

Terms and Conditions

General

- 1) TE Consulting Services Pty Ltd (ACN 622 749 946) trading as Modus Operandi (MO) (ABN 50 622 749 946) is a company located in Australia, that provides business improvement consulting services ("Services") to various businesses throughout the world ("Client/you").
- 2) These terms and conditions apply to all Services provided by MO to Client's and forms an agreement (Agreement) between the parties.
- 3) These terms and conditions will prevail over any other agreements, terms, conditions, representations (oral or written), or understandings between MO (including their staff) and the Client.
- 4) Incorporated into this Agreement is a Scope Schedule which sets out the specific Services MO offers to perform for the Client. This Agreement incorporates by reference that Scope Schedule as part of the terms and conditions of this Agreement.
- 5) You, as the Client agree to be bound by this Agreement; if you do not agree, do not engage MO to provide services.
- 6) If you have questions or concerns regarding these terms and conditions, you should first contact the staff at MO on seek@findyourmo.com or seek independent legal advice.
- 7) The Client agrees to work collaboratively and in cooperation with MO at all times, including:
 - a) Responding to communication and requests for information from MO within 3 business days or such other time as agreed; and
 - b) For Project Work, complying with timelines provided by MO.
- 8) All Services will be performed at MO's principal place of business unless otherwise specified in the Scope Schedule.
- 9) MO reserves the right to accept or decline, in whole or in part, any request for Services.
- 10) The included Services MO agrees to provide to the Client are set out in the attached Scope Schedule which is a detailed and final description of the Services MO agrees to provide to the Client.
- 11) Any variations to the Scope Schedules or Services must be agreed in writing between MO and the Client.
- 12) During the time that MO provides services to you, it may become apparent that the Scope Schedule will need to be amended (by deleting or adding works), if this occurs, MO will notify you within 3 business days of becoming aware of a change in the Scope Schedule and where necessary, a new Scope Schedule will be provided to you and become part of this Agreement.
- 13) Various things are excluded from the Scope Schedule, they include:
 - a) All travel costs associated with the time required to attend the Client's offices on-site;
 - b) Flights, Accommodation & Parking (which are to be charged by MO at cost + 8% administration fee);
 - c) Where MO staff are required to travel more than 100km from its Principal Place of Business; a Per Diem Rate of \$75 per day to be paid for incidentals (to be included in payment invoices);
 - d) All costs associated with the purchase and ongoing fees of:
 - i) simPRO;
 - ii) Any other external system or product costs (Groundplan etc.); and/or
 - iii) The cost of Ongoing System Maintenance.

Payment & Invoicing

- 14) Generally, MO provides Services in three ways:
 - a) Project work;
 - b) Maintenance and/or ad-hoc work; or
 - c) Training work.
- 15) The Scope Schedule will set out of the manner in which MO will provide the Services to you and

Inclusions and Exclusions

therefore the basis upon which you agree to pay MO.

16) All prices are inclusive of Goods and Sales Tax (GST) and you are liable to pay the applicable amount of GST at the same time that payment for the Services is made.

17) In consideration of MO providing Services described in the Scope Schedule, the Client agrees to pay MO on the following basis:

a) For Project Work:

- i) A payment invoice will be generated for all project work on the following basis:
 - (1) 20% of the project fee as a deposit;
 - (2) Within 14 days thereafter, 20% of the project fee as a progress claim;
 - (3) Within 14 days thereafter, 20% of the project fee as a progress claim;
 - (4) Within 14 days thereafter, 20% of the project fee as a progress claim;
 - (5) 20% of the project fee upon completion of all Services by MO.
- ii) If the Client does not comply with Clause 7 above and provide information to MO as requested, MO are entitled to issue the 20% completion final invoice at any time, even if the Project Work has not yet been completed.
- iii) A payment invoice will be generated by MO in accordance with the schedule above and is due and payable by the Client to MO within 7 days of receiving the invoice.
- iv) Once all payments have been made to MO by the Client, the final documentation will be provided to the Client.

