



# Terms and Conditions

**1. Term**

- 1.1. The term of this Agreement commences on execution of the proposal or commencement of the services whichever is sooner and continues until terminated in accordance with this Agreement or, in any event, on the Date of Completion.

**2. Naturaliste Solutions' Responsibilities**

- 2.1. Naturaliste Solutions will perform the Services in a competent and professional manner and in accordance with generally acceptable industry standards. Naturaliste Solutions may remove and replace any of its resources performing the Services; any resource removed will be replaced by a resource of comparable training and experience.
- 2.2. Provision of Workers Compensation under Western Australia Law for Naturaliste Solutions Employees.

**3. Client's Responsibilities**

- 3.1. Client will timely provide Naturaliste Solutions with the documentation, information, access to its personnel and the cooperation Naturaliste Solutions reasonably requires to provide the Services. The Services are not intended as a substitute for professional judgment. Client will not use the Services, New Materials, or Naturaliste Solutions Materials as the sole source for any decision relating to any of its contracts.
- 3.2. Payment of the fee in accordance with clause 4.

**4. Payment of Fee**

- 4.1. Fees are set out in the proposal provided and may be amended from time to time in accordance with this Agreement and as mutually agreed between the parties.
- 4.2. Naturaliste Solutions will provide an invoice at the end of each month of service or when a phase of work or milestone is complete. This will be agreed with the Client upon execution of the contract.
- 4.3. The Client must make payment within 14 days after the invoice was received.
- 4.4. For all projects with a duration exceeding 30 days, the Client agrees to pay a non-refundable deposit equal to 20% of the total invoice amount. This deposit is due on the project start date.
- 4.5. The remaining balance of the invoice must be paid in full on the day the project is

completed, unless otherwise agreed upon in writing by both parties.

- 4.6. Payments not received within the stipulated timeframe will incur a late fee of 3% of the outstanding invoice total per calendar month, or part thereof. Invoices overdue by more than 7 days may result in the suspension of all ongoing services until payment is received in full. Additionally, the Client shall be liable for any costs incurred by Naturaliste Solutions in recovering overdue payments, including but not limited to debt collection fees and legal expenses.
- 4.7. All amounts specified in or under this agreement exclude GST. GST payable in respect of the services provided by us pursuant to this Agreement must be paid to us as an additional amount on the due date for payment of our fees or on the date we deliver a tax invoice in respect of the relevant taxable supply, whichever occurs last.

**5. Taxes**

- 5.1. Client will be responsible for all applicable taxes (excluding taxes imposed on Naturaliste Solutions' net income) imposed by any taxing authority, whether designated as value-added (VAT), goods and services (GST), sales, use, or other similar taxes ("Transaction Taxes"), now in effect or hereafter imposed, resulting from the fees arising pursuant to this Agreement. If Client is exempt from Transaction Taxes, Client must inform Naturaliste Solutions of its exemption and provide to Naturaliste Solutions complete and proper documentation evidencing the exemption.
- 5.2. If Client is required by applicable law to deduct or withhold taxes from any payment due to Naturaliste Solutions, Client will:
  - a. withhold the legally required amount from payment;
  - b. remit the withheld tax to the applicable taxing authority; and
  - c. promptly deliver to Naturaliste Solutions original documentation or a certified copy evidencing remittance of withheld tax. If Client does not provide evidence of payment of withheld taxes, Client will reimburse Naturaliste Solutions for the tax withheld from payment to Naturaliste Solutions. Client will comply with all applicable income tax treaties

and protocols in determining the amount of tax to withhold.

## 6. Variations

- 6.1. Any variation to the scope, deliverables, or timeline of the project must be requested in writing by the Client and agreed upon by Naturaliste Solutions in writing before implementation.
- 6.2. Variations may incur additional fees based on the nature and extent of the requested change. Unless otherwise agreed, a standard administration fee of 10% of the value of the variation or \$500 AUD (whichever is greater) will be applied.
  - a. Example: If the value of the variation is \$6,000 AUD, the administration fee will be \$600 AUD (10% of \$6,000 AUD). If the value of the variation is \$4,000 AUD, the administration fee will be \$500 AUD, as it exceeds 10% of the variation value.
- 6.3. Approved variations may result in adjustments to the project timeline, which will be communicated to the Client in writing.
- 6.4. If the Client causes changes to the project scope or deliverables without prior written approval from Naturaliste Solutions, the additional costs incurred will be billed to the Client at a rate of \$275 AUD per hour, with a minimum charge of \$1,500 AUD.
- 6.5. Fees associated with approved variations must be paid within 7 days of the variation invoice being issued. Late payment penalties outlined in Clause 4.6 will apply.

