

Terms of Business

These terms and conditions (**Terms of Business**) apply to any products or services supplied by Australian Wholistic Health & Wellbeing Company Limited trading as Vitality Works (ABN 70 145 723 119) (as set out in the Work Schedule) ("Provider", "we", "us", "our") to you.

In the absence of you signing these Terms of Business, your use of our Services is sufficient to be taken as acceptance in full of the current version of these Terms of Business. It is not necessary for us to get your express agreement or signature to these Terms of Business.

Unless otherwise agreed in writing or set out in the Work Schedule, these Terms of Business apply to the exclusion of any inconsistent provisions, which may appear on any order form, or other documentation issued by you, including any variations or any additional services provided.

1. Services

Provider will provide the Services described in the Work Schedule in a timely, diligent and competent manner and at such locations and times as agreed between the parties in writing. Unless otherwise agreed in writing by the parties, the Work Schedule will be prepared by Provider in response to a request for services from Client. Provider will ensure that all personnel providing Services maintain appropriate training or qualifications to provide those Services.

If the Provider considers it appropriate to do so, it may engage a subcontractor to assist the Provider in supply of any products and services.

If the Provider has undertaken any work arising out of or related to the supply of products or services prior to the date of an Agreement, the terms of the Agreement shall operate retrospectively from the earliest date on which such work was carried out.

2. Access and Information

Client acknowledges that Provider's performance is dependent on Client cooperating with Provider in connection with your Agreement, and allowing Provider to perform the services and supply any products or materials. Without limiting the foregoing, Client may be required to provide: (a) site inductions (b) access to the rooms/buildings/premises in which the Services will be provided; (c) audio-visual equipment (if applicable to the Services); (d) security passes, parking and storage space for equipment; (e) wastepaper bins in all rooms; and (f) anything of similar nature reasonably required by Provider to perform the Services. Client will provide Provider with any information reasonably required by Provider to assist with the performance of the Services.

Any products, equipment or materials supplied by the Client in connection with the Services is, and shall remain, the Client's responsibility and Provider disclaims all liability in this regard to the extent permitted by law.

Client acknowledges and agrees that it is responsible for providing and maintaining a safe, hazard-minimised work environment for Provider and Provider's personnel to perform the Services on Client's premises, and will comply with all applicable laws including but not limited to environmental, occupational and work health and safety laws and regulations.

Client acknowledges that: (a) in providing of the Services, Provider may receive individual medical history and consent forms from each participant (each a Medical Form); (b) each Medical Form is a medical record, and as such must be treated as confidential; (c) Client will not have access to any Medical Forms, and Provider will not release any Medical Form to the Client or any third party without the written authority of the relevant participant; (d) Provider may not use the Medical Forms to provide Client with the names of those participants who received Services without the express consent of the relevant participant.

3. Agreed Price

Provider will invoice the Agreed Price for the services and service terms (including cancellations, additional and extraordinary work charges) as set out in the Work Schedule. You agree to pay the Agreed Price, in accordance with the Work Schedule within 30 days of the receipt of the relevant invoice.

The Client acknowledges and agrees that Provider may increase the Agreed Price annually on or after each anniversary of the commencement date of the Agreement by the greater of 3% per annum and the percentage equal to the percentage increase in the CPI for the preceding twelve month period by written notice to the Client (**CPI Adjustment**). If the parties have agreed to fixed pricing for an initial term, then the Agreed Price shall be subject to the CPI Adjustment, which will be applied to the period after the end of that initial term.

Any reasonable out-of-pocket expenses associated with the provision of the Services which have not been expressly included in the Agreed Price and/or Work Schedule, including, but not limited to, mileage, printing, courier expenses, flights, consumables will be invoiced at cost plus 10% in the invoice immediately following the expense being incurred.

Payment by credit card attracts a 2.5% processing fee.

4. Interest

If Client does not pay any invoice by 30 days after the relevant invoice was due and payable, following a written notice by Provider to the Client of any late payment, Provider may charge the Client interest (which will accrue daily) on any outstanding amounts from the date the relevant invoice was due and payable at the rate of 8% above the cash target rate determined by the Reserve Bank of Australia applying at the date of the invoice.

Should Provider incur legal and/or any other expenses (including any such expenses to a debt collection agency) in obtaining, or attempting to obtain, payment for any amount due by the Client, the Client may be liable for such expenses.

5. File storage/destruction

Provider may store its Client file records for 12 years after completion of the Services, or for such other period as required by law, following which they may be destroyed without further notice to Client.

