

TERMS AND CONDITIONS (attached to QUOTE)**1. ACCEPTANCE**

- 1.1 This Agreement is between Food Labels Online Pty Limited (ABN 68 601 139 940) (referred to as “**Food Labels Online**”, “**we**” or “**us**”), and the Client requesting the Services referred to as “**client**” or “**you**”), and collectively the Parties.
- 1.2 You have requested our consulting services relating to food labelling and compliance reviews (**Services**) as set out on our website available at foodlabels.com.au (**Site**). You agree and accept that our Services are provided to you on these Terms and Conditions (**Terms**).
- 1.3 These Terms together with the individual service quote provided to you by us (**Quote**) form the agreement under which we will supply Services to you.
- 1.4 Please read these Terms carefully. Please contact us if you have any questions, before you purchase any Services from us. Our contact details are at the end of these Terms.
- 1.5 Your purchase of our Services indicates that you have had sufficient opportunity to access the Terms and contact us, that you have read, accepted and will comply with the Terms, and that you are eighteen (18) years or older. You must not order products or services from us if you are under eighteen (18) years of age. If you do not agree to the Terms, do not purchase any of our Services.
- 1.6 Our Terms of Use set out terms and conditions for using our Site. Our Privacy Policy sets out how we collect, use and protect your personal information. These are available on our Site.
- 1.7 To use our Services, you must enter your details online and may be required to upload images and documents, including, but not limited to, labels, receipts and production specification sheets (**Client Content**), as required to enable us to perform the Services.

2. SERVICES

- 2.1 We agree to perform the Services set out on our Site with due care and skill.
- 2.2 The estimated period of time for us to provide the Services is set out in the Quote.
- 2.3 We may provide the Services to you using our employees, contractors and third party providers and they are included in these Terms.
- 2.4 Suppliers of third party services who are not an employee or our direct contractor (**Third Party Services**) will be the responsibility of the Client. We are not responsible for the quality of service provided by suppliers of Third Party

Services. The Client must make direct arrangements with them.

- 2.5 Our Services are, unless otherwise agreed, as set out on our Site. If you request additional services, including but not limited to changes in scope, variations or additional rounds of comments, we have discretion whether to perform this work, or be paid for Services performed to date.
- 2.6 If we agree to perform the additional services, then we will inform you of the additional costing. You need to confirm your acceptance of the variation and costing before we commence work. The additional services may incur additional costs which will be invoiced to you.

3. PRICE, INVOICING AND PAYMENT

- 3.1 Services will be provided to you for a fixed fee as indicated on the Site or charged on an hourly basis agreed between the Parties (**Price**).
- 3.2 You must pay for the Services by the methods available on the Site, unless otherwise agreed between the Parties.
- 3.3 The Price and Services can be varied by written agreement between us, including by email.
- 3.4 If we inform you that fees and expenses are an estimate only, you acknowledge that the final fee may be more or less than the estimated amount. We will endeavour to advise you of any material variation from the estimate as it becomes apparent.
- 3.5 Our pricing structure or payment methods may be amended from time to time in our discretion.

Fixed fees

- 3.6 For Services provided on a fixed-fee basis, you agree to pay the Price at the time that you place your request for our Services. All amounts are stated in Australian dollars. All Prices include Australian GST (where applicable) and is set out in the Quote.
- 3.7 We will not provide any Services until full payment is received.

Hourly rates

- 3.8 For Services provided on an hourly basis, invoices will be issued by Food Labels Online (**Invoices**) to you on a monthly basis. You agree to pay our Invoices within 30 days. If an Invoice is unpaid for more than 7 days after the payment date, we will cease to provide Services to you. We may, at our discretion, recommence providing Services to you once outstanding Invoices are paid.

3.9 We may charge interest at the rate of 1% per month on any amounts unpaid after the expiry of 7 days after the payment date.

3.10 If invoices are unpaid for 7 days after the payment date, we have the right to engage debt collection services for the collection of unpaid and undisputed debt, and the right to commence legal proceedings for any outstanding amounts owed to us.

4. CLIENT OBLIGATIONS AND WARRANTIES

4.1 You warrant that you will not canvass, employ, induce or attempt to employ, induce, solicit or entice away from us, any employee or contractor that was employed by or contracted to us during the term that we provide Services to you or the prior twelve (12) month period.

4.2 You warrant that throughout the term of this Agreement that:

- (a) there are no legal restrictions preventing you from agreeing the Terms;
- (b) you will cooperate with us and provide us with the necessary Client Content and relevant information and comply with requirements in a timely manner, as requested by us from time to time, that are reasonably necessary to enable us to perform the Services;
- (c) the Client Content and any relevant information you provide to us is true, correct and complete;
- (d) you will not infringe any third party rights in working with us and receiving the Services;
- (e) you will inform us if you have reasonable concerns relating to our provision of Services under the Terms, with the aim that we and you will use all reasonable efforts to resolve the concerns;
- (f) you are responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to be provided, at your cost, and for providing us with the necessary consents, licences and permissions;
- (g) you consent to the use of your name and Intellectual Property in relation to the Services in a way which may identify you;
- (h) if applicable, you have a valid ABN which has been advised to us; and
- (i) if applicable, you are registered for GST purposes.

