

EVEREDGE GLOBAL PTY LTD TERMS AND CONDITIONS OF BUSINESS – LAST UPDATED: 09 June 2023

This document sets out the Terms and Conditions upon which EverEdge Global Pty Ltd (ABN 19 607 612 457) will perform Services.

1. DEFINITIONS

1.1. In these Terms and Conditions:

“Additional Services” means any work requested, (either orally or in writing) by you, that we agree to complete that is beyond the scope of any Project Brief, or where no Project Brief has been agreed to, any work performed by us for you;

“Agreement” means this agreement, which defines the terms and conditions under which we will perform the Services for you and where applicable will also include any Project Brief. Where these terms and conditions and the Project Brief conflict the terms of the Project Brief will prevail;

“Confidential Information” means all information relating to our or your business and includes information relating to our or your business operations, business strategies, marketing plans and technologies and the Services;

“GST” means any goods and services or similar tax imposed under the *A New Tax System (Goods and Services Tax) Act 1999* or any legislation amending or replacing that Act.

“Fees” means the charging arrangement set out in the Project Brief or where no specific charging arrangement is described, our Standard Hourly Rates;

“Project Brief” means an Engagement Proposal or other document (including email or other written communications) agreed between you and us that sets out the scope and charging basis for work we undertake for you;

“Services” means any work carried out in relation to any Project Brief or any Additional Services;

“Standard Hourly Rates” means the amount our staff or contractors charge per hour of time spent performing the Services. The per hour charge out rates are:

CXO & Managing Director / IAM Accredited	AUD 945
Head	AUD 695
Manager / Senior Manager / Associate Director	AUD 545
Senior Strategist / Senior Consultant	AUD 395
Strategist / Consultant	AUD 245
Analyst	AUD 195
Associate Analyst	AUD 125

These Standard Hourly Rates are subject to change with 10 days’ notice excepting that no such change shall be retroactive. These Standard Hourly Rates are subject to the following increases over Standard Hourly Rates in the following circumstances:

Urgency: +25%: any request by you that requires any Services to be delivered in 75% or less of the usual time for Services of that type or scope;

Super Urgency: +75%: any request by you that requires any Services to be delivered to you within 72 hours or less from time of instruction;

Testimony: +100%: any attendance (in person or via remote conference facility) at any arbitration, mediation or litigation event;

“Terms and Conditions” means these EverEdge Global Pty Ltd Standard Terms and Conditions of Business;

“we”, “us” or “our” means EverEdge Global Pty Ltd (ABN 19 607 612 457);

“Working Day” means a day, excluding Saturdays, Sundays, statutory public holidays or any day in the period commencing 24 December and ending on 5 January, on which registered banks are open for ordinary over-the-counter business in Sydney, Australia; and

“you” or “your” means the EverEdge Global Pty Ltd client the Project Brief is addressed to or the Services are performed for.

2. SERVICES

- 2.1.** All rights, deliverables and obligations related to this Agreement commence from the date of signing the Project Brief or in the case of Additional Services, the date we agreed to the Additional Services. For the purposes of clarification where a prepayment for Services is required we reserve the right to not commence the Services until you have made that prepayment however the rights, deliverables and obligations related to this Agreement will be in effect from the date the Project Brief was signed or the Additional Services were agreed to.
- 2.2.** You agree and understand that any Additional Services may incur additional Fees and alter the timeframe of any deliverables due in accordance with a Project Brief.
- 2.3.** The person signing this document for and on behalf of you warrants that he or she has authority to make this binding legal contract on your behalf. The person signing agrees to indemnify us against all losses and costs that may be incurred by us arising out of a court of competent jurisdiction finding that the person signing the agreement did not enjoy such authority at the date this agreement was made.
- 2.4.** We will use reasonable endeavours to perform the Services in accordance with any agreed timeframes.
- 2.5.** To enable us to perform the Services, you agree to provide us with any information, assistance, co-operation and access to premises that we may reasonably require from time to time.
- 2.6.** To the best of your knowledge, all information provided by you or on your behalf will be accurate and complete in all material respects. The provision of information to us will not infringe any copyright or other third party rights.
- 2.7.** We will rely on the information, assistance and co-operation made available to us and, unless we expressly agree otherwise, will have no responsibility to evaluate it or verify it.
- 2.8.** Unless specified in the Project Brief only a final report will be provided, no draft or editable report will be issued. Where a draft is provided, you may not rely on that draft report, presentation or communication. We may choose to, but shall not be required to, update any final report, presentation or communication due to client requests or any new information or circumstances of which we become aware, or events occurring, after its delivery.

