

## **TERMS & CONDITIONS**

### **1 Introduction**

- 1.1 These pages contain the Terms and Conditions (T&Cs) on which, in conjunction with our engagement letter, we will provide services to you. Where there is any inconsistency between an engagement letter issued to you and these T&Cs, the engagement letter will prevail to the extent of the inconsistency.
- 1.2 On your acceptance of the terms contained in the Engagement Letter you will be bound by these T&Cs. You will be taken to have accepted the terms of our engagement letter, and these T&Cs, on the earlier of the date:
  - a) that you sign and return the 'Acknowledgement Advice' to us, which accompanied our engagement letter,
  - b) you otherwise advise us in writing, or
  - c) you provide us with instructions after the date of the engagement letter.
- 1.3 These T&Cs terminate when either:
  - a) we have completed providing services to you, or
  - b) the provision of services is terminated either by you or by us, and
  - c) you have paid us fees rendered in respect of services provided in respect of the engagement and any other outstanding amounts.

### **2 Our services**

- 2.1 The services we have agreed to provide to you, which comprise the scope of our work for this engagement, are set out in our Engagement Letter. We will of course exercise reasonable skill and care to provide the services in line with the appropriate professional standards.
- 2.2 We will provide our services that, in our professional judgement, are appropriate for this engagement and in accordance with applicable legal and ethical standards.

- 2.3 From time to time you may request additional services from us. Where we agree to provide these services to you, they will be governed by these T&Cs and the Engagement Letter amended as agreed in relation to the scope of work, or by a separate Engagement Letter.
- 2.4 Unless otherwise specifically stated in the Engagement Letter, any advice or opinion relating to the services is provided solely for your benefit. Except as required by law, you may not disclose all or any part of the advice or opinion in any way, including by publication or electronic media, to any other party without our written consent.
- 2.5 We disclaim all responsibility for the consequences of anyone, apart from you, relying on our advice and/or opinion without our written consent.

### **3 Advice**

- 3.1 We shall not be under any obligation, regardless of the circumstances, to update any advice or report, oral or written, for events occurring after the advice or report has been issued in final form.
- 3.2 Any advice that we give you will be based on the law effective at the date of the advice or opinion. We do not accept any responsibility for any changes in the law, and/or in its interpretation, which occur after the date of our advice. This applies to any changes in the law or its interpretation which take effect retrospectively.
- 3.3 No actions taken by us and/or statements made during our engagement shall be taken as a promise or guarantee to you about the outcome of any matter.
- 3.4 Unless otherwise agreed with you, or specifically stated in the Engagement Letter, the advice we give cannot be relied upon to disclose irregularities, including fraud and other illegal acts and errors that may occur.
- 3.5 No advice we provide to you is intended to constitute or will constitute legal advice and it should not be relied upon by you as such.

#### **4 Your responsibilities**

- 4.1 You will disclose all facts and circumstances of which you are aware that may bear upon the engagement.
- 4.2 You agree to pay for the services we provide in accordance with the payment terms set out in the Engagement Letter and in these T&Cs.
- 4.3 If you can't make full payment by the due date, you will make direct contact with us to gain our agreement for an acceptable timeframe to clear outstanding amounts.
- 4.4 You agree to respond promptly to provide all information and materials that we reasonably require to enable us to provide the services set out in the Engagement Letter, including arranging access to:
  - a) members of your staff,
  - b) third parties,
  - c) records,
  - d) technology and systems, and
  - e) premises as required.
- 4.5 Please do not assume that we know information you have not told us. Where you, or others on your behalf, have made information available to our staff not engaged in the provision of the services, please do not assume that this information has been made available to our staff who are engaged in the provision of the services to you.
- 4.6 Your primary representative from Murray Nankivell is the Engagement Director specified in the Engagement Letter.
- 4.7 We will rely on the information and material that you, or another party provides. We will not verify this information and/or material unless you request or advise us to do so and we agree to do so as part of our services. You are responsible for the completeness and accuracy of the information and materials you supply to us.
- 4.8 If you become aware that any of the information or material provided to us has changed, is incomplete, incorrect or misleading, or may in any other way impact upon the services we provide to you, you must inform us immediately. You must also take all necessary steps to

correct any announcement, communication or document issued which contains, refers to, or is based upon such information.

- 4.9 We disclaim all responsibility for your failure to inform us of any changes to any information and/or material which impacts upon the services we have agreed to provide to you.
- 4.10 If you provide any advice or opinion we give to you to a third party without our consent, you agree to indemnify us against any claims made against us by that third party or any other party and for the costs of defending any such claims.

## **5 Non-conformance**

- 5.1 If you become aware that the advice or opinion we have provided to you does not conform to the scope of work set out in the Engagement Letter, you must inform us immediately. You must give us the opportunity to rectify any such advice or opinion.