5. INTELLECTUAL PROPERTY AND MORAL RIGHTS

5.1 The worksheets, forms, reports and other documents that we provide to you in carrying

out the Services, including our labelling compliance reports, contain material which is owned by or licensed to us and is protected by Australian and international laws (**Materials**). We own the copyright which subsists in all creative and literary works incorporated into our Materials.

5.2 You agree that, as between you and us, we own all intellectual property rights in our Materials, and that nothing in these Terms constitutes a transfer of any intellectual property rights in our Materials.

5.3 We agree to grant you a license to use our Materials for the commercial purposes of your business only.

5.4 You must not breach our copyright or intellectual property rights, including but not limited to:

- (a) altering or modifying any of the Materials;
- (b) creating derivative works from the Materials; or
- (c) on selling our Materials to third parties.

5.5 You agree to provide us with Client Content and any relevant information, including Intellectual Property, to us to enable us to provide the Services. You:

- (a) warrant that you have all necessary rights to provide the Intellectual Property to us;
- (b) grant us a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable right and licence to use the Intellectual Property in any way we require to provide the Services to you; and
- (c) consent to any act or omission which would otherwise constitute an infringement of your Moral Rights.

5.6 If you (or any employee or agent) have Moral Rights in any Intellectual Property that you provide to us, you:

- (a) irrevocably consent to any amendment of the Intellectual Property in any manner by us for the purposes of providing Services to you;
- (b) irrevocably consent to us using or applying the Intellectual Property for the purposes of providing Services to you without any attribution of authorship;
- (c) agree that your consent extends to acts and omissions of any of our licensees and successors in title; and
- (d) agree that your consent is a genuine consent under the *Copyright Act* 1968 (Cth) and has not been induced by duress or any false or misleading statement.

6. CONFIDENTIAL INFORMATION

- 6.1 The Parties acknowledge and agree that Confidential Information may pass between the Parties.
- 6.2 Where Confidential Information is disclosed by a Party, the Recipient agrees:
- (a) not to disclose the Confidential Information to any third party at any time;
 - (b) only to use the Confidential Information for the purpose for which it was disclosed by the Discloser and not for any other purpose;
 - (c) to use its best endeavours to protect the Confidential Information from unauthorised disclosure;
 - (d) to be responsible for and assume liability in relation to all of its employees, agents, consultants and contractors to whom Confidential Information is disclosed and ensure that they maintain the confidentiality of the Confidential Information and otherwise comply with the obligations set out in this Agreement;
 - (e) not to use the Confidential Information to compete with the Discloser, or offer services similar to the Discloser, including but not limited to by entering into business arrangements with any competitors, customers, clients, employees, contractors or agents of the Discloser (who were competitors, customers, clients, employees, contractors or agents of the Discloser at the date of discussions with the Discloser or within the 12 months prior), directly or indirectly, including but not limited to a company, trust, partnership, contracting or employment relationship.
- 6.3 These obligations do not apply to Confidential Information that:
- (a) is authorised to be disclosed;
 - (b) is in the public domain and/or is no longer confidential, except as a result of breach of these Terms;
 - (c) is received from a third party, except where there has been a breach of confidence; or
 - (d) must be disclosed by law or by a regulatory authority including under subpoena.
- 6.4 The obligations under this clause will survive termination of these Terms.

7. FEEDBACK AND DISPUTE RESOLUTION

- 7.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively.

If you have any feedback or questions about our Services, please contact any member of our staff.

- 7.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure.

(a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them (**Initial Meeting**).

(b) If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of New South Wales to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.

- 7.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.

8. TERMINATION

- 8.1 The Parties may terminate the Terms by mutual agreement, by notice in writing including by email.

(a) For Services which are provided for a fixed fee, if no work has commenced, Food Labels Online may, at its discretion, provide the Client with a full or partial refund. If a refund is to be made, it will be paid via the same payment method used to purchase the Service/s.

(b) For Services which are provided on an agreed hourly rate, any deposits or payments made are not refundable to the Client, and the Client is to pay all Invoices for Services rendered and must also pay for any Services which have been performed and have not yet been billed to Client.

- 8.2 Either party may terminate the Terms, if there has been a material breach of these Terms, subject to following the dispute resolution procedure.

