

These terms apply to an entity (the “Client”) engaging LITMUS 360 PTY LTD (the “Consultant”) to provide consulting services.

These terms must be read with, and are subject to, any scoping document or letter from the Consultant to the Client. These terms and that document/s together govern the contract between the Client and the Consultant for the services concerned.

These terms also apply to any subsequent services the Client may require of the Consultant, unless agreed otherwise and in writing.

The Client and Consultant agree to the following terms and conditions in relation to the engagement for the Project.

Definitions

1. The “Consultant” is Litmus 360 Pty Ltd (ABN 64 622 004 200), trading as and hereafter referred to as *litmus360*.
The “Client” is the entity responsible for payment of the Fee rendered in respect of the Services.
The “Project” is the project, job or tasks referenced in a Scope of Work document, Funding Submission, Proposal, Project Plan or other related documents prepared by the Consultant and agreed by the Client and/or prepared by the Client and agreed by the Consultant, against which a Fee is payable to the Consultant by the Client.
The “Agreement” comprises only the “Letter of Engagement” and/or “Project Submission” issued by the Consultant, “Terms and Conditions” and the Scope of Work (including any other document referenced there-in).
The “Scope of Work” refers to any document setting out the overall Project as well as the portion and components of the Project to be managed and/or delivered by the Consultant (including any other document referenced there-in).
The “Services” to be performed by the Consultant for the Client are those contained in the Scope of Work.
The “Fee” is the amount or amounts payable to the Consultant referenced in the Scope of Work.

Services & Scope of Work

2. In providing the Services, the Consultant shall exercise the degree of skill, care and diligence normally exercised by consultants in similar circumstances.
3. If the original Scope of Work is to be varied, the Consultant may decline to act for the new scope of work or may review the Fee and/or any estimate of fees/expenses previously given.
4. Generally, project documentation including any or all of the following: Proposal, Letter of Engagement, Project Plan, Resource Schedule or other document, will be provided indicating the scope of services required.
5. If during a Project the Scope of Work changes, these terms also apply to the new scope. In the absence of detailed information about the level of documentation already available and the skill and extent of Client support that is scheduled, some adjustments to the Scope of Work may need to be made once these are known.
6. Unless specifically instructed otherwise however, the Consultant is not liable to make independent investigations in order to verify the veracity, completeness or content of information provided to the Consultant by the Client or a third party.

Fees, Expenses & Invoicing

7. In consideration of the Consultant performing the Services, the Client agrees to pay the Fee to the Consultant. This Fee will be on a time and materials basis at the Consultant's standard rates unless otherwise agreed in writing. Also included will be any related expenses such as travel, accommodation, printing, couriers, teleconferences and other costs related to delivery of the Project. In consideration of the Client paying the Fee, the Consultant agrees to perform the Services as soon as practicable after receipt of: i) a written or verbal request to commence; ii) provision of all required information outlined in the Scope of Work.
8. The Fee is quoted excluding the Goods and Services Tax (GST) and all other GST and any other applicable taxes must be added at the appropriate rate at the time of invoicing.
9. In relation to the Fee:
 - (a) Where a fixed price Fee is quoted, this will remain fixed for a period of 90 days;
 - (b) Where a Fee is quoted at daily rates plus materials, the rate will be fixed for 90 days;
 - (c) Fees are reviewed and varied on an annual basis; and
 - (d) Any services additional to those set out in the Scope of Work shall be charged on a time and materials basis unless a new fixed Fee is agreed in writing.
10. The Consultant shall be entitled to render invoices at any time. The Client shall pay such invoices within fourteen (14) days of the date shown on the invoice. The Consultant shall be entitled to interest at the same rate as the maximum overdraft rate (simple business overdraft rate or equivalent) fixed by the Commonwealth Bank of Australia of all due and not paid within fourteen (14) days of the date shown on the invoice.
11. The Consultant has a general lien over any documents / property at any time held for the Client, as security for payment of invoices the Consultant issued or are to issue. That lien continues even if the Consultant is no longer providing services for the Client. The Consultant furthermore requires that reports/advice or any other information provided by to the Client must not be relied upon and remain the property of the Consultant, until such time as the Consultants Fees and any outstanding tax invoices for provision of such reports/advice or any other information provided to the Client have been paid for in full.
12. The Client agrees to pay all costs (including legal and other debt collection costs on an indemnity basis) related to the recovery by the Consultant from the Client of any monies due by the Client to the Consultant under or in connection with this Agreement.

