

## **PROGRESSIVE SOLUTIONZ.BIZ**

### **Terms of Business**

#### **Application of Terms**

1. These Terms of Business ("Terms of Business") shall govern all work, services and goods provided (together "the Service") by Progressive Solutions Ltd ("PSL") to the client (the "Client").
2. By instructing PSL the Client agrees to these Terms of Business and these Terms of Business shall continue to apply for any subsequent Service provided by PSL to the Client.
3. Notwithstanding clause 2 above, PSL shall be entitled to amend its Terms of Business at its sole discretion. The Terms of Business as amended by PSL shall apply from the date the Client is notified of the amended terms.

#### **Services**

4. PSL will provide the Service as specified in an initial engagement letter and/or other agreement(s) whether verbal or written.
5. The Service may include advice and recommendations; however the Client understands that the implementation of that advice and recommendation is the responsibility of the Client, unless specified otherwise in writing.
6. The Service may vary from time to time and PSL reserves the right to add, remove or amend the Service it offers at its sole discretion.

#### **Information**

7. PSL will not verify the accuracy of information supplied by or to the Client, unless it is specifically requested by the Client in writing to do so.
8. While all reasonable efforts have been made to ensure the accuracy of the information presented, PSL or its agents; nor Progressive Solutions Ltd or its Directors, its agents, employees and contractors accept - are not responsible for the results of any actions taken on the basis of the Service provided or other material provided or for any errors or omissions.
9. It should not be used as a substitute for legal advice.

#### **Fees, interest and costs of recovery**

10. The manner of charging for the Service shall be specified in the engagement letter and/or other agreement(s) whether verbal or written. If no specific manner of charging is specified then the Service shall be charged at a rate commensurable to the skills of the consultant providing the Service.
11. All charges are exclusive of Goods & Services Tax and other government taxes and levies.
12. Fees and expenses will be billed by PSL monthly and will be due and payable within 7 days of the billing date.
13. Interest may be charged on any amount overdue from the due date until date of payment at the rate of 2% per month.
14. The Client shall be liable to pay all costs incurred by PSL in the recovery or attempted recovery of any outstanding moneys, including legal costs on a solicitor/client basis and any debt collection costs incurred by PSL.

#### **Confidentiality**

15. PSL will not disclose to a third party any confidential information that it may obtain by providing the Service unless authorised to do so by the Client or compelled by law. However, you authorise us to disclose information to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these Terms of Business.

#### **Ownership of intellectual property**

16. Any copyright or other intellectual property rights, software, products or goods or devices developed or any documentation prepared for the Client by PSL shall remain the absolute property of PSL, unless stated otherwise in writing.
17. Subject to payment in full for the Service, PSL grants the Client a non-exclusive licence to use the intellectual property contained in the Service.

#### **Restriction and Indemnity**

18. The Service is provided for the sole use and benefit of the Client and, unless PSL has expressly agreed otherwise in writing, no advice or information provided to the Client made either directly or indirectly may be used or relied upon by any third party.
19. PSL does not accept liability to any third party and the Client agrees to indemnify PSL, its owners, partners, directors, officers, employees, contractors and agents against any third party claim arising from the Client's release of any PSL advice or information to any other party.

#### **Liability**

20. The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations upon us which cannot by law (or which can only to a limited extent by law) be excluded. We exclude all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.
21. The Client acknowledges that the Service is being supplied for business purposes and as such the guarantees under the Consumer Guarantees Act 1993 do not apply pursuant to Section 43 of that Act.
22. Except to the extent that the law prevents us from excluding liability and as expressly provided for in clause 24, we shall not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by you or another person and whether in contract, or tort (including in negligence), or otherwise and whether such loss or damage arises directly or indirectly from the Service provided by us to you.
23. You shall indemnify us and our directors, agents, employees or our contractors against all claims and loss of any kind whatsoever however caused or arising which is brought by any person in connection with any matter, act, omission, or error by us, our agents or employees in connection with the Service.
24. To the extent that we are liable for any reason for any loss suffered or liability incurred by you arising from any breach of these Terms of Business or for any other reason, such liability is limited to the amount of the Actual Cost of the Service paid to us by you for the Service or \$2,500 whichever is the lesser amount.
25. This clause shall continue in force notwithstanding the termination of these Terms of Business or the completion of the Service.

### **Dispute resolution**

26. Any dispute or difference between the parties arising from or touching the matters referred to in these Terms of Business ("the dispute") shall be dealt with in the manner set out in this clause.
  - a. The parties agree to consult each other and discuss problems which arise with the purpose of resolving them in a commercially sensible and practical manner.
  - b. Any such dispute which is not settled to the satisfaction of both parties shall be resolved as follows:
    - i. The parties shall first refer the dispute to mediation by a mediator agreed by the parties or failing agreement appointed by the President of the New Zealand Law Society (or the President's nominee) on terms of mediation to be agreed between the parties, or failing agreement within a reasonable time appointed by the mediator, on terms set by the mediator.
    - ii. The reference shall commence when any party gives written notice to the other specifying the dispute and requiring its resolution under this clause.
    - iii. Any information or documents obtained through or as part of the reference under the subclause shall not be used for any purpose other than the settlement of the dispute under this subclause.
    - iv. If the dispute is not resolved within 30 days of the commencement of the reference to mediation either party may then but not earlier submit the dispute to arbitration in accordance with the Arbitration Act 1996.
    - v. Such Arbitration shall be conducted by a single arbitrator appointed by the parties, or failing such appointment, appointed by the President of the New Zealand Law Society (or the President's nominee).
    - vi. An arbitrator so appointed shall not be the same person as any mediator appointed under the previous subclauses.

### **General**

27. The contract and the relationship are subject to the exclusive jurisdiction of the New Zealand Courts.
28. Failure by PSL to enforce any of the Terms of Business shall not be deemed to be a waiver of any of the rights and obligations PSL has under the contract.
29. If any provision of these Terms of Business is invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
30. These Terms of Business may only be varied by agreement in writing between the parties.
31. You must not subcontract or assign any of your rights, powers or obligations under these Terms of Business.
32. You shall at all times treat as confidential all non-public information and material received from us and shall not publish, release, or disclose the same without our prior written consent. For clarity, confidential information includes any new Intellectual Property and prices.
33. You must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms of Business.
34. Any notice may be given by phone, in person, posted, or sent by fax or email to you (or where you are a company, to any of your directors)