3. PAYMENT

- 3.1.** All Fees, consideration or payment obligation stated or referred to in this Agreement:
 - (a) do not include GST, and if GST is imposed on any **Supply**, as that term is defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (**“GST Law”**), other than a Supply which is GST free under subsection 38-190 of the GST Law, made by any party (**“Supplier”**) to any other party (**“Recipient”**) under or in connection with this Agreement, the consideration for that Supply is increased by an amount equal to the amount of that consideration multiplied by the rate at which GST is imposed in respect of that Supply. The Supplier must provide to the Recipient a GST tax invoice as required by the relevant legislation;

- (b) are exclusive of sales tax or value added tax which, where applicable, will be payable by you to us in addition to the Fees;
- (c) will be paid to the credit of a bank account to be designated in writing by us;
- (d) will be paid without deduction or set-off of any kind;
- (e) will be paid 10 days after the date of the invoice is sent; and
- (f) will be paid by the due date, failing which:
 - (i) we may withhold delivery of any final report or other deliverable until the date of actual payment has been received by us; and
 - (ii) we may charge interest on any outstanding amount on a daily basis at an annual rate equivalent to the standard commercial overdraft interest rate charged by our bankers plus 3%, from the due date until the date of actual payment; and
 - (iii) if we incur any costs or expenses by reason of your failure to pay any amount required to be paid by you to us by the due date, you will reimburse us for all costs and expenses that we incur in connection with any actions or proceedings for recovery of such amounts, including all reasonable accounting costs, attorney costs (on a solicitor and own client basis), court costs and debt collection costs.

3.2. If:

- (a) you have signed a Project Brief or, in the case of Additional Services, we have agreed to the Additional Services;
- (b) an invoice has been issued for delivery of the Services;
- (c) we have not yet delivered any Services; and
- (d) you fail to pay the deposit within 90 days, or you notify us that you no longer wish to have the Services delivered,

you agree that we are entitled to an administration fee of an amount equal to 25% of the Fees. You agree that such administration fee constitutes a reasonable and genuine pre-estimate of the anticipated or actual loss or damage which would be incurred by us as a result of your failure to and the administration fee is reasonable and is not a penalty.

3.3. We may elect to suspend performance of the Services while any Fees or other amounts payable under the Agreement remain outstanding.

3.4. In addition to the Fees, you agree to pay for reasonable expenses and other charges (Disbursements) incurred by us on your behalf.

3.5. In regards to travel related Disbursements, travel costs incurred within the Sydney metropolitan limits will not be charged to you. The full costs for any travel terminating outside of the Sydney metropolitan limit will be charged to you. For travel outside the Sydney region, we utilise economy class for flights within Australia and New Zealand unless you have authorised business-class travel. We utilise business class for international flights in excess of four hours.

4. INTELLECTUAL PROPERTY RIGHTS

4.1. Subject to 4.2 we will own all copyright in all reports, summaries, documents, and other materials created by us specifically for you during the performance of the Services. We will assign to you ownership of such copyright upon payment by you in full of all Fees and other amounts payable under the Agreement, subject to a non-exclusive, perpetual, irrevocable, worldwide license to use the copyright subject to our obligations of confidentiality to you.

