
**PINNACLE TMS PTY LIMITED
STANDARD TERMS OF ENGAGEMENT**

Terms of Engagement means this document entitled "Standard Terms of Engagement" (which are published on our website www.pinnaclecms.com.au and which may be amended from time to time) and the letter outlining the Services and our Costs.

Costs means the Costs described in the letter we have sent or will send to you.

Disbursements means the Disbursements described in the letter we have sent or will send to you.

Deposit means the amount of the deposit sought in the letter we have sent or will send to you.

Services means the Services described in the letter we have sent or will send to you.

"we", "us" or "our" means Pinnacle TMS Pty Limited (ACN 143 288 920).

1. Offer

We offer to undertake the Services on the terms and conditions contained in our Terms of Engagement.

We do not provide advice on other matters including without limitation patent, legal, financial, taxation or accounting matters however, we can refer you to appropriate experts if you require advice on those matters.

2. Services

The Services we are to perform are set out in the letter we have sent or will send to you, which together with our Terms of Engagement form part of our Terms of Engagement. We will not be obliged to undertake tasks unless they are set out in that letter or in subsequent written communications between us.

The scope of the Services may expand beyond this at your request, but the estimate of Costs given assumes that it will not. We reserve the right to re-negotiate the Costs and Disbursements should any particular aspect of the Services change and we will endeavour to promptly agree a mutually acceptable adjustment.

We do not warrant or guarantee the timing of the provision of the Services or the issue of any Trademarks by the Trade Marks Office.

3. Your obligations

To do the best job we can, we need you to give us full, clear and accurate instructions in a timely manner including providing all documents and other records (or access thereto) relevant to the Services we are providing to you.

You must act reasonably and take reasonable care to protect your own interests in respect of the services we provide to you and any transaction relevant to the Services provided by us, including satisfying yourself as to the commercial viability of the transaction and, where relevant, investigating the bona fides of any other parties, checking financial accounts and assessing the commercial soundness of the transactions. You agree that you have the sole responsibility for all such matters as they are outside the scope of our expertise.

4. Costs

Our estimate of our Costs for undertaking the Services is set out in the letter we have sent or will send to you.

The final Costs may differ from the estimate if the scope or nature of the Services changes or if unforeseen circumstances arise. You should therefore view the estimate as our best guess of the cost of our Services based on the information given to us to date. The estimate is not a fixed price quote.

Any work falling outside the scope of the Services but performed on your behalf or at your request will be charged at the rate in set out in the letter we have sent or will send to you unless otherwise agreed in writing.

5. Disbursements

Our Costs exclude any costs or fees payable to other parties relevant to the Services. Any other expenses incurred by us directly related to this project, including but not limited to, printing, couriers and filing fees will be in addition to our fees and added to our accounts at cost.

We will endeavour to obtain your prior approval when incurring individual Disbursements over \$300.00. You agree to reimburse us, following issue of an account or to provide funds to us in advance (at our discretion), in respect of any

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liability or expense incurred on your behalf in performing the Services.

6. Goods and Services Tax

All rates, Costs and Disbursements in our Terms of Engagement are GST exclusive unless otherwise stated. Where the service provided is subject to GST, GST of 10% will be added and charged to you.

7. Accounts and interest

All accounts must be paid in full within 14 days of issue. If our accounts are not paid in full within 14 days of issue, we may charge you interest on the unpaid amount at the rate of 10% per annum.

8. Our duty of care

Our duty of care is to the client named in this offer, if accepted. We do not owe any duty of care or liability to any other person to the extent permitted by law. If any other person wishes to rely on our advice, they can do so only if we expressly agree in writing.

9. Termination

If this offer is accepted, the agreement between us may be terminated by either you or us providing 7 days written notice to the other. On termination, all Costs and Disbursements we have incurred on your behalf in undertaking the Services will become immediately due and payable and an account will be immediately rendered for those Costs and Disbursements.

10. Deposit

We request that you pay us a deposit to assist us to meet costs and expenses incurred on your behalf so as not to delay the Services. A credit will apply in your favour against future Costs and Disbursements for the amount of the deposit paid. We may ask you from time to time to provide further deposits in advance of anticipated further Costs and Disbursements and you agree to provide such further deposits on request.

