

# TERMS AND CONDITIONS OF USE

Please note that SUMB is not a law firm and we do not provide legal advice. Any documents, conversations with, or information obtained from SUMB does not constitute legal advice. If legal advice is required, you should contact a legal services firm. (Please refer to clause 10 for our full disclaimer.)

## 1. ACCEPTANCE

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- 1.1 These Terms and Conditions (**Terms**) are between SUMB Australia Pty Ltd ACN 635 088 381 (**SUMB**), its successors and assignees (referred to as “we”, “us” or “our”) and you, the person, organisation or entity that wishes to receive services from us as advertised on our Site (**Services**) (referred to as “you” or “your”), and collectively the Parties. These Terms apply to the Services that we offer to you.
- 1.2 Our Services are available at [www.set-up-my-business.com.au](http://www.set-up-my-business.com.au) (**Site**).
- 1.3 You agree that these Terms form the agreement under which we will supply our Services to you. Please read these Terms carefully. Please contact us if you have any questions using the contact details at the end of these Terms.
- 1.4 You accept these Terms by ticking the online acceptance box, upon entering our Site, by making a purchase from us otherwise using our Services. Using or purchasing our Services indicates that you have read, accepted and will comply with these Terms, and that you are 18 years or older (in the case of an individual). You must not order or use the Services if you are under 18 years of age or if you do not agree to these Terms.
- 1.5 You must only use the Site in accordance with these Terms and any applicable laws and must ensure that your employees, sub-contractors and any other agents who use or access the Site in connection with the engagement between you and us comply with the Terms and any applicable laws.

## 2. SERVICES

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### For Australian Business Number (ABN) Registration Services

- 2.1 By requesting and purchasing our Services, you acknowledge and agree that:
  - a. **ATO**: your application to register an ABN is subject to the decision of the Australian Taxation Office (**ATO**);
  - b. **Tax agency**: by submitting an application to register your ABN, you appoint us as your tax agents to submit your application on your behalf. Our appointment as your tax agent terminates upon receiving the outcome of your application (including if your application to register an ABN is successful or unsuccessful);
  - c. **Rejection**: the ATO may at its discretion reject your application or hold it for 28 days to carry out a review. In the event your application is held by the ATO, we will communicate with the ATO on your behalf as your registered tax agents until the ATO accepts or rejects your application; and

- d. **Acceptance:** if your application is accepted by the ATO, we will advise you of your ABN by email. Information about your tax file number (**TFN**), GST and PAYG status will be communicated directly to you by the ATO. We are not responsible for verifying that the ATO has notified you of your TFN or processed your GST and PAYG applications.

## For Company Registration Services

2.2 By requesting and purchasing our Services, you acknowledge and agree that:

- a. **Declaration of accuracy:** by making the Declaration at the end of the company incorporation order form / questionnaire, you authorise and consent to SUMB submitting / lodging the application for registration as an Australian company (Form 201) to ASIC and warrant that the information contained therein is not false or misleading in any way.
- b. **ASIC:** your application to register a company is subject to the decision of the Australian Securities and Investments Commission (**ASIC**);
- c. **Modifications:** once you have submitted your application via our Site, any proposed modifications, alterations, retractions or withdrawal of your application is subject to ASIC's discretion and beyond our control;
- d. **Processing:** your application may be subject to manual processing or review by ASIC as well as ASIC server issues which may result in a delay in the processing of your application (these factors are outside of our control and we will not be responsible for such delays); and
- e. **Provision of documents:** if your application is accepted by ASIC, the relevant documents issued by ASIC and related Pro-forma Documents will be made available to you via the email address provided on the application.

## For Trust Set Up Services

2.3 By requesting and purchasing our Services, you acknowledge and agree that:

- a. **Templates:** any trust deed documents that form part of the Services (**Trust Deeds**) are template documents based on the information you provide us;
- b. **Advice:** Trust Deeds are complicated documents and may carry significant tax, accounting and structuring consequences if they are not prepared based on tailored information specific to your unique circumstances. Please note that we do not offer settlor services as a part of our trust deeds. You should seek professional legal, tax and financial advice before any Trust Deeds are executed; and
- c. **No warranty:** as the Trust Deeds are based on the information you provide, and contain no additional input from us, we make no warranties about them being:
  - i. effective from a tax, structuring, accounting or any other purpose;
  - ii. fit for your purpose;
  - iii. best suited to you or your business; or

- iv. compliant with law.

