

Terms and Conditions

First 5 Minutes Pty Ltd



first5
MINUTES

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Clause 1: Definitions

In these terms and conditions:

Agreement means First 5 Minutes' agreement with you, as constituted by your acceptance of the Proposal, incorporating these terms and conditions.

Business Day means a day which is not a Saturday or Sunday or public holiday in the State or Territory within Australia in which the Services or Products are provided.

Claim means any claim, proceedings, suit, action or demand.

Commencement Date means the date for commencement of the Term as specified in the Proposal or if none is specified then the date of your acceptance of the Proposal.

Confidential Information means all information and data concerning the prospects, customers, suppliers, business, dealings, operations, financial position and affairs of First 5 Minutes or you, other than information and data which has entered into the public domain.

Diagram Fee means that part of the Fee payable by you as outlined in the Proposal and categorised as a fee for the preparation of evacuation diagrams and signs.

First 5 Minutes means First Five Minutes Pty Ltd ACN 010 596 013, its successors and assigns and, where the context allows, any related corporation including First Five Minutes Consulting Services Pty Ltd ACN 010 753 027.

Fee means the fee or remuneration for provision of the Services referred to in the Proposal, as adjusted from time to time in accordance with terms and conditions.

GST means a tax under A New Tax System (Good and Services Tax) Act 1999 (Cth) or any other tax in the nature of goods and services or like tax.

Insolvency includes winding up, dissolution, administration, receivership, provisional liquidation, liquidation, bankruptcy and any arrangement (including a scheme of arrangement), composition and compromise with, or assignment for the benefit of, creditors.

Overdue Rate means the rate of interest equal to the National Australia Bank Indicator Lending Rate on amounts over \$100,000 plus 2% per annum (or if there is no such rate by that name, then an interest rate nominated by First 5 Minutes as charged by National Australia Bank or its successor).

Products means the goods or products referred to in the Proposal (or such other goods or products as First 5 Minutes may agree to provide you with from time to time)

Proposal means the letter of proposal and accompanying documents (or other form of document) prepared by First 5 Minutes under which it offers to provide you with Services and/or Products.

Recipient means a party receiving a Taxable Supply.

Services means the services described in the Proposal (or such other services as First 5 Minutes may agree to provide you with from time to time), which might include audit services, consultancy services and casual module training services.

Set Up and Establishment Fee means that part of the Fee payable by you at the commencement of the Services, as outlined in the Proposal and categorised as a Set Up and Establishment Fee (where applicable).

Staff means, in relation to an entity, that entity's officers, employees, contractors and agents.

Supplier means a party making a Taxable Supply.

Supply Price means the price for supply of Services or a Product as set out in the Proposal, as adjusted from time to time in accordance with these terms and conditions.

Taxable Supply has the meaning given to that term under A New Tax System (Goods & Services Tax) Act 1999 (Cth)

Term means the term of the Agreement between First 5 Minutes and you, commencing on the Commencement Date and ending on the Termination Date, as extended under clause 5.2.

Termination Date means the date which is three (3) years from the Commencement Date, as extended under clause 5.2

You means the company, organisation or person named as "the Client" in the Proposal or the Service Agreement or to whom the Services are to be provided.

Warden means a person who is designated as a member of the Facility Emergency Control Organisation, whether or not that person is employed by you.

Clause 2: Services

- 2.1 the Term, in consideration of you paying the Fee and the Supply Price, First 5 Minutes will supply the Services and/or the Products to you on the terms set out in the Proposal.
- 2.2 In addition to the Fee, you agree to reimburse First 5 Minutes for any out of pocket expenses that are incurred by it and authorised in advanced by you in connection with the provision of the Services or the Products.
- 2.3 Where the Services comprise fire and emergency response training services, you acknowledge and agree as follows:
 - a) if you cancel a scheduled training session or course, then First 5 Minutes may apply a cancellation fee;
 - b) Wardens or a member of your Staff who attend a training session or course provided by First 5 Minutes may not satisfactorily complete a training course or necessarily achieve a standard of competence suitable to you. The successful completion by Wardens or your Staff of a course to a satisfactory standard will depend upon the Warden or your Staff member's attitude, ability, motivation and effort;