Client Requirements

13. The Client shall supply free of charge and on a timely basis to the Consultant:
 - (a) instructions / documents specifically required to deliver the Scope of Work;
 - (b) access to the Client's personnel; and
 - (c) all other information pertinent to the Scope of Work and/or set out in the Project documentation necessary for completion of the Services.
14. The following Services will not be provided (unless expressly provided for and factored into the Scope of Work and Fee): i) travel to (including flights and accommodation) and attendance at meetings; ii) any work arising after issue of the final report; iii) implementation (where this type of work does not form part of the services). Where the above items are required but have not been provided for by the Scope of Work can be provided at *litmus360* standard rates.

Insurance

15. The Consultant holds current broadform liability insurance (public and product). A certificate of currency may be requested from the Consultant by an authorised representative of the Client, but must be held in confidence.

Copyright & Intellectual Property

16. Copyright in all reports, specifications, designs, plans, methodologies and other documents prepared by the Consultant in connection with the Project shall remain the property of the Consultant. The Client shall have a licence to use the documents for the purpose of completing the Project, but the Client shall not use, or make copies of, such documents for use with any other project.
Any intellectual property:
(a) which is created by the Consultant for the use of Client, unless otherwise stated, remains the express Property of the Consultant for future use;
(b) not specifically designed and paid for by the Client shall not be the property of the Client nor can it be adapted, reproduced, sold or in any way used by the Client outside of the context of the Scope of Work set out in the specific Engagement which the Consultant is delivering for the Client; and
(c) which is owned by the Client prior to the commencement of the Engagement or other information of explicitly confidential nature will be kept confidential and not be disclosed by the Consultant except as needed to perform the Services or required by law.

Dispute Resolution & Termination

17. If at any time the Client wishes to discuss how the Services can be improved or to make a complaint, the Consultant can be contacted by phone or email provided in the Project documentation. The Consultant will investigate any complaint promptly to endeavour to resolve the issue.
18. The Client may terminate this Agreement: i) in the event of substantial breach by the Consultant of his obligations hereunder, which breach has not been remedied within thirty (30) days of written notice from the Client requiring the breach to be remedied.
19. The Consultant may terminate this Agreement: i) in the event of monies payable to the Consultant being outstanding for more than 30 days from the date of invoice or as otherwise specified by the Consultant; or ii) in the event of substantial breach by the Client of his obligations hereunder, which breach has not been remedied within 30 days of written notice from the Consultant requiring the breach to be remedied; or iii) upon giving the Client thirty (30) days written notice of his intention to do so.
20. In the event of termination by either party pursuant to Clauses 18 and 19, the Consultant shall be entitled to be paid for that part of the Services rendered up to the time of termination and if the termination is under Clause 19(ii) shall be entitled to an additional payment for expenses that have been incurred by the Consultant up to the date of termination plus payment representing the equivalent of the Services in the Agreement for the next sixty (60) days.
21. The Consultant may suspend provision of the Services upon any payment being due and unpaid by the Client until such payment is made or the Agreement is terminated.
22. Any dispute between the Client and the Consultant which cannot be resolved informally, which will be the first course of action, will be referred to mediation in accordance with the Mediation and Conciliation Rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) provided that this provision shall not prevent the Consultant from instigating legal action at any time to recover monies owing by the Client to the Consultant. The mediation shall be held in Sydney NSW.

Email

23. The Client acknowledges that email is inherently insecure, may contain computer viruses, may be delayed or prevented in transmission or receipt from causes outside control and might be intercepted by third parties. Both parties agree to take reasonable steps to ensure their email transmissions (and any attachments) are free of computer viruses.

Subcontracting

24. (a) The Consultant may subcontract any part of the Services or Scope of Work.
(b) Subject to Clause 24(a), neither party may assign, transfer or sublet any obligation under this Agreement, without the written consent of the other. Unless stated in writing to the contrary, no assignment, transfer of subletting shall release the assignor from any obligation under this Agreement.
25. The Client agrees to provide a safe working environment for the Consultant to conduct the services.