## Business Name registration Services

2.4 By requesting and purchasing our Services, you acknowledge and agree that:

- a. **Availability of names:** Business Name availability checks carried out via the Business Name application form on the Site are dependent on the ASIC business names register (**ASIC Register**). We are not responsible for any errors or omissions on the ASIC Register or if the ASIC Register or its system is experiencing technical issues, such as downtime or maintenance.
- b. **No warranty of availability:** Submission of a Business Name application through the Site does not guarantee that you will successfully obtain the registration of that Business Name. We do not make any warranties as to the registrability of your Business Name as we are merely facilitating an application with ASIC.
- c. **Non-availability:** If your Business Name is unavailable after carrying out the availability check on the Business Name application form, your application will not proceed for that Business Name and we will notify you.
- d. **ABN requirements:** An ABN must be obtained before a person can register a Business Name. If you do not obtain an ABN, then we will be unable to register a Business Name on your behalf.
- e. **Manual filing:** If the ASIC Register is not available for any reason, we can manually file your Business Name application. If we file your Business Name application manually in such instances, we would be unable to check the ASIC Register to ascertain if your Business Name is available. If your chosen Business Name is unavailable you can either:
  - i. choose another Business Name; or
  - ii. obtain a full refund of your application fees from us, less the \$43.85 administration and handling fee (**Administration Charge**).
  - iii. If you do not make the election referred to in paragraph 2.4e.ii above, within 10 days of us notifying you that your Business Name is unavailable, we will just provide you with the refund referred to in paragraph 2.4(e)(ii).
- f. **Delayed registration:** If your Business Name needs to be reviewed manually by ASIC, then this may delay the registration of your Business Name or result in your Business Name not being successfully registered.
- g. **Availability check:** the Business Name availability check on the ASIC Register is carried out on the date that you submit your Business Name application to us. We make no guarantees about the availability of your Business Name between the intervening period from the time the check is conducted and the time ASIC reviews your application.
- h. **Timing of submission:** We will endeavour to submit your Business Name application to ASIC as soon as possible after receipt of your Business Name application. If, for any reason, your chosen Business Name is no longer available to you when we submit your Business Name application, we will notify you as soon as possible so that you can select

a different Business Name. We are not liable for any direct or indirect loss, costs or damage incurred or suffered by you due to your chosen Business Name not being available for registration.

- i. **Impact on third parties:** Registration of a Business Name does not prevent third parties from:
  - i. registering a trade mark substantially identical or deceptively similar to your Business Name;
  - ii. registering a company or business name, which is similar to your Business Name; or
  - iii. using an identical or similar name as an unregistered trade mark.
- j. **Rejection:** If your Business Name application is rejected or queried by ASIC for any reason, we will contact ASIC on your behalf and attempt to resolve any application problems that may have arisen. We will then advise you of the reason that your application has been rejected and offer possible solutions where it is practicable to do so.
- k. **Manual review:** If your application requires manual review by ASIC, we may need further evidence of your right to use certain terms. If you do not provide the requested information within the relevant time period (as notified by us), then your Business Name application may be rejected.
- l. **Review of decisions:** To seek a review of a decision by ASIC, an objection must be lodged with ASIC within 28 days of the date of the notice from ASIC.
- m. **Overcoming objections:** While we will try to overcome objections on your behalf, we do not make any warranty or guarantee that we will be able to do so. If your objection is not successful, we will cancel your Business Name application and refund your application fee in full.

## Services generally

- 2.5 **Cancellation:** we reserve the right to cancel your request for Services for any reason before the Services are performed, and we will notify you of this as soon as possible. Where payment has already been debited, the full amount will be credited back to your original method of payment.
- 2.6 **Pricing Errors:** in the event that we discover an error or inaccuracy in the price of our Services, we will attempt to contact you and inform you of this as soon as possible. You will then have the option of purchasing the Services at the correct price, or cancelling your order for Services. If you choose to cancel your order and payment has already been debited, the full amount will be credited back to your original method of payment.

## 3. PRICE, INVOICING AND PAYMENT

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- 3.1 **Payment terms:** you agree to pay us upfront the amounts for Services set out on our Site. All amounts are stated in Australian dollars and include GST (where applicable). You will be

required to make payment by way of credit card or other payment methods as set out on the Site when making a purchase for the Services.