b) For Maintenance/Ad-hoc Work:

- i) All maintenance, training, strategy and ad-hoc work that exceeds 1 hour will be charged either on an hourly rate as agreed between MO and the Client and set out in the Scope Schedule or for an agreed subscription amount each month for an agreed amount of hours of work also set out in the Scope Schedule.
- ii) All ad-hoc support queries will be charged in 15-minute increments at a rate as set out in the Scope Schedule or for an agreed prepaid amount in advance. Payment will be due at the time of booking the support request.

iii) For the creation of forms for use in the Client business, MO will charge per form created as set out in the Scope Schedule.

iv) A payment invoice will be generated by MO at the completion of the work (or weekly if the work continues beyond one week) and is due and payable by the Client to MO within 7 days of receiving the invoice.

c) For Training Work:

- i) All training work will be agreed between the Client and MO in detail in advance of the Services being provided.
- ii) MO will charge the Client, as agreed and set out in the Scope Schedule, either on a day rate or hourly rate.
- iii) Full payment is required for training work at least 7 business days before the training work is to occur (whether that is online or in person).
- iv) If the Client cancels the booked training with less than 7 business days notice, MO are entitled to charge a \$250.00 plus GST cancellation fee. Any remaining monies that were pre-paid to MO will be refunded within 20 working days to the Client.
- v) If the Client cancels the booked training with less than 5 business days notice, MO are entitled to keep the entire amount pre-paid by the Client for the booked training work.

18) MO reserves the right to invoice a Client for payment on any other basis which is agreed in writing with the Client and MO at any time.

19) If the Client cancels work pursuant to clause 17a) or b) with less than one business day's notice, MO reserves the right to charge a cancellation fee of \$250.00 plus GST which will be invoiced and payable within 7 days.

Default

20) A statement of account verified by the director of MO or her nominee will be prima facie evidence of the sum due and owing by the Client as at the date of that account.

21) If the Client defaults in payment of any of MO's invoices then (no matter the basis of the Scope Schedule):

- a) all monies owed by the Client to MO will immediately fall due and payable;

- b) MO is entitled to suspend the provision of all Services immediately by sending an email to the Client to that effect;
- c) Upon a payment default occurring, MO can elect to deliver a suspension notice to the Client setting out the Client's default and if that payment default is not rectified within 7 calendar days, MO can then elect to terminate this Agreement forthwith;
- d) the Client (at MO's discretion) will pay interest on the amount payable at 15% per annum (interest accrues at the rate set out above on each unpaid amount which is due and payable by the Client under or in respect of this Agreement both before and after judgment (as a separate and independent obligation));
- e) the Client will pay MO's costs or expenses incurred in relation to any actual or contemplated enforcement of the Agreement, or the actual or contemplated exercise, preservation or consideration of any rights, powers or remedies under this Agreement which includes legal costs and expenses and collection charges on a full indemnity basis.

Warranty and Liability

- 22) MO and its staff, contractors and agents undertake to take all care when performing the Services subject to this Agreement.
- 23) MO is not liable for any damages whatsoever (including special, indirect, consequential, or incidental damages or damages for loss of profits, revenue, or loss of use) arising out of or relating to the Services provided whether such damages arise in contract, in tort, in equity, under statute, at law or otherwise.
- 24) MO makes no express warranties or representations in relation to the Services offered or provided.
- 25) In any event, MO's liability to you as the Client or any third parties (whether arising under statute, contract, tort (including negligence), equity or otherwise) for any defect in the Services will in all cases be limited to the cost of the Services provided by MO.

Indemnity

- 26) You agree to indemnify and hold MO harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by MO and from and

against all actions, proceedings, claims or demands made against MO, arising:

- a) As a result of your failure to comply with any laws, rules, standards or regulations applicable in relation to the provision of Services by MO.
- b) As a result of any other negligence or other breach of duty by you in connection the provision of Services by MO.
- c) As a result of anything improper or illegal done in connection with the Services provided by MO.
- d) As a result of any breach of this Agreement by you or your agents or employees.