## 7. Representations and Warranties

- 7.1. Each Party represents and warrants that:
  - b. it is duly organized and validly existing under the laws of the jurisdiction of its incorporation or organization, and has full power and authority to perform all of its obligations under this Agreement; and
  - c. the person executing this Agreement on its behalf is duly authorized and empowered to bind the Party to this Agreement.
- 7.2. Except as provided in this agreement, Naturaliste Solutions disclaims all other representations and warranties, whether express or implied, including warranties of merchantability or fitness for a particular purpose.

## 8. Intellectual Property

- 8.1. Client retains ownership of all materials, and the intellectual property rights in those materials, provided to Naturaliste Solutions by or on behalf of Client ("Client Materials"). Client will also own copies of reports and training documents Naturaliste Solutions delivers to Client under this Agreement ("New Materials"). Client may use the New Materials in the form provided for its internal purposes only; Client may not use the New Materials for any other purpose or permit any other person, firm or entity to use the New Materials other than related body corporates of the Client or any advisers of the Client on a need-to-know basis.
- 8.2. Naturaliste Solutions' Materials. "Naturalise Materials" including methodologies, pre-existing programs, instruments, models, proprietary information, patents, registered and unregistered trademarks, trade names, trade secrets, copyrights, prototypes, inventions, algorithms, designs, compilations, computer software programs, tools, databases, evaluation guides, report forms, scoring guides, scoring algorithms, scoring instructions, scoring software and norms. Naturaliste Solutions may customize, modify, translate, or expand Naturaliste Solutions' Materials to apply to Client's unique requirements (collectively, a "Customization"). Any Customization will be Naturaliste Solutions Materials exclusive of any Client Materials included therein. Naturaliste Solutions owns Naturaliste Solutions Materials at all times, and Naturaliste Solutions reserves all rights not expressly granted under this Agreement. Licenses to Naturaliste Materials must be procured through a separate license agreement. Other than as provided below, this Agreement will not be construed as a license to copy, modify, create derivative works from, publish, disclose or otherwise use Naturaliste Solutions Materials. Client will not download, copy, publish, disclose, create derivative works of, disassemble, decompile or otherwise attempt to reverse engineer Naturaliste Solutions Materials, nor will Client permit any other person to do so. Client will be liable for all violations of these restrictions by its employees, subcontractors, or agents.

- 8.3. If a Customization includes Client Materials, Client grants to Naturaliste Solutions a non-exclusive, limited, non-transferable license to use the Client Materials solely to provide the Services in connection with the Customization. Client represents and warrants that it has all the necessary rights to include the Client Materials in the Customization.
- 8.4. If New Materials include Naturaliste Solutions Materials, Naturaliste Solutions grants the Client and its related bodies corporate a non-exclusive, limited, non-transferable license to use any Naturaliste Solutions Materials in the New Material for the purposes for which the New Materials are provided. Naturaliste Solutions represents and warrants that it has all the necessary rights to include the Naturaliste Solutions Materials in the New Materials.

