

TERMS & CONDITIONS

At **In the Clear Pty Ltd**, we do things differently. It is important to us that our clients always understand what we are doing and how we will do it so that we can build ongoing relationships. For that reason, it is also important to us that you read and understand our Terms if you would like us to do work for you.

These Terms are to be read in conjunction with any agreement, proposal or offer to you, and form a contract between your business entity ("you") and In the Clear Pty Ltd (620447154) and any related entity ("us", "we" or "the Company").

MAKING A CONTRACT

- 1. Offer of Services** – We have or will send to you an offer to provide services to you. This may take the form of an email, a tender or proposal or further agreement and will include a list of the services and/or products we will provide to you ("**Scope of Works**") in accordance with these Terms and Conditions ("**Terms**").

This is known as the "**Offer**".

- 2. Acceptance** – We will take you to have accepted our Offer if you:
 - (a) Instruct us that you accept our Offer;
 - (b) Instruct us to carry out the Scope of Works;
 - (c) Pay us a deposit; or
 - (d) Continue to communicate with us in such a manner that would indicate to the reasonable person that you have accepted our Offer.

Your acceptance of our Offer may be in writing, verbally or otherwise by your conduct.

We will not perform work until the Offer has been accepted.

- 3. Agreement** – Together, the Offer, Terms and your Acceptance of that Offer form the Agreement between you and us.
- 4. Variation** – The Agreement may be varied as agreed either verbally or in writing between us.

SCOPE

- 5. Fees** – Fees will be charged in accordance with the Offer ("**Fees**"). By accepting our Offer, you agree that the Fees are reasonable and non-refundable.
- 6. Schedule of Fees** – If the Offer refers to a Schedule of Rates or Service Package, those rates are outlined below.
- 7. Variation of Fees** – We may vary the Fees by providing verbal or written notice to you, if:
 - (a) We undertake additional services at your request;
 - (b) We undertake additional services which are required as a result of unexpected or undisclosed conditions encountered by us whilst providing the services;
 - (c) A change of law or technological advancement occurs during the provision of the services which, in our reasonable opinion, results in increased costs being

incurred by us whilst performing the services under this Agreement.

- 8. Prevailing Terms** – Unless agreed in writing by the Company, these Terms prevail over and serve to exclude any other terms issued by you.

PAYMENT TERMS

- 9. Service Package** – If your Offer specifies that you have ordered a 'Service Package', you must pay for the Service Package within 7 days of accepting our Offer and in any event prior to us commencing work. If the Service Packages are not paid for prior to commencing work then we reserve the right to charge you our usual Schedule of Rates and not the discounted Service Package rates.
- 10. Issuing Invoices** - From time to time, we will issue invoices to you. You agree to receive the invoices at the email address provided by you to us. The frequency of invoices will be at our sole discretion unless agreed with us that you will be issued invoices on a regular and systematic basis.
- 11. Paying Invoices** – You agree to pay us in accordance to the payment terms specified in your invoice. In the event that the invoice does not have payment terms specified, the total amount of each invoice must be paid within 30 days of the date of the invoice.
- 12. GST** - Whether Goods and Services Tax ("**GST**") is included in the invoice will be specified on the invoice. If it is unclear whether GST is payable, then you must pay GST on top of the invoice rendered if GST is payable on the invoice.
- 13. Varying Payment Terms** – If you fail to pay an invoice in accordance with these Terms, we have complete discretion to decide whether to extend the payment term, and will only do this in writing to you.
- 14. Variations** – Any variations to the Scope of Works must be agreed in writing between you and us. These Terms will apply to all variations unless otherwise agreed in writing.
- 15. Stop Work** – If you do not pay an invoice, then at any time after the due date or as per clause 11, we may stop work or stop any service that you engage us for whether it relates to the overdue invoice or any other service you engage us for, until such a time as the invoice is paid in full.
- 16. Interest** – If an invoice remains overdue for a period of 30 days or over then we reserve the right to charge interest on that invoice at 4% p.a. above the cash rate as at the date of the invoice.

ENDING THE CONTRACT

17. Disputes – If you have any concerns regarding payment or our performance of the Scope of Works:

- (a) Please email us at accounts@itcautomarine.com.au with your concerns;
- (b) our team will then review your case and conduct an investigation; and
- (c) we will provide our decision to you in writing.

All communication in relation to disputes must be made via email and we reserve the right not to discuss invoice disputes over the phone.

18. Ending the Agreement –

- (a) At any time, either party can terminate this Agreement by providing the other party with **30 days' written** notice.
- (b) If you breach your obligations under these Terms, we may at our discretion:
 - (i) immediately terminate the Agreement by written notice; or
 - (ii) notify you of the breach and provide you with a specific time in which to remedy the breach, failure of which will result in immediate termination.
- (c) If the Agreement is terminated we may:
 - (i) continue to provide the Scope of Works to you upon request to the value already paid by you; or
 - (ii) refund you the remaining value of the Service Package (if relevant); or
 - (iii) credit the remaining value of the Service Package to any outstanding invoices (if relevant); and/or
 - (iv) request that you sign a Deed of Settlement and Release or a Deed of Assignment and Release; and/or
 - (v) retain all intellectual property, software, materials and documentation specified in the Scope of Works.
- (d) If the Agreement is terminated in accordance with these Terms, then we bear no liability for partially completed work, losses suffered by you or expenses incurred by you as a result of the termination.

