

# Terms of Business of the Blaze Acumen Group



This document together with any Engagement Letter we issue form the Contract between You and the Blaze Acumen Group (referred to as 'We', 'Us' and 'Our'). The terms defined in the Engagement Letter have the same meaning in these Terms of Business.

## 1 Services

### 1.1 Basis of Services

1.1.1 We will provide the Services described in our Engagement Letter, or any separate document we issue summarising the scope of our Services ('Services').

1.1.2 Our work will be based solely on the information provided, the circumstances made known to us and the assumptions set out in our correspondence. We rely on you bringing to our attention as soon as possible any changes in the information as originally presented as it may impact on our advice.

1.1.3 Changes in the law and in interpretations may take place before our advice is acted upon or may be retrospective in effect. Unless specifically stated in the engagement letter we accept no responsibility to inform you of changes in the law or interpretations affecting advice previously given by us.

1.1.4 Some of the matters on which we may be asked to advise on may have personal tax implications for parties for which we are not responsible unless specifically instructed to address these issues on an individual basis.

1.1.5 Should we provide any advice or reach any conclusions during the course of our engagement, you acknowledge that this will be based on our opinion and interpretation of current legislation, administrative practice and the information you provide us regarding your particular circumstances. You also acknowledge that any deliverable or advice provided under this engagement may be subject to challenge by the relevant authorities including the Australian Taxation Office ("ATO") and overseas taxation bodies.

1.1.6 Should we give oral advice in meetings and over the telephone you acknowledge that the benefit of subsequently obtained relevant information, or more detailed consideration of the matters discussed, may affect the view we expressed. Accordingly, if you wish to rely on any oral advice, you should seek written confirmation of the same.

1.1.7 The Australian taxation system and its relevant legislation is constantly changing. You acknowledge that we cannot guarantee that we will notify you of all reforms or changes that may be relevant to you.

1.1.8 You must not act on advice given by us on an earlier occasion without first confirming with us that the advice is still valid.

1.1.9 Our services are limited exclusively to those you have engaged us to perform. Unless otherwise specified in the engagement letter, our Services cannot be relied upon to disclose irregularities and errors, including fraud and other illegal acts, in your affairs. Neither an audit nor a review will be conducted and, accordingly, no assurance will be expressed.

### 1.2 Time Scale

1.2.1 We will use our best endeavours to carry out our obligations in accordance with the time scales set out in the Engagement Letter or as otherwise agreed. However, unless both of us specifically agree otherwise in writing, the dates contained in the Engagement Letter or otherwise advised are indicative dates intended for planning and estimating purposes only and are not contractually binding.

### 1.3 Changes to Services

1.3.1 Either of us may request changes to the Services to be provided or changes to any other aspect of the Terms of Business but no such changes take effect unless agreed in writing, with the exception of our standard hourly rates which we may adjust on an annual basis without notice. Both of us agree to work together to enable both parties to assess the impact of any requested changes on the cost, timing or any other aspect of the Services.

## 2 Reporting

2.1 We will provide the Services and report (including, but not limited to, preparation of financial statements, income tax returns and consulting advice) to you in accordance with the terms set out in the Engagement Letter. You may make copies of any reports for your own internal use but you must not provide the report or copies of it to any third party without first obtaining our written consent. Such consent will only be granted on the terms we deem appropriate which will include that we accept no duty or responsibility to any other party who may seek to rely on our report. In some cases appropriate releases from third parties may be required.

## 3 Intellectual Property

3.1 Intellectual property rights in all documentation, systems, materials, methodologies and processes brought to the assignment or created in the course of the assignment shall remain and be vested in The Blaze Acumen Group.

3.2 Unless we agree otherwise, anything we create in connection with this agreement may be used by you only for the purpose for which you have engaged us.

## 4 Information

4.1 You agree to provide in a timely fashion all information, documents, instructions and access to third parties reasonably required to enable us to provide the Services. You agree to ensure we are permitted to use any third party information or intellectual property rights you provide to us to perform the Services.

4.2 You agree that the information you provide to us in relation to this agreement will be complete, accurate and not misleading in nature and that you will notify us of any changes to the information or instructions you have provided us to the extent those changes impact on the Services provided.

4.3 Unless otherwise stated in the Engagement Letter, we will not audit or independently verify the accuracy of such information and documents and we will not be liable for any loss or damage arising from any inaccuracy or other defect in any information or documents supplied by you.

