

## 1 Definitions

The following definitions apply to these terms and conditions:

- 1.1 **"Bergent"** means Bergent Pty Ltd (ACN 006 699 387).
- 1.2 **"Client"** means a party to whom the Services are provided by Bergent.
- 1.3 **"Completion"** means completion of the provision of Services to the Client.
- 1.4 **"Confidential Information"** means all confidential information of a party (including their operations, business, financial affairs, personnel, customers, know-how, trade secrets, processes, methods, plans, systems, strategies, techniques, results, designs and marketing information) but excluding any information which is in the public domain (otherwise than through a breach of confidence).
- 1.5 **"GST"** has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended or replaced from time to time.
- 1.6 **"Proposal"** means a written proposal, including research methodologies and techniques, for the provision of Services by Bergent to the Client as varied in accordance with these terms and conditions.
- 1.7 **"Reports"** means all market and other research, studies, surveys, interviews, questionnaires, recommendations, presentations (including power point presentations), text, material and other information (whether written or oral) provided by Bergent to the Client in the provision of the Services, other than the Proposal.
- 1.8 **"Services"** means the services provided by Bergent to the Client in accordance with the Proposal, including carrying out all fieldwork, collection of data and the preparation and provision of all Reports.

## 2 Terms and Conditions

- 2.1 These terms and conditions and the Proposal, once accepted in accordance with Clause 3, together form **"the agreement"** and will apply to the provision of Services by Bergent to the Client.
- 2.2 These terms and conditions take precedence over any other terms and conditions that the Client proposes (unless otherwise expressly agreed in writing by Bergent). These terms and conditions may be supplemented or amended from time to time by notice from Bergent to the Client.

## 3 Acceptance of Proposal

- 3.1 A Proposal is valid for acceptance by the Client for 90 days from the date that Bergent provides the Proposal to the Client, or as otherwise agreed in writing. If the Client accepts the Proposal, Bergent will provide, and the Client will accept, the provision of the Services in accordance with this agreement.
- 3.2 Bergent may withdraw or vary a Proposal prior to acceptance of the Proposal by the Client by notice to the Client and, in such case, Bergent may provide the Client with a revised Proposal.

## 4 Fees and costs

- 4.1 The fees payable for the Services will be the amounts specified in the Proposal and, subject to this Clause, will include all fees for consulting and fieldwork services.
- 4.2 Unless otherwise specified in the Proposal, the fees for the Services are exclusive of any GST and the Client must pay to Bergent at the same time and in the same manner as the Client pays the relevant fees, an amount equal to any GST payable in respect of the fees.
- 4.3 Unless otherwise specified in the Proposal, the fees for the Services are exclusive of all:
  - 4.3.1 travel expenses outside Melbourne;
  - 4.3.2 costs for stimulus materials (including, commercials, story boards and samples); and
  - 4.3.3 out-of-pocket or other expenses agreed between the parties,and unless otherwise agreed, the Client must reimburse Bergent for any such costs within 30 days of notice by Bergent to the Client of those costs (together with reasonable evidence of incurrence of those costs).

## 5 Terms of Payment

- 5.1 Unless otherwise specified in the Proposal or agreed in writing by the parties, in consideration of Bergent providing the Services, the Client must pay Bergent the fees specified in the Proposal as follows:
  - 5.1.1 50% of the fees will be payable in advance within 30 days of acceptance of the Proposal (**"Initial Payment"**); and
  - 5.1.2 the remaining 50% of the fees will be payable upon completion of the Services within 30 days of provision of an invoice from Bergent to the Client for that amount.
- 5.2 Bergent is under no obligation to provide the Services unless and until the Client pays Bergent the Initial Payment.
- 5.3 Bergent may require immediate payment of all amounts outstanding (whether or not due and payable) if any event of insolvency or bankruptcy (or similar event) occurs in respect of the Client, including if the Client enters into or resolves to enter into any arrangement with creditors or if an administrator, liquidator, receiver or similar officer is appointed over the whole or any part of the assets or undertakings of the Client or the Client otherwise suspends payment of its debts.
- 5.4 The Client will pay to Bergent, on demand, interest at 2% over the bank overdraft rate charged by Bergent's major bank at that time on all overdue amounts calculated on and from the date for due payment until the date of payment in full of the overdue amount.

## 6 Termination of Services by the Client

The Client may terminate the provision of the Services at any time by written notice to Bergent. In such case,

- 6.1 if the Client has already paid to Bergent an amount in excess of the fees payable for the Services provided by Bergent up to the date of termination (as reasonably determined by Bergent), then Bergent will reimburse the Client the excess amount; or
- 6.2 if the fees payable for the Services provided by Bergent up to the date of termination (as reasonably determined by Bergent) are greater than the amount already paid by the Client, then the Client must pay Bergent the additional amount within 30 days of Bergent providing an invoice for that amount to the Client; and
- 6.3 the Client must immediately reimburse Bergent for any costs referred to in Clause 4.3.

## 7 Termination of Services by either party

Either the Client or Bergent may immediately terminate the provision of the Services at any time by written notice to the other if that party considers that the working relationship between the parties has broken down irretrievably. In such case, Clauses 6.1, 6.2 and 6.3 apply.

## 8 Postponement of Services by the Client

- 8.1 The Client may postpone the provision of Services at any time by providing written notice to Bergent.
- 8.2 Unless otherwise agreed, if the Client postpones the provision of the Services for more than 3 months, the Client will be deemed to have given Bergent notice of termination of the Services under Clause 6.

