



TERMS OF BUSINESS

**DISTINCT ICT AUSTRALIA PTY
LTD**

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TERMS OF BUSINESS

This Agreement sets forth the terms and conditions ("Terms of Business") under which Distinct ICT Australia (DIA) provides goods and services to its customers. By engaging DIA for any services or purchasing any goods, the Customer agrees to be bound by these terms.

1. Introduction and Definitions

1.1 Purpose

These Terms of Business outline the arrangement between Distinct ICT Australia (DIA) and its customers regarding the sale of goods and/or delivery of services.

1.2 Definitions

- a) **Services** means the software development, website development, hosting, consulting, IT managed services, cloud migration, and business process optimization provided by DIA.
- b) **Goods** means any products sold by DIA including but not limited to hardware, software applications, SaaS products such as Fueled, and integrated hardware and SaaS solutions like Flow.
- c) **Customer** means the entity purchasing goods or services from DIA.
- d) **Agreement** means this Terms of Business document and any accompanying Quotes or Statements of Work (SOW).
- e) **IP** means Intellectual property, including software libraries and proprietary tools.
- f) **SOW** means Statement of Work, which outlines specific project requirements and deliverables.
- g) **Quote** means an estimate provided by DIA outlining the scope of Services and Fees.
- h) **Ongoing Services** means recurring services provided over a set term.
- i) **Business Day** means any day other than a Saturday, Sunday, or public holiday in Victoria, Australia.
- j) **Default** means the failure of the Customer or any guarantor to pay money when due or to comply with any obligation under this Agreement.

2. Application of General Terms

- 2.1** These general agreed terms apply to all transactions between DIA and the Customer. Other documents related to specific transactions may include additional terms and conditions.

3. Revisions and Updates to Terms

3.1 Right to Update

DIA may revise these Terms of Business at any time. Customers are responsible for reviewing the Terms periodically. Continued use of Services constitutes acceptance of the revised Terms.

3.2 Notification of Changes

DIA will notify Customers of any significant changes to the Terms via email or website update. This may include posting a notice on the homepage, a dedicated section for updates, or any other area where such notifications are prominently displayed.

4. Quotes and Fees

4.1 Estimates and Fees

Quotes provided by DIA are estimates based on the initial scope provided by the Customer. Fees are calculated based on hourly rates unless a fixed project fee is specifically agreed upon.

4.2 Acceptance of Quotes

Upon acceptance of a Quote, any special conditions therein will take precedence over these general Terms.

4.3 Scope Changes

If the scope of Services changes, a new Quote will be provided, and additional fees may apply.

4.4 Project Fees and Scope Reassessment

Project fees, if offered, are subject to DIA's discretion and risk assessment. Project fees are based on the initial scope and risk assessment provided at the start of the project. If, during the project, it becomes evident that the level of effort, complexity, or risk significantly exceeds initial estimates, DIA reserves the right to reassess the project scope and adjust the fees accordingly. In such cases, DIA will notify the Customer as soon as possible, provide a revised Quote, and obtain written approval before proceeding with the additional work.

5. Price and Payment Terms

5.1 Price

The price means DIA's fixed and published price, the amount agreed between the parties, or the amount established by a course of dealing between the parties. Unless otherwise agreed, the price does not include delivery costs. (such as shipping, handling, or transport fees for goods) or any other additional expenses. All prices are exclusive of GST (Goods and Services Tax), which will be added to the total amount payable by the Customer.

5.2 Payment as a Condition Precedent

Payment is a condition precedent to the delivery of goods or provision of services unless otherwise agreed.

5.3 Payment on Business Days

If a payment or action is due on a day that is not a business day, the obligation must be fulfilled on or by the next business day.

5.4 Acceptance of Late Payments

Accepting late payments does not waive DIA's right to require timely payments or to suspend or terminate the agreement.

6. Guarantor Requirement

6.1 Personal Guarantor

If the Customer is a company, DIA requires a personal guarantor of the Customer's obligations under this Agreement. All principals of a company, trust, or partnership must sign a personal guarantee. All guarantors are jointly and severally liable for the performance of all terms, covenants, and conditions of the agreements.