- c) First 5 Minutes makes no representation or warranty that any particular Warden or member of your Staff who attends a training course will successfully complete that course.
- 2.4 Where you cancel or re-schedule an agreed date, location or time at which any of the Services are to be provided, you agree to bear any reasonable costs or expenses suffered or incurred by First 5 Minutes as a consequence. You also acknowledge that a cancellation fee may.
- 2.5 If during the Term, you cancel or terminate the Services, you acknowledge that you will have to pay the Fee which would have been paid by you for the balance of the Term.
- 2.6 You warrant that the Services are required for business purposes and not for personal, domestic or household use or consumption.

Clause 3: Supply of Products

- 3.1 Clause 3 applies only if First 5 Minutes has agreed to supply Products to you under the Proposal.
- 3.2 First 5 Minutes agrees to supply you with the Products at the applicable Supply Price.
- 3.3 All Products sold or supplied by First 5 Minutes are sold on these terms and conditions. These terms and conditions will prevail over any terms and conditions of any purchase order from you.
- 3.4 Any delivery times made known to you are estimates only and First 5 Minutes will not be liable for any late delivery of the Products and will not be liable for any loss, damage or delay occasioned from late delivery of the Products.
- 3.5 The risk in the Products will pass to you upon delivery.
- 3.6 Title in the Products will not pass from First 5 Minutes to you until such time as the whole of the Supply Price has been received in cleared funds by First 5 Minutes. Until such time as the Supply Price has been paid in full, you agree that First 5 Minutes may enter your premises (or the premises of any person where the Products are located) without liability of any nature and re-take possession of the Products. If the Products are re-sold by you, you agree to hold such part of the proceeds of sale as represents the unpaid price of the Products as the beneficial property of First 5 Minutes and will pay such amount to First 5 Minutes upon request.
- 3.7 You warrant that the Products are required for business purposes and not for personal, domestic or household use or consumption.

Clause 4: Fees, Prices and Payment

- 4.1 You agree to pay for the Services and any Products supplied by First 5 Minutes as follows:

- a) as to any Establishment Fee, at the time of acceptance of the Proposal;
 - b) as to any Diagram Fee, within 7 days of issue of an invoice by First 5 Minutes to you;
 - c) as to any supply of Products, within 7 days of issue of an invoice by First 5 Minutes to you;
 - d) as to any Fee applicable to the supply of Casual Module Training or Consultancy Services , within 7 days of issue of an invoice by First 5 Minutes; and
 - e) as to any Fee for other Services, at the times set out in the Proposal but, if no times are specified in the Proposal , the Fee will be divided into four quarterly instalments payable quarterly in advance, commencing on acceptance of the proposal.
- 4.2 If at any time monies are overdue and owing in with respect to any invoice, then:
- a) the whole of the amount of all invoices then outstanding will become immediately due and payable; and
 - b) First 5 Minutes may immediately discontinue supply of the Services and Products until such time as such monies (together with any accrued interest) are paid in full. In no event will First 5 Minutes be liable for any direct or indirect Claim suffered or incurred by you as a result of such circumstances including without limitation, failure to perform the Services, failure to perform the Services on the scheduled day or at the scheduled location or for any delay in performing the Services.
- 4.3 First 5 Minutes reserves the right to charge you interest at the Overdue Rate on any monies due but unpaid, calculated daily from the due date for payment until payment is received in cleared funds.
- 4.4 If any GST is payable on any Taxable Supply made by the Supplier to the Recipient under or in connection with the Agreement, then the Recipient must pay to the Supplier the amount of such GST (to the extent that it is not already specifically included in the Fee) in addition to the consideration otherwise payable for the Taxable Supply.
- 4.5 The Supplier must provide the Recipient with a tax invoice in such form as will permit the Recipient to claim an input tax credit for the amount of such GST should it be so entitled.
- 4.6 If the Recipient is obliged to reimburse or indemnify the Supplier for any amount paid or payable by the Supplier to a third party (“Third Party Payment”), then:
- a) the amount payable by the Recipient will be reduced by the amount of any input tax credit to which the Supplier is entitled in relation to the Third Party Payment; and
 - b) the Recipient will only be obliged to pay any applicable GST on that reduced amount.
- 4.7 During any fixed term of the Agreement on each anniversary of the Commencement Date, First 5 Minutes may by notice in writing increase the amount of Fees and other remuneration for supply of the Services and the price for supply of the Products in accordance with the fixed amount or rate set out in the Proposal and if no fixed amount or rate is set in the Proposal then by an amount which is, as a percentage, not more than the increase in the Consumer Price Index (All Groups) for the capital city in the State in