## 9 Standards of Services

- 9.1 During the provision of the Services, Bergent will:
  - 9.1.1 ensure that all market research project executives will be members of the Market Research Society of Australia Ltd (MRSa) and be subject to the rules, requirements, codes, guidelines and sanctions of the Society; and
  - 9.1.2 use all reasonable endeavours to ensure that it complies with the Code of Conduct adopted by the Market Research Society of Australia (MRSa), the Australian Marketing Institute (AMI) and European Society for Opinion and Marketing Research (ESOMAR), the International Code of Marketing and Social Research Practice and the Code of Professional Behaviour of the International Chamber of Commerce.
- 9.2 The Services are provided on the basis of information and materials available to Bergent at the time those Services are provided. Figures and results used in the Reports are estimates derived from samples Bergent has carried out in accordance with accepted market research methods and as such are subject to the limits of statistical error. Bergent will use all reasonable endeavours to ensure the accuracy of all Reports, but does not warrant or represent the accuracy of any item of them.

## 10 Warranties and liability

- 10.1 To the maximum extent permitted by law, all conditions and warranties implied by the *Trade Practices Act 1974* (Cth) ("**TPA**") and the *Goods Act 1958* (Vic) ("**Goods Act**") or by any other relevant law are expressly excluded.
- 10.2 To the maximum extent permitted by law, Bergent will not be liable or responsible for any loss, damage, liability, claim or proceeding (including loss of profits, business or anticipated savings or any direct, indirect or consequential loss) arising out of or in connection with the provision of the Services; the use or interpretation of the Services, Reports or Proposal; any information or material provided to Bergent by any third party; any statistical errors or inaccuracies in the Reports; any third party claims occasioned by errors in carrying out the Services or delay in delivery; or Bergent complying with any instructions of the Client in relation to the Services; and the Client releases Bergent from all such loss, damage, liability, claims or proceedings.
- 10.3 The liability of Bergent for breach of a term or condition implied by the TPA and the Goods Act will be limited at Bergent's option to, in respect of services, the supply of or the payment of the costs of having the services supplied again (if any) and, in respect of goods, the replacement of the goods or the supply of equivalent goods, or to the repair or replacement or cost of repair or replacement of goods, whichever is the lesser.
- 10.4 The Client will indemnify Bergent against any loss, damage, liability, claim or proceeding in respect of breach of this agreement by the Client (including costs to recover overdue amounts) or any wilful, negligent or unlawful act or omission by the Client.

## 11 Title and Intellectual Property

- 11.1 Title to and ownership in any written Reports that are provided to the Client remains with Bergent and does not pass to the Client until all amounts due to Bergent under this agreement have been paid in full.
- 11.2 The Client acknowledges and agrees that:
  - 11.2.1 field data, questionnaires, call sheets and other records and materials relating to the provision of the Services will be stored for 12 months after Completion of the Services, after which Bergent may destroy or otherwise dispose of that material; and
  - 11.2.2 video and tape recordings of discussions and interviews may be erased immediately upon completion of the Services.The Client must notify Bergent in writing if it wishes to vary this procedure, in which case Bergent may charge the Client a fee for storage and retrieval of such information.
- 11.3 All intellectual and industrial property in connection with Bergent's business, the Proposal and the provision of the Services, whether conferred by statute, common law or equity, whether registered or unregistered and whether conferring present or future rights, including copyright, methodologies and techniques (including any methods of collecting data), processes, procedures, programs, systems, designs, trade marks, business and trade names and Confidential Information, will immediately vest in and be owned solely by Bergent.

## 12 Confidentiality

- 12.1 Each party will keep all Confidential Information of the other party confidential and will not disclose that Confidential Information to any third party or make any unauthorised use, copy or reproduction of the Confidential Information. Each party will take all reasonable steps to ensure its employees, agents and any other person who has access to the Confidential Information of the other does the same.
- 12.2 Bergent will take all reasonable steps to ensure the security and safety of the Client's Confidential Information, property and materials supplied or gathered for the purpose of providing the Services, however, notwithstanding Clause 12.1, all such information, property and materials will be given to Bergent at the Client's own risk.

## 13 General

- 13.1 Clauses 10, 11 and 12 survive the expiration or termination of the provision of Services under this agreement.
- 13.2 Where a force majeure event or a circumstance beyond Bergent's reasonable control prevents or delays Bergent from performing an obligation under this agreement, that obligation is suspended as long as the force majeure continues and Bergent will not be liable for failure to perform its obligations due to that event or circumstance.
- 13.3 Bergent may subcontract the supply of the whole or part of any of the Services. Bergent will use all reasonable endeavours to ensure that the standard of services provided by any subcontractors is equivalent to the standard Bergent would ordinarily expect to provide to its customers.
- 13.4 The Client must not assign, transfer or otherwise deal with this agreement or any right or obligation under this agreement without the prior written consent of Bergent.
- 13.5 If the Client comprises more than one person, a promise, agreement, obligation or liability of the client binds those persons jointly and each of them severally.
- 13.6 No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right arising out of or in connection with this agreement or otherwise will operate as a waiver of such power or right, nor will any single or partial exercise of such power or right preclude any future exercise. Any right or power of a party may only be waived in writing signed by the party.
- 13.7 Except where expressly provided otherwise, if a clause in these terms and conditions is inconsistent with any provision of the Proposal, these terms and conditions prevail to the extent of the inconsistency.
- 13.8 Part or all of any provision of this agreement that is illegal or unenforceable will be severed from this agreement and will not affect the continued operation of the remaining provisions of this agreement.
- 13.9 This agreement is governed by the laws of the State of Victoria and the parties submit to the non-exclusive jurisdiction of the laws of Victoria.