4.2. Nothing in clause 4.1 will give you ownership of any copyright in any reports, summaries, documents, or other materials that are generic to our business, are precedents, are created for other clients or are not created by us (such as third party works, templates, pre-existing works and our library resources). If we provide such materials to you we do so on the basis that you are licensed on a non-exclusive, non-transferable, non-sub-licensable basis to use and copy them solely for your internal business purposes.

5. CONFIDENTIALITY

- 5.1. All Confidential Information will be maintained as secret and confidential by you and us respectively. Neither party may use or disclose the Confidential Information other than as necessary to enable us to perform the Services or comply with our obligations under the Agreement.
- 5.2. We owe the same obligation of confidentiality in clause 5.1 to others who are, or who have been, our clients. You accept that the provision of Services to you does not place us under any obligation to disclose to you, or use for your benefit, any confidential information that we have, or may obtain, in relation to any other client or prospective client.
- 5.3. We may use your name, brand and / or trademark publically to identify you as a client, but we may refer to you in connection with Services only if, in doing so we do not disclose any of your Confidential Information, or it is a matter of public knowledge that we are providing them (or have provided them).
- 5.4. Our obligations of confidentiality under the Agreement will not apply where we use in our marketing materials any report, presentation or other work we have prepared for you provided that your identity and other sensitive information has been removed or obscured.
- 5.5. Our obligations of confidentiality under the Agreement will not apply to Confidential Information that:
 - (a) was, before our receipt from you, in our possession;
 - (b) is independently acquired or developed by us;
 - (c) is subsequently disclosed to us by a third party who has not derived it from you;
 - (d) is or becomes generally available to the public through no act or default of us; or
 - (e) is required to be disclosed by law.

6. WARRANTY AND LIABILITY

- 6.1. We are not a registered patent attorney firm or law firm, nor do we hold ourselves out to be patent attorneys or lawyers, as such our Services do not extend to providing opinions on the validity or infringement of patents or providing legal advice.
- 6.2. We are not a law firm, nor do we hold ourselves out to be a law firm. As such, while any Confidential Information you provide us will be treated in confidence, communications between us and any work product will not be protected by principles of Legal Privilege.
- 6.3. The Competition and Consumer Act 2010 and similar State and Territory legislation may confer rights and remedies on you in relation to the Agreement which cannot be excluded, restricted or modified (**'Non-excludable Rights'**). We do not exclude any Non-excludable Rights but do exclude all other conditions and warranties implied by custom, law or statute. To the full extent permitted by law, our liability for breach of implied warranties, conditions or undertakings which cannot be excluded is limited to (a) re-performing the relevant non-compliant Services or (b) refunding the Fees paid by you for the relevant non-compliant Services.
- 6.4. You acknowledge that, except as expressly provided in these Terms and Conditions, we give no warranties or representations in relation to the Services, either express or implied, including but not limited to any implied warranties relating to quality, fitness for any particular purpose or ability to achieve a particular result.
- 6.5. During the course of performing the Services, we may express opinions or beliefs to you about the effectiveness of various courses of action or about the results that might be anticipated. Such statements are expressions of opinion only, and will not constitute any promises or guarantees.
- 6.6. We will not assume any management responsibilities in connection with the Services. We will not be responsible for the use or implementation of the output of the Services.
- 6.7. The Services are provided to you, our client. We have no liability to any person other than you in relation to the Services.

