.

### 5) SERVICES

#### 5A) FIXED FEE SERVICES

- a. Fixed Fee Service invoices are issued for the entire invoicing period in which the Service commences.
- b. The normal billing period for Fixed Fee Services is monthly in advance.
- c. Fixed Fee Services require the Client to set up a direct debit facility prior to commencement of these Services and maintain for the duration of these Services. Cancellation by the Client or other failure of the direct debit may be construed, at Bremmar's sole discretion, as an immediate instruction to cancel this Agreement without further notice to the Client.
- d. Fair usage policy applies to Fixed Fee Support Services. Services are included within Fixed Fee Services based on the IT Support requirements of an average business. In the event that Bremmar deems that the usage of Fixed Fee Services exceeds fair usage, we will contact you to discuss an upgrade in your service level.
- e. At the end or termination of Fixed Fee Services Bremmar will provide, if requested, system and device username and passwords relevant to the client ICT environment in raw text format only.

#### 5B) LABOUR

- a. Unless otherwise specified Labour is not included. Labour is charged at Bremmar's standard hourly rates.
- b. Any Labour quoted is an estimate only and does not include situations beyond Bremmar's reasonable control such as existing computer, software or cabling issues.
- c. Any Labour quoted is during business hours unless otherwise specified. Labour performed outside of business hours is charged at 1.5 times the standard hourly rate.
- d. Air travel is charged at 50% of the standard hourly rate for the time of travel. Air travel means travel time from Bremmar to Perth airport, pre boarding time, air time and clearance plus up to 30 minutes travel time from destination airport. All other travel time will be charged at Bremmar's standard rates for the time of travel. Travel time charges may therefore vary depending on the time of travel and the member of staff. Travel time is charged from leaving Bremmar premises to arrival at the Client's site and may include an allowance for breaks if travel time is greater than 2 hours.

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**6) EQUIPMENT**

- a. Hardware, software, equipment and licensing invoices are issued upon the earlier of readiness for despatch from Bremmar to the Client or delivery to Bremmar premises where customisation is scheduled in advance of despatch to the Client.
- b. All hardware, software, equipment and licensing purchases remain the property of Bremmar until complete payment has been received.
- c. Once ordered hardware, software equipment and licensing cannot be returned with no fault or cancelled unless agreed in writing by Bremmar. Hardware, software, equipment and licensing orders returned with no fault or cancelled may incur up to a 20% restocking fee.
- d. Any damages in transit whatsoever is between the Client and the carrier. Transit insurance is the Client’s responsibility. Bremmar will not be responsible for any damages or loss whatsoever during transit once the goods are despatched regardless of whether the carrier is arranged by us or you.

**7) EXPENSES**

- a. Expenses including but not limited to parking, freight, airfares, accommodation, meals and reasonable incidentals are on-billable to the Client.

**8) PRICING POLICY**

- a. Bremmar reviews its corporate rates annually, pricing is normally adjusted in accordance with Australian CPI.
- b. Rates are also reviewed at the expiry of the initial Agreement term.
- c. For Quotations and Proposals, pricing is valid for 14 days unless otherwise agreed in writing or where any of the underlying goods or services are sourced by Bremmar in a currency other than the Australian dollar. Where goods or services are sourced in a currency other than Australian dollar, if the Australian dollar moves plus or minus 2c from the closing rate on the date of the Quotation or Proposal then Bremmar reserves the right to requote the Proposal or Quotation at the current exchange rate.

**9) CONFIDENTIALITY**

- a. All information relating to the Client that is clearly known to be confidential or proprietary, or which is clearly marked as such, will be held in confidence by Bremmar and will not be disclosed or used by Bremmar except to the extent that such disclosure or use is reasonably necessary for the performance of Bremmar’s work.
- b. All information relating to Bremmar that is known to be confidential or proprietary, or which is clearly marked as such, will be held in confidence by the Client and will not be disclosed or used by the Client except with the written permission of an authorised Bremmar representative or to the extent that the Client is required to disclose by law.
- c. These obligations of confidentiality will not apply with respect to information that is independently developed by the parties, lawfully becomes a part of the public domain, or of which the parties gained knowledge or possession free of any confidentiality obligation.
- d. These obligations of confidentiality will extend for a period of 12 months after the termination of any contractual relation between Bremmar and the Client.

**10) TERMINATION**

- a. Bremmar may, without liability terminate or suspend the Service if:
  - i. the Client commits or permits to occur any material breach of the terms of this Agreement or
  - ii. the Client fails to make payment of invoices within the payment terms and any such breach or failure continues for a period of 7 days after Bremmar has informed the Client in writing requiring such a breach or default to be remedied.
- b. In the event of termination the Client will be liable for all charges and costs up to and including the termination date, including any applicable early termination charges.
- c. In the event of suspension the Client will be liable for all outstanding once off charges and all recurring charges that would have been incurred during the period of suspension.
- d. Bremmar may without liability terminate the Agreement by giving 30 days written notice to the Client if, for any reason beyond Bremmar’s reasonable control, Bremmar is unable to provide the Services for a period greater than 30 days including but not limited to an inability by Bremmar to provide the Services due to a Force Majeure Event.
- e. Where this Agreement provides for no end date this Agreement will continue until either party gives written notice of at least one complete calendar month;
- f. Where this Agreement provides for a minimum term this Agreement will continue uninterrupted following the end of the minimum term until either party gives written notice of at least one complete calendar month.
- g. For the purpose of this section a complete month commences on the first of the month and continues to the last day of that month.

