



NewThink

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GENERAL TERMS AND CONDITIONS

These Terms and Conditions (**Terms**) relate to the as a client of NewThink "**You**" and govern your use of website (www.newthink.net.au), tools and us providing our consulting/training services "**Services**", provided by Amanda Rae Morey t/as NewThink (ABN 13957218458) "**we, us, our**".

If you have any questions about these Terms, please contact us in writing at info@newthink.net.au before engaging our services.

These Terms will come into effect when you accept our quote for Services and form a binding legal agreement between you and us.

1 ACCEPTANCE OF TERMS

- 1.1 These Terms and Conditions are integral to your engagement with New Think and our provision of the Services.
- 1.2 By paying any amount to us or otherwise engaging us in writing for Services, you acknowledge that you have read, understood, and agree to be bound to these Terms and Conditions and all related policies.
- 1.3 These Terms must be read together with all applicable documents including but not limited to NewThink's *Privacy Policy* (available via access at <https://newthink.net.au/privacy-policy>).
- 1.4 Any policies and codes of conduct provided to you do not form part of these Terms and do not constitute any contract between you and NewThink.

2 UPDATES TO TERMS

- 2.1 We reserve the right to update and change these Terms from time to time without notice. You may be requested to accept any updates prior to continuing engagement with our website and/or Services.
- 2.2 You will be subject to the Terms in force at the time you engage our Services.
- 2.3 Notwithstanding clause 2.1 we aim to provide at least 14 days' notice of any changes to these Terms.
- 2.4 If you continue to use NewThink Services after any changes take effect, or you otherwise indicate acceptance of the changes, you will be deemed to have accepted such changes.



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3 CHANGES TO WORK

- 3.1 Any requested changes to our Services, after you have accepted our Quote will incur additional charges or fees. We will provide a further estimate or quote for such work.
- 3.2 Any changes to work will be approved by you, in either in writing and by email or by your continued instructions regarding the additional work.

4 YOUR OBLIGATIONS

- 4.1 When we provide our Services, you agree to:
 - (a) Respond promptly to our communications regarding the Services.
 - (b) Comply with all applicable laws and regulations including those related to safety.
 - (c) Comply with these Terms and any associated agreements, policies, procedures, and codes of conduct, as outlined in Clause 1.
 - (d) Act in good faith; and
 - (e) Not use our Services for any illegal, fraudulent, harmful purposes, or in a manner that is contrary to these Terms and associated documents.
- 4.2 We may request that you provide us with responses, feedback, completed questionnaires, copy content, images, and other information to best deliver our Services. You agree to provide such information may affect our ability to provide the Services.

5 FEES AND PAYMENTS

- 5.1 The fees for our Services "**Fees**" are as indicated on our Quote, prior to your acceptance.
- 5.2 All Fees are in Australian Dollars (AUD).
- 5.3 All Fees are exclusive of GST.
- 5.4 You are liable to pay fees for Services provided to you, following acceptance of our quote.



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- 5.5 Despite our best-efforts additional fees may be required if the scope of work changes for reasons outside our control, at which time an amended quote will be provided.
- 5.6 Upon reasonable, written notice your approval to proceed with amended Services may be indicated by your continued instructions.
- 5.7 You agree that we may obtain approval for direct debit, for payment of Fees or any part thereof.
- 5.8 We reserve the right to modify, cancel and limit our Services at any time.
- 5.9 NewThink is not responsible or liable for additional bank charges you may incur.
- 5.10 If payment via credit facilities fails, you will be contacted to rectify the payment.
- 5.11 Interest may be charged on overdue invoices, at the rate of 1% per month. Our tax invoices will specify the interest rate applicable.
- 5.12 All invoices for completed Services are expected to be paid, in full, within 14 days providing our invoice to you.
- 5.13 A deposit, equivalent to 10% of the total quoted Fees is required within 14 days of acceptance of our Quote.

6. GENERAL INFORMATION / DISCLAIMER.

- 6.1 NewThink may record the provision of its Services, such as workshops. Specific notice of such recordings will be provided, and all recordings will be managed in accordance with the NewThink Privacy Policy.
- 6.2 Testimonials and examples of our Services, wherever published are not guarantees of equal service on every occasion.

7. YOUR PRIVACY

- 7.1 In accordance with our Privacy Policy, we will collect personal information from you while providing our Services. This may include credit related personal information, obtained from third party searches and investigations.
- 7.2 Your personal information will only be used for the purposes for which it is collected or in accordance with the *Privacy Act 1988* (Cth).