11. Agency and delegation

(a) We will undertake the Services and perform the powers, duties or authorities conferred on us by you as your agent on the terms

and conditions stated in our Terms of Engagement.

(b) We may delegate the performance of any obligation of ours under our Terms of Engagement at our discretion.

12. Warranty and Indemnity

You hereby warrant to us that you have the right to instruct us to lodge the application for the Trademark and that you have not infringed any third party rights in relation to the trademarks (as the case may be) and you indemnify us and agree to forever keep us indemnified from any and all cost, damage, liability, expense or loss, including indirect, consequential and special losses, that we may incur in relation to you or any third party, where the cost, damage, liability, expense or loss is caused by or contributed to by breach of that warranty. This clause survives termination.

13. Contractual limitation of liability

To the extent permitted by law, and notwithstanding clause 12 entitled "Warranty and Indemnity", our liability to you in respect of any cost, damage, liability, expense or loss including those caused or contributed to by our negligence) is limited to the provision of further or replacement services or \$5,000 in our discretion.

14. General

(a) Email

Any communications or documents transmitted by email may be interfered with, contain computer viruses or other defects or may not be successfully replicated on other systems. We will not be liable for any copying, recording, reading or interference by others during or after a transmission, for any delay or non-delivery or for any damage or loss caused in connection with a transmission and you hereby release us from any claim relating to any such damage or loss caused.

If you have any doubts about the authenticity of any communications or documents purportedly sent by us, please contact us immediately.

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(b) Notices

All notices required or permitted to be given under our Terms of Engagement must be in writing and given by personal service, pre-paid postage, facsimile transmission or e-mail transmission at the addresses of the parties as stated in our Terms of Engagement.

(c) No waiver

- (i) No right under our Terms of Engagement will be waived except as expressly agreed in writing and signed by us. We will not waive a right if we grant an extension or forbearance to you. A waiver by us of any matter does not prejudice our rights in respect of any subsequent or other matter. Any non-exercise or partial exercise of, or any delay in exercising any right or remedy does not constitute a waiver of that right or remedy.
- (ii) These Terms of Engagement will not be amended other than in writing signed by both you and us.

(d) Independent legal advice

You acknowledge that you have had adequate opportunity to obtain independent legal advice as to the meaning and effect of our Terms of Engagement before it was entered into.

(e) Entire agreement

- (i) The Terms of Engagement supersedes all previous agreements and embodies the entire agreement between us in relation to the Services. Any previous correspondence, negotiations or representations before this offer is accepted does not bind either us or you and neither we nor you can rely on them.
- (ii) Any warranty or condition which would otherwise be implied in the Terms of Engagement is excluded to the extent permitted by law.

(f) Severance

If a clause in the Terms of Engagement is void, illegal or unenforceable, it may be varied to give effect to the intention of the Terms of

Engagement or severed without affecting the enforceability of the other provisions.

(g) Governing law and jurisdiction

- (i) The Terms of Engagement and the transactions contemplated by them are governed by the law enforced by New South Wales.
- (ii) We and you each irrevocably submit to the jurisdiction of the Courts of New South Wales and all Courts called to hear appeals from the Courts of New South Wales in respect of the Terms of Engagement or its subject matter.

(h) Disputes and arbitration

All questions, disputes or differences which arise between us and you with respect to the Terms of Engagement or its subject matter are to be referred to a single arbitrator in accordance with the subject to the provisions of the *Commercial Arbitration Act 1984* (NSW) or any re-enactment or statutory modification of that law for the time being in force.

15. Acceptance of this offer

The offer to perform the Services as set out in the letter we have or will send to you remains open for acceptance for 7 days unless withdrawn by us earlier. That offer may be accepted by signing and returning the duplicate letter describing the Services and the Costs or making the payment of the amount of the Deposit.

If you are not entering into these Terms of Engagement as an individual, by proceeding to instruct us and paying the Deposit, you confirm that you are authorised to accept these Terms of Engagement on behalf of the relevant entity on whose behalf the Services are being performed.

16. Deposit

In order for us to immediately commence work on the project, please provide the Deposit either by electronic funds transfer or deposit to our bank account, the details of which are contained in the letter we have sent or will send to you detailing the Services and our Costs.