**11) ASSIGNMENT**

The Client must not assign, transfer or sub-licence any Agreement with Bremmar without the prior written consent of Bremmar. Such consent may not be unreasonably withheld or delayed.

**12) LIMITATION OF LIABILITY**

- a. To the extent permitted by law Bremmar excludes all implied terms, conditions and warranties whether statutory or otherwise, relating to the subject matter of the Agreement.
- b. To the extent permitted by law, in no event will Bremmar be liable or responsible to the Client for any incidental, punitive, indirect or consequential loss, including, but not limited to, lost revenue, lost profits, loss of opportunity, expectation loss, replacement goods, loss of technology, loss of data, or interruption or loss of use of service or equipment suffered or incurred in connection with the Services, Goods and or this Agreement, any penalties or fines imposed by Regulatory Authority or from any other cause.

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- c. To the extent Bremmar is found liable, for any breach or failure to provide Services in accordance with any express term of this Agreement or any term or conditions or warranty which has been implied by statute and cannot be excluded, such liability will be limited to any one or more of the following at Bremmar sole discretion.
  - i. If the breach or failure relates to Goods
    - (a) the replacement of the goods or the supply of equivalent goods
    - (b) the repair of goods
    - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods the payment of the cost of having the goods repaired and
  - (ii) if the breach or failure relates to Services
    - (a) the supplying of the Services again
    - (b) the payment of the cost of having the Services supplied again
    - (c) the provision of Services required to return the Client's computer network to its original state prior to the breach or failure.
- d. Risk arising from loss or damage to hardware, software, licensing or equipment will pass to Client on delivery or if transported under arrangements made by the Client risk will transfer to the Client at the time the goods are passed to the transporting entity.
- e. Bremmar will only be liable to the Client for representations and warranties specifically given in writing by an Authorised Representative of Bremmar prior to the provision of the Service or invoice whichever is earlier. For the purpose of this clause Authorised Representative means a properly appointed working Director of Bremmar.
- f. This paragraph (paragraph headed LIMITATION OF LIABILITY) continues to apply despite termination or expiry of this Agreement.
- g. Despite anything in this Agreement to the contrary, Bremmar will not be liable for any delay or failure in performance of any part of this Agreement, to the extent such delay or failure is attributable to a Force Majeure Event.

**13) WARRANTY AND DISCLAIMER**

- a. The Client acknowledges that no computer system or software can be made completely stable or secure, and that Bremmar cannot guarantee the stability, safety or security of the Client's network or data.
- b. Bremmar warrants that its Services will be provided in a workmanlike manner, and in conformity with generally prevailing industry standards and the time frame, if any, set forth in the Service Description/ Scope of Services.

**14) INDEMNIFICATION**

- a. The Client indemnifies and holds Bremmar harmless against and claims by third parties, including all costs, expenses and legal fees incurred by Bremmar therein, arising out of or in conjunction with the Client's performance under or breach of this Agreement.
- b. Each indemnity of the Client under this Agreement is a continuing obligation and remains in full force after the termination of this Agreement.

**15) EMPLOYEE SOLICITATION / HIRING**

During the period of this Agreement and for 12 months thereafter, neither party will directly or indirectly solicit or offer employment to or hire any employee or former employee of the other.

**16) RELATION OF PARTIES**

The performance by Bremmar of its duties and obligations under this Agreement will be that of an independent contractor, and nothing herein will create or imply an agency relationship between Bremmar and the Client, nor will this Agreement be deemed to constitute a joint venture or partnership between the parties.

**17) GOVERNING LAW**

- a. This Agreement will be governed by and construed in accordance with the laws of Western Australia. The parties submit to the exclusive jurisdiction of the Courts of Western Australia and any disputes will be litigated in Perth courts.
- b. The non exercise of or delay in exercising any power or right by Bremmar does not operate as a waiver of that power or right, nor does any single exercise of power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by an Authorised Representative of Bremmar.
- c. This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.
- d. This Agreement contains the whole understanding of the parties to the exclusion of any prior agreement, representation or understanding relating to its subject matter.

**18) MODIFICATIONS**

Bremmar reserves the right, at its absolute discretion, to make reasonable revisions to these General Terms and Conditions at any time and without prior notice and such revision shall be effective when sent to the Client. Changes to General Terms and Conditions will be sent to the Client by email. This email will be deemed to have been received by the Client at the date and time of when the computer from which the email is sent, reports that the email has been sent.

**19) DEFINITIONS**

"Bremmar" means Bremmar Consulting ABN 90 048 070 165 and/or Bremmar Communications ABN 70 144 469 250

"Service" or "Services" means the services, including products, supplied by Bremmar Consulting and/or Bremmar Communications

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Date last reviewed: 1 November (no substantive change – 1 replace ‘Service Description’ with ‘Client Agreement Supplementary Terms’, insert ‘Service’; 6d delete ‘out of our premises’)

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