

TERMS AND CONDITIONS OF SERVICE

1. DEFINITIONS

- (a) **Agreement** means these Terms and Conditions.
- (b) **Client** means the Client, its assigns, successors or any person or entity acting on behalf and/or with the authority of the Client.
- (c) **Services** shall mean all services supplied by the Service Provider to the Client.
- (d) **Party or Parties** means the Service Provider and the Client.
- (e) **Price** means the costs of the services as agreed between the service Provider and the Client.
- (f) **Person** shall include a firm, corporation or body corporate.
- (g) **Service Provider** means The French Language Experts Pty Ltd (ACN 607 327 748), its successors, assigns or any person or entity acting on behalf of and/or with the authority of The French Language Experts Pty Ltd (ACN 607 327 748).
- (h) **Website** means www.fle.com.au.

2. INTERPRETATIONS

- (a) In this Agreement, unless the contrary intention appears:
 - (i) headings are for ease of reference only and do not affect the meaning of this Agreement;
 - (ii) the singular includes the plural and vice versa and words importing gender include other genders;
 - (iii) other grammatical forms of defined words or expressions have corresponding meanings;
 - (iv) a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph of, schedule or annexure to this Agreement and a reference to this Agreement includes any schedules and annexure;
 - (v) a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
 - (vi) a reference to "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency;
 - (vii) a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;
 - (viii) a reference to a Party includes its executors, administrators, successors and permitted assigns;
 - (ix) words and expression defined in the Corporations Act 2001 (Cth) as at the date of this Agreement have the meanings given to them in the Corporations Act 2001 (Cth) at that date; and
 - (x) a reference to writing includes email, typewriting, printing, lithography, photography and any other method of representing or reproducing words, figures or symbols in a permanent and visible form;
 - (xi) a reference to a person includes a natural person, body corporate, partnership, trust, association or any governmental, administrative or judicial body, tribunal, department, commission, authority,

agency, minister, corporation or instrumentality or any other entity;

- (xii) a reference to a statute, ordinance, code or other law includes regulations, rules and other instruments under the statute, ordinance, code or other law and any consolidations, amendments, re-enactments or replacements;
- (xiii) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (xiv) any agreement, representation, warranty or indemnity by two or more parties binds those parties jointly and severally;
- (xv) any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
- (xvi) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of this Agreement; and
- (xvii) if a day on or by which an obligation must be performed or an event must occur is not a business day in the location of the Service Provider' address, the obligation must be performed or the event must occur on or by the next business day in the location of the Service Provider' address

3. GOVERNING CONDITIONS

- (a) This Agreement shall apply to the supply of the Services by the Service Provider to the Client.
- (b) All orders, however made, are accepted upon the terms and conditions contained in this Agreement, which shall override any terms or conditions incorporated or referred to by the Client in writing, orally or otherwise.
- (c) It is expressly agreed that no variation or alteration of this Agreement shall be effective unless in writing and signed by a duly authorised signatory of each Party.
- (d) No failure by the Service Provider to object to any terms or conditions incorporated or referred to by the Client in writing, orally or otherwise shall be deemed a waiver of this Agreement or an acceptance of the Client's terms and conditions by the Service Provider.

4. EMPLOYEES' AUTHORITY

Without the written consent of the Service Provider first obtained, no employee, agent or sales representative of the Service Provider has the authority to amend, alter or enlarge this Agreement.

5. ACCEPTANCE

- (a) Any instructions received by the Service Provider from the Client for the supply of Services and/or the Client's acceptance of Services supplied by the Service Provider shall constitute acceptance of the terms and conditions contained in this Agreement.
- (b) Placing an order presumes knowledge and acceptance of the terms and conditions contained in this Agreement. Upon placing an order the Client shall receive a written acknowledgement of the order, which does not constitute a binding contract until the Service Provider accepts the Client's order by written confirmation.
- (c) The Service Provider reserves the right to reject cancellation by the Client of an accepted order or any

portion thereof. Cancellation of an accepted order needs to be approved in writing by the Service Provider and the Client may be charged cancellation charges.

- (d) Where more than one Client has entered into this Agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- (e) The Client shall give the Service Provider not less than fourteen (14) days prior written notice of any proposed change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, address for service, email address,).The Client shall be liable for any loss incurred by the Service Provider as a result of the Client's failure to comply with this clause.
- (f) None of the Service Provider's agents, employees, representatives or subcontractors are authorised to make any representations, statements, conditions or agreements not expressed or authorised by the manager of the Service Provider in writing nor is the Service Provider bound by any such unauthorised representations, statements, conditions or agreements.

6. PRICE AND PAYMENT

- (a) All amounts stated in this Agreement to be payable by the Client are inclusive of any tax or duty payable under this Agreement properly chargeable in respect of the supply of services.
- (b) Each payment by the Client must be calculated and made without, and free and clear of any deduction for set-off or counterclaim and any withholding for or on account of any tax or any other deduction, unless required by law, in which case the Client shall ensure that the withholding or deduction does not exceed the minimum amount required by law and shall increase the amount payable by it so that the net amount received and retained by the Service Provider will equal the full amount which the Service Provider would have received and retained if no withholding or deduction had been made.

7. TERMS ARE STRICTLY FOURTEEN (14) DAYS FROM INVOICE

- (a) The Price shall be the price as detailed for the Services as set out on the Website
- (b) All prices are subject to change by the Service Provider without notice.
- (c) Payment of the Price shall be due before delivery of the Services
- (d) Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.
- (e) Payment will be made by credit card (Visa or MasterCard only) or debit card through the Service Provider's electronic payment gateway.

8. RISK

Risk shall pass to the Client on delivery of the Services.

9. CONFIDENTIALITY

- (a) Confidential Information includes but is not limited to all know-how, trade secrets, ideas, concepts, technical and operational information owned or used by a Party (the **Disclosing Party**); information or course material provided by the Service Provider to the Client (whether in hard copy form or through on-line delivery), information concerning the affairs or property of the Disclosing Party or any

business, property or transaction in which the Disclosing Party may be or may have been concerned or interested; details of any customers or Service Providers of the Disclosing Party; and information which, by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential to the Disclosing Party or to any third Party with whose consent or approval the Disclosing Party uses that information.

- (b) Provisions to remain confidential - General Disclosure: Subject to the further provisions of this clause below, each other Party (the **Recipient Party**) must not and must ensure that its officers, employees, contractors, subcontractors, and agents do not during the continuance of this Agreement, and after its termination without the prior written consent of the Disclosing Party disclose any Confidential Information belonging to the Disclosing Party; or disclose the content or effect of this Agreement.

(c) Permitted disclosures

- (i) If the disclosure is required by law, the Recipient Party will make reasonable efforts to notify the form and terms of that disclosure to the Disclosing Party and provide the Disclosing Party with a reasonable opportunity to comment on the form and terms.
- (ii) The obligations of this clause do not apply to any information which the Recipient Party can reasonably demonstrate:
 - (A) is in the public domain through no fault of its own; or
 - (B) is already known to the Recipient Party (as evidenced by its written records) at the date of disclosure and was not acquired directly or indirectly from the Disclosing Party; or
 - (C) is required to be disclosed by law under a court order, or by any recognised stock exchange or other regulatory body.

10. INTELLECTUAL PROPERTY

- (a) Intellectual Property includes but is not limited to the name, common law and registered trademarks, patents, copyrights material, logos, designs, documentation, insignias, emblems, know-how, procedures, manuals, training and other methods and programs, marketing information, client lists and other Confidential Information, computer software and all other material however embodied.
- (b) Neither Party shall use Intellectual Property of the other Party in any manner without its prior written consent.
- (c) Neither Party will accrue any right to use the other's Intellectual Property as a result of entering into this Agreement.
- (d) Each Party must:
 - (i) not use any of the other Party's Intellectual Property in any manner likely to deceive or cause confusion or jeopardise its distinctiveness;
 - (ii) not use or authorise the use of, or make or authorise any application to register, any trade mark that is substantially identical with, or deceptively similar to, any of the other Party's Intellectual Property on or in connection with any goods or services;
 - (iii) not use or register any business name, company name, domain name, labelling or packaging or

anything else that incorporates or is substantially identical with, or deceptively similar to, any of the other Parties Intellectual Property;

- (iv) not use any of the other Party's Intellectual Property, or do any other thing, in any manner likely to damage that Party's reputation; and
 - (v) at the other Party's request, promptly give the requesting Party any information concerning the use of its Intellectual Property that the requesting Party may require.
- (e) The Client warrants that all Intellectual Property given to the Service Provider for the execution of the Client's order for Services will not cause the Service Provider to infringe any third party's Intellectual Property.
- (f) The Client agrees to indemnify the Service for all liability, loss, damages, claims, demands and expenses suffered or incurred by the Services Provider arising under or in connection with a breach by the Client of its obligations under this clause.

11. WARRANTY AS TO QUALITY

- (a) The Service Provider warrants that the Services supplied will be of a merchantable quality, however, any liability whether consequential or otherwise arising out of or in respect of the supply, re-supply, use or re-use of the Services, howsoever arising, including by virtue of representation, warranty, or express or implied condition or term is hereby excluded.
- (b) All advices, recommendations, information, assistance or services (the **Advices**) provided by The Service Provider in relation to the Services is given in good faith and is believed by the Service Provider to be appropriate, accurate, and reliable. However, the Client acknowledges that in purchasing the Services it has not relied upon the Advices provided by the Service Provider or its agents.

12. LIMITATION OF LIABILITY

- (a) Subject to any written warranty the Service Provider provides the Client and any rights which cannot be excluded by law (**Non – Excludable Rights**), all warranties, conditions, liabilities or representation as to the:
- (i) quality or fitness of the Services (whether express, implied, statutory or otherwise); or
 - (ii) accuracy of information, advice or other services concerning the Services,
- are expressly excluded.
- (b) The Service Provider's liability for a breach of this Agreement, Non- Excludable Rights or any written warranty the Service Provider provides to the Client is, to the extent permitted by law, limited, at the Service Provider's opinion, to one or more of the following:
- (i) replacing the Services or supplying equivalent services; or
 - (ii) paying the cost of replacing the Services or of acquiring equivalent services;
- (c) Except as expressly provided in this Agreement, the Service Provider is not liable to the Client (whether in contract, tort or otherwise) for any loss or damage the Client suffers or incurs even if due to the Service Provider's negligence in respect of defects in the Services or for any injury, death, damage, (whether direct, consequential or otherwise), loss of profit or economic loss resulting from

such defects or from any work done by the Client or any third party in connection with the Services.

- (d) The Client indemnifies the Service Provider for all liabilities, losses, damages, costs or expenses suffered or incurred by the Service Provider as a result of any of the following:
- (i) the Service Provider's compliance with the Client's instructions regarding the Services;
 - (ii) the Client's failure to detect and bring to the Service Provider's attention matters for which the Service Provider may become liable, whether for negligence, under legislation or otherwise;
 - (iii) any statement the Client makes about the Services without the Service Provider's written approval;
 - (iv) the use of the Services by the Client or a third party;
 - (v) the Client's negligence or breach of this Agreement;
 - (vi) any claim by a third party for any injury, death, damage (whether direct, consequential or otherwise), loss of profit, economic loss or for the infringement or alleged infringement of a patent, registered design, trademark, copyright or any other intellectual property right in respect of the Services caused by the Client's act or omission.

13. CANCELLATION

- (a) The Service Provider may cancel this Agreement or cancel delivery of Services at any time before the Services are delivered by giving the Client written notice. On giving such notice the Service Provider shall repay the Client any sums paid in respect of the Price. The Service Provider shall not be liable for any loss or damage whatever arising from the cancellation.
- (b) In the event that the Client cancels delivery of Services the Client shall be liable for any loss incurred by the Service Provider (including, but not limited to, any loss of profits) up to the time of cancellation and the Service Provider shall not release any data or materials already prepared or purchased for the Client until such time as the Client's account have been paid in full.

14. FORCE MAJEURE

If due to war, strikes, industrial action short of a strike, import or export embargo, lockouts, accidents, fire, blockade, flood, natural catastrophes or other obstacles over which that Party has no control, that Party fails to perform any of its obligations under this Agreement, that Party shall not be held responsible for any loss or damage which may be incurred as a result of such failure. Should the event of force majeure continue for longer than one month, the Party adversely affected shall have the option of terminating this Agreement immediately without further liability other than such liabilities as have already accrued when the Agreement ends.

15. DEFAULT AND CONSEQUENCES OF DEFAULT

- (a) Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of two and half (2.5%) per cent per calendar month and such interest shall compound monthly at such a rate until judgement is obtained.
- (b) If the Client defaults in payment of any invoice when due, the Client shall indemnify the Service Provider from and against all costs and disbursements incurred by the Service Provider in pursuing the debt including legal cost on a

solicitor and own client basis and the Service Provider's collection agency costs.

- (c) Without any prejudice to any other remedies the Service Provider may have, if at any time the Client is in breach of any obligation (including those relating to payment); the Service Provider may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. The Service Provider will not be liable to the Client for any loss or damage the Client suffers because the Service Provider exercised its rights under this clause.
- (d) If any account remains overdue after thirty (30) days then an amount of ten (10%) per cent of the overdue amount, an administrative fee up to a maximum of \$200 shall be levied which such a sums becoming immediately due and payable.
- (e) Without prejudice to the Service Provider's other remedies at law or under the provisions of this Agreement, the Service Provider shall be entitled to cancel all or any part of the any order of the Client, which remains unperformed and all amounts owing to the Service Provider shall, whether or not due for payment, become immediately payable in the event that:
 - (i) any money payable to the Service Provider becomes overdue, or in the Service Provider's opinion the Client will be unable to meet its payments as they fall due; or
 - (ii) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (iii) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

16. WAIVER AND REMEDIES CUMULATIVE

- (a) No whole or partial waiver of any breach of this Agreement shall be held to be a waiver of any other breach or any subsequent breach.
- (b) The whole or partial failure of a Party to enforce at any time the provisions of this Agreement shall in no way be construed to be a waiver of such provisions nor in any way effect the validity of this Agreement or any part of it or the right of a Party to enforce subsequently each and every provision.
- (c) The failure of a Party at any time to require performance of any obligation under this Agreement is not a waiver of that Party's right to claim damages for breach of that obligation; and at any other time to require performance of that or any other obligation under this Agreement, unless written notice to that effect is given.
- (d) No waiver by the Service Provider of any of its rights under this Agreement shall release the Client from full performance of any remaining terms and conditions, and no waiver by the Service Provider of any breach of the terms and conditions shall be a waiver of any subsequent breach of the same or any other obligation under this Agreement.
- (e) No failure to exercise, nor delay or omission by the Service Provider in exercising, any right, power or remedy conferred on it under this Agreement or provided by law shall except with the express written consent of the Service Provider affect that right, power or remedy or operate as a waiver of it.

- (f) Waiver of any provision of or right under this Agreement must be in writing signed by the Party entitled to the benefit of that provision or right; and is effective only to the extent set out in that written waiver.
- (g) The rights, remedies and powers of the Parties under this Agreement are cumulative and not exclusive of any rights, remedies or powers provided to the Parties by law.

17. REFERENCE TO LAWS

A reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State legislation, as applicable

18. COUNTERPARTS

This Agreement may be executed in original form and/or by facsimile transmission or pdf copies in any number of counterparts and all counterparts taken together shall constitute one and the same instrument.

19. POWER OF ATTORNEY

Where this Agreement is executed on behalf of a Party by an attorney, that attorney by executing declares and warrants that the attorney has been duly appointed and has no notice of the revocation of the power of attorney under the authority of which the attorney executes the Agreement on behalf of that Party.

20. NO MERGER

The rights and obligations of the Parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

21. ENTIRE AGREEMENT

This Agreement constitutes the entire understanding and agreement of the Parties in relation to the subject matter hereof and supersedes all prior negotiations, understandings and agreements between the Parties in relation to the subject matter. Each of the Parties hereby declares that save for the provisions herein expressly contained there is no other understanding, agreement, warranty, undertaking or representation whether express or implied which in any way extends, defines, limits or otherwise relates to the express provisions contained in this Agreement.

22. SEVERANCE

- (a) If reading down a provision of this Agreement would prevent the Agreement being invalid, illegal, unenforceable or voidable it shall be read down to the extent that it is necessary and capable of being read down.
- (b) Where, notwithstanding the above, a provision of this Agreement is still invalid, illegal, unenforceable or voidable:-
 - (i) if the provision would not be invalid, illegal, unenforceable or voidable if a word or words were omitted, that word or those words shall be deleted; and
 - (ii) in any other case, the whole provision shall be deleted;
 - (iii) and the remainder of this Agreement shall continue to have full force and effect.

23. RELATIONSHIP

This Agreement does not create a relationship of employment, agency, trust or partnership between the Parties.

24. THE COMMONWEALTH COMPETITION AND CONSUMER ACT 2010 (CTH) (CCA) AND FAIR TRADING ACT (FTA)

Nothing in this Agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

25. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of Queensland and subject to the non-exclusive jurisdiction of the courts of Queensland

26. GENERAL

- (a)** The Service Provider shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Service Provider of this Agreement.
- (b)** In the event of any breach of this Agreement by the Service Provider, the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Service Provider exceed the Price of the Services.
- (c)** The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed by the Client to the Service Provider.
- (d)** The Service Provider may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- (e)** The Service Provider reserves the right to review this Agreement at any time. If, following any such review, there is to be a change to this Agreement, then that change will take effect from the date on which the Services Provider notifies the Client of such change.