## 9. Confidential Information

- 9.1. One Party ("Discloser") may disclose Confidential Information to the other Party ("Recipient") in connection with this Agreement. "Confidential Information" means all oral or written information concerning the Discloser, including the Discloser's business and business activities (past, present and future), financial information, technical information, customer information, intellectual property, methodologies, strategies, plans, documents, drawings, designs, tools, models, inventions, and patent disclosures, whether or not marked or identified as "confidential," that may be obtained from any source as a result of this Agreement. Confidential Information does not include information, technical data, or know-how that:
- a. is or becomes a matter of public knowledge through no fault of Recipient or any employees or third parties that the Recipient provides the Confidential Information to;
  - b. was lawfully in Recipient's possession or known by Recipient prior to its receipt from Discloser;
  - c. was rightfully disclosed to Recipient by another person without restriction;
  - d. Recipient independently develops without use of Discloser's Confidential Information; or
  - e. Discloser approves in writing for release.
- 9.2. Recipient will not use any Discloser Confidential Information for any purpose other than to perform its obligations under this Agreement or to use the New Materials or any other Services provided under this Agreement. Recipient will not disclose any Discloser Confidential Information to third parties or to its employees, other than employees or third parties who are required to have the Confidential Information to perform obligations under this Agreement and who are bound by confidentiality terms substantially similar to those in this Section 6. Recipient and Discloser will each be responsible for any breach of this Agreement by its representatives and any third parties that it provides Confidential Information to. Recipient will protect Confidential Information from disclosure to others using the same degree of care it uses to protect its own confidential information, but in any case no less than a commercially reasonable degree of care. If Recipient is required by law, regulations (including the rules of a recognized stock exchange), or court order to disclose any of Discloser's Confidential Information, Recipient, where legally allowed and reasonably possible, will promptly notify Discloser in writing prior to making any disclosure. Discloser may, at its sole expense, seek a protective order or other appropriate remedy from the proper authority. If no protective order or other remedy is obtained, or Discloser waives compliance with this Agreement or it is not legally allowed or reasonably possible to provide prior notice of the requirement to make disclosure, Recipient will furnish only the legally required portion of Confidential Information and will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to the Confidential Information to the extent possible.
- 9.3. Upon request, Recipient will destroy Discloser's Confidential Information in its possession, but Recipient may:
- 9.4. retain copies of Confidential Information that it is required to retain by law or regulation or for good corporate governance purposes;

- 9.5. retain copies of its work product that contain Confidential Information for archival purposes or to defend its work product; and
- 9.6. store copies made as part of routine back up of its information technology systems but the Confidential Information Recipient retains must continue to be handled in accordance with this clause 8.

#### **10. Indemnification**

- 10.1. Client will indemnify and defend Naturaliste Solutions, its parent, affiliates, and their respective directors, officers, partners, employees, shareholders and agents and their respective successors and permitted assigns, from and against all third party suits, claims, actions, and proceedings and all related liabilities, losses, judgments, damages, costs and expenses (including interest, penalties, fines, legal fees and other litigation expenses) that are or are alleged to arise from:
  - a. Naturaliste Solutions' use of Client Materials in accordance with this Agreement;
  - b. Any act or omission of the client, its employees, agents or servants as they relate to the services;
  - c. Client's breach of its representations and warranties.
- 10.2. Naturaliste Solutions will indemnify and defend Client, its parent, affiliates, and their respective directors, officers, partners, employees, shareholders and agents and their respective successors and permitted assigns, from and against all third party suits, claims, actions, and proceedings and all related liabilities, losses, judgments, damages, costs and expenses (including interest, penalties, fines, legal fees and other litigation expenses) that are or are alleged to arise from:
  - a. Naturaliste Solutions' gross negligence, wilful misconduct, fraud or dishonesty; or
  - b. Naturaliste Solutions' breach of its representations and warranties.
- 10.3. The Party seeking indemnification will provide detailed written notice to the indemnifying Party promptly after learning of the third party claim; the indemnified Party's failure to do so promptly will not relieve the indemnifying Party of its indemnification obligations except to the extent the

indemnifying Party is materially prejudiced by any delay in this notice. The indemnifying Party may assume control of the defence and settlement of the claim, and the indemnified Party will provide reasonable assistance at the indemnifying Party's reasonable expense, but the indemnifying Party may not agree to any settlement or consent to any final judgment without the prior written consent of the indemnified Party if:

- a. the indemnified Party is required to admit liability, undertake any obligation or pay any amount other than amounts concurrently reimbursed by the indemnifying Party;
- b. the settlement or judgment does not fully release the indemnified Party of all liability; or
- c. the indemnified Party's rights in its own property are negatively affected.

#### **11. Limitations of Liability**

- 11.1. Neither party will be liable to any party for any indirect, special, exemplary, consequential, punitive or incidental damages of any type, including lost profits or business interruption, relating to this Agreement.
- 11.2. Naturaliste Solutions' maximum liability for any claims relating to this Agreement is limited to providing the services again.
- 11.3. This clause 10 applies regardless of the legal theory asserted and even if the party knows that these damages might occur.