Applicability of Terms

- 27) These terms and conditions, as may be varied from time to time at the sole discretion of MO and displayed on the MO Website (<https://findyourmo.com/>), apply to the relationship between MO and the Client and is conditional upon acceptance of and compliance with these terms and conditions, as they apply from time to time.

- 28) Any specific conditions, notices, variations and disclaimers whether incorporated currently or given in the future need to be carefully read as acceptance of these terms and conditions will be confirmation that they have been read and understood.

Notices

- 29) Any notices given in relation to this Agreement must be in writing and signed by an authorised person of the Client.
- 30) Notices must be transmitted by email to seek@findyourmo.com
- 31) A notice is deemed to be served "at the time of dispatch" within the meaning of section 23 of the *Electronic Transactions (Queensland) Act 2001*.

Waiver and Bar to Proceedings

- 32) The failure of MO to exercise or enforce any right or provision of this Agreement does not constitute a waiver of such right or provision. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of the use of the Services or the Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

No Disadvantage

- 33) These terms and conditions are not to be constructed to the disadvantage of a party because that party was responsible for its preparation.

Dispute

- 34) If any dispute arises under this Agreement or in connection with anything to do with the subject matter of these terms and conditions and/or the Services provided, such dispute must first be the subject of a mediation between the parties before a mediator agreed between the parties or otherwise appointed by the Institute of Arbitrators and Mediators Australia. The good faith participation in the mediation is a pre-condition of any litigation, except for applications for urgent, summary or injunctive relief.

Confidentiality

- 35) MO acknowledges that in the course of providing Services subject to this Agreement that it will encounter confidential information of the Client (Confidential Information).
- 36) MO Agrees to use the Confidential Information solely for the purpose of providing the Services. MO will not use or exploit the Confidential Information for its own benefit or any other purpose, or allow any other person to do so.
- 37) MO may only disclose the Confidential Information to its employees or advisers on a need to know basis. This Agreement does not give MO or any person to whom it discloses the Confidential Information any right, title or interest in the Confidential Information.
- 38) All employees of MO are bound by an internal confidentiality agreement which is an overarching agreement that protects all client and MO's own confidential information.
- 39) MO will take all reasonable steps to protect the Confidential Information and keep it secure from unauthorised persons by keeping all data on an encrypted, file storage system in the "cloud".
- 40) MO will inform the Client as soon as practicable if MO:
- Becomes aware or suspects that there has been a breach of any obligations under this Agreement; or

- Is required to disclose the Confidential Information by law, any securities exchange or court.

- 41) While all care is taken by MO at all time, MO are not responsible for data breaches, data loss, hacking, scams or any other thing that the Client may suffer and the Client is responsible entirely for their information technology systems, use, access and data storage.

Termination

- 42) This Agreement can be terminated by convenience by MO providing written notice to the Client to that effect.
- 43) This Agreement can be terminated by the Client by providing 60 calendar days written notice to MO. Nothing in this termination clause acts to extinguish any of the other obligations under the Agreement.

Continuing Obligations

- 44) Unless otherwise stated, each indemnity, payment or similar obligation in this Agreement:
- is of a continuing nature and are independent of each other;
 - is payable on demand; and
 - survives termination or discharge of this Agreement.

Cumulative Rights

- 45) The rights, powers and remedies provided to the Supplier in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law.

Entire Agreement

- 46) This Agreement constitutes the entire agreement between the parties and supersedes any prior or contemporaneous agreements, statements, understandings, or representations concerning its subject matter.

Severability

- 47) If any part of this Agreement is legally declared invalid or unenforceable, that part shall be severed from the remainder which will remain valid and enforceable.

Applicable Law

- 48) This Agreement and the relationship between MO and the Client shall be governed by the laws of

Queensland and the parties submit to the non-exclusive jurisdiction of the Queensland Courts.