## **6 Data Storage**

- 6.1 Murray Nankivell contracts a third party to provide a hosted environment using cloud storage for our computer infrastructure.
- 6.2 The hosted environment is under the exclusive control of our third party provider.
- 6.3 The cloud storage is wholly within Australia and the Data Centre where our server is housed has ISO 27001 certification.
- 6.4 Our data is protected by Intrusion Protection/Detection and Anti-virus systems.
- 6.5 All data transfers within the Murray Nankivell computer infrastructure are encrypted to the End User session.
- 6.6 The third party cloud storage provider only has access to Murray Nankivell data for the purposes of providing a reliable computer infrastructure environment.
- 6.7 The third party cloud storage provider is contractually prohibited to access and use Murray Nankivell data other than necessary to perform the explicit function outline in 6.1 above.

## **7 Outsourced Services**

- 7.1 We may involve third party contractors or outsourced service providers in providing various aspects of your accounting work. These services may include:
- a) accounting file preparation and/ or Data entry into our accounting systems,
  - b) auditing of accounts (including Self-Managed Super Funds),
  - c) hosting of data on cloud based servers, as per clause 6.
- 7.2 Acceptance of our services in conjunction with this engagement document indicates your acceptance of the use of outsourced services as described above. Where the outsourced service requires the disclosure of personal information to an overseas recipient, a consequence of your consent is that we will be required to take reasonable steps to ensure that Australian Privacy Principles are complied with by the overseas recipients of the Personal Information.
- 7.3 We have taken all available measures to ensure the security and privacy of your data is protected and follows the notifiable data breaches scheme as outlined in the Privacy Act 1988.

## **8 Fees**

- 8.1 You may request an estimate of the professional fees and costs of engagements. We are pleased to provide such estimates, however such estimates are provided on the basis they are not a guarantee of the approximate final fees that may be payable in respect of the specific engagement.
- 8.2 Unless we specifically agree in writing, no written or oral statement regarding fees and costs in connection with a particular engagement, whether expressly stated as an estimate or not, shall be deemed to limit or "cap" our professional fees and costs.
- 8.3 The basis on which we charge fees for this engagement is set out in the Engagement Letter. If appropriate, we shall provide an estimate of our fees for carrying out the services in the Engagement Letter.

- 8.4 If we have agreed to calculate the fees, we charge to you on a time basis by applying an hourly rate, we may review and increase the rates we are charging to you on a twelve monthly basis.
- 8.5 Our invoice is payable within 21 days of the date of issue unless stated otherwise in the Engagement Letter.
- 8.6 Where payment is not received within 21 days of the date of the invoice, we may pass on the credit card processing fee charged by our merchant facilities payment provider.
- 8.7 If you do not pay our invoice in full, we may:
  - a) elect not to continue to provide our services to you,
  - b) suspend work until further payment is made,
  - c) refer the debt to a Collection Agency, and
  - d) instigate legal proceedings without further notice.
- 8.8 Without prejudice to the above, we may take further action to recover any outstanding amounts due to us. Any costs, fees or disbursements that we incur in the recovery of the outstanding amounts, and any interest, will be added to the amount due from you.

## **9 Disbursements**

- 9.1 In addition to our fees, we may incur expenses (disbursements) on your behalf during the engagement.
- 9.2 Disbursements represent out-of-pocket payments made by us on your behalf and, unless you are requested to pay such items directly, may include such items as photocopying, courier, postage, filing fees and other applicable costs.
- 9.3 Where we incur disbursements on your behalf, we will charge you the GST inclusive amount of those expenses, less any input tax credits which we are entitled to.
- 9.4 Where we incur any disbursements as your agent, we will charge you the GST inclusive cost of those disbursements and provide you with sufficient information to enable you to claim an input tax credit in respect of them (if you are entitled to claim such input tax credit).

- 9.5 We will seek your approval before incurring any unusual or extraordinary expenses on your behalf.

## **10 Documents**

- 10.1 All materials developed, modified, designed, or created by us in the course of carrying out our services, including know how, systems, software, reports, documents, written advice, drafts and working papers belong to us. Any correspondence or documents we provide to you during the engagement belong to you unless we specify otherwise.
- 10.2 Unless otherwise agreed in the Engagement Letter, all original documents you have provided to us during this engagement will belong to you.
- 10.3 On completion of our work, or termination of this engagement, we will return to you any papers to which you are entitled. Upon completion of the engagement, we will electronically store our file, including any documents or materials you leave with us, for a period of 7 years from the date of our final invoice. You authorise us to destroy our file (excluding any documents kept in safe custody) after the expiration of that period.
- 10.4 We accept no liability for any losses you suffer if our file, including any documents or other material you leave with us, is damaged or destroyed for any reason.
- 10.5 We will exercise our right to retain documents to which you are entitled relating to this engagement, until all our outstanding fees and disbursements are paid in full, unless acceptable security is provided.