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7.3 We manage and protect your personal information in accordance with our Privacy Policy (available at <https://newthink.net.au/privacy-policy>). For more information, please contact us in writing.

8. CONFIDENTIALITY

8.1 NewThink will not disclose any Confidential Information except:

- (a) Where the information is in the public domain or moves into the public domain, other than by breach.
- (b) If the information is required to be disclosed under law.
- (c) Where the disclosure is permitted under these Terms or is required to give effect to these Terms.
- (d) If disclosure is made to our personnel to enable proper performance of obligations.
- (e) Where the disclosure is required for legal proceedings regarding these Terms; or
- (f) With written consent from the party to whom the information relates.

8.2 Definitions

Confidential Information means all information:

- (i) Relating to or arising from the Services.
 - (ii) concerning business operations, which any reasonable person would consider confidential (e.g trade secrets, client lists, pricing); and
- but does not include information that:
- (iii) is or becomes independently developed or known by a party through no breach of these Terms by that party; or
 - (iv) becomes publicly available, without breach of these Terms.

8.3 This clause survives termination or expiry of these Terms.



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9 INTELLECTUAL PROPERTY

- 9.1 Unless indicated otherwise, all materials on our site, application and other content prepared and/or distributed by us, are subject to copyright, trademark and other intellectual property rights owned by licensed by NewThink.
- 9.2 You acknowledge that we may seek injunctive relief to prevent violations of intellectual property rights.
- 9.3 This clause survives termination of these Terms.

10 RIGHT TO SUSPEND, TERMINATE AND REFUND

- 10.1 We have the right to suspend or terminate your use of the Services for breach of these Terms or any reason we consider appropriate.
- 10.2 Either party may terminate the Services by providing to the other party a minimum of 5 days' written notice. Where such notice of termination is provided you may:
 - (a) retain our Services during this period; or
 - (b) make a payment in lieu of notice.
- 10.3 Despite termination NewThink will hold and manage all personal information in accordance with its Privacy Policy.
- 10.4 Termination does not release a party from any accrued liability.
- 10.5 If you terminate our services early outstanding fees for those services are payable. We will issue an invoice for all work completed up to the end of the Notice Period.
- 10.6 Refunds are not provided except in accordance with the Australian Consumer Law, as set out in Schedule 2 to the *Australian and Competition Act, 2010* (Cth) and its regulations or our Cancellation Terms (Clause 5).
- 10.7 Refund requests will be assessed on a case-by-case basis considering the costs associated with each service.

11 LIABILITY

- 11.1 Nothing in these Terms excludes the application of the Competition and Consumer Act 2010 (Cth) including the Australian Consumer Law. If you are a "consumer" as defined in the Australian Consumer Law, the consumer guarantees under the



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Australian Consumer Law apply in addition to other rights and remedies under applicable laws.

- 11.2 If we are liable to you for a failure to comply with a “non-excludable” guarantee that under the Australian Consumer Law, our total liability is limited, at our option, to the resupply of the Services or the payment of the cost of resupply.
- 11.3 If you are a Small Business, as defined in the Australian Consumer Law, our liability is limited to the extent permitted by law to:
 - (a) supplying of the Services again; or
 - (b) payment of the cost of having the Services supplied again.
- 11.4 We exclude any liability for any personal injury (including death), property damage, or any special, indirect or consequential loss arising under or in connection with these Terms, including loss of profits, loss of sales or business, loss of production, loss of agreements, loss of business opportunity, loss of anticipated savings, loss of, or damage to, goodwill or reputation or loss of use or corruption of data or information.
- 11.5 You agree that any legal remedy or liability for actions or omissions of any other parties will be limited to claims against those other parties. Unless prevented by applicable law, you agree not to seek any legal remedy from NewThink to the extent that NewThink did not cause or contribute to the harm.
- 11.6 You agree to indemnify and keep indemnified NewThink against all reasonable loss or damage suffered or incurred as a result of claims by third parties arising from or in connection with your misuse of our Services where such claims arose from your acts or omissions.
- 11.7 This clause applies to the fullest extent permitted by law and survives termination of these Terms.

12 NON-EXCLUSIVITY

- 12.1 You acknowledge and agree that we may provide our services to other clients in the same or similar industry as you, provided there is no conflict of interest.
- 12.2 We do not provide our Services on an exclusive basis.