7. Default and Remedies

7.1 Customer Default

The Customer and any guarantor will be in default if they fail to pay when due or fail to comply with any obligation under the Agreement.

7.2 Default Notice

If the Customer defaults, DIA may issue a default notice specifying the default and corrective action required. The Customer has 14 business days to rectify the default.

7.3 Consequences of Non-Compliance

If the Customer does not comply with the default notice, they become immediately liable to pay all outstanding amounts with interest from the due date at 25% per annum. DIA may repossess and sell goods, applying proceeds toward the outstanding balance.

7.4 Recovery Costs

The Customer agrees to pay all costs and expenses incurred by DIA in recovering amounts owed and indemnifies DIA against any losses resulting from the default.

8. Retention of Title and Security Interest

8.1 Retention of Title

Title to the goods does not pass to the Customer until DIA has received payment in full.

8.2 Security Interest

To protect its security interest in the goods until payment is received in full, DIA may register its security interest in the goods or collateral under the *Personal Property Securities Act 2009* (PPSA). The Customer agrees to do all things necessary to facilitate such registration and acknowledges that the registration may affect the Customer's priority over the goods or collateral.

8.3 Right of Entry

Upon default, the Customer irrevocably permits DIA or its authorized representative, upon reasonable notice, to enter the premises where the goods are held to recover them. The Customer indemnifies DIA for all reasonable recovery costs and losses on resale.

9. Risk and Insurance

9.1 Transfer of Risk

Unless otherwise agreed, risk passes to the Customer at the time of shipment FOB (Free on Board) from DIA's place of business to the Customer's specified location.

9.2 Insurance

The Customer must insure the goods against loss or damage until full payment is made to DIA.

9.3 Claims for Damage

The Customer assumes responsibility for filing claims for damage against carriers or other agents.

10. Insurance Proceeds

10.1 Insurance

If goods are damaged or destroyed after shipment, the Customer must direct the insurer to pay DIA any insurance money due for the goods. Insurance money received will be applied in a specified order:

- a) First to the outstanding price of damaged or destroyed goods; and
- b) Then to other outstanding amounts.

11. Ongoing Services

11.1 Minimum Term and Automatic Renewal

Ongoing Services are subject to a minimum term. This term will automatically renew unless the Customer provides written notice of termination at least 7 days before the renewal date to the specified email address tom@distinctict.com.au.

11.2 Billing and Payment Terms

Fees for Ongoing Services are based on hourly rates or the number of employees in managed services contracts. All fees are exclusive of GST.

11.3 Non-Payment and Suspension of Services

DIA reserves the right to suspend Services if any account is outstanding. Payment of outstanding amounts and prepayment for future services will be required to resume Services.

11.4 Credit Card Charges and Late Fees

If the Customer has provided a credit card on file, DIA reserves the right to charge the credit card for any overdue payments without further notice. If no credit card is on file, the Customer agrees that any overdue amounts will incur interest at a rate of 22% per annum, calculated from the date the payment was due until the date of full payment.

12. Cancellation and Termination

12.1 Notice Period for Cancellation

Either party may cancel this Agreement with 30 days' written notice prior to the end of the contract term. Managed services agreements locked in for three years cannot be terminated early due to DIA's advance commitment.

12.2 No Early Termination for Managed Services

Managed services agreements have a mandatory three-year term due to DIA's upfront resource allocation and planning.

12.3 No Liability for Cancellation Costs

DIA will not be liable for any costs or damages incurred by the Customer due to cancellation of Services.

13. Customer Obligations

13.1 Clear Requirements

The Customer must provide clear and comprehensive requirements for the Services to be delivered, as outlined in the accepted Quote or SOW.

13.2 Responsiveness

The Customer agrees to respond promptly to all reasonable requests for information, feedback, approvals, or other communication necessary for DIA to perform the services effectively. Delays in response may lead to project delay and could result in additional charges. If the Customer fails to respond within 30 days of a request, any deposit paid will expire and become non-refundable. DIA is not responsible for any delays or additional costs incurred due to the Customer's failure to provide timely responses.

13.3 Information and Cooperation

The Customer is responsible for providing necessary access to systems, information, and other resources required by DIA to perform the Services.