6. Cancellation, adjustment or reasonable postponement of the Services

Client may require a reasonable adjustment to any Work Schedule on written notice to Provider, or Client may cancel the Services at any time, in each case in accordance with the Cancellation and Postponement Policy referenced in the Work Schedule.

Provider will implement hazard control measures related to potential exposure to COVID-19 during the Services, but the Services may be impacted by these measures in the form of disruptions to the delivery of some face to face Services, in which case, Provider may provide alternate options to the delivery of the Services including but not limited to conducting meetings and workshops virtually using technologies including: Zoom, Skype, Microsoft teams, Slack; conducting training sessions via webinars; or using either your nominated document sharing sites or offering our own.

Provider may, in its absolute discretion, charge a fee equivalent to the reasonable costs associated with time incurred on the Services or any other incurred costs, if the Services are confirmed and then delayed or cancelled by Client (or any Client participant receiving the Services) after Provider has already commenced the Services (including any required preparation for the Services), or have purchased equipment or supplies for the Services.

7. Confidentiality and Privacy

7.1 Confidentiality

Obligation of Confidentiality - Neither party will, without the prior written consent of the other, disclose to any third party any Confidential Information which is received from the other and will only use such Confidential Information for the purposes of providing or receiving Services or for its internal record keeping purposes. Each party will exercise the same level of protection and care to safeguard the Confidential Information it receives from the other party that it customarily uses in safeguarding its own confidential information and at a minimum will use reasonable endeavours. Confidential Information disclosed under an Agreement will be subject to this clause 7 for 2 years following the initial date of disclosure other than Personal Information (as defined in clause 7.2) which will be held as required by law.

Exceptions - These restrictions will not apply:

- (a) to any information which: (i) is or becomes generally available to the public other than as a result of a breach of an obligation under this clause 7; (ii) is acquired from a third party without an obligation of confidentiality; or (iii) is or has been independently developed by the recipient or was known to the recipient prior to receipt; or
- (b) to any disclosure of Confidential Information: (i) to a party's respective insurers or professional advisors provided such disclosure is only under the condition of confidentiality; (ii) to a third party, to the extent that this is required by any court of competent jurisdiction, by a governmental or regulatory authority, or where there is a legal right, duty or requirement so to disclose (in which case the party so disclosing will, where reasonably practicable and legal, first give the other party at least 2 business days' notice in writing); or (iii) by Provider to its Related Bodies Corporate or a third party as may be necessary for the delivery of the Services, subject to such third party agreeing in writing to be bound by similar terms and conditions as contained in this clause 7.

7.2 Privacy

If a party collects, holds, stores or processes Personal Information, as defined under the *Privacy Act 1988* (Cth) (**Privacy Laws**) under or in connection with this Agreement, the party must, and must procure that all of its personnel to whom it discloses Personal Information, comply with the Privacy Laws and not do anything with Personal Information which would cause the other party to breach its obligations under the Privacy Laws.

8. Intellectual Property

- (a) Client Materials - Client will own the Intellectual Property in any materials which are or were created by or licensed to Client prior to, or outside of, any engagement with Provider (**Client Materials**), subject to the remainder of this clause 8. If Client grants permission to Provider to use the Client Materials, Client grants to Provider a non-exclusive, royalty-free, world-wide, perpetual right to use, copy, adapt, modify and sub-license such Client Materials, but only for the purpose of the provision of the Services and for no other purpose.
- (b) Pre-Existing Works - The Intellectual Property in any materials or software (whether written or machine-readable) which are or were created by or licensed to Provider prior to, or outside of, the Client's engagement of Provider, and any subsequent modifications to same (Pre-Existing

Works) will remain vested in Provider or a third party. To the extent that Pre-Existing Works are embedded in any Deliverables, Client will have a licence to use them in accordance with clause 8(c) below.

- (c) Deliverables - Provider will own the Intellectual Property in all deliverables which are not Client Materials and in all other materials or software created under these Terms of Business whether by or on behalf of Provider solely or both parties jointly (**Deliverables**). Provided Client has met its payment obligations under these Terms of Business or Work Schedule, Client will have a perpetual non-exclusive, non-transferable licence to use these Deliverables (and any Pre-Existing Works to the extent that these are embedded in the Deliverables) for Client's own internal use and only for the purposes for which they were delivered, but Client must not provide any Deliverables (or any Pre-Existing Works, to the extent that these are embedded in the Deliverables), or copies of them, to any third party without Provider's prior written consent. Any Deliverables that are not expressly specified in the Work Schedule as "Client Materials", "Deliverables" or "Pre-Existing Materials" will be considered "Deliverables".

