

AU-TCpro02



TRANSPORT CONTRACTOR
— Consultants Pty Ltd —
The Power of Us - Supporting Your Success!

Terms and Conditions

These are the terms and conditions subject to which we allow you to engage our services and use Our Website. By visiting or using Our Website, or make an order for Services, you agree to be bound by them.

We are Transport Contractor Consultants Pty Ltd, a company registered in Australia, ACN: 634 750 539.

Our address is P.O. Box 5355 Brendale Qld 4500.

You are: Anyone who uses Our Website or buys any Service from us in any circumstances and/or capacity.

It is now agreed as follows:

1. Definitions

- “Detailed Specification” means the written specification of the Work you have instructed us to do, and which we will prepare for your approval.
- “Documentation” means any documentation which may include instruction manuals, user guides and/or other documentation written and/or provided by either party.
- “Intellectual Property” means intellectual property owned by us, of every sort, whether or not registered or registrable in any country, including intellectual property of all kinds coming into existence after today; detailed and including, among others, patents, trademarks, unregistered marks, designs, copyrights, software, domain names, discoveries, creations and inventions, together with all rights which are derived from those rights.
- “Our Website” means any website or service designed for electronic access by mobile or fixed devices which is owned or operated by us or any member of The Power of Us Pty Ltd group of companies which currently includes the registered company Transport Contractor Consultants Pty Ltd and any and all web pages owned by us.
- “Price” means the price for our Services as set out on Our Website or otherwise provided by us.
- “Services” means all of the services available from Our Website, whether free or charged.
- “Work” means the work we do to provide the Services you have ordered and/or agreed to.

2. Interpretation

In this agreement unless the context otherwise requires:

- 2.1. a reference to one gender shall include any or all genders and a reference to the singular may be interpreted where appropriate as a reference to the plural and vice versa.
- 2.2. a reference to a person includes a human individual, a corporate entity and any organisation which is managed or controlled as a unit.
- 2.3. in the context of permission, “may not” in connection with an action of yours, means “must not”.
- 2.4. the headings to the paragraphs to this agreement are inserted for convenience only and do not affect the interpretation.
- 2.5. any agreement by either party not to do or omit to do something includes an obligation not to allow some other person to do or omit to do that same thing.
- 2.6. except where stated otherwise, any obligation of any person arising from this agreement may be performed by any other person.
- 2.7. in any indemnity, a reference to costs or expenses shall be construed as including the estimated cost of management time of the indemnified party, such cost calculated at \$200 per hour.
- 2.8. these terms and conditions apply to all supplies of Services by us. They prevail over any terms proposed by you.
- 2.9. this agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any version or translation of this agreement in any other language, the English language version shall prevail.

3. Basis of contract

- 3.1. In entering into this contract, you have not relied on any representation or information from any source except the definition and explanation of the Services given on Our Website or provided verbally and/or in writing by us.
- 3.2. If you use Our Website in any way and make an order on behalf of another person you warrant that you have full authority to do so and you accept personal responsibility for every act or omission by you.
- 3.3. Subject to these terms and conditions, we agree to complete the Work and to provide to you some or all of the Services described on Our Website at the Prices we charge from time to time.
- 3.4. You acknowledge that you understand exactly what is included in the Services provided under the Subscription and you are satisfied that the Services you intend to buy are suitable and satisfactory for your requirements.
- 3.5. So far as we allow use of our Intellectual Property, we grant a licence to you, limited to the terms set out in this agreement.