14. Bug Fixes

14.1 Bug Identification Period

The Customer must report any bugs or defects in the delivered software or services within 30 days of release or delivery. DIA will address these bugs at no additional cost if reported within this period. DIA will assess reported issues to determine if they qualify as a bug under the original scope of work. Any issues determined to be scope creep, enhancements, or additional features will not be considered bugs and will be quoted separately at DIA's standard rates.

14.2 Post-Identification Charges

Any bugs reported after the 30-day identification period will be considered outside of the warranty period and will be fixed at DIA's standard hourly rates.

14.3 Exclusions

DIA is not responsible for fixing bugs caused by third-party software, hardware, or modifications made by the Customer or any third party without DIA's consent.

15. Intellectual Property (IP) and Confidential Information

15.1 IP Ownership

All intellectual property rights, including copyrights, patents, trademarks, trade secrets, and any other proprietary rights, in any materials, software, or documentation developed or delivered by DIA as part of the services shall remain the exclusive property of DIA. The Customer is granted a limited, non-exclusive, non-transferable license to use the deliverables solely for their intended purpose as agreed upon in the Statement of Work (SOW) or other agreements.

15.2 Restrictions on Use

The Customer may not share or use DIA's proprietary libraries or tools beyond the scope of the final solution delivered. Sharing with third parties is strictly prohibited.

15.3 Confidentiality

Both parties agree to maintain the confidentiality of each other's proprietary and confidential information, both during and after the term of the Agreement.

16. Assignment of Source Code and Handover

16.1 Handover Fees

If the Customer requests a handover of source code, documentation, or other deliverables at the conclusion of a project or termination of services, a minimum handover fee of \$10,000 (ex GST) will apply. This fee covers the preparation of documentation, transfer of environments, and any other administrative tasks necessary to complete the handover. For more complex systems, where the handover process requires additional time and resources, the fee may be adjusted accordingly. The fee must be paid in full before the handover process begins.

16.2 Conditions for Assignment

The assignment or handover of any source code, documentation, or other deliverables is subject to the Customer fulfilling all conditions outlined in this Agreement and any associated documents, including the full payment of all fees and charges. The handover will be conducted under terms specified in the Statement of Work (SOW) or a separate written agreement, and DIA retains the right to withhold assignment until all conditions are met.

17. Data Privacy and Security

17.1 Compliance with Privacy Laws

DIA will comply with all relevant data privacy laws, including the Australian Privacy Principles and the General Data Protection Regulation (GDPR), where applicable.

17.2 Data Protection Measures

DIA will implement industry-standard security measures to protect customer data from unauthorized access, disclosure, alteration, or destruction. These measures include encryption, access controls, and regular security audits.

17.3 Data Breach Notification

In the event of a data breach, DIA will promptly notify the Customer in accordance with applicable legal requirements, detailing the nature and extent of the breach and any actions taken to mitigate damage.

18. Cybersecurity Obligations

18.1 Customer Responsibilities

The Customer is responsible for maintaining their own cybersecurity measures, including but not limited to, secure passwords, access controls, and regular system updates.

18.2 DIA's Obligations

DIA will provide reasonable assistance in securing the Customer's IT infrastructure, including monitoring for potential threats and advising on necessary updates or patches but only if the Customer is under a full managed services agreement. For other service arrangements, DIA's obligations will be limited to the scope defined in the SOW.

18.3 Incident Response

In the event of a cybersecurity incident impacting the Customer's systems managed by DIA, DIA will take immediate action to contain and resolve the issue. DIA will provide a report detailing the incident, its impact, and the steps taken to resolve it.

19. Third-Party Software and Services

19.1 Use of Third-Party Software

DIA may utilize third-party software or services as part of the services provided to the Customer. DIA will ensure that any third-party software used is appropriately licensed and complies with all legal requirements.

19.2 Warranties and Limitations

DIA does not provide warranties for third-party software or services. The Customer agrees to be bound by the terms and conditions of any third-party agreements.

19.3 Responsibilities for Updates and Licenses

The Customer is responsible for ensuring that all third-party software licenses remain current and updated unless otherwise agreed in writing with DIA.

20. Service Continuity and Disaster Recovery

20.1 Service Continuity

DIA commits to providing continuous service availability. In the event of a disruption, DIA will take all reasonable steps to restore services as quickly as possible.