9. No exclusivity

Provider will not be prevented or restricted by anything in these Terms of Business or Work Schedule, save only for its obligations with respect to Confidential Information, from providing services to other clients.

10. Restraint

Neither the Client nor any of its Related Bodies Corporate may during an Agreement and for a period of 12 months from the end of the Agreement solicit, approach or endeavour to entice away any person employed by Provider or any of its Related Bodies Corporate during the period during which the Services are provided, unless that person responds to a bona fide advertisement published by Client or the relevant Related Body Corporate which is targeted to a wide audience of potential applicants.

Neither Provider nor any of its Related Bodies Corporate may during an Agreement and for a period of 12 months from the end of the Agreement solicit, approach or endeavour to entice away any person employed by Client or any of its Related Bodies Corporate, during the period during which the Services are provided, unless that person responds to a bona fide advertisement published by Provider or the relevant Related Body Corporate which is targeted to a wide audience of potential applicants.

11. Termination

Termination for cause: Either party (**Non-Defaulting Party**) may terminate an Agreement with immediate effect by providing a written notice to the other party (**Defaulting Party**) if: (a) the Defaulting Party is in material breach of these Terms of Business, or terms set out in the Agreement, and such breach is not capable of being remedied or if it is capable of being remedied is not remedied within 10 Business Days of the notice to remedy issued to the Defaulting Party; (b) where Client is the Defaulting Party, Client fails to pay any invoice by its due date; (c) the Defaulting Party is subject to an Insolvency Event.

Termination in the event of force majeure: Either party may terminate an Agreement with immediate effect by providing a written notice to the other party where one or both of the parties to the Agreement has been prevented from performing its obligations under an Agreement in accordance with the force majeure clause in clause 19 for more than 20 Business Days.

On termination of the Agreement, Client must pay Provider all outstanding fees up to the date of termination (whether or not invoiced) and any additional direct out-of-pocket costs or expenses Provider incurs up to the date of termination as a direct result of such termination. Providing the Client gives Provider sufficient notice, Provider will take reasonable steps to mitigate any such costs or expenses. This obligation survives the termination of the Agreement.

12. Relationship of the parties

Each of the Client and Provider are independent contractors. Nothing in an Agreement will constitute or be deemed to constitute a partnership, joint venture or agency relationship between the parties.

13. Liability and acknowledgement of risk

Nothing in an Agreement is intended to, or should be read as, excluding or limiting any liability of either party that cannot be excluded or limited by law.

Without limiting the foregoing, regardless of the basis on which Client is entitled to claim damages from Provider (including fundamental breach, negligence, misrepresentation, or other contract tort or equitable claim), to the extent permitted by law, Provider's total liability for all claims under or in connection with the Agreement is limited in the aggregate to an amount equivalent to one times the fees paid under the Work Schedule applicable to the affected Services at the time the first claim is made.

Further, neither party will be liable to the other for any loss or damage that was not in the reasonable contemplation of the parties at the time of entering into the Agreement or for any lost profits, lost business opportunity, anticipated savings or any special, indirect, consequential, economic, punitive or exemplary loss or damage, even if informed of the possibility of such loss or damage.

To the maximum extent permitted by law all warranties, conditions, representations or terms not expressly set out in the Agreement are hereby excluded.

Client acknowledges that Provider does not manufacture any materials provided in the provision of Services, including but not limited to vaccines and devices. As a result, Provider cannot guarantee supply or performance (including any desired results or outcomes) of the relevant materials required for provision of the Services. Client acknowledges that shortages of any such materials are not the responsibility of Provider.

Provider reserves the right to refuse to provide any Services to any of the Client's participants if, acting reasonably, Provider or any of its personnel providing the Services determines that providing the relevant Services to the Client participant would compromise or risk his or her health or safety, including but not limited to the circumstances where Provider or any of its personnel determines that any Medical Form or any other information provided by Client or the Client participants is inaccurate or incomplete.

The Medical Form for each participant of the Services is required by Provider to ensure that the Services that Provider provides are suitable for the Client participants. Any details that are inaccurate or incomplete on the relevant Medical Form for each participant (including any false or misleading information provided by Client or any Client participant to Provider or its personnel) and which could not reasonably have been detected by Provider or its personnel at the time of providing the Services, may cause Provider to provide inappropriate services and advice, for which Client acknowledges that Provider does not accept liability, to the extent permitted by law.