which the Services or Products are delivered) for the preceding 12 months, such variation to take place as and from the relevant anniversary of the Commencement Date. In any other case, First 5 Minutes may increase the Fees and remuneration for the supply of the Services and the prices for supply of the Products by providing you with thirty (30) days notice in writing.

- 4.8 Notwithstanding clause 4.7, if at any time during the Term there is an increase in the costs incurred by First 5 Minutes in supplying the Service or the Products due to factors beyond its reasonable control (for example, as a result of changes in prices of First 5 Minutes' suppliers, or changes to legislation or industrial awards), then First 5 Minutes may by giving you sixty (60) days notice in writing increase the Fees for supply of the Services or increase the Supply Price for supply of the Products (as the case may be).

Clause 5: Terms of Agreement

- 5.1 Subject to clause 5.2, the Agreement commences on the Commencement Date and will continue until the Termination Date or until terminated earlier in accordance with the provisions of these terms and conditions, whichever occurs first.
- 5.2 Notwithstanding the Term, the parties agree that First 5 Minutes will continue to provide the Services and/or the Products after the Termination Date, on the basis of a series of rolling twelve (12) month terms. Unless a party gives to the other a notice at least sixty (60) days before the Termination Date indicating that the party giving the notice does not wish the Services to continue past the Termination Date, the parties agree to extend the Term for a further period of twelve (12) months. In that event, the Term will include the additional twelve month period and the Termination Date will be the end of the Term as extended by the further terms of twelve months.

Clause 6: Warranty by First 5 Minutes & Limitation of Liability

- 6.1 First 5 Minutes warrants that its Staff will at all times be suitably skilled and qualified to provide the Services.
- 6.2 To the full extent permitted by law, First 5 Minutes makes no other warranties in relation to the supply of the Services or the Products and subject to clause 6.5, excludes any warranties or conditions that would otherwise be implied under the Trade Practices Act 1974 (Cth) or other statute or at general law including those as to merchantability, description, quality, suitability or fitness for any purpose or otherwise.
- 6.3 If any warranty or condition cannot be excluded, restricted or modified, then to the full extent permitted by law, First 5 Minutes limits its liability in connection with the supply of the Services and Products (however arising, whether in contract, tort or otherwise) at its option to one of the following:
- a) in the case of the supply of Services;
 - i. supplying the relevant Services again; or

- II. the payment of the cost of having the relevant Services supplied again;
 - b) in the case of the supply of the Products;
 - I. replacement of the relevant Products or the supply of equivalent Products;
 - II. the repair of the relevant Products;
 - III. the payment of the cost of replacing the relevant Products or acquiring equivalent Products; or
 - IV. the payment of having the relevant Products repaired.
- 6.4 To the full extent permitted by law, First 5 Minutes will not be liable for any special, indirect or consequential loss, damage or injury suffered or incurred by you in connection with the supply of or any failure to supply the Services or the Products.
- 6.5 Nothing in these terms and conditions will exclude, restrict or modify any rights or remedies which you may have under the Competition and Consumer Act 2010 (Cth) or other legislation which under such laws cannot be excluded, restricted or modified by agreement.