Records Management

26. The Consultant will retain records for the legally required minimum period from the completion of a Project if one exists, and may destroy records after that time. The Consultant will take all reasonable steps to keep all information provided by the Client secure, in the event that such information needs to be accessed and/or worked upon by the Consultant beyond the premises of the Client

Liability & Indemnity

27. The Consultant accepts no liability to anyone other than to the Client. The benefit of the Consultant's Services may not be assigned, held on trust or otherwise transferred by the Client.
28. The Consultant will be liable to the Client for net losses, damages, costs or expenses (losses) caused by the Consultant's wilful default, except:
 - (a) the Consultant will not be liable if such losses are due to the provision of false, misleading, incorrect or incomplete information or documentation by the Client, the Consultant's reliance on instructions provided by the Client, or due to any acts or omissions of any person other than the Consultant;
 - (b) the Consultant will not be liable to the Client for accidental, incidental, indirect, special, punitive or consequential damages or for loss of profits or savings, even if the Consultant has been advised of, knew or should have known of the possibility of such damage or loss;
 - (c) the Consultant will have no liability for any statements, representations, guarantees, conditions or warranties (together representations) arising from communications (oral or written) which are not expressly contained in this Agreement. All representations to exercise reasonable care or render the Consultant's Services with due care and skill which may otherwise be implied by statute, common law or custom are expressly excluded; and
- (d) the aggregate liability of the Consultant, whether to the Client or any third party, of whatever nature, whether in contract, tort or otherwise, for any losses (including interest) whatsoever and howsoever caused arising from or in any way connected with this Engagement shall not exceed 100% of the Fees invoiced under this Engagement. The Client agrees to release the Consultant from all claims arising in connection with the Services to the extent that the Consultant's liability in respect of such claims would exceed this amount.
29. The Client agrees that all claims against the Consultant, whether in contract, tort, negligence, equity or otherwise, must be formally commenced within twelve months after the termination or expiry of the Services or the Agreement, whichever is earlier.
30. Where the Client comprises two or more parties, the limitation of liability contained in Clause 28 above must be allocated among these parties. Such allocation is a matter to be resolved by those parties.
31. Subject to the limitations and exclusions of liability specified in this Agreement the Consultant's liability shall be limited to only that part of any loss or damage that is proportionate to the loss or damage it has directly caused. In determining responsibility for loss or damage caused, account shall be taken of any loss or damage that is reasonably attributable to any third party. Nothing in these terms and conditions affects the rights, obligations or remedies of the parties under the any proportionate liability legislation applicable.

32. The Client agrees to indemnify the Consultant:
- (a) against any and all losses, claims, costs, expenses, actions, demands, damages, liabilities or any other proceedings, incurred or suffered by the Consultant, including in respect of any claim by a third party (whether in contract, tort, or otherwise), arising from any breach by the Client of its obligations under this Agreement or by reason of any action the Consultant takes in good faith;
 - (b) against any and all losses, claims, costs, expenses, actions, demands, damages, liabilities or any other proceedings, incurred or suffered by the Consultant in respect of any claim by a third party (whether in contract, tort, or otherwise) from the Client's use of the Consultant's Services; and
 - (c) from any liabilities the Consultant may have to the Client or any third party as a result of reliance by the Consultant on any information provided by the Client (or any of the Client's representatives), which is false, misleading, incorrect or incomplete or as an result of the failure to provide information which was material information held in the Client's possession or control.
33. The indemnities in this clause will include all costs incurred by the Consultant in regard to such liability or claim, including legal costs, the time of the Consultant's personnel and the costs of any expert engaged by the Consultant to assist in dealing with the claim or liability in any way.

Privacy

34. The *litmus360* privacy policy is published as a separate document and can be found at <http://www.litmus360.com.au>

Changes to Terms and Condition

We may modify these Terms and Conditions at any time, in our sole discretion and all modifications will be effective immediately upon our posting of the modifications on our website or notice board.

LITMUS 360 PTY LTD
trading as *litmus360* - ABN 64 622 004 200

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