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12.3 We will protect the confidential information you provide us and in accordance with our privacy policy.

13 **FORCE MAJEURE**

13.1 We are not liable for any Loss incurred by you because of our failing or being prevented, hindered, or delayed in the performance of our obligations under these Terms where such prevention, hindrance, or delay results from a Force Majeure Event.

13.2 The performance of the affected obligations will be resumed as soon as practicable after such Force Majeure Event is removed or has ceased.

13.3 References to a Force Majeure Event in this clause mean events, circumstances, or causes beyond a party's reasonable control including (but not limited to):

(a) strikes, lockouts or other industrial action.

(b) civil commotion, riot, invasion, cyber-attack, service attack, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war.

(c) fire, explosion, storm, flood, earthquake, subsidence, or other natural disaster.

(d) epidemic, pandemic, health emergencies, disease.

(e) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.

(f) interruption or failure of utility services (including the inability to use public, private telecommunications networks, servers, or third-party hosting platforms); and

(g) the acts, decrees, legislation, regulations, or restrictions of any Government Agency.

13.4 References to Loss in this clause means: any loss, liability, cost, charge, expense, Tax, Duty, or damage of any nature whatsoever, including special, incidental, or consequential damages, losses, or expenses (howsoever arising or caused, including, without limitation, negligence).



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14 SEVERABILITY

- 14.1 If any provision of these Terms is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms, which shall remain in full force and effect.

15 NO ASSIGNMENT

- 15.1 You cannot transfer or assign your rights in accordance with these Terms, including any membership or registration with us, without our prior written consent.
- 15.2 We may assign or transfer our rights and obligations under these Terms at any time, without prior notice.
- 15.3 These Terms shall be binding on and shall inure to the benefit of all successors and permitted assigns and personal representatives (as the case may be) of each of the parties.

16 DISPUTE RESOLUTION

- 16.1 If you have any complaint or dispute arises in relation to these Terms and/or our Services, this will be dealt with in accordance with this clause and/or any other relevant part of these Terms.
- 16.2 In the case of any complaint, dispute or claims against us, all notices are to be provided to info@newthink.net.au
- 16.3 We will address each complaint in an independent, objective, and unbiased manner, with a view to a fair and reasonable outcome while always respecting privacy.
- 16.4 Except in relation to a complaint under the Consumer Legislation or as required by any other law, you understand and agree that any complaint, claim or dispute in relation to a Services, including applicable fees, must be filed within twenty-one (21) days of the provision of Services. You acknowledge and accept that any claim, complaint, or dispute filed outside this period will not be considered by NewThink. resolved by agreement within five business days of the Second Party receiving the notice referred to above, either party may refer the matter to the relevant state Office of Fair Trading, or ACCC, for consideration.



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- 16.5 If we are unable to resolve your complaint, claim or dispute within three business days of receipt, we will provide you with a contact person and an estimated period for resolving your complaint. We seek to resolve most complaints within fourteen business days after receiving it and will otherwise advise you if further time is required.
- 16.6 We will notify you of the outcome of any claim, complaint, or dispute, by your nominated preferred means of communication.
- 16.7 We may retain a recording or copies of any claim, complaint, or dispute for the purpose of identifying steps and measures that may be taken for future prevention of similar issues and training of our staff.
- 16.8 Nothing in this clause prevents a party from commencing proceedings seeking costs assessment, if, in that party's reasonable opinion, it is necessary to protect their rights.

17 APPLICABLE LAW

- 17.1 These Terms shall be guided and governed by the laws of New South Wales and/or Australia.
- 17.2 You consent to the exclusive jurisdiction of the courts in New South Wales, Australia to determine any matter or dispute which arises between us.

18 NOTICES

- 18.1 Notices to us must be sent to info@newthink.net.au Notices to you will be sent to the email address provided by you or via a method specified in these Terms.
- 18.2 Notices are deemed to be received:
 - (a) If sent by email, at the time of receipt or within 24 hours, whichever is earlier, unless a non-delivery report is received; or
 - (b) If delivered in person, on the day of delivery.

19 YOUR FEEDBACK

- 19.1 We welcome enquiries or feedback on our website and/or Services. Unless specifically stated by you, we shall treat any information you provide us with, as non-proprietary and non-confidential. Please see our Privacy Policy for further details.
- 19.2 If you have questions or comments regarding this Site or our services, please email us at info@newthink.net.au