- 3.6. Our contract with you and your Subscription is for a minimum of three years from the date of start / payment. Your continued use of our Services after that shall be deemed acceptance by you of the changed Service, system and/or terms.
- 3.7. The contract between us comes into existence when we receive payment from you for a minimum three-year Subscription and/or otherwise agreed Service.
- 3.8. We may refuse to supply a Service if you live in a region we do not serve.
- 3.9. Subject to all the terms in this agreement, we authorise you to access and use Our Website and to download and print a small part of the content. This licence is conditional not only on your compliance with all of the terms of this agreement, but also on your using the Content only as intended by us, for your use in connection with the Work.
- 3.10. Some of our Services are now or may in future, be available to you only subject to additional terms. Those terms will be set out on Our Website. You now agree that if you choose to use any such service, the relevant terms will become part of this agreement.
- 3.11. If we give you free access to a Service or feature on Our Website which is normally a charged feature, and that Service or feature is usually subject to additional contractual terms, you now agree that you will abide by those terms.
- 3.12. We may change this agreement and/or the way we provide the Services, at any time. If we do:
 - 3.12.1 the change will take effect when we post it on Our Website.
 - 3.12.2 you agree to be bound by any changes. If you do not agree to be bound by them, you should not use Our Website or the Services.
 - 3.12.3 if you make any payment for Services or goods in the future, you will do so under the terms posted on Our Website at that time.
 - 3.12.4 to this agreement when you access Our Website or use the Services after any such modification is posted.

OR

- 3.13. Our contract terminates on the earliest of:
 - 3.13.1 our completion of any Work or Service for which you have paid us. If there is any doubt as to when this is, or was, then our decision is final.
 - 3.13.2 our having worked for the amount of time for which you have paid us, even if the Work is unfinished.
- 3.14. You do not become a client for the time when after completion of one piece of work we start another. With the exception of the Subscription Services each piece of Work is a new retainer which terminates when that Work is done. If we should give advice on the same subject at a later time, that advice constitutes a separate contract and does not retrospectively extend the first contract for our Services.

- 3.15. Services may be delivered by your free download, by e-mail or by both of these, at our choice.
- 3.16. You agree that you are bound by these terms (or the latest version of them) for all future contracts with us, whether ordered through Our Website or in some other way.

4. Price and payment

- 4.1. Prices for business Services detailed on Our Website are exclusive of any applicable goods and services tax or other sales tax.
- 4.2. The Price of any Service may be changed by us at any time. But we will never change a Price so as to affect the Price charged to you at the time when you buy a Service.
- 4.3. Charges for Services are fixed whenever it is reasonably possible for us to ascertain the price.
- 4.4. When we do not provide fixed charges for the Service based on an agreed day or project rate., we will charge by the hour a fixed fee of \$250.00 Per Hour. In that case all Work done, including all travel, documentation, letters, e-mails, faxes, and telephone calls made and received may be charged on a time or cost basis in minimum units of thirty-minute blocks.
- 4.5. Estimates of charges will be provided to you wherever possible.
- 4.6. For ALL Services provided (Subscription Services Exempt) Payment will be due to us within [seven days] of your receipt of our invoice.
- 4.7. Payment may be made by credit card to Our Website or by transfer to our bank account.
- 4.8. For ALL Services provided if we do not receive payment within the period required, we shall stop Work until you have brought your payment up to date.
- 4.9. It is possible that the Price may have increased from that posted on Our Website. If that happens, we will not provide the Services until you have confirmed that you wish to order at the new price.
- 4.10. Bank charges by the receiving bank on payments to us will be borne by us. All other charges relating to payment in a currency other than Australian dollar will be borne by you.

5. Security of your credit card

We take care to make Our Website safe for you to use.

- 5.1. Card payments are not processed through pages controlled by us. We use one or more online payment service providers who will encrypt your card or bank account details in a secure environment.
- 5.2. If you have asked us to remember your credit card details in readiness for your next purchase or Subscription, we will securely store your payment details on our systems. These details will be fully encrypted and only used to process your automatic monthly payments or other transactions which you have initiated.