OBLIGATIONS

19. Your Obligations – You agree to:

- (a) Pay all reasonable fees charged by us within the terms of payment;
- (b) Assist us to provide the services as requested, including giving us access to the

premises, the or relevant vehicles as required;

- (c) Take all reasonable steps to ensure we are immediately informed whenever there is a material change to the circumstances that may affect our ability to provide the services;
- (d) Not engage any other person or company to provide the services while the Agreement is ongoing;
- (e) Provide to us a safe working environment when we provide services on your premises;
- (f) Not intimidate, harass or bully our staff or contractors; and
- (g) Take all reasonable steps to ensure that any loss or damage is mitigated.

20. Release – You hereby release us from any claim for damage suffered by you due to reasonably unforeseeable circumstances in relation to the services we are providing under this Agreement.

21. Appointments – Appointment dates and times will be mutually agreed having regards to the Scope of Works. Appointments may be rescheduled when we receive more than insert number of hours hours written notice. We cannot refund cancelled Appointments. However, we offer 'make up' Appointments at the earliest convenience for you and for us. If, due to circumstances beyond our control, we cancel (without rescheduling) an appointment, we will provide you notice and reschedule the Appointment at a future date at no extra fees to you.

22. Indemnity – You indemnify us against and release us from all claims, losses and damage (including legal costs) that may be suffered:

- (a) Due to your act or omission in breach of this Agreement; and
- (b) Due to the failure of third party services or products even where the services and products are deployed by us or interact with the Scope of Works.

This clause shall survive termination of this Agreement.

23. Warranties – We provide, subject to the Terms & Conditions set out in our Warranty Policy, a warranty to you in respect of the products applied to the vehicle (such as paint work) or used in the process of clean/detailing the vehicle. In the event our Warranty does not apply, the only warranty given in relation to our Services is the minimum required to be given at law under the *Competition and Consumer Act 2010* (Cth)(if any). This clause shall survive termination of this Agreement

LEGALS

24. Privacy – We may collect personal information from you when providing Services in accordance with our Privacy Policy. Your personal information will only be used for the purposes for which it is collected or in accordance with the *Privacy Act*

1988 (Cth). You authorise us to disclose personal information to Third Parties where reasonably necessary in the course of providing the services or required by law. This clause shall survive termination of this Agreement

25. Confidentiality –

- (a) You must not use or disclose our Confidential Information except with written approval from us or as required by law, and you must take all reasonable steps to ensure that your employees and agents do not use or disclose our Confidential Information. This clause shall survive termination of this Agreement.
- (b) We will not disclose your Confidential Information except with written approval or as required by law.
- (c) We may only use your Confidential Information in the course of providing the Scope of Works to you, and you authorise us to use your Confidential Information to provide services to you.

26. Subcontracting – You authorise us to use subcontractors to perform the Scope of Works.

27. No reliance – You acknowledge and accept that you have not entered into these Terms on reliance on any statement made by us about the suitability of the Scope of Works for you unless specified by us in writing.

28. Lien – In addition to any other remedy or right that we may have, you agree that we have the right to a lien (under general law and/or equity or pursuant to statute) over all property in the control or in our possession including, without limitation, any working documents related to the Scope of Works, communication and other material, to secure payment of any or all amounts outstanding.

29. General – The following general rules apply to this Agreement:

- (a) **Assignment –** This Agreement is not assignable.
- (b) **Severability –** If anything in this Agreement is unenforceable, illegal or void, then it is

severed and the rest of the Agreement remains in force.

(c) **Variations –** Any variations to the Terms must be in writing and accepted by both parties.

(d) **Waiver –** A party's failure to delay or exercise a power does not operate as a waiver of that right or power.

(e) **Entire Agreement –** These Terms and any documents expressly incorporated into these Terms form the entire agreement between the parties.

(f) **Notices –** All notices under these Terms are to be provided to each party in writing via email to the email address nominated by the party from time to time.

(g) **Governing Law –** These Terms shall be governed by the laws applicable in the state of NSW and the parties submit to the jurisdiction of the courts of that State.

(h) **Limited Liability –**

(i) We are not responsible for anything outside of our control.

(ii) You agree that, should you bring a claim against us for any act, omission or negligence by us, such claim will be limited to either:

(A) The fees that you have paid us for the services; or

(B) The re-supply of the services by us.

(i) **Guarantee -** If the you are a Corporation (within the meaning of the *Corporations Act 2001 (Cth)*) and it accepts the Offer, then the director, officer or person that accepts the Offer on your behalf guarantees your obligations to us, including any monies owed to us.

SCHEDULE OF RATES:

Service	Rate (incl GST)

Updated as at 10 September 2020

TOTAL:	\$