- 6.8.** To the fullest extent permitted by law, we accept no duty of care to any third party in connection with the provision of the Services.
- 6.9.** You acknowledge that the Services are performed by us, and that none of our officers, employees or affiliates will have any liability to you for any matter arising from the Services. This clause 6.8 is inserted for the benefit of such officers, employees and affiliates and may be enforced by them against you.
- 6.10.** In no event will we be liable (whether in contract, tort including negligence, or otherwise) to you for:
- (a) loss of revenue or profit, loss of anticipated savings, loss of goodwill or opportunity, loss of production, loss or corruption of data or wasted management or staff time; or
 - (b) loss, damage, cost or expense of any kind whatsoever that is indirect, consequential, or of a special nature, arising directly or indirectly out of the Agreement.
- 6.11.** If we are liable to you (or any others for whom the Services are provided) under this agreement or otherwise in connection with the Services, for loss or damage (including interest and costs) to which any other persons have also contributed, our liability to you shall be several, and not joint with such others, and shall be limited to our fair share of the total loss or damage which is agreed between us or ascribed to us by a court or tribunal of competent jurisdiction based on our contribution to the loss and damage relative to the others' contributions. No exclusion or limitation on the liability of other responsible persons imposed or agreed at any time shall affect any assessment of our proportionate liability hereunder, nor shall settlement of or difficulty enforcing any claim, or the death, dissolution or insolvency of any such other responsible persons or their ceasing to be liable for the loss of damage or any portion thereof, affect any such assessment.
- 6.12.** Our maximum liability to you arising out of any and all claims under the Agreement, or relating to the Services, will not in any circumstances exceed the Fees payable by you to us for the Services and actually paid before the date such liability first arose.
- 6.13.** You may not bring any proceedings under the Agreement in relation to:
- (a) any act or omission of us; or
 - (b) any breach by us of the Agreement, more than 12 months following termination of the Agreement.
- 6.14.** None of the exclusions or limitations set out in these Terms and Conditions will have the effect of limiting or excluding any form of liability where such liability cannot be so limited or excluded under applicable law.

7. TERMINATION

- 7.1.** The Agreement will terminate when we have completed the Services, unless it is earlier terminated under clause 7.2.
- 7.2.** Subject to any specific terms set out in a Project Brief, either you or we may terminate the Agreement at any time and for any reason, by giving written notice to the other party.
- 7.3.** Upon early termination of the Agreement:
- (a) we will stop performing the Services;
 - (b) for any Services calculated primarily on the amount of time spent performing the Services, we will invoice you for any Services performed but not yet invoiced as at the date of termination;
 - (c) for any Fees calculated on a fixed fee basis then:
 - (i) if you terminate the Agreement under clause 7.2, or you do not initiate the Services within 20 Working Days of the date of this Agreement or you ask that we stop or suspend performing the Services, or if we terminate the Agreement because you breached clauses 2.5 and 2.6, we will be entitled to invoice you for the entire amount of the fixed fee not yet invoiced, and you will not be entitled to a refund of any amount of the fixed fee already paid by you; or

- (ii) if we terminated the Agreement other than because you breached clauses 2.5 and 2.6, we will be entitled to invoice you for a proportion of the fixed fee not yet invoiced, such proportion to fairly reflect the amount of the Services actually performed, as reasonably determined by us;
- (d) we will invoice you for any expenses, disbursements and charges incurred but not yet invoiced as at the date of termination;
- (e) clauses 4, 5, 6, 7.3, 8 and any other clauses intended to survive termination will remain in full force and effect; and
- (f) subject to this clause 7.3, and except for any accrued rights, neither party will be under any further obligation to the other party.

8. GENERAL

- 8.1.** We will not be liable to you for any breach or failure to perform any of our obligations under the Agreement where such breach or failure is caused by anything beyond our reasonable control, including (without limitation) war, civil commotion, hostility, act of terrorism, strike, lockout, other industrial act, weather phenomena or other act of God, governmental regulation or direction.
- 8.2.** No failure or delay by either you or us to exercise any right or remedy under the Agreement will be treated as a waiver of such right or remedy. No single or partial exercise of any right or remedy will prevent the further exercise of such right or remedy.
- 8.3.** This Agreement contains the whole of the contract and understanding between you and us relating to the matters covered by it. It supersedes all prior representations, agreements, statements and understandings between you and us relating to those matters, whether verbal or in writing.
- 8.4.** New South Wales law governs the formation, validity, construction and performance of the Agreement. The Agreement is subject to the non-exclusive jurisdiction of the New South Wales courts, and the parties submit to that jurisdiction.