6. Service provision

- 6.1. The Services are listed and described on Our Website. Once we receive your payment, we will contact you and welcome you as a valued member.
- 6.2. In order to provide the Services, we may need specific information from you, as follows:
 - 6.2.1 information and confirmation from you on any aspect of your business.
- 6.3. The provision of our Service relies on a schedule of Work. If you are unable to provide us with acceptance or information, we require for a period which extends the agreed timescale then we are entitled to payment in accordance with the schedule in any event.
- 6.4. Our Services will be delivered by various methods which may include specific information packs, in person home/office visits, website interaction, telephone or email communication or by all of these, at our choice in the way we have explained in Our Website.
- 6.5. If we are not able to provide you Services within 7 business days of you requiring our Services, we shall notify you by e-mail to tell you the likely provision date.
- 6.6. For ALL Services provided (Subscription Services Exempt) If we have started to Work for you and you cancel our contract, you accept that you will be obliged to pay us for Work done, whether or not this Work is sufficiently advanced for you to be able to use it.

7. Monthly Subscription Services

- 7.1. For Subscription Services ALL monies paid by you to us are non-refundable and cancellation and/or termination of this agreement by you or us at any time for any reason will not entitle you to a refund of monies paid. When you enter into a Subscription for our Services you do so for the agreed 36-month period and as such you are committed to paying the 36-month Subscription in its entirety.
- 7.2. By signing up for a monthly subscription membership with Transport Contractor Consultants Pty Ltd I am signing for a 36-month period and my plan will automatically roll over to a month-by-month plan at the end of this time frame. At the end of my contract my plan can be cancelled at any time by providing Transport Contractor Consultants Pty Ltd with 30 days' notice in writing.
- 7.3. You may not share or allow others to use the Services in your name.

8. Foreign taxes, duties and import restrictions

- 8.1. If you are not in Australia, we have no knowledge of, and no responsibility for, the laws in your country.

9. Work management procedure

- 9.1. We shall prepare a Detailed Specification for your approval.
- 9.2. For ALL Services provided (Subscription Services Exempt) We may require you within an agreed timeframe of the receipt of the Detailed Specification either approve or give us your further instructions for edit of it. If you fail to respond within that time period, you will be deemed to have approved the Detailed Specification.
- 9.3. We shall take account of all reasonable comments and/or requests for amendment received from you and shall incorporate them in a revised version of the Detailed Specification to be prepared and delivered to you as soon as reasonably possible.
- 9.4. The process described above will be repeated until you have approved (or are deemed to have approved) the Detailed Specification.

10. Dissatisfaction with the Services

- 10.1. Our most important task is to ensure your absolute satisfaction. We will always strive to reach that target. However, we acknowledge that mistakes are made occasionally. This paragraph covers that possibility. If you are not wholly satisfied with the Service, please tell us at the earliest opportunity:
 - 10.1.1 the date, if relevant, of the failure.
 - 10.1.2 when and how you discovered the failure.
 - 10.1.3 the result of the failure.
 - 10.1.4 your suggestion as to an action we should take to resolve the situation and restore your faith in us.
- 10.2. To do this, it is essential that you contact us by email at the contact point on Our Website.

OR

- 10.3. The procedure for complaints about our Services is set out on Our Website. If you do not follow this procedure, we may be unable to identify you and the Services you have received.

AND

- 10.4. You now agree that you commit a breach of this contract if you seek repayment of money paid to us by asking your credit card provider to credit back a payment made to us, without attempting to seek repayment from us first. In that event, you agree that you will owe us first the sum charged to us by our payment service provider and secondly a sum based on time spent at \$250 per hour in dealing with your breach. You also agree that this provision is reasonable.