- 3.2 **Invoicing:** we may, at our discretion, issue you an invoice for our Services (**Invoice**). Where applicable, you agree to pay our Invoices within 7 days of the Invoice date. If an Invoice is unpaid for more than 7 days, without in any way limiting the remedies available to us in law or equity we may cease to provide the Services to you until we receive full payment of the Invoice.
- 3.3 **Interest:** we may charge interest at the rate of 2% per month on any amounts unpaid after the expiry of 7 days after the payment date.
- 3.4 **Late payment:** if invoices are unpaid for 7 days after the payment date, we reserve 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.
- 3.5 **Amendments:** Our pricing structure, payment methods and these Terms may be amended from time to time at our discretion. The pricing changes will apply to you for Services provided after the date of the change. All other changes will apply from the date that the amended or new Terms are posted on our Site or are provided to you, whichever is earlier.

#### **4. YOUR OBLIGATIONS AND WARRANTIES**

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- 4.1 **Documents:** as part of our Services, we may generate pro-forma documents containing information you supply to us via our Site (**Pro-forma Documents**). You acknowledge and agree that any Pro-Forma Document you purchase may not be suitable for your purposes and these Pro-Forma Documents do not constitute legal, tax or commercial advice.
- 4.2 **Your acknowledgments:** by using our Services, you acknowledge and agree that:
- a. there are no legal restrictions preventing you from agreeing to these Terms;
  - b. you will cooperate with us and provide us with information that is reasonably necessary to enable us to perform the Services as requested by us from time to time, and comply with these requests in a timely manner;
  - c. we do not and cannot warrant that a Pro-forma Document you order through us is appropriate for your circumstances and you must obtain independent legal, financial, accounting and tax advice from qualified advisors before executing any Pro-forma Document;
  - d. you will not use or copy any part of a Pro-forma Document purchased from us to create another document or for any purpose other than the specific purpose for which it was ordered;
  - e. you must consult with an appropriately qualified professional for advice regarding the suitability of a Pro-forma Document ordered through us;
  - f. we are not the author of any Pro-forma Document provided to you;
  - g. the information you provide to us or to a Third Party via our Services is true, correct and complete;

- h. you are responsible for the accuracy and correctness for the information you provide to us or to a Third Party via our Services and we are not responsible for any mistakes or error in the information you supply to us;
- i. you will not infringe any third party rights in working with us and receiving the Services (including Intellectual Property rights);
- j. you will inform us if you have concerns relating to our provision of Services under these Terms, with the aim that we and you will use all reasonable efforts to resolve your concerns;
- k. 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;
- l. you consent to the use of your name and Intellectual Property in relation to the Services in a way which may identify you;
- m. if applicable, you hold a valid ABN which has been provided to us; and
- n. if applicable, you are registered for GST purposes.

## 5. OUR INTELLECTUAL PROPERTY

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- 5.1 **Ownership of materials:** The work and materials that we provide to you in carrying out the Services including but not limited to the Pro-forma Documents and which are available for purchase via our Site contain material which is owned by or licensed to us and is protected by Australian and international laws (**Materials**). We own the Intellectual Property rights, or hold the appropriate licences, in the Materials including but not limited to copyright which subsists in all creative and literary works incorporated into our Materials.
- 5.2 **Intellectual property rights:** You agree that, as between you and us, we own all Intellectual Property rights and associated licence rights in our Materials, and any training or educational material, and that nothing in these Terms constitutes a transfer of any Intellectual Property rights in our Materials, except as stated in these Terms or with our written permission.
- 5.3 **Limitation of licence:** Your use of our Materials does not grant you a licence, or act as a right to use, any Intellectual Property in the Materials, whether registered or unregistered, except as stated in these Terms or with our written permission.
- 5.4 **Undertakings:** You must not infringe our Intellectual Property rights by, including but not limited to:
  - a. altering or modifying any of the Materials;
  - b. creating derivative works from the Materials; or
  - c. using our Materials for commercial purposes such as on sale to third parties.
- 5.5 **IP licence:** We grant you a non-exclusive, non-transferable licence to use the Materials for the intended purpose(s) of the Materials as at the time you ordered the Services. You do not have a licence to use, adapt or reproduce the Materials for any other purpose.