Client acknowledges that although rare, some patients are known to suffer side effects or adverse reactions, including but not limited to severe allergic reactions or anaphylactic shock, without any prior history of adverse reactions. Provider will direct its personnel performing the Services to monitor Client's employees for an appropriate period after each individual service, but does not accept liability for participants who may suffer an adverse reaction.

Except to the extent to which liability is proven to have been caused by or contributed to as a result of the negligence or wilful misconduct by Provider in performing the Services, to the extent permitted by law, Provider excludes all liability to Client or any participant who receives the Services, for any loss or damage arising in connection with incorrect or improper use (including failure to comply with or follow the reasonable instructions, directions or protocols of Provider) of any materials or

equipment used in the provision of Services, by Client or any participant of the Services,

14. Australian Consumer Law

These Terms of Business do not affect any guarantees that cannot be excluded under the Australian Consumer Law. To the extent permitted at law, if the Australian Consumer Law does apply to the Services then any recourse is limited to, at Provider's discretion, resupplying the Services or refunding all or some of the Agreed Price (as required).

15. Insurance

Provider will maintain the relevant: (a) professional indemnity insurance in respect of liability under your Agreement for an amount of at least \$10 million in the annual aggregate; and (b) public liability insurance for an amount of at least \$20 million in the annual aggregate.

Each party will comply with all workers compensation or similar legislation in respect of its employees.

16. Dispute Resolution

If a dispute arises in relation to the provision of the Services (**Dispute**), then:

- (a) each party will use its best endeavours to settle the Dispute by agreement and act in good faith and cooperate with the other party to resolve the Dispute;
- (b) if the Dispute is not settled by agreement within 30 days, then, unless both parties agree:
 - i. full written particulars of the Dispute must be promptly given to the other party; and
 - ii. the matter must then be referred to mediation in Sydney administered by the Australian Disputes Centre (**ADC**) before either party commences any litigation;
- (c) the mediation under this clause 16 must be conducted in accordance with the guidelines for mediation operating at the time the matter is referred to the ADC (**Guidelines**) except to the extent that the Guidelines are inconsistent with the terms of the Agreement. The Guidelines set out the procedures to be adopted for the mediation, the process of selection of the mediator and the costs involved;
- (d) neither party will initiate any litigation during the dispute resolution process outlined in paragraphs (b) to (c) above, unless proceedings are necessary for preserving the party's rights; and
- (e) each party will continue to comply with all its obligations in the Agreement until the Dispute is resolved.

17. GST

Definitions: For the purposes of this clause 17, "acquisition", "consideration", "GST", "GST Law", "input tax credit", "recipient" "supply", "taxable supply", "tax invoice" and "value" have the meaning given by section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

GST exclusive consideration: Except where express provision is made to the contrary, the consideration payable by a party for a taxable supply made by the other party pursuant to an Agreement represents the value of the taxable supply and is expressed to be exclusive of any GST.

Consideration to be increased by GST amount: Notwithstanding any other provision of the Agreement, if a party makes a taxable supply in connection with an Agreement (the supplier), then the party liable to pay for the taxable supply (the recipient) must also pay, at the same time and in the same manner as the GST exclusive consideration is otherwise payable, an additional amount equal to the amount of any GST payable in respect of the taxable supply.

Further and additional payments: Where an Agreement requires the recipient of a taxable supply to make further and additional payments, whether by way of reimbursement or contribution or other payments, for an amount paid or payable by the supplier in respect of an acquisition from a third party for which the supplier is entitled to claim an input tax credit, the additional amount payable by the recipient will be reduced by the amount of the input tax credit and increased by the amount of GST payable by the supplier in respect of the supply.

Tax Invoice: The right of either party to payment under this clause 17 is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the supplier of the taxable supply to the recipient.

18. Notices

Any notice given under an Agreement must be in writing and may be:

- (a) delivered by hand, in which case the notice will be taken to be received on delivery;
- (b) sent by pre-paid post to the registered address of the party, in which case the notice will be taken to be received on the second Business Day after the day of posting; or
- (c) transmitted by electronic mail, in which case the notice will be taken to be received at the time it is recorded as 'sent' and appears in the 'Sent' folder of the sender's electronic mail system.

If the delivery is not on a Business Day or is after 5.00pm (recipient's time) on a Business Day, the notice is taken to be received at 9.00am (recipient's time) on the next Business Day.

19. General

Mutual Warranties: Each party warrants and represents that it: (a) is validly existing under the laws of its place of incorporation and has the power and authority to carry on its business as that business is now being conducted; (b) has the authority to grant the licence rights provided to the other party as set out in this Agreement; (c) is duly authorised to enter into and be bound by this Agreement.