11. Confidentiality

- 11.1. Both parties are aware that in the course of our Work for you either of us will have access to and be entrusted with information in respect of the business and operation of the other and their dealings, transactions and affairs, all of which information is or may be confidential.
- 11.2. We both now undertake for ourselves and every employee, or sub-contractor whose services we may use both during and after completion of the Work, that we will not divulge to any person whatever or otherwise make use of (and will use their best endeavours to prevent the publication or disclosure of) any trade secret or confidential information.
- 11.3. For the purposes of your above undertaking, the information will be deemed to include all information (written or oral) concerning the Detailed Specification.
- 11.4. Each of us now undertakes to the other to make all relevant employees, agents and sub-contractors aware of the confidentiality of information and the provisions of this paragraph and to take all such steps as will from time to time be necessary to ensure compliance by its employees, agents and sub-contractors with these provisions.
- 11.5. The provisions of the last previous sub paragraph will not apply to either of us if the other becomes subject to bankruptcy, receivership, or liquidation proceedings.

12. Intellectual Property

You agree that at all times you will:

- 12.1. not cause or permit anything which may damage or endanger our title to the Intellectual Property.
- 12.2. notify us of any suspected infringement of the Intellectual Property.
- 12.3. indemnify us for any loss or expense arising from your misuse of the Intellectual Property.
- 12.4. on the expiry or termination of this agreement immediately stop using the Intellectual Property except as expressly authorised by us in writing.
- 12.5. not use any name or mark similar to or capable of being confused with any name or mark of ours.
- 12.6. so far as concerns software provided or made accessible by us to you, you will not:
 - 12.6.1 copy, or make any change to any part of its code.
 - 12.6.2 use it in any way not anticipated by this agreement.
 - 12.6.3 give access to it to any other person than you, the licensee in this agreement.
 - 12.6.4 in any way provide any information about it to any other person or generally.
- 12.7. not use the Intellectual Property except directly in our interest.

13. Disclaimers and limitation of liability

- 13.1. This paragraph applies so far as the applicable law allows.
- 13.2. All implied conditions, warranties and terms are excluded from this agreement. If in any jurisdiction an implied condition, warrant or term cannot be excluded, then this sub paragraph will be deemed to be reduced in effect, only to the extent necessary to release that specific condition, warranty, or term.
- 13.3. Our Website and our Services are provided “as is”. We make no representation or warranty that the Service will be:
 - 13.3.1 useful to you.
 - 13.3.2 of satisfactory quality.
 - 13.3.3 fit for a particular purpose.
 - 13.3.4 available or accessible, without interruption, or without error.
- 13.4. We claim no expert knowledge in any subject. We disclaim any obligation or liability to you arising directly or indirectly from information you take from Our Website.
- 13.5. We make no representation or warranty and accept no responsibility in law for:
 - 13.5.1 accuracy of any content or the impression or effect it gives.
 - 13.5.2 delivery of content, material, or any message.
 - 13.5.3 privacy of any transmission.
 - 13.5.4 third party advertisements which are posted on Our Website or through the Services.
 - 13.5.5 the conduct, whether online or offline, of any user of Our Website or the Services.
 - 13.5.6 failure or malfunction of computer hardware or software or technical equipment or system connected directly or indirectly to your use of the Services.
 - 13.5.7 any act or omission of any person or the identity of any person who introduces himself to you through Our Website.
 - 13.5.8 any aspect or characteristic of any goods or services advertised on Our Website.
- 13.6. You agree that in any circumstances when we may become liable to you, the limit of our liability is the amount you have paid us in the immediately preceding 12-month period for the Services concerned.
- 13.7. Except in the case of death or personal injury, our total liability under this agreement, however it arises, will not exceed the sum of \$1,000. This applies whether your case is based on contract, tort or any other basis in law.
- 13.8. We will not be liable to you for any loss or expense which is:
 - 13.8.1 indirect or consequential loss; or

- 13.8.2 economic loss or other loss of turnover, profits, business or goodwill even if such loss was reasonably foreseeable or we knew you might incur it.
- 13.9. This paragraph (and any other paragraph which excludes or restricts our liability) applies to our directors, officers, employees, subcontractors, agents and affiliated companies as well as to us.
- 13.10. If you become aware of any breach of any term of this agreement by any person, please inform us immediately in writing. We welcome your input but do not guarantee to agree with your judgement.
- 13.11. Nothing in this agreement will be construed as limiting or excluding our liability for death or personal injury caused by our negligence.