5.6 **Exclusivity:** The Materials are provided to you for your exclusive use only and must only be used for the purpose specific to your purchase. You must not use or share any part of the Materials with any other person or entity for reselling or other commercial purposes and the limited licence to use our Materials does not permit you to reuse any part of Materials to create another document.

## 6. CONFIDENTIAL INFORMATION

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6.1 **Our non-disclosure:** We agree not to disclose your Confidential Information to any third party (other than as required under law or with your prior consent). If the Confidential Information relates to your personal information, we will only disclose it in accordance with our **Privacy Policy** (which is available on the Site). We undertake to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure, only to use the Confidential Information for the purpose for which it was disclosed by you, to provide better quality Services to you, and not for any other purpose.

6.2 **Your non-disclosure:** You, including your employees and contractors, agree not to disclose our Confidential Information to any third party, to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure, and only to use the Confidential Information for the purpose for which it was disclosed or provided by us to you, and not for any other purpose.

6.3 **Exceptions to confidentiality:** These obligations do not apply to Confidential Information that:

- a. is authorised by you 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 **Survival:** The obligations under this clause will survive termination of these Terms.

## 7. FEEDBACK AND DISPUTE RESOLUTION

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7.1 **Feedback:** Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Services, please contact us.

7.2 **Disputes:** 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 Queensland 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 **Without prejudice:** 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

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- 8.1 **Material breach:** Either Party may terminate these Terms, if there has been a material breach of these Terms, subject to following the dispute resolution procedure.

- 8.2 **Our rights:** We may terminate these Terms immediately, at our sole discretion, if:

- a. we consider that a request for the 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. you act in a way which we reasonably believe will bring us or our Site into disrepute;
- e. you provide us with incorrect payment details or any other incorrect information;
- f. you fail to pay an Invoice within 7 days of the payment date; or
- g. for any other reason outside our control which has the effect of prejudicing our ability to perform the Services required within the required timeframe.

- 8.3 **Refunds:** On termination of these Terms you agree that the Fees and any other payments made are not refundable to you. You must pay for all Services provided prior to termination, including any Services which have been performed and have not yet been invoiced to you.

- 8.4 **Retention of documents:** On completion of the Services, we will retain your documents (including copies) as required by law or regulatory requirements. Your agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.

- 8.5 **Accrued rights:** The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.

## 9. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS

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- 9.1 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services in the period set out on the Site where it is affected by your delay in response, or supply of incomplete or incorrect information.

- 9.2 **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.

9.3 **Warranties:** To the extent permitted by law and subject to clause 9.6, we exclude all express and implied warranties, and all material and work is provided to you without warranties of any kind, either express or implied. We expressly disclaim all warranties including but not limited to implied warranties of merchantability and fitness for a particular purpose.

9.4 **Liability:** To the extent permitted by law and subject to clause 9.6, we exclude all express or implied representations, conditions, guarantees and terms relating to the Services and these Terms, except those set out in these Terms, including but not limited to:

- a. implied or express guarantees, representations or conditions of any kind, which are not stated in these Terms;
- b. the 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 your 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.

9.5 **Limitation:** Subject to clause 9.6, our total liability arising out of or in connection with the Services, however arising, including under contract, tort, including negligence, in equity, under statute or otherwise, will not exceed the total fees paid by you to us in the twelve (12) month period prior to the event giving rise to the liability, or one hundred dollars (AUD\$100) if no such payments have been made, as applicable.

9.6 **ACL:** If the *Competition and Consumer Act 2010* (Cth) or any other legislation states that there is a guarantee in relation to any good or service supplied by us in connection with these Terms, and our liability for failing to comply with that guarantee cannot be excluded but may be limited, clauses 9.3 to 9.5 and 13 do not apply to that liability. Instead, our liability for that failure is limited to (at our election), in the case of a supply of goods, replacing the goods or supplying equivalent goods or repairing the goods, or in the case of a supply of services, supplying the services again or paying the cost of having the services supplied again.

9.7 **Survival:** This clause will survive termination of these Terms.

## 10. DISCLAIMER

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10.1 **Availability of services:** You acknowledge and agree that the Services and any Third Party services made available via the Site are provided on an "as is" basis and subject to availability. Although we intend that access to the Services via the Site should be available on a full-time basis, it is possible that the Site will be unavailable or there may be a delay in providing the Services due to maintenance, outage or other issues from Third Parties which is beyond our control.