20.2 Disaster Recovery Plan

DIA will maintain a disaster recovery plan to address potential service disruptions due to unforeseen events. This plan includes regular data backups, redundant systems, and failover procedures to minimize downtime.

20.3 Customer Responsibilities

The Customer is responsible for maintaining their own disaster recovery plans, including backup and recovery procedures for their own data not managed by DIA.

21. Intellectual Property Indemnification

21.1 Indemnification by DIA

DIA agrees to indemnify, defend, and hold the Customer harmless against any claims, damages, or expenses arising from any alleged or actual infringement of third-party intellectual property rights resulting from the use of DIA's proprietary tools, software, or services, provided that such use is in accordance with the terms of this Agreement.

21.2 Exclusions

This indemnification does not apply to any claims resulting from modifications made by the Customer or use of the software or tools in combination with other software or services not provided by DIA.

22. Performance Metrics and Reporting

22.1 Regular Performance Reports

DIA shall provide the Customer with regular performance reports detailing service uptime, incident response times, and other key performance metrics.

22.2 Transparency and Accountability

These reports are intended to ensure transparency and accountability in DIA's delivery of services and to provide the Customer with data on service performance.

23. Termination for Convenience

23.1 Termination by Either Party

Either party may terminate this Agreement for convenience, without cause, by providing the other party with thirty (30) days' written notice.

23.2 Obligations Upon Termination

Upon termination for convenience, the Customer shall pay for all services rendered up to the date of termination, including any costs incurred by DIA in preparation for the provision of services.

24. Export Control Compliance

24.1 Compliance with Export Laws

Both DIA and the Customer agree to comply with all applicable export control laws and regulations, including those of Australia and any other applicable jurisdiction, in the performance of this Agreement.

24.2 Cross-Border Data Transfer

The Customer acknowledges that certain services may involve the cross-border transfer of data and agrees to obtain all necessary approvals and consents required under applicable laws.

25. Data Backup and Recovery

25.1 Backup Responsibilities

DIA will perform regular backups of customer data as part of its cloud and IT managed services.

26. Limitation of Liability

26.1 Limitation on Direct Damages

DIA's total liability to the Customer for any claim arising out of or in connection with this Agreement, whether in contract, tort (including negligence), or otherwise, shall not exceed the total amount of fees paid by the Customer to DIA for the services provided under this Agreement in the six (6) months preceding the event giving rise to the claim.

26.2 Exclusion of Indirect and Consequential Damages

To the fullest extent permitted by law, DIA shall not be liable to the Customer for any indirect, incidental, special, consequential, or punitive damages, including but not limited to, loss of profits, revenue, data, business opportunities, or goodwill, arising out of or in connection with the services provided under this Agreement, even if DIA has been advised of the possibility of such damages.

26.3 No Liability for Third-Party Acts or Omissions

DIA shall not be liable for any damages or losses resulting from third-party actions, omissions, or failures, including those of subcontractors, third-party service providers, or any other third parties not under DIA's direct control.

26.4 Exclusions from Limitation

The above limitations and exclusions of liability shall not apply to damages resulting from DIA's gross negligence, wilful misconduct, or any liability that cannot be excluded or limited by law.

26.5 Acknowledgement and Acceptance of Risk

The Customer acknowledges and accepts that the limitations and exclusions of liability set forth in this clause are reasonable in light of the nature of the services provided and the fees charged by DIA. DIA is not liable for any data loss due to events beyond its control, such as cyber-attacks, natural disasters, or customer actions that compromise data integrity.

26.6 Customer Responsibilities

The Customer is responsible for maintaining its own backups and recovery plans, particularly for critical or sensitive data not covered by DIA's backup services.

27. Subcontracting and Third-Party Providers

27.1 Right to Subcontract

DIA reserves the right to subcontract any portion of the services provided under this Agreement to qualified third-party providers.

27.2 Responsibility for Subcontractors

DIA will remain fully responsible for the performance of any subcontracted services and will ensure all subcontractors comply with the terms of this Agreement.

28. Service Transition and Exit Plan

28.1 Service Transition

Upon termination or expiration of this Agreement, DIA will cooperate with the Customer to ensure a smooth transition of services back to the Customer or to a new service provider.