#### **12. Relationship of the Parties**

- 12.1. Naturaliste Solutions is at all times an independent contractor. Naturaliste Solutions employees remain in Naturaliste Solutions' employ and will not be deemed Client's agents or employees. Neither Party is authorized to bind or commit the other Party in any respect or to accept legal process on the other Party's behalf. Neither Party will be liable to any agent, subcontractor, supplier, employee, or customer of the other Party for any commission, compensation, remuneration, or similar benefit of any nature whatsoever. This Agreement is not intended to, and does not, create or impose any fiduciary relationship between the Parties. Naturaliste Solutions is not providing legal advice under this Agreement.

#### **13. Assignment, Subcontracting**

13.1. Neither Party may sell, assign, or transfer this Agreement, without the other Party's written consent, but no consent is required if the assignment:

- a. results from the assignor's merger, consolidation, spin-off, split-off or acquisition, but the assignment must be limited to the assignor's survivor, subsidiary or successor; or
- b. is to an affiliate capable of performing the assignor's duties and obligations under this Agreement. Subject to the foregoing, this Agreement will inure to the benefit of and will be binding upon Naturaliste Solutions, Client and their respective successors and permitted assigns.

13.2. Naturaliste Solutions will not subcontract Services without Client's prior consent. This provision applies to subcontractors engaged specifically to provide Services for Client.

#### **14. Governing Law**

14.1. This Agreement will be governed by the laws of the State of Western Australia.

14.2. The parties submit to the non-exclusive jurisdiction of the courts of the State of Western Australia and any courts which may hear appeals from those courts in respect of any proceedings in connection.

#### **15. Non Waiver**

15.1. A Party's failure at any time to enforce any of the provisions of, or any right or remedy available to it under, this Agreement or at law or in equity, or to exercise any option provided, will not constitute a waiver of that provision, right, remedy or option or in any way affect the validity of this Agreement. A Party's waiver of any default by either Party will not be deemed a continuing waiver, but will apply solely to the instance to which that waiver is directed.

#### **16. Severability; Interpretation**

16.1. Every provision of this Agreement will be construed, to the extent possible, to be valid and enforceable. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, that provision will be deemed severed from this Agreement, and all other provisions will remain in full force and effect.

#### **17. No Third Party Beneficiary Rights**

17.1. This Agreement is not intended to be for the benefit of any person other than Client and Naturaliste Solutions. No other person, will be considered a third party beneficiary of or otherwise entitled to any rights or benefits arising in connection with this Agreement.

#### **18. Force Majeure**

18.1. Neither Party will be considered in default as a result of its delay or failure to perform its obligations under this Agreement when the delay or failure arises out of causes beyond that Party's reasonable control. Causes may include acts of God or a public enemy, acts of the state or the government in its sovereign or contractual capacity, fires, floods, epidemics, strikes, and unusually severe weather; in every case, delay or failure to perform must be beyond the reasonable control of and without the fault or negligence of the Party claiming a force majeure event to excuse its performance.

#### **19. Entire Agreement; Conflicts**

19.1. This Agreement contains the entire agreement between the Parties regarding the subject matter hereof and supersedes any prior representations, advertisements, statements, proposals, negotiations, discussions, understandings, or agreements regarding the same subject matter. The Parties will not be bound by any representation, promise, or condition not expressly set forth in this Agreement. Preprinted terms and conditions on any purchase order issued by Client, or terms and conditions or additional requests for information included in Client's vendor set up process, under this Agreement are superseded in their entirety by this Agreement and without force or effect, even if Naturaliste Solutions signs the purchase order or acknowledges such terms to be set up as a vendor in Client's systems and whether such signature or acknowledgement occurs prior to or after the execution of this Agreement.

19.2. Under no circumstances will Naturaliste Solutions' acknowledgement of any such terms be considered an amendment to this Agreement. All purchase orders must include a reference to this Agreement. Neither Party has been induced to enter into this Agreement by any representations or

statements, oral or written. Not expressly contained in this Agreement.