Clause 7: Confidentiality

- 7.1 All Confidential Information of a party (the “Disclosing Party”) that may come into the possession of the other party (the “Receiving Party”) during the Term is and remains the property of the Disclosing Party.
- 7.2 The Receiving Party must not at any time without the consent of the Disclosing Party, copy or take extracts from and Confidential Information or remove any Confidential Information from either party’s premises except in the performance of its obligations under the Agreement. In the case of removal of any Confidential Information the Receiving Party must as promptly as possible and in any case immediately upon demand return it to the Disclosing Party.
- 7.3 The Receiving Party must not either before or after the termination of the Agreement disclose to any person (other than the persons from time to time authorised by the Disclosing Party) any Confidential Information of which the Receiving Party may become possessed and the Receiving Party must not make use of any such Confidential Information:
- a) to gain directly or indirectly any improper advantage to itself or to any other person;
 - b) to itself provide services which are similar to the Services; or
 - c) to injure or cause loss either intentionally or unintentionally directly or indirectly to the Disclosing Party.
- 7.4 You grant First 5 Minutes permission to name you as a client of First 5 Minutes in tendering for work from third parties

Clause 8: Your Obligations

- 8.1 In consideration of First 5 Minutes providing the Services and/or the Products, you will pay the Fee to First 5 Minutes at the times required under these terms and conditions.

- 8.2 You will make available all relevant information regarding or relevant to the nature of the particular Services required to be provided and the location of the premises where those Services will be performed at least five Business Days prior to the proposed date of commencement of provision of those Services.
- 8.3 You will provide all assistance reasonably required by First 5 Minutes in a timely manner so that First 5 Minutes may perform the Services and supply the Products. Without limitation, you will use your best endeavours to ensure Wardens and/or your Staff are ready and available at the agreed times for the Services to be provided to them.
- 8.4 You will ensure that at every premises where First 5 Minutes is required to provide Services or supply the Products that there is current policy of insurance covering public liability for not less than \$20 million for each claim.

Clause 9: Release and Indemnity

- 9.1 You release First 5 Minutes from any Claim arising out of any act or omission of your Staff.
- 9.2 You release First 5 Minutes from any Claim arising out of any act or omission of First 5 Minutes or its Staff (unless any such act is negligent or deliberate) in connection with the delivery of the Services.
- 9.3 You indemnify and will keep First 5 Minutes indemnified from and against any Claim arising out of any act or omission of any Warden of your Staff to whom you request that First 5 Minutes provide the Services.

Clause 10: Force Majeure

- 10.1 A party will not be liable for any delay or failure to perform its obligations under the Agreement if such delay is due to any cause beyond the reasonable control of the party.
- 10.2 As soon as a party becomes aware that the performance of its obligations may be affected by a cause beyond its reasonable control, it will give the other party notice of the circumstances, the anticipated delay and any conduct that it can take to mitigate the effect of the circumstances.
- 10.3 If a delay or failure of a party to perform its obligations is due to a cause beyond its reasonable control, the performance of that party's obligations will be suspended.
- 10.4 If a delay or failure by a party to perform its obligations due to a cause beyond its reasonable control exceeds 60 days from the date that the obligation was required to be performed, either party may immediately terminate the Agreement on providing written notice to the other party.
- 10.5 Without limiting any other provision of this clause 10, you acknowledge that in certain circumstances First 5 Minutes' Staff may not be available at the scheduled time and location at which the Services are to be performed due to sickness, accident or other misfortune or incapacity of that individual or interruption or failure of transportation to that scheduled location. In such circumstances First 5 Minutes will use reasonable

endeavours to supply replacement Staff or carry out such other remedial action it considers appropriate in order to be able to perform the Services at the scheduled location as quickly as possible. You acknowledge, however, that it may not be possible for First 5 Minutes to source replacement Staff at short notice or on the particular scheduled day in question. In no event will First 5 Minutes be liable for any direct or indirect Claim suffered or incurred by you as a result of such circumstances including without limitation, failure to perform the Services, failure to perform the Services on the scheduled day or at the scheduled location or for any delay in performing the Services.