Precedence: If there is any conflict, inconsistency or ambiguity between any provisions or parts of an Agreement the provisions will prevail in the following decreasing order of precedence: (a) a Work Schedule (b) the Terms of Business; (c) any document incorporated by reference.

Assignment: An Agreement cannot be assigned by either party without the prior written consent of the other party.

Force majeure: Provider is not liable for any act, omission or failure relating to the Services if that act, omission or failure is directly a result of a cause beyond its reasonable control. This includes extreme weather conditions, civil disruption, act of terrorism, act of government or industrial action. If such an event occurs Provider will give Client notice of this, and will continue to use its best endeavours to carry out its obligations to Client.

Whole Agreement: The Agreement replaces any previous individual agreements, arrangements or understandings between Client and Provider or any of its Related Bodies Corporate. The Agreement constitutes the whole agreement between Client and Provider in relation to the Services.

Variation: An Agreement may only be varied in writing and signed by both parties.

Severability: Part or all of any provision of an Agreement that is illegal or unenforceable will be severed from the Agreement and will not affect the continued operation of the remaining provisions of the Agreement.

Governing Law: The Agreement will be governed by and construed in accordance with the laws in force in the State of New South Wales and each party submits to the exclusive jurisdiction of the courts of that State.

20. Definitions

Unless expressed or implied to the contrary:

Agreement refers to these Terms of Business, together with any Work Schedule (which may be in the form of a proposal issued by the Provider), agreed by you and Provider, which describes the products and services to be delivered by Provider to you as set out in the Agreement.

Agreed Price means the price (whether a lump sum or sums, rates, or any other basis for charging) for the performance of the services or supply of products, as set out in any agreed Work Schedule and includes any part payment made by way of a deposit.

Client, you and your means the person or company who contracts with Provider to provide products and services. An Agent may represent the Client who acts with the Client's authority and arranges or directs services on the Client's behalf.

Confidential Information means all information that the disclosing party provides or makes available to the recipient party in connection with an Agreement (regardless of the form in which the information is provided) that is marked as "confidential" or that is by its nature manifestly confidential.

CPI means the Consumer Price Index (All Groups) published by the Australian Bureau of Statistics or any similar index that replaces it.

Insolvency Event means in relation to a party any of the following occurring: (a) an order being made, or that party passing a resolution, for its winding up; (b) an application being made to a court for an order for its winding up which application is not stayed, withdrawn or dismissed within 5 Business Days of being made; (c) an administrator being appointed; (d) that party resolving to appoint a controller (as defined in the Corporations Act 2001 (Cth)) or analogous person to it or any of its assets; (e) an application being made to a court for an order to appoint a receiver, receiver and manager, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to that party or any of its assets, which application is not stayed, withdrawn or dismissed within 5 Business Days of being made; (f) that party being taken under section 459F (1) of the Corporations Act 2001 (Cth) to have failed to comply with a statutory demand; (g) it becoming insolvent (as defined in the Corporations Act 2001 (Cth)) or claiming to be insolvent; or (h) any analogous event (including any analogous event under the laws of any applicable jurisdiction).

Intellectual Property means any type of intellectual property anywhere in the world including without limitation: (a) any patents, utility models, copyrights (including future copyrights) registered or unregistered trade marks or service marks, trade names, brand names, indications of source or appellations of origin, eligible layout rights, plant variety rights, registered or unregistered designs, drawings, specifications or technology or commercial names or designations; (b) any invention, discovery, trade secret, know-how, computer software or confidential, scientific, technical or product information and any developments or improvements to equipment, products, technology processes, methods or techniques; (c) any other rights which result from intellectual activity in the industrial, scientific, literary or artistic fields whether industrial, commercial or agricultural and whether dealing with manufactured or natural products; and (d) any pending application or right to apply for registration, letters patent, deed of grant, certificate or document of title for anything which is referred to in paragraphs (a) to (c) of this definition and any medium in which anything which is referred to in those paragraphs is stored or embodied.

Medical Form has the meaning given to this term in clause 2.

Related Body Corporate has the meaning given to this term in the Corporations Act 2001 (Cth).

Work Schedule has the same meaning and purpose as Agreement as given in clause 20.

21. Interpretation

In an Agreement, unless specified to the contrary or the context requires otherwise: (a) the singular includes the plural and vice versa; (b) words denoting any gender include all genders; (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning; (d) headings are for convenience and do not affect interpretation; (e) a reference to "\$", "A\$" or "dollar" is a reference to Australian currency; and (f) a reference to a party includes its executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns.