

# ACCURIUM – GENERAL TERMS AND CONDITIONS

November 2021

## 1. BACKGROUND

1.1 These Terms and Conditions govern the:

- (a) access and use of Certificate Services offered by Accurium Pty Limited (ABN 13 009 492 219) of Level 8, 1 Chifley Square, Sydney NSW 2000 (**Accurium**) via its secure online Portal (**Certificate Services**) and
- (b) the provision of any technical services provided by Accurium including any technical materials, calculators, phone or email support (the **TechHub Services**).

1.2 By registering and logging into the Portal, you and any of your nominated representatives are deemed to accept and be bound by these Terms and Conditions as well as the general Conditions of Use (**Conditions of Use**) of the Accurium website (**Website**).

1.3 You should read these Terms and Conditions along with the Website Conditions of Use and any other terms, notices or disclaimers contained elsewhere on the Website carefully before registering for our Portal or Services.

## 2. DEFINITIONS

2.1 In these Terms and Conditions, the words defined below as well as words in brackets and bolded are defined terms:

- (a) **Active Certificate Client** means an Office who has met our Minimum Certificate Order Requirements and has not signed up to an alternative Certificate provider.
- (b) **Administrator** means a person nominated by an Office to have administrative functionality in relation to Portal access, including the right to add new Users and amend payment details.
- (c) **Business Day** means a day that is not a Saturday, Sunday or declared public holiday in Tasmania.
- (d) **Certificate** means an actuarial certificate supplied by Accurium via the Portal for the purpose of section 295-390(4) of the Income Tax Assessment Act 1997.
- (e) **Certificate Client** means an Office who accesses our Certificate Services only.
- (f) **Office** means a person (or persons) who accesses our Services. An Office may be a TechHub Services Client or a Certificate Client or both.
- (g) **Minimum Certificate Order Requirements** means the minimum certificate order requirements considered by Accurium (in its sole and absolute discretion) to be sufficient for Accurium to grant an Office access to the TechHub Services at no additional charge.
- (h) **Portal** means our customer portal used by Offices to access Certificates and other Services.
- (i) **Service** means either Certificate Services or the TechHub Services or other goods and services offered by Accurium via the Portal or otherwise from time to time.
- (j) **TechHub Services** means the provision of any technical services provided by Accurium including any technical materials, calculators, phone or email support.
- (k) **TechHub Services Client** means an Office who access our TechHub Services only.
- (l) **User** means, an individual relating to an Office who registered on the Website to use one or more Services. Each User has a unique login and password for the Website.
- (m) **Website** means the Accurium website, [www.accurium.com.au](http://www.accurium.com.au)

## 3. THE PORTAL

3.1 To become a User, a person (either individually or on behalf of an Office) must complete the

registration details in the manner described on the Website. Subject to clause 3.2 registration and access to the Portal is non-transferable.

- 3.2 Accurium may from time to time merge or transfer registrations in its absolute discretion, for instance where there are multiple User registrations for a single Office or where two Offices have merged.
- 3.3 The User may create separate user profiles for representatives of an Office, including a director, officer, employee, agent, contractor or professional adviser (**Representative**) to enable access to the User's account using a unique identification code and password (**User ID**).
- 3.4 Accurium reserves the right to introduce or vary any fees or payments associated with the Portal at any time. Goods and services purchased through the Portal are also subject to specified Fees.
- 3.5 Each User is permitted to access and use the User's dashboard and any other dashboard within the Portal which display the User's transactions (**Records**) via the Portal and allow the User to:
  - (a) view all Certificate and other applications for Services submitted to Accurium by the User;
  - (b) review the status of Certificate applications;
  - (c) save incomplete Certificate applications for future retrieval;
  - (d) view details of each submitted application, including which User profile submitted the Certificate application (if applicable);
  - (e) apply for a Certificate amendment or update to an existing application;
  - (f) retrieve the final versions of Certificates and other documents ordered via the Portal;
  - (g) retrieve invoices or receipts relating to the User;
  - (h) arrange recurring transactions to pre-fill information for the next financial year or to reflect amendments or updates;
  - (i) through the "My Account" feature, invite other people to access the Portal; and
  - (j) access other facilities provided by Accurium on the User's dashboard and any other dashboard within the Portal from time to time.
- 3.6 Each Office may appoint a person with special administrative access (**Administrator**). The Administrator is permitted to, in respect of that Office:
  - (a) administer all User IDs, add or revoke additional Users or Administrators;
  - (b) manage registration details, including contact information, email addresses, postal addresses, the User's corporate name and ABN, and any other information required by Accurium from time to time; and
  - (c) manage paid and unpaid invoices in respect of the User, including registered credit card information for the purposes of payments via the Payment Express facility.

#### 4. SECURITY

- 4.1 The User is solely responsible for the use, supervision, management and control of the Records accessed via their account. The User must ensure that the Records are protected at all times from any form of unauthorised access, use or disclosure.
- 4.2 The User must take all reasonable steps to avoid unauthorised access to, or use of, the Portal, including by implementing appropriate internal policies and procedures regarding security.
- 4.3 The User is responsible for the confidentiality of their respective passwords (including but not

limited to changing passwords from time to time and not releasing the information to third parties). The User must notify Accurium immediately if the User becomes aware of, or has any reason to believe, that there is any unauthorised use of the User's account or any other breach of security.

4.4 Accurium reserves the right to suspend access or change access to the User's account upon notification by or on behalf of the User that any password has been lost, stolen or otherwise compromised.

4.5 Each User acknowledges and accepts that any person accessing the Portal leaves an auditable trail, including:

- (a) the date, time and duration of access; and
- (b) the Records viewed,

and Accurium reserves the right to conduct audits in relation to access to the Portal from time to time, including as to whether or not any document accessed was printed, saved or transmitted.

## **5. SERVICES**

### **5.1 Certificate Services**

- (a) Accurium will prepare and supply the relevant Certificate Service within the time specified on the Website or the Portal (or a reasonable time if no time is specified), in reliance on the information submitted by an Office during the application process.
- (b) Once an application is made for a Certificate Service, an Office cannot cancel the application or assign its interests under these Terms and Conditions without Accurium's express consent.
- (c) For the avoidance of doubt, Accurium may in its absolute discretion vary the Certificate Services offered from time to time. The available Services will be specified on the Website or Portal (as appropriate).

### **5.2 TechHub Services**

- (a) Accurium will provide the relevant TechHub Service within the time specified on the Website or the Portal.
- (b) TechHub Services are provided either:
  - (i) For TechHub Services Clients, for a fee of \$200 per calendar month (plus applicable GST); or
  - (ii) For Active Certificate Clients, at nil cost. For the avoidance of doubt, nil costs charged are done in the sole and absolute discretion of Accurium.
- (c) For the avoidance of doubt, Accurium may, in its absolute discretion, vary the TechHub Services offered and/or Fees charged from time to time. The available Services will be specified on the Website or Portal (as appropriate).

## 6. PAYMENT

- 6.1 For the avoidance of doubt, each Office is responsible for the payment of all Fees. Unless otherwise agreed by Accurium, the amounts payable for the relevant Service (**Fees**) are specified on the Website or the Portal and are **payable by the Office**:
- (a) immediately upon placement of any order, by credit card; or
  - (b) within fourteen (14) days of receipt of a tax invoice, generated upon delivery of the Service by Accurium, and addressed to either the Office or a trustee; or
  - (c) if a bulk billing facility has been agreed with Accurium, within fourteen (14) days of receipt of a tax invoice statement, generated at the end of each calendar month, and addressed to the Office; or
  - (d) At its absolute discretion, Accurium may agree alternative payment terms with an Office.
- 6.2 The Office acknowledges and accepts that any credit card information provided by the Office in accordance with clause 6.1(a) will be collected the by Windcave facility and is subject to, but not limited to, the terms and conditions available at the Windcave website:  
<https://www.windcave.com/Document/AU-Terms%20and%20Conditions.pdf>
- 6.3 If the Office does not pay the Fees within the specified timeframe, then without prejudice to any other right or remedy available to Accurium, Accurium may:
- (a) withhold any Services ordered until such default is corrected;
  - (b) reject any further orders from the Office until such default is corrected;
  - (c) charge the Office interest on the unpaid amount at the interest rate of the Reserve Bank of Australia cash rate plus 2 percentage points per annum, compounded daily, until payment is received in full. The Office must pay the interest (if any) to Accurium within fourteen (14) days of receipt of a written demand from Accurium;
  - (d) contract a debt collection agency to pursue the Office for unpaid amounts; and/or
  - (e) terminate or suspend access to the Portal in whole or in part in accordance with clause 8.1.
- 6.4 Accurium may vary the Fees from time to time in its absolute discretion, such variations to take effect one month from the date that the revised Fee being specified on the Website or Portal.
- 6.5 To the extent permitted by law, Accurium may, in its absolute discretion, decide to accept or reject a refund request or payment change request. No refunds will be given for change of mind.

## 7. ACKNOWLEDGMENTS

- 7.1 Each Office acknowledges that:
- (a) Accurium is not responsible for any problems, failures or technical malfunctions of any telephone lines or networks, online computer systems, servers or providers, computer equipment, software, or any other object or material, related to the Office's use of the Portal;
  - (b) no data transmission over the internet can be guaranteed as totally secure and any information the Office submits via the Portal is transmitted at the Office's own risk;
  - (c) the Services are provided on an "as is" basis with all faults and without warranty of any kind to the extent permitted by law;
  - (d) the Office is solely responsible for any and all activities and transactions performed under the Office's account, including by or on behalf of any Representative; and
  - (e) Accurium is in no way responsible or liable to the Office in respect of any loss or damage caused to the Office for decisions made on the basis of the Office's Records.
- 7.2 The Office must ensure that