4.4 Should we distribute tax related material to you in connection with current tax issues, you acknowledge that such information relates to generic issues and ideas, the appropriateness of which to you will generally require further consideration and advice. These materials should not be used as a substitute for specific advice and the Blaze Acumen Group will have no responsibility to take matters further unless we are specifically instructed by you.

## 5 Fees and Payment

### 5.1 How fees will be calculated

5.1.1 Fees for the Services will be charged on the basis set out in the Engagement Letter. Goods and Services Tax ("GST") at the prevailing rate will be added to and forms part of our fees.

5.1.2 Our total fees or hourly rates and, where applicable, out of pocket expenses (our "Billings") are based on the currently applicable GST rate (except where we have assessed that the Services to be provided GST free). If this GST rate changes, our Billings will be adjusted to reflect the change.

### 5.2 Expenses

5.2.1 All charges are exclusive of expenses unless the Engagement Letter states otherwise. The charges will be calculated as the amounts incurred by us (net of any applicable GST input tax credit to which we are entitled) plus GST as applicable. Any special expense arrangements will be agreed and set out in the Engagement Letter.

### 5.3 Payment of invoices

5.3.1 Unless specifically agreed otherwise, your obligation to pay us fees and expenses to which we are entitled will fall due within **14 days** of the issue of a tax invoice to you as detailed in the Engagement Letter. Where an amount for GST is stated to be a component of the fees and expenses, our fee account will comply with the law specifying what constitutes a "tax invoice" for GST purposes.

5.3.2 The Blaze Acumen Group retains the right to charge a commercial rate of interest on accounts which are overdue by more than one month.

5.3.3 The Blaze Acumen Group may exercise a lien on any of your documents we have in our possession in the event of a dispute, or until all outstanding fees have been paid.

### 5.4 Audit Insurance

5.4.1 In some cases, you may be entitled to assistance with your professional fees, particularly in relation to any investigation into your taxation affairs by the ATO. Assistance may be provided through insurance policies you hold or via membership of a professional or trade body. Other than where such insurance was arranged through us, you will need to advise us of any such insurance cover that you have. You will remain liable for our fees regardless of whether all or part are to be paid by someone else.

## 6. Term and Termination

### 6.1 Commencement of Contract

6.1.1 This Contract will apply from the commencement date stated in the Engagement Letter, if any, or where no commencement date is specified from the date of acceptance of the Contract as specified in the Engagement Letter.

### 6.2 Termination

6.2.1 The Contract may be terminated by either party by written notice if either party fails to remedy a material breach of these Terms of Business.

6.2.2 Otherwise the contract may be terminated by either party provided 60 days written notice of such termination is given.

### 6.3 Fees payable upon termination

6.3.1 In circumstances where this agreement is terminated prior to completion of the relevant deliverables, we reserve the right to pass on our costs incurred at our standard hourly rates for work performed on Services related to this agreement, up to the amount of any quoted fee. You agree to pay us for all Services provided prior to termination on this basis if requested, within the standard payment terms disclosed on the invoice.

### 6.4 Clauses continue to apply subsequent to termination

6.4.1 With the exception of clause 1.1, all other clauses continue to apply after termination of this agreement.

## 7. Confidentiality

7.1 To afford the maximum protection to your confidential interests, all employees of the Blaze Acumen Group are employed under a service contract which contains a clause strictly forbidding the unauthorised disclosure of information.

## 8. Liability

8.1 The Blaze Acumen Group will use reasonable skill and care in the provision of the Services to You as set out in the Engagement Letter.

8.2 To the extent permitted by law, the Blaze Acumen Group excludes all warranties, conditions or terms, other than those expressly set out in these terms and conditions including, but not limited to, all warranties, conditions or terms implied in fact or by law. Nothing in clause 8 has the effect of excluding, restricting or modifying any non-excludable statutory condition, warranty, guarantee, right, remedy or other benefit that is preserved for You by the Competition and Consumer Act 2010 (Cth) (or any other legislative provision).

8.3 Where the Blaze Acumen Group is not entitled to exclude a warranty, condition or term implied in fact or by law, and to the extent permitted by law, the Blaze Acumen Group's liability for breach of any such warranty, condition or term is limited to:

- (a) in the case of Services, at the option of the Blaze Acumen Group, either the resupply of the Services or payment of the cost of having the Services resupplied; and
- (b) in the case of documentary deliverables or materials, at the option of the Blaze Acumen Group, either the resupply of the deliverables or materials or payment of the cost of having the deliverables or materials resupplied.