28.2 Exit Plan

DIA will provide an exit plan detailing the steps and timeline for transitioning services, including data transfer, documentation handover, and any necessary training for the Customer or their new service provider.

28.3 Costs of Transition

The Customer will bear any costs associated with the transition of services, including but not limited to data transfer, additional resources, and third-party fees.

29. Confidentiality of Customer Data

29.1 Data Confidentiality

DIA agrees to maintain the confidentiality of all customer data and information obtained during the performance of services. This obligation extends beyond the termination of this Agreement.

29.2 Permitted Disclosures

Confidential information may only be disclosed to third parties with the Customer's consent or as required by law.

30. Compliance with Laws

30.1 General Compliance

Both DIA and the Customer agree to comply with all applicable laws, regulations, and industry standards in the performance of their obligations under this Agreement.

30.2 Specific Compliance

This includes compliance with software licensing, data protection regulations, and industry-specific guidelines relevant to the services provided.

31. Intellectual Property Ownership and Licensing

31.1 Licensing of Developed Software

Any software or code developed by DIA for the Customer is licensed, not sold, to the Customer. The Customer receives a non-exclusive, non-transferable license to use the software for its intended purpose.

31.2 Restrictions on Licensing

The Customer is prohibited from modifying, distributing, or sublicensing the developed software without DIA's express written consent.

32. Escalation Procedure for Service Issues

32.1 Escalation Process

In the event of a service issue or dissatisfaction, the Customer must first contact DIA's designated account manager. If the issue is not resolved, it will be escalated to senior management.

32.2 Resolution Timeline

DIA will use commercially reasonable efforts to resolve service issues promptly and will communicate regularly with the Customer regarding the status of any escalated issues.

33. Intellectual Property Rights in Developed Solutions

33.1 Ownership of Custom Solutions

While the Customer retains ownership of the specific customizations and configurations made for their use, DIA retains all rights, title, and interest in the underlying software and methodologies.

33.2 Restrictions on Reuse

The Customer agrees not to replicate or use any custom-developed solutions for purposes other than those expressly stated in this Agreement.

34. Training and Support Services

34.1 Training Services

DIA agrees to provide training services to the Customer's designated personnel on the use of developed software or managed services, as specified in the SOW.

34.2 Support Services

DIA will provide support services, including troubleshooting and issue resolution. Any additional support will be billed at DIA's standard hourly rates.

35. Service Availability and Maintenance

35.1 Scheduled Maintenance

DIA reserves the right to perform scheduled maintenance on its systems, which may temporarily affect service availability. DIA will provide advance notice to the Customer of any scheduled maintenance.

35.2 Emergency Maintenance

In the event of emergency maintenance required to protect the integrity or security of systems, DIA may perform such maintenance without prior notice. DIA will use commercially reasonable efforts to minimize service disruptions.

36. Customer Data Ownership and Access

36.1 Data Ownership

The Customer retains all rights, title, and interest in and to their data. DIA does not claim ownership of any customer data processed as part of the services.

36.2 Access to Data

Upon request, DIA will provide the Customer with reasonable access to their data. Upon termination or expiration of this Agreement, DIA will provide a final export of the Customer's data in a standard format, subject to payment of any outstanding fees.

37. Warranties and Representations

37.1 Mutual Warranties

Both parties warrant that they have the authority to enter into this Agreement and that entering into this Agreement does not violate any laws or agreements to which they are subject.

37.2 No Implied Warranties

Except as expressly stated in this Agreement, DIA disclaims all warranties, express or implied, including warranties of merchantability, fitness for a particular purpose, and non-infringement.

38. Force Majeure

38.1 Force Majeure Event

Neither party shall be liable for any failure or delay in performance under this Agreement (except for payment obligations) due to circumstances beyond their reasonable control, such as natural disasters, war, or acts of government.

40. Governing Law and Jurisdiction

40.1 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of Victoria, Australia.

40.2 Jurisdiction

Any disputes arising under or in connection with this Agreement shall be resolved in the courts of Melbourne, Victoria, Australia.

41. Severability

41.1 Severability Clause

If any provision of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions will continue in full force and effect.