- 8.3 We may terminate the Terms immediately, in our sole discretion, if:

(a) we consider that a request for a Service is inappropriate, improper or unlawful;

- (b) you fail to provide us with clear or timely instructions to enable us to provide the Services;
 - (c) we consider that our working relationship has broken down including a loss of confidence and trust;
 - (d) for any other reason outside our control which has the effect of compromising our ability to perform the work required within the required timeframe; or
 - (e) you fail to pay an Invoice within 7 days of the payment date.
- 8.4 On termination of these Terms you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and Intellectual Property.
- 8.5 On termination of these Terms, we agree to promptly return (where possible), or delete or destroy (where not possible to return), your Confidential Information and Intellectual Property, and/or documents containing or relating to your Confidential Information and Intellectual Property.
- 8.6 On completion of the Services, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to the Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.
- 8.7 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 9. **LIMITATION OF LIABILITY AND DISCLAIMERS**
- 9.1 **You acknowledge and agree that the Services provided to you by Food Labels Online are the services of a food consultant and are not legal services. Any Materials provided to you do not constitute legal advice. If you require legal services or advice, you need to seek the services of a qualified legal professional.**
- 9.2 **ACL:** Certain legislation including the Australian Consumer Law (ACL) in the *Consumer and Competition Act 2010* (Cth), and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services by us to you which cannot be excluded, restricted or modified (Statutory Rights).
- 9.3 Our liability is governed solely by the ACL and these Terms. We exclude all conditions and warranties implied by custom, law or statute except for your Statutory Rights.
- 9.4 Except for your Statutory Rights, all material and work is provided to you without warranties of any kind, either express or implied; and we expressly disclaim all warranties of any kind including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- 9.5 **Services:** If you are a consumer as defined in the ACL, the following applies to you: We guarantee that the Services we supply to you are rendered with due care and skill; fit for the purpose that we advertise, or that you have told us you are acquiring the Services for or for a result which you have told us you wish the Services to achieve, unless we consider and disclose that this purpose is not achievable; and will be supplied within a reasonable time. To the extent we are unable to exclude liability; our total liability for loss or damage you suffer or incur from our Services is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates.
- 9.6 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services in this estimated period, which is affected by your delay in response, incomplete or incorrect information.
- 9.7 **Referral:** On request by you, we may provide you with contact details of third party specialists. This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about the third party advice or provision of services, and we disclaim all responsibility and liability for the third party advice or provision of services, or failure to advise or provide services.
- 9.8 **Liability:** To the extent permitted by law, we exclude all express or implied representations, conditions, guarantees, warranties and terms relating to the Services and this agreement, except those set out in this agreement, including but not limited to:
 - (a) implied or express guarantees, warranties, representations or conditions of any kind, which are not stated in the Terms;
 - (b) our Services being unavailable; and
 - (c) any loss, damage, costs including legal costs, or expense whether direct, indirect,

incidental, special, consequential and/or incidental, including loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any indirect, remote, abnormal or unforeseeable loss, or any loss or damage relating to business interruption, or otherwise, suffered by you or claims made against you, arising out of or in connection with the inability to access or use the Services, and the late supply of Services, even if we were expressly advised of the likelihood of such loss or damage.

9.9 This clause will survive termination of these Terms.

10. INDEMNITY

10.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:

- (a) any information that is not accurate, up to date or complete or is misleading or a misrepresentation;
- (b) any breach of these Terms; and
- (c) any misuse of the Services from or by you, your employees, contractors or agents.

10.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of our Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.

10.3 The obligations under this clause will survive termination of these Terms.

11. GENERAL

11.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.

11.2 **Publicity:** You consent to us using advertising or publically announcing that we have undertaken work for you.

11.3 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or

information and for any damage caused to your system or any files by a transfer.

11.4 **GST:** If and when applicable, GST payable on our Services will be set out on our Invoices. By accepting these Terms you agree to pay us an amount equivalent to the GST imposed on these charges.

11.5 **Relationship of parties:** The Terms are not intended to create a relationship between the parties of partnership, joint venture, or employer-employee.

11.6 **Assignment:** The Terms is personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent not to be unreasonably withheld).

11.7 **Severance:** If any provision (or part of it) of the Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) of these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of the Terms are valid and enforceable.

11.8 **Notices:** Any notice required or permitted to be given by either party to the other under these conditions will be in writing addressed to you at the address provide. Our address is set out at the end of these Terms. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission.

11.9 **Jurisdiction & Governing Law:** These terms are governed by the laws of New South Wales and the Commonwealth of Australia. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales.

12. DEFINITIONS

12.1 **Confidential Information** includes confidential or commercially sensitive information about the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how,

Intellectual Property, technology, and other information whether or not such information is reduced to a tangible form or marked in writing as "confidential".

12.2 **Discloser** means the Party disclosing information, including Confidential Information.

12.3 **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.

12.4 **Intellectual Property** includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit layouts, trade names, trade secrets, business names, company names or internet domain names.

12.5 **Recipient** means the Party receiving information, including Confidential Information.

For any questions or notices, please contact us at:

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