8.4 In all instances, other than as set out in clauses 8.2 or 8.3, the total aggregate liability of the Blaze Acumen Group to You for loss or damage (including indirect and consequential loss or damage), caused by, or resulting from, or in relation to, the Services, including whether arising from breach of contract, negligence, or any other tort, in equity or otherwise, and whether or not the Blaze Acumen Group was advised of the possibility of such loss or damage, is limited to three times the fees paid by you to the Blaze Acumen Group in respect of the relevant Services. The limitation of liability set out in the Terms of Business applies to you for any claims arising from, or in connection with, the Services performed under the terms of our engagement. You agree that you will not dispute the operation, validity or enforceability of this limitation of liability.

8.5 Blaze Acumen Pty Ltd is a corporate member of Chartered Accountants Australia and New Zealand ("CAANZ") which has schemes approved under professional standards legislation in force in Australian States and Territories. Where a liability cap is not otherwise specified in our Terms of Business or valid, our liability for any claim in connection with our Services is limited in accordance with the relevant CAANZ scheme. Legislation providing for apportionment of liability may apply. Please advise us if you wish to obtain a copy of the relevant scheme.

8.6 Where multiple clients or entities are listed in our Engagement Letter, the limits on liability referred to in clause 8.4 must be apportioned between the various clients or entities.

8.7 You agree that if you make any claim against us for loss as a result of a breach of our contract, and that loss is contributed to by your own actions, then liability for your loss will be apportioned as is appropriate having regard to the respective responsibility for the loss, and the amount you may recover from us will be reduced by the extent of your contribution to that loss.

8.8 Our advice and information is for your sole use, and we accept no responsibility to any third party, unless we have expressly agreed in the Engagement Letter that a specified third party may rely on our work. You agree to indemnify us against any liability, including but not limited to legal costs, that are incurred by us in connection with any claim by a third party arising in connection with these Services.

## 9. Dispute Resolution

9.1 Where a dispute arises in relation to this agreement, you agree that all reasonable attempts will be made to resolve the dispute including, if necessary, through mediation, prior to the commencement of any legal proceedings.

## 10. Blaze Acumen Staff

10.1 All Blaze Acumen Group employees are employed under a service contract that prohibits the staff member from accepting employment with or providing services to a client or an associate of a client of the Blaze Acumen Group for a period of six months after termination of employment. You agree not to induce or encourage any staff member to breach this component of their service contract.

10.2 You agree not to bring any claim (including but not limited to claims for negligence) against any Blaze Acumen employee personally in connection with Services provided under this engagement. You further agree that each of our employees involved in providing any Services to you relies on the protection afforded by this clause as if they were a party to this agreement, and we accept the benefit of this clause on their behalf.

## 11. Documents

11.1 It is our practice to destroy documents belonging to us after they are more than seven years old. Your acceptance of these terms includes your consent for us to destroy any documents that strictly belong to you which have been filed amongst our own papers.

## 12. Record Keeping

12.1 Generally records relevant to the preparation of an income tax return must be retained by a taxpayer for a period of five years and these must be available for examination by the Commissioner of Taxation upon request. You acknowledge that it is your responsibility to maintain original records to satisfy any enquiry by the ATO.

12.2 Taxpayers must satisfy minimum standards of reasonable care and demonstrate “reasonably arguable positions” in relation to contentious issues in order to minimise penalty exposures. While the ATO does not require documents to be lodged with an income tax return, any work papers and research papers prepared to support amounts documented in the return must be sufficiently documented.

## 13. Communications

13.1 During our performance of the Services we may wish to send messages and/or documents to each other by e-mail. As e-mail carries with it the possibility of inadvertent misdirection, or non-delivery of confidential material, unless you notify us otherwise you consent to the use of e-mail in accordance with clause 13.2.

13.2 Where messages are sent by e-mail, we will adopt the following procedures and require you to do likewise:

- (a) If sending a confidential e-mail message, the sender will indicate if a response is not wanted in an electronic form. All risks connected with sending by e-mail commercially sensitive information relating to your personal or business affairs are borne by you and are not our responsibility. If you do not accept this risk, you should notify us in writing that e-mail is not an acceptable means of communication.
- (b) Both parties will carry out procedures to protect integrity of data, in particular, it is the recipient’s responsibility to carry out a virus check on any attachments before launching any documents, whether received on disk or otherwise.