42. Entire Agreement

42.1 Entire Agreement Clause

This Agreement, including all SOWs, Quotes, and other attachments, constitutes the entire understanding between the parties concerning the subject matter and supersedes all prior agreements, representations, and understandings.

43. Audit Rights

43.1 Audit Rights Clause

DIA reserves the right to audit the Customer's use of its services and software to ensure compliance with the terms of this Agreement. The Customer agrees to provide reasonable access to records and personnel for this purpose.

44. Continuous Improvement

44.1 Continuous Improvement

DIA commits to continuously improving the services provided under this Agreement. Both parties agree to meet periodically to review performance and discuss potential improvements or changes to the services.

45. Marketing and Publicity

45.1 Use of Customer Name

The Customer agrees that DIA may use the Customer's name and logo in its marketing materials and on its website as a reference, subject to prior approval from the Customer.

46. Feedback and Development Rights

46.1 Feedback Rights

The Customer agrees that any feedback provided to DIA regarding the services or software may be used by DIA for any purpose, including improvement of services, without any obligation to the Customer.

47. Ethical Use of Services

47.1 Ethical Use Clause

The Customer agrees to use DIA's services and products ethically and legally, complying with all applicable laws and regulations, and not for any unlawful or harmful activities.

48. Customer Responsibilities for Regulatory Compliance

48.1 Regulatory Compliance

The Customer is responsible for ensuring that their use of DIA's services complies with all applicable regulatory requirements specific to their industry, including any specific data residency, privacy, or security regulations.

49. Technology Compatibility and Customer Infrastructure

49.1 Compatibility Requirements

The Customer is responsible for ensuring that their systems and infrastructure are compatible with the technology and services provided by DIA. DIA is not liable for any issues arising from incompatibility.

50. Data Retention and Deletion Policy

50.1 Data Retention

DIA will retain customer data only for as long as necessary to fulfill the purposes for which it was collected or as required by law.

50.2 Data Deletion

Upon termination of the Agreement or upon request, DIA will delete customer data in its possession, except for data required to be retained for legal, regulatory, or internal business purposes.

51. Customization and Integration Services

51.1 Scope of Customization

Any customization or integration services provided by DIA are limited to those specifically agreed upon in the SOW. Any additional customization requests will require a new SOW and may incur additional fees.

52. Intellectual Property Rights in Pre-Existing Materials

52.1 Pre-Existing Materials

Any pre-existing materials, including software libraries or tools, used by DIA in the provision of services remain the exclusive property of DIA. The Customer is granted a limited license to use these materials solely for their intended purpose as part of the delivered services.

53. Customer Cooperation

53.1 Cooperation Obligation

The Customer agrees to provide all necessary cooperation, information, and resources reasonably required by DIA to perform the services effectively. Failure to cooperate may result in delays or additional charges.

54. End-of-Life and End-of-Support for Services

54.1 Service Lifecycle Management

DIA reserves the right to discontinue or terminate support for specific services or software versions at its discretion, provided that reasonable notice is given to the Customer.

55. Independent Contractor Relationship

55.1 Independent Contractor

The relationship between DIA and the Customer is that of independent contractors. Nothing in this Agreement creates a partnership, joint venture, or employment relationship between the parties.

56. No Waiver

56.1 No Waiver Clause

The failure of either party to enforce any right or provision of this Agreement shall not constitute a waiver of future enforcement of that right or provision.

57. Direct Debit Authorization

57.1 Direct Debit Authorization

The Customer agrees to provide explicit written authorization, in the form of a signed Direct Debit Request (DDR) form, permitting DIA to debit amounts due under this Agreement from the Customer's nominated bank account or credit card.

This authorization applies to all fees, charges, and expenses incurred under this Agreement, including but not limited to ongoing service fees, project fees, interest on overdue amounts, and any applicable taxes such as GST.

The Customer is responsible for ensuring that the nominated account has sufficient funds and that all account details provided are correct.

If a direct debit transaction is declined due to insufficient funds or incorrect details, the Customer may be liable for any associated fees and charges incurred by DIA.

The Customer may cancel the direct debit authorization by providing written notice to DIA at least 14 days prior to the next scheduled payment, provided all outstanding amounts are settled.