## **11 Communication and electronic documents**

- 11.1 Each party is authorised to communicate with and provide documents to the other party by post, facsimile or electronically. To the extent permitted by law.
- 11.2 Each party will not be responsible for any liability caused in connection with electronic transmissions.

- 11.3 We will not be responsible for any delay, non-delivery or interruption of any of the methods of communication.
- 11.4 You will take all reasonable steps to ensure you have suitable systems in place to prevent corruption of data, or transmission of viruses in your electronic documents or other communications to us.
- 11.5 You acknowledge and accept the risks that email communications may not always be secure, irrespective of the security we have in place.
- 11.6 You will contact us immediately if you have any concerns about the authenticity of any documents or communications purportedly sent by us.

## **12 Confidentiality**

- 12.1 In conducting this engagement, information acquired by us during this engagement is subject to strict confidentiality requirements. That information will be treated by us as follows:
  - a) we shall protect the confidential information in a reasonable and appropriate manner and in accordance with applicable professional standards,
  - b) we shall use confidential information only to perform our obligations under this engagement, and
  - c) we shall reproduce confidential information only as required to perform our obligations under this engagement.
- 12.2 We may disclose confidential information if this is required by law or is required in order for us to comply with our professional duties and obligations, or as required by professional or regulatory bodies.

## **13 Quality control**

- 13.1 As a member firm of CPA Australia Ltd we are required to undertake a quality review process. Other regulatory bodies may also conduct surveillance or reviews to monitor quality control. As part of this process client files are subject to review.

- 13.2 As a result of this quality review your client files may be chosen for inspection. By accepting our terms of engagement, you authorise your files to be reviewed in this way.

#### **14 Copyright and Intellectual property**

- 14.1 Unless otherwise specified in the Engagement Letter, we retain all copyright and intellectual property rights in all material developed, designed or created by us in the course of carrying out the services including know how, systems, software, reports, written advice, drafts and working papers.
- 14.2 You acknowledge that any documents or material given to us in relation to this engagement will not infringe the copyright or intellectual property rights of any other entity.
- 14.3 You must not use the Murray Nankivell name or logo on any website or in any public statement unless you have our prior written consent.

#### **15 Independence and Conflicts of interest**

- 15.1 The performance of our services is governed by Professional and Ethical Standards and other specific legislative requirements regarding independence.
- 15.2 We do not believe that there is any conflict of interest in us providing the services set out in the Engagement Letter to you at present. However, it is possible that in the future a conflict may arise. If it does, we will notify you immediately and discuss the issue with you.
- 15.3 Our aim is to make sure that any further services we provide to you will be objective and free from any independence or conflicts of interest issues. In some cases this may result in us having to cease providing any further services to you.

#### **16 Termination**

- 16.1 The ways in which you may terminate this engagement are set out in the Engagement Letter.

- 16.2 Unless we are providing you with a statutory audit service, we may terminate this engagement by giving you 7 days' notice in writing, unless a shorter period is required for matters of urgency, if:
- a) you do not pay our account,
  - b) you do not meet a requirement for money on account of costs or disbursements,
  - c) we have requested instructions, information or materials from you, but you have failed to provide them in a timely manner,
  - d) you give us instructions that are false and misleading,
  - e) we believe that we may have a conflict of interest, or
  - f) any other reasonable grounds.
- 16.3 Where we are providing you with a statutory audit service the Engagement Letter will set out the ways in which this engagement can be terminated.
- 16.4 Either party may terminate this engagement in the event of bankruptcy or the appointment of a receiver or an administrator of the other party.
- 16.5 All sums due to us shall become payable in full when termination takes effect, or as otherwise agreed in the Engagement Letter.
- 16.6 Termination under this clause shall be without prejudice to any rights that may have accrued before termination.

## **17 Changes**

- 17.1 This document is subject to change to reflect best practice. Your engagement letter sets out the effective date (version) of the T&Cs that applies to the services that we provided to you.
- 17.2 The latest version of our T&Cs is available on our website – [www.murraynankivell.com.au](http://www.murraynankivell.com.au).

## **18 Governing law and jurisdiction**

- 18.1 The terms of engagement and these T&Cs will be governed and construed according to the law applying in South Australia.
- 18.2 Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of South Australia.

## **19 Waiver**

- 19.1 A failure by us to take action to enforce our rights does not constitute a waiver of any right or remedy under this agreement unless it is in writing and signed by us.
- 19.2 A waiver by us of any specific provision of this agreement does not affect any other provision of this agreement.

Effective 15 March 2024