## 20. Compliance with Legal and Regulatory Requirements

- 20.1. Each Party represents and warrants that it:
- a. Will comply with all applicable legal and regulatory requirements of any governmental or supranational body with jurisdiction over this Agreement or either Party, which include:
    - i. information privacy and data protection laws and regulations relating to the protection, disclosure and use of individuals' personal data including the General Data Protection Regulation (GDPR) and other laws and regulations that mandate the protection of personal data;
    - ii. anti-bribery, anti- modern slavery, anti-corruption, and anti-money laundering laws or regulations; and
    - iii. international trade laws and regulations including those of Australia, the US, EU, UK and UN ("Sanctions").
  - b. is not a target of Sanctions;
  - c. is not owned or controlled by any person or entity which is a target of Sanctions; and
  - d. is not located or organized in, has operations in, nor is owned or controlled by persons or entities in a jurisdiction which is a target of Sanctions (including Russia, Cuba, Iran, North Korea, Syria, and the Crimea Region of the Ukraine) ("Sanctioned Jurisdiction").
- 20.2. Client further represents and warrants that it will not transfer, provide access, or use the Services or work product (including tools and intellectual property): to or for the benefit of any Specially Designated National and Blocked Person (as designated by the U.S. Department of the Treasury's Office of Foreign Assets Control), to or in any Sanctioned Jurisdiction, or to any other party if such transfer, access, or use would constitute a violation of Sanctions.
- 20.3. If Client, as of the Effective Date, is a target of Sanctions or Client is located in a Sanctioned Jurisdiction, the Agreement is void at inception if Naturaliste Solutions' performance of the Agreement would violate applicable Sanctions. Any breach of this clause 19, including if Client becomes a target of Sanctions, is a material breach of this

Agreement and grounds for immediate termination by the non-breaching Party.

## 21. Miscellaneous

- 21.1. No provision of this Agreement will be construed against or interpreted to the disadvantage of any Party because that Party has or is deemed to have drafted the provision.
- 21.2. All section headings and captions are for the Parties' convenience only, are not part of the text, and will not be deemed in any way to limit or affect the meaning of this Agreement.
- 21.3. When used in this Agreement, "including" means "including without limitation." Subject to Client's prior written consent, Client permits Naturaliste Solutions to include Client's company name as a participant in products and services.
- 21.4. The Parties may execute this Agreement in any number of counterpart copies, which may be delivered by PDF or other electronic means, each of which will be deemed an original, but which taken together constitute a single instrument.
- 21.5. Either Party may terminate this Agreement immediately if:
- a. a Party is in breach of a material term of this Agreement, the non-breaching Party has provided the breaching Party with a written notice and the breaching Party has failed to cure the breach within thirty (30) days of its receipt of notice; or
  - b. the other Party enters into bankruptcy proceedings, becomes insolvent, or there is an appointment of a receiver for the benefit of creditors, or cessation of business.
  - c. Except as expressly provided in this Agreement. all remedies available to either Party for breach of this Agreement or at law or in equity are cumulative and may be exercised concurrently or separately. Those sections of this Agreement that are intended by their nature to survive termination or expiration of this Agreement will survive.
  - d. A notice under this Agreement must be in writing and delivered by hand, email or post to the recipients, street, email or postal address (as the case may be) last known to the sender.

- e. Unless we say otherwise explicitly or in writing any service provided by Naturaliste Solutions is limited by the information provided by the Client.

## **22. No other Warranties or representations**

- 22.1. By signing this document you acknowledge that neither Naturaliste Solutions nor anyone acting on our behalf have or has made any warranties or representations to you in relation to the matters the subject of the Agreement which are not fully set out in the Agreement, and that before signing the Agreement you have read it and the Schedule and have understood them.

## **23. Termination**

- 23.1. Either party may terminate this Agreement by providing 30 days written notice.
- 23.2. Naturaliste Solutions may terminate this Agreement immediately:
  - a. If the client fails to pay an invoice within 30 days of receipt;
  - b. If the client otherwise breach this Agreement;
  - c. If we consider continued to act for you we might breach a legal or ethical duty; or
  - d. For an event of Force Majeure.
- 23.3. Upon Termination the Client must pay all fees incurred up to the date of termination.

## **24. Disputes**

- 24.1. Each of the parties must use their reasonable endeavours to co-operatively resolve a dispute.
- 24.2. If a dispute arises and cannot be resolved between the contract representatives within 10 business days, the dispute must be referred to a senior representative from both parties with the authority to resolve the dispute.
- 24.3. If the senior representatives fail to resolve the dispute within 20 days of such referral, either party may begin arbitration proceedings.
- 24.4. A dispute must be referred to senior representatives before escalation to a third-party dispute process.