14. Indemnity

You agree to indemnify us against all costs, claims and expense arising directly or indirectly from:

- 14.1. your failure to comply with the law of any country including Chain of Responsibility.
- 14.2. your breach of this agreement.
- 14.3. any act, neglect or default by any agent, employee, you or your customer.

15. Termination

- 15.1. For Monthly Subscription Memberships refer Clause 7 and Subclauses 7.1, 7.2 and 7.3
- 15.2. This agreement **may** be terminated:
 - 15.2.1 when the Work has been delivered to you.
 - 15.2.2 immediately by us if you fail to pay any additional sum due within 14 days of the date of submission of an invoice.
 - 15.2.3 immediately by either party if the other commits any material breach of any term of this agreement and which in the case of a breach capable of being remedied is not remedied within 30 days of a written request to remedy it.
 - 15.2.4 immediately by either party if a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration or bankruptcy order (otherwise than for the purpose of an amalgamation or reconstruction) unless an application has been made under the Treasury Laws Amendment (2017 Enterprise Incentive No.2) Act 2017.
- 15.3. Termination of this agreement by this paragraph will be without prejudice to any other rights or remedies to which a party may be entitled.

16. Miscellaneous matters

- 16.1. Our privacy policy is strong and precise. It complies fully with the current privacy law.
- 16.2. You undertake to provide to us your relevant business information, current land address, e-mail address and telephone number as often as they are changed together with all information that we may require to enable us to fulfil our obligations under this contract.
- 16.3. If any term or provision of this agreement is at any time held by any jurisdiction to be void, invalid or unenforceable, then it will be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it will be binding in that changed or reduced form. Subject to that, each provision will be interpreted as severable and will not in any way affect any other of these terms.
- 16.4. The rights and obligations of the parties set out in this agreement will pass to any permitted successor in title.
- 16.5. If you are in breach of any term of this agreement, we may:
 - 16.5.1 publish all text and content relating to the claimed breach, including your name and email address and all correspondence between us and our respective advisers; and you now irrevocably give your consent to such publication.
 - 16.5.2 terminate your account and refuse access to Our Website.
 - 16.5.3 remove or edit content or cancel any order at our discretion.
 - 16.5.4 issue a claim in any court.
- 16.6. Any obligation in this agreement intended to continue to have effect after termination or completion will so continue.
- 16.7. No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.
- 16.8. When you visit Our Website or send messages to us by email, you are communicating with us electronically. We communicate with you by e-mail or by posting notices on Our Website. You agree that all our electronic communications satisfy any legal requirement that such communications be in writing.
- 16.9. Any communication to be served on either part by the other will be delivered by hand or sent by express post or recorded delivery or by e-mail.

It will be deemed to have been delivered:

 - if delivered by hand: on the day of delivery;
 - if sent by post to the correct address: within 72 hours of posting;
 - if sent by e-mail to the address from which the receiving party has last sent e-mail: within 24 hours if no notice of non-receipt has been received by the sender.

- 16.10. In the event of a dispute between the parties to this agreement, then they undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing arbitration or litigation.
- 16.11. So far as the law permits, and unless otherwise stated, this agreement does not give any right to any third party.
- 16.12. Neither party will be liable for any failure or delay in performance of this agreement, which is caused by circumstances beyond its reasonable control, [including any labour dispute between a party and its employees].
- 16.13. In the event of any conflict between any term of this agreement and the provisions of the constitution of a limited company or any comparable document intended to regulate any other corporate or collective body, then the terms of this agreement will prevail.
- 16.14. The validity, construction and performance of this agreement shall be governed by the laws of the State of Queensland, and you agree that that any dispute arising from it shall be litigated only in that State.