13.3 In the event you receive fraudulent email correspondence purporting to be from the Blaze Acumen Group, we shall not be liable for any loss you may incur due to acting on said fraudulent email, if you have not verbally confirmed the requested instructions with a current Blaze Acumen Partner or authorised employee.

## 14. Draft Deliverables

14.1 You should only rely on our final written deliverables. We will not be held liable for any reliance on deliverables provided in draft form, whether marked “draft” or otherwise.

## 15. Exclusivity

15.1 The Blaze Acumen Group will not be prevented or restricted by anything in this Contract from providing services for other clients, including but not limited to your competitors or other parties whose interests may be in conflict with yours, provided we do not disclose your confidential information.

## 16. Contractors

16.1 You acknowledge we may utilise contractors, including:

- TOA Global Pty Ltd (an Australian based company with operations in Asia) to perform or work with us to perform the Services. Blaze Acumen remains responsible for the Services provided; and
- Other third parties from time to time.

16.2 To perform the Services, you also acknowledge we may provide these third parties with access to your data to the extent this is required to perform the Services.

## 17. Privacy of Personal Information

17.1 As part of our engagement we may from time to time electronically distribute your personal financial information by electronic means to you and other third parties. Such personal information may include, inter alia, taxation returns, financial statements, letters of advice, tax file numbers and statements of assets and liabilities. Where you request us to distribute financial information to you or other third parties via email rather than via our preferred method of electronic delivery, you provide your authority for the electronic distribution of this information and accept that email is a relatively insecure form of communication and will not hold the Blaze Acumen Group responsible for unauthorised parties accessing or tampering with such communications. You will advise the Blaze Acumen Group if information is not to be distributed by electronic means.

17.2 Disclosure by you of personal information to us in the course of our engagement is subject to the Privacy Act 1988 (“the Privacy Act”). Accordingly the Services are provided on the basis that you will only disclose personal information about an individual to us:

- (a) for a purpose related to the performance of the Services;
- (b) provided you have made all disclosures required under the Privacy Act;
- (c) provided you have obtained any consents required under the Privacy Act; and
- (d) provided to do so would not otherwise breach the Privacy Act.

17.3 As we rely on you to fulfil these obligations you will indemnify the Blaze Acumen Group and its staff, against any claim, loss or expense resulting from your failure to make any disclosure or obtain any consent required under the Privacy Act or otherwise to comply with the Privacy Act.

17.4 If the performance of the Services requires a third party to supply personal information to us on your request, it is your obligation to ensure that the third party complies with clauses 17.2 (a) to (d) above and you will indemnify us against any claim, loss or expense resulting from that party’s failure to do so, or to otherwise comply with the Privacy Act.

## 18. Cloud-based Accounting Packages and Software

18.1 In the event we use cloud-based accounting packages and software in providing our Services, you agree that we may use your information, including any of your personal information, as required to make use of these packages and software in providing our Services, and you acknowledge that your personal or other information used with the cloud-based accounting packages and software may be transferred overseas and held on overseas servers.

18.2 Where the accounting package or software is provided by a third-party software provider, you agree that:

- (a) Your information may be disclosed to an overseas recipient in circumstances where reasonable steps have not been taken to ensure that the overseas recipient does not breach the Australian Privacy Principles;
- (b) If these overseas recipients handle your information in breach of the Australian Privacy Principles, you will not be able to seek redress, under the Privacy Act;

- (c) These overseas recipients may not be subject to any privacy obligations or to any principles similar to the Australian Privacy Principles, and as such you may not be able to seek redress in such overseas recipient's jurisdiction; and
- (d) These overseas recipients may be subject to foreign laws that could require the disclosure of your information to third parties, such as an overseas Government or authority.

18.3 The Blaze Acumen Group will not be liable for any liability or loss of any kind arising from technical issues, access problems or data breaches that arise in the cloud-based accounting packages or software which are beyond our control.

## **19. Late Lodgement Penalties and Interest**

19.1 Penalties and interest for late lodgement of income tax returns can accumulate to significant amounts, even for non-taxable taxpayers. While we will monitor relevant time limits for lodgement of returns or dates for payment of tax, the responsibility rests with you to ensure that all information is supplied to us in a timely manner to enable the returns to be completed for lodgement within the relevant time frames. You acknowledge that the Blaze Acumen Group will bear no responsibility or liability for any late lodgement penalties or interest that may be issued by the ATO.