- 10.2 **Third party content:** The Site may include third party content which is subject to that third party's terms and conditions of use. Nothing on this Site should be construed as granting any licence or right for you to use that content. You should consult the third party's terms and conditions of use in relation to any third party content. We are not responsible for the accuracy of information contained on other websites accessed by links from this Site and make no warranties that the information contained on this Site or any links from this Site are free of infection by computer viruses or other contamination. We disclaim all responsibility and all liability (including liability for negligence) for all expenses, losses, damages and costs you might incur as a result of the information being inaccurate or incomplete in any way.
- 10.3 **External links:** Links to third party websites do not constitute any endorsement or approval of those sites or the owners of those sites.
- 10.4 **Assumption of risk:** While the information and material in the Materials, including any Pro-Forma Documents available on the Site or otherwise provided to you by us, is provided in good faith on an "as is" basis, we accept no responsibility for and make no representations or warranties to you or to any other person as to the reliability, accuracy, currency or completeness of the information in the Materials or information generally contained on the Site or in our Pro-forma Documents. Any reliance you place on the Materials including Pro-Forma Documents or information contained on the Site is entirely at your own risk.
- 10.5 **No advice:** You acknowledge and agree that any information, insight or guidance contained on the Site, in the Materials or otherwise provided as part of the Services (such as over the phone) is not an attempt to practice in areas including law, finance or tax, or to provide legal, commercial or tax advice or is not as a substitute for professional advice. Use of our Site, Services or Material, or telephone conversation with us, does not establish any kind of fiduciary or client relationship. Any legal, commercial or tax information on our Site, Services over the phone, or in our Materials including the Pro-forma Documents is provided simply for your information and convenience. The Site, Services, phone conversations and Materials are intended for general information purposes only. They do not take into account your own personal circumstances or needs. They are not intended to be advice, they are not intended to be relied upon without relevant professional advice and they are not a substitute for professional advice based on your personal circumstances or needs.
- 10.6 **Professional advice:** The Site, Services and Materials are not intended to replace any relationship between you and your lawyer, accountant, financial advisor or other related professional. Please consult your lawyer, accountant, financial or tax advisor or other professional where appropriate if you require advice.
- 10.7 **Appropriateness for use:** Any Pro-forma Documents or other templates you acquire from our Site may be produced to include information (including Confidential Information and personal information) you submit to us via our Site. We cannot and do not warrant that such use of our Services is appropriate or suitable for your needs. We recommend you seek legal, commercial, tax or other professional advice if you wish to use any Pro-forma Documents you purchase from our Site and acquire advice on any legal, commercial and tax effects from any use of such documents. Use includes relying on the Pro-forma Documents in the form provided via the Site and Services or modifying or amending any Pro-forma Document.
- 10.8 **Suitability of services:** You are solely responsible for determining the suitability of any of our Services, and your reliance on any information that is provided to you through our Site, Services or Materials is at your own risk.

- 10.9 **Responsibility for information:** You are also solely responsible for the information included in the Materials as a result of the answers you give to questions you answer on the Site.
- 10.10 **Mistakes of fact:** We are not responsible for any mistakes that you make in answering or understanding the questions on the Site. If you do not understand a question then you should seek advice from an appropriately qualified professional.
- 10.11 **No guarantees:** We do not guarantee, and accept no legal responsibility whatsoever arising from or in connection to the accuracy, reliability, currency, correctness or completeness of any material contained on this Site.
- 10.12 **Survival:** This clause will survive termination of these Terms.

## 11. REFUND

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- 11.1 **Refund policy:** Please ensure any details you submit via the Site and Services are correct and complete as we do not provide a refund of our service fees or any government fees or related disbursements for any application you submit to ASIC, the ATO or another regulatory authority on the basis of error or change of mind. Where there is an error, we recommend you contact the relevant government agency directly to discuss the next steps.
- 11.2 **Our Discretion:** We may provide you with a refund on a case-by-case basis and solely at our discretion. Please contact us using our details at the bottom of these Terms if you would like to request a refund of any fees for Services.