Clause 11: Appointment as Sole Provider

11.1 During the Term:

- a. you agree to exclusively refer all of your requirements for services and goods the same as, or similar to the Services and Products referred to in the Proposal to First 5 Minutes; and
- b. in so doing you agree not to engage any other person or entity to supply services and goods the same as or similar to the Services and Products specified in the Proposal.

Clause 12: Intellectual Property Rights

12.1 All copyright and other intellectual property rights in any software, designs, inventions, manuals, procedures, policies or creative works (Intellectual Property Rights) owned by First 5 Minutes at the Commencement Date remain the property of First 5 Minutes at all times.

12.2 Any Intellectual Property Rights developed by First 5 Minutes during the Term in connection with the performance of the Services or otherwise in connection with the performance of First 5 Minutes' obligations under the Agreement will vest in First 5 Minutes immediately upon its creation. You agree at the request of First 5 Minutes to execute any assignment or other document reasonably requested by First 5 Minutes for the purpose of vesting in First 5 Minutes such Intellectual Property Rights.

12.3 First 5 Minutes grants to you a non exclusive licence to use the Intellectual Property Rights referred to in clauses 12.1 and 12.2 during the Term for the limited purpose of participating in the Services and promoting the Services to Wardens and your Staff.

Clause 13: Return of Facilities

13.1 You must deliver to First 5 Minutes immediately upon request and on termination of the Agreement, all facilities, equipment, notes and other records relating to the business or affairs of First 5 Minutes which First 5 Minutes may provide to you for the purposes of the Agreement of which you may acquire during the course of the Agreement.

Clause 14: Termination

- 14.1 Either party may terminate the Agreement at any time by giving the other party at least thirty (30) days notice in writing to the other party in the event that the other party has breached a provision of the Agreement and has failed to rectify such a breach after the non-defaulting party has first given fourteen (14) days written notice requiring such breach to be rectified.
- 14.2 Notwithstanding clause 14.1, First 5 Minutes may terminate the Agreement by giving you thirty (30) days notice in writing in the event that:
- you infringe any of First 5 Minutes' intellectual property rights;
 - you enter into any form of Insolvency.
- 14.3 If First 5 Minutes terminates the Agreement as a consequence of your breach, then you must pay to First 5 Minutes:
- any part of the Fee which is then due and payable to First 5 Minutes; and
 - the Fee which would have been paid by you for the balance of the Term.
- 14.4 Any monies payable to First 5 Minutes under clause 14.3 and which remain unpaid for thirty (30) days shall be a debt due and payable by you to First 5 Minutes.

Clause 15: General

- 15.1 (Further assurances) Each party will take all steps and do all such things as may be reasonably requested by any other party to give effect to any of the transactions contemplated by the Agreement.
- 15.2 (Waiver) No waiver of any breach of the Agreement will be effective unless such waiver is in writing and signed by the party against whom such waiver is claimed. No waiver of any breach will be deemed to be a waiver of any other or subsequent breach.
- 15.3 (Governing law) The Agreement will be governed by and constructed in accordance with the laws of applicable to the State in which the Services or Products are delivered and the parties submit to the non-exclusive jurisdiction of the courts of that state.
- 15.4 (Severance) Any provision of the Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be severed from the Agreement without invalidating the remaining provisions of the Agreement or affecting such provision in any other jurisdiction.
- 15.5 (Successors) The Agreement binds and benefits the parties and their respective legal personal representatives, successors, and permitted assigns.
- 15.6 (Variation) The provision of the Agreement may not be varied unless in writing signed by the parties. However, First 5 Minutes may change these Terms and Conditions at any time by publishing an updated version at the First 5 Minutes Website. You will be deemed to have accepted these changes, and the terms of the Agreement will be varied as a consequence, if First 5 Minutes informs you of these changes and you either confirm your

acceptance of the changes in writing with First 5 minutes or you continue to use the Services following the notification of the change.