## **20. Advice to Individuals / Couples**

20.1 If you are individuals in a relationship, we will advise you and your spouse/partner on the basis that you are a family unit with shared interests. We may deal with either of you and may discuss with either of you the financial affairs of the other. If you wish to change these arrangements, please let us know.

## **21. Personal Superannuation Advice**

21.1 If you require personal superannuation advice which takes your personal circumstances into consideration (for example, contributions, pension commencements, pension commutations etc) we can provide this advice via our wholly owned subsidiary Complete Latitude, which holds a Limited AFSL licence with ASIC. Should you require the services of Complete Latitude this would be covered by a separate engagement letter issued by Complete Latitude.

## **22. Self-Managed Superannuation Fund Clients**

### **22.1 Class Super**

22.1.1 In order to attend to the compliance obligations for our Self-Managed Superannuation Fund (SMSF) clients we use Class Super as our preferred software administration provider.

22.1.2 You agree for us to use Class Super to attend to your SMSF compliance and administration obligations. You also agree, when possible, to assist us in ensuring all relevant data feeds are able to be established so that we are in a position to provide timely advice and to attend to regular reporting obligations within their required time frames.

### **22.2 Correspondence with SMSF's Auditor**

22.2.1 All SMSF financial statements are required to be audited. As part of our streamlined service to you we liaise directly with the auditor of your fund. This includes forwarding information to the auditor (including by email) and corresponding with the auditor in order to respond to the auditor queries. You agree for us to send all relevant documentation and information to the SMSF's auditor on your behalf.

## **23. Client monies**

23.1 We maintain a trust account for dealing with client monies on their behalf. We can only accept money into our trust account on your behalf if you have provided us with a written trust account authority letter which details the authority given to us in relation to that trust money.

## **24. General**

### **24.1 Definitions**

24.1.1 The Blaze Acumen Group – any entity which practices under a name which includes all or part of the name "Blaze Acumen" or which is represented to you as a Blaze Acumen entity. Complete Latitude Pty Ltd is a Blaze Acumen entity and included in these Terms of Business.

24.1.2 You – the client or taxpayer jointly and severally (or related entity of such) referred to in our Engagement Letter and includes all related entities established subsequent to the execution of this agreement.

### **24.2 Entire Agreement**

24.2.1 This Contract comprising the Engagement Letter together with Attachments including Terms of Business forms the entire agreement between us relating to the Services. It replaces and supersedes any previous proposals, correspondence, understandings or other communications whether written or oral.

### **24.3 Applicable Law**

24.3.1 Our engagement is governed by Victorian law. The courts sitting in that State will have non-exclusive jurisdiction in relation to any dispute between us.

### **24.4 Engagement Letter to take Precedence**

24.4.1 In the event of any conflict between these Terms of Business and the Engagement Letter, the Engagement Letter will take precedence.

### **24.5 Assignment**

24.5.1 Neither party may, nor have the power to, assign or otherwise deal with its rights or obligations under this Contract without the prior written consent of the other party, except that the Blaze Acumen Group may without consent assign or novate this Contract to a successor of the business of the Blaze Acumen Group to which this Contract relates.

### **24.6 Independence**

24.6.1 Should circumstances change and we are no longer permitted to provide a service to you because of independence rules or legislation, we reserve the right to vary our Engagement Letter with your agreement so that we and you would not be in breach of such rules or legislation or to terminate the relevant Services. Where an engagement is terminated for these reasons, you will pay for all Services provided up to the date of termination.

### **24.7 Notices to produce documents**

24.7.1 If we receive any legally enforceable notice or demand issued by a third party, including the Australian Securities & Investments Commission, Australian Taxation Office, Australian Stock Exchange, any government statutory body or instrumentality, or any court or tribunal in relation to or in connection with the Services you agree to pay our reasonable professional costs and expenses (including solicitor client expenses) in complying with or challenging any such notice or demand to the extent that our costs and expenses are not recovered or recoverable from the party issuing the notice or demand.

## **25. Force Majeure**

25.1 Neither of us will be liable to the other for any delay or failure to fulfil their obligations (other than an obligation to pay) under this Contract to the extent that any such delay or failure arises from causes beyond their control, including but not limited to fire, floods, acts of God, acts or regulations of any governmental or supranational authority, war, riot, terrorist activities, strikes, lockouts and industrial disputes.