

Terms and Conditions

HR Equine Consulting Australia

Client Details

Client name:
Billing name:
Address:
Email address:
ABN/ACN:
Contact name:
Phone number:
Cost register (office use):
Signed:
As an authorised representative of the Client, I accept these Terms and Conditions for and on behalf of the Client.
Name:
Position:
Date:

Recitals

- a) Elite Equine HR Solutions, a division of Elite Equine Products, conducts business in the fields of strategy facilitation, consultancy services and facilitation in leadership development, assessment, business consulting, cultural transformation, outplacement and career development.
- b) This agreement sets out the terms and conditions agreed between the parties for the provision of Services by Elite Equine to the Client from time to time.
- c) This agreement will apply to and in respect of the project outlined in a Proposal, and any other projects for which the Client requests the services of Elite Equine.

1. Acceptance of Agreement

The commencement of the Services under a Proposal will constitute acceptance by the Client of this agreement (if not previously accepted).

2. Commencement

This agreement will continue in full force and effect for the duration of the Services and may be amended by agreement between the parties.

3. Elite Equine Obligations

3.1 Subject to the Client complying with its obligations and responsibilities under this agreement, Elite Equine shall provide the Services with all reasonable skill and care.

3.2 The parties acknowledge and agree that any variation to the Service description must be agreed in writing between the parties. In the event that the Client requests any changes to the Service description, Elite Equine reserves the right to review the fee to be charged to the Client.

4. Client's Obligations

4.1 Where the Services are to be provided on the Client's site the Client must ensure that they provide:

- a) a safe workplace;
- b) a safe work system;
- c) an induction to site and equipment, including amenities and evacuation procedures; and
- d) elimination of hazards and controlling risks to health and safety.

4.2 The Client agrees to indemnify and hold Elite Equine harmless from any loss or damage incurred by Elite Equine due to any breach of this clause 4.

5. Fees

5.1 Professional fees payable under this agreement (including under any Proposal) must be paid by the Client in full upon commencement of the Services unless otherwise specified in the Proposal.

5.2 Any invoice remitted by Elite Equine must be paid by the Client within five (5) days from the date of the tax invoice.

5.3 Any cancellation of the Services:

- a) within 24 hours of the proposed commencement will be charged in full to the Client; and
- b) within 48 hours of the proposed commencement will be charged 50% of the fees payable.

5.4 Incidentals such as travel will be charged to the Client unless otherwise agreed upon in the Proposal. Elite Equine shall not incur any incidental costs without the prior consent of the Client.

6. Termination

6.1 Either party may terminate the agreement by providing the other party (30) days written notice.

6.2 In the event of early termination of this agreement (including a Proposal):

- (a) the Client agrees to reimburse Elite equine for all reasonable out of pocket expenses incurred by Elite equine prior to termination; or
- (b) where Elite Equine has invoiced the Client for Services not yet rendered (except in relation to cancellation of the Services pursuant to clause 5.3), Elite Equine shall issue a credit note to the Client. Any credit note issued shall be current for 12 months from the date of issue.

7. Intellectual Property Rights

7.1 Elite Equine warrants that:

- (a) it owns or has otherwise obtained an appropriate licence over all Intellectual Property Rights necessary to provide the Services and ensure the Client has the full benefit of the Services; and
- (b) the provision and the Client's use of the Services will not infringe any third party's Intellectual Property Rights.

7.2 All rights in Background IP used in connection with the provision of the Services remain with the contributing party.

7.3 The Client acknowledges that it will not obtain any Intellectual Property Rights from Elite Equine under this agreement (including under any Proposal). The Client acknowledges that in the course of performing its obligations under this agreement, Elite Equine may create Materials. Subject to the Client's rights in its Background IP, Elite Equine shall own all rights, title and interest in such Materials, including all Intellectual Property Rights.

7.4 Elite Equine grants to the Client a non-exclusive, royalty free, limited licence to use the Materials for the duration of the Services. For the avoidance of doubt, the Client cannot

utilise any of Elite Equine's Intellectual Property Rights, including the Materials, for any commercial purpose without the written permission of Elite Equine.

7.5 Any licence granted to the Client under this agreement shall terminate upon termination of the Proposal, unless otherwise agreed between the parties.

8. Privacy

Each party must comply with, and ensure that each of its employees, agents and contractors complies with, the Privacy Act in relation to personal information including but not limited to the use, storage and protection of personal information, whether or not it is an organisation bound by the Privacy Act.

9. Insurance

9.1 Before commencing the Services and for the duration of this agreement, Elite Equine shall affect and maintain:

- (a) public liability insurance for not less than \$5 million in respect of any liability arising from any act or omission of Elite Equine.

9.2 For the duration of this agreement, the Client must affect and maintain:

- (a) public liability insurance for not less than \$5 million in respect of any liability arising from any act or omission by the Client or any of the Client's officers, employees, agents or subcontractors.

10. Restraint

10.1 In consideration of entering into this agreement each party undertakes to the other party that for the duration of this agreement and for a period of twelve (12) months (or such lesser period as deemed appropriate by a Court of competent

jurisdiction) after the date that this agreement is ended each party shall without the prior written consent of the other party, either directly or indirectly:

- a) approach any employee or agent of the other party for the purpose of enticing that person away from the other party; or
- b) interfere or seek to interfere with the relationship between the other party and the customers, suppliers and employees of the other party.

10.2 The parties acknowledge and agree that the prohibitions and restrictions contained in this agreement are reasonable and necessary to protect the goodwill of each party's business.

11. Indemnity

11.1 Elite Equine's liability under this agreement whether in contract, tort (including but not limited to negligence) or otherwise shall be limited to 100% of the fees which are paid or payable by the Client to Elite Equine in the 12 calendar months preceding the event which gave rise to Elite Equine's liability and in no event shall exceed an aggregate total sum of \$100,000 per year.

11.2 Neither party will be liable to the other for any indirect or consequential losses, loss of profit, revenue, production, reputation or any special, punitive or exemplary damages.

12. Dispute Resolution

12.1 If a dispute arises between Elite Equine and the Client concerning any matter arising under this agreement either party may give notice of that dispute to the other party.

12.2 Upon receiving such a notice, senior representatives of both parties undertake to promptly meet and endeavour to resolve the dispute in good faith.

12.3 If the dispute cannot be resolved within thirty (30) days of the notice being received (or such additional period as the parties agree in writing) then the parties will refer the dispute to mediation, and have the mediation conducted in accordance with the ACDC Mediation Guidelines.

13. GST

Unless otherwise expressly stated, any and all fees payable under this agreement are exclusive of GST. The supplier (Elite Equine) will provide the recipient (the Client) with a tax invoice in respect of any supply made by the supplier to the recipient under this agreement.

14. General

14.1 Assignment: Elite Equine may licence or subcontract all or any part of its rights and obligations under this agreement with the Client's prior consent.

14.2 Variation: This agreement may only be varied in writing by agreement between the parties.

14.3 Notice: Any notice under this agreement will be effective if made in writing and delivered by email, facsimile, hand or post to the other party. A notice under this agreement is deemed to be received by the addressee:

- a) in the case of an email, on the business day on which it is sent or, if it is sent on a non-business day, the next business day;
- b) in the case of hand delivery, when delivered; and
- c) in the case of postal delivery, on the third business day after posting.

14.4 Inconsistency: If there is any inconsistency between the provisions of this

agreement and the provisions of a Proposal under this agreement, the provisions of this agreement will prevail to the extent of the inconsistency.

14.5 Governing law: This agreement is governed by, and will be interpreted in accordance with, the laws of the State in which the Services are provided, and the parties submit exclusively to the jurisdiction of the courts of that State and the Commonwealth of Australia.

15. Definitions

• **Background IP** means the Intellectual Property Rights that a party makes available for the purpose of this agreement, whether upon commencement of this agreement or during the term of the agreement, and

- a) is in existence prior to the commencement date of the Services; or
- b) is brought into existence independently of this agreement or the project to which the Services relate.

• **GST** has the same meaning given to it in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

• **Intellectual Property Rights** means all present and future rights conferred under statute, common law and equity in relation to copyright, inventions (including patents), registered and unregistered trademarks, trade names, logos, registered and unregistered designs and trade secrets or any other proprietary rights arising from intellectual activity.

• **Materials** means all material developed or created for the Client for the purpose of providing the Services under this agreement.

• **Privacy Act** means Privacy Act 1988 (Cth).

- **Proposal** means any proposal issued by Elite Equine to the Client outlining Services.

- **Elite Equine** means Callanan Developments Pty Ltd T/A Elite Equine Products ABN: 78 481 891 364

- **Service/s** means the services described in the Proposal, provided by Elite Equine to the Client.