- 15.7 (Entire agreement) The Agreement constitutes the entire agreement between the parties in relation to its subject matter. Any prior arrangements, agreements, representatives or undertakings are superseded and replaced by the Agreement.
- 15.8 (Relationship) The relationship of the parties is one of the independent contractors. Nothing in the Agreement will be construed as rendering the relationship one of employer and employee, principal and agent, partnership or joint venturers.
- 15.9 (Assignment) You must not assign or otherwise transfer or attempt to assign or transfer any right or obligation under the Agreement without the consent of First 5 Minutes.
- 15.10 (Trust) If you enter into the Agreement as a trustee you acknowledge that the Agreement binds you personally and in your capacity as trustee, that you enter into the Agreement for a proper purpose of the trust that it has power and authority under the trust to enter into the Agreement, and that it has the right to be fully indemnified by the beneficiaries and fully out of the trust property before the beneficiaries for all liabilities it enters under the Agreement.

Clause 16: Dispute Resolution

- 16.1 If a dispute arises in connection with the Agreement which cannot be settled by the parties within 14 days, the parties must endeavour to settle the dispute by mediation held in Brisbane (or in such other place as may be agreed by the parties by the parties in writing) before having recourse to litigation.
- 16.2 The parties must use their best endeavours to agree on a mediator but failing agreement either party may request the President of the Queensland Law Society to appoint a mediator and the mediator will be appointed on the terms specified by that organisation. The parties will bear equally the costs of any mediator appointed.
- 16.3 The parties agree that the mediator may conduct proceedings under this clause 16 in such manner as the mediator considers is fit including, if appropriate, the adoption of all or part of the Guidelines for Commercial Mediation of the Australian Commercial Disputes Centre. During the course of the mediation, each party must be represented by a person having authority to agree to resolution of the dispute.
- 16.4 If the dispute has not been settled within 28 days (or such other period as the parties may agree in writing) after the appointment of the mediator, the dispute may be submitted to a dispute resolution procedure specifically agreed to be the parties or, if not, to litigation.
- 16.5 Nothing in this clause 16 will prevent a party from seeking urgent interlocutory relief before an appropriate court.

Clause 17: Notices

17.1 Any notice to or by a party:

- a) must be in writing addressed to the other party and signed by or on behalf of the party giving the notice; and
- b) is regarded as given by the sender and received by the addressee:
 - I. if by delivered in person, when delivered to the addressee,
 - II. if delivered by post, two Business Days after the date the notice is posted,
 - III. if delivered by facsimile, upon the sender receiving a transmission report from the sender's facsimile machine indicating that the facsimile has been successfully transmitted in full, and
 - IV. if by email
 - a) upon receiving an acknowledgment from the recipient party; or
 - b) (except where the sender is put on notice that the email may not have been successfully sent) upon the return receipt being delivered by the automated email system to the sender, but the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (addressee's time) it is deemed to be given on the succeeding Business Day.

Clause 18: Interpretation

18.1 In these terms and conditions unless the context otherwise requires:

- a) words importing the singular include the plural and vice versa;
- b) words denoting a gender include all genders;
- c) headings shall be ignored in construing these terms and conditions;
- d) references to persons include references to corporations and other bodies and entities;
- e) references to statutes include all statutes amending, consolidating or replacing such statutes; and
- f) a reference to "\$" or "dollars" is a reference to the lawful currency of the Commonwealth of Australia.