## 12. PROHIBITED USE

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- 12.1 **Appropriate use:** Use of our Site, Services and Materials is limited to the contemplated functionality. You agree that your use of our Site, Services and Materials must comply with these Terms. You agree that you will not use the Site, Services and Materials in a manner that:
- a. harasses, abuses, stalks, threatens, defames or otherwise interfere, infringe or violate the rights of any other party (including but not limited to rights of publicity or other proprietary rights);
  - b. is unlawful, fraudulent or deceptive;
  - c. uses technology or other means to access the Site, Services or Materials that is not authorized by us;
  - d. uses or launch any automated system, including without limitation, robots, spiders, or offline readers, to access the Site, Services or Materials;
  - e. attempts to or tampers with, hinder or modify the Site, attempts to introduce viruses or any other computer code, files or programs that interrupt, destroy or limit the functionality, knowingly transmit viruses or other disabling features, damages or interfere with the Application including but not limited to the use of trojan horses, viruses, or piracy or programming routines that may damage or interfere with the Site;
  - f. attempts to gain unauthorised access to our computer network or user accounts;

- g. encourages conduct that would constitute a criminal offense, or that gives rise to civil liability;
- h. violates these Terms;
- i. attempts to damage, disable, overburden, or impair our servers or networks;
- j. fails to comply with applicable third party Terms; or
- k. facilitates or assists another person to do any of the above acts.

### 13. INDEMNITY

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- 13.1 **Acceptance:** 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. your use of our Materials including but not limited to any Pro-forma Documents;
  - b. any information that is not accurate, up to date or complete or is misleading or a misrepresentation;
  - c. the Materials you order not being suitable or appropriate for your purposes or in/to your circumstances;
  - d. you failing to obtain advice from an appropriately qualified professional regarding the Materials and whether they are appropriate for your purposes or in your circumstances;
  - e. your answers to questions asked on the Site, including if you do not answer them accurately;
  - f. amending the Materials after you order them from the Site;
  - g. any breach of these Terms; or
  - h. any misuse of the Services, the Site or the Materials from or by you, your employees, contractors or agents.
- 13.2 **Cooperation:** 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 the Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.
- 13.3 **Costs:** You agree to indemnify us against any cost, loss, liability or damage suffered or incurred by us as a result of your use of the Site.
- 13.4 **Survival:** The obligations under this clause will survive termination of these Terms.

### 14. AVAILABILITY OF THE SITE

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- 14.1 **Continuity:** While we try to ensure that the Site, including the Content, functionality, performance and features are available continuously, we do not represent or warrant that access will be secure, error free, uninterrupted or timely or that the Site or the related server

are free of viruses, bugs or other harmful applications or interference. You are responsible for implementing sufficient procedures and virus checks to satisfy your own requirements.

- 14.2 **Suspension:** We may suspend your access to the Site without prior notice due to maintenance, system failure, repair or any other reason beyond our control

## 15. MODIFICATION TO TERMS

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- 15.1 **Amendments:** We may amend these Terms and any of our other policies relating to the Site, at any time, at our discretion and without notice. Any such amendments are effective upon being published on this Site or as otherwise notified.

- 15.2 **Regular review:** You are responsible for reviewing these Terms regularly. Continued use of this Site and our Services after any such amendments constitutes your consent to such amendments.

## 16. GENERAL

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- 16.1 **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. Our privacy policy is available here [\[insert link\]](#).

- 16.2 **Publicity:** You consent to us using advertising or publicly announcing that we have undertaken work for you.

- 16.3 **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.

- 16.4 **GST:** If and when applicable, GST payable on the 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.

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

- 16.6 **Assignment:** These Terms are 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).

- 16.7 **Severance:** If any provision (or part of it) under these 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) under 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 these Terms are valid and enforceable.

- 16.8 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control. If we are delayed from performing our obligations due to such a circumstance for a period of at least 1

month, we may terminate our agreement with you by giving you 5 business days' notice in writing.

- 16.9 **Notice:** 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 in your Account. 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.
- 16.10 **Jurisdiction & Applicable Law:** These Terms are governed by the laws of Queensland. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Queensland. If you access the Site or Services from outside Australia, you do so at your own risk and you are responsible for complying with the laws in the place where you access the Site and Services.
- 16.11 **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between you and us and supersede any prior agreement, understanding or arrangement between you and us, whether oral or in writing.
- 16.12 **Contact information:** Any questions about the Terms should be sent to us at: [support@set-up-my-business.com.au](mailto:support@set-up-my-business.com.au).

## 17. DEFINITIONS & INTERPRETATION

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### 17.1 Definitions

In these Terms, unless the context requires otherwise:

<b>Affiliate</b>	means in relation to SUMB: a. a person that controls or is controlled by SUMB; and b. a Related Body Corporate of SUMB.
<b>Body Corporate</b>	has the meaning given to that term in the Corporations Law.
<b>Business Day</b>	means a day (other than a Saturday, Sunday, or public holiday) that banks are open for general banking business in Brisbane, Queensland.
<b>Claim(s)</b>	includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to these Terms or otherwise.
<b>Confidential Information</b>	udes confidential information about you, your credit card or payment details, 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".
<b>Corporations Law</b>	means the <i>Corporations Act 2001</i> (Cth).
<b>Effective Date</b>	means the date these Terms is accepted by both Parties.

<b>Force Majeure Event</b>	<p>a. includes:</p> <ul style="list-style-type: none"> <li>i. an act of God;</li> <li>ii. a weather pattern or event;</li> <li>iii. a natural disaster;</li> <li>iv. a war, act of terrorism, cyber-attack, riot, insurrection, or act of vandalism;</li> <li>v. a disease or pandemic;</li> <li>vi. a failure of electricity, water, or other utility;</li> <li>vii. a strike, lockout, ban, or other industrial disturbance; or</li> <li>viii. a law, rule, or regulation of any government or governmental agency or an executive or administrative order;</li> </ul> <p>b. which affects a Party's capacity to fulfil its obligations under these Terms, and:</p> <ul style="list-style-type: none"> <li>i. is unforeseen;</li> <li>ii. is beyond the control of the relevant Party; and</li> <li>iii. occurs without the fault or negligence of the relevant Party.</li> </ul>
<b>GST</b>	has the meaning given to that term in the GST Law.
<b>GST Law</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Intellectual Property</b>	includes any and all present and future rights to intellectual and industrial property throughout the world, and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), patents, improvements, registered and unregistered trademarks, designs (whether or not registered or registrable), any corresponding property rights under the laws of any jurisdiction, discovery, circuit layouts, trade names, trade secrets, secret process, know-how, concept, idea, information, process, data or formula, business names, company names or internet domain names.
<b>Party</b>	means a party to these Terms.
<b>Personal Information</b>	means any personal information, as defined in the Privacy Act 1988 (Cth) as amended, provided by you including via the Site.
<b>Related Body Corporate</b>	has the meaning given to that term in the Corporations Law.
<b>Site</b>	means any and all of the Sites located at <a href="http://www.set-up-my-business.com.au">http://www.set-up-my-business.com.au</a> , or any subsequent URL which may replace any of them.
<b>Tax Invoice</b>	has the meaning given to that term in the GST Law.
<b>Terms</b>	means these Terms and Conditions and the terms and conditions and policies referenced herein and/or available by hyperlink, including our Privacy Policy as amended from time to time.
<b>User(s)</b>	means a user/s of the Site either collectively or individually, as the context requires.
<b>we/us/our</b>	means SUMB Pty Ltd ACN and all of its Affiliates;
<b>you/your</b>	means you as: <ul style="list-style-type: none"> <li>a. a user of the Site; and</li> <li>b. the person acquiring the Services from us.</li> </ul>

## 1.2 Interpretation

In these Terms, unless the context requires otherwise:

- a. a singular word includes the plural and vice versa;

- b. a reference to a time is to local time in Queensland, Australia;
- c. if any act contemplated by these Terms is to be done on a day that is not a Business Day, then the act must be done on or by the next Business Day;
- d. headings are for convenience only and do not affect interpretation;
- e. a reference to a covenant, obligation, or agreement of two or more persons binds or benefits them jointly and severally;
- f. a reference to a clause, paragraph, schedule, or annexure is a reference to a clause, paragraph, or annexure of these Terms;
- g. a reference to a Party, includes the Party's executors, administrators, successors, substitutes, and permitted assigns;
- h. a reference to dollar or '\$' is a reference to Australian dollars;
- i. a reference to a statute, ordinance, code, or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments, or replacements of any of them;
- j. a reference to a document or agreement, including these Terms, is a reference to that document or agreement as amended, supplemented, varied, or replaced;
- k. a reference to a natural person includes a Body Corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity, and vice versa; and
- l. the words 'include', 'including', 'such as', 'for example', and any similar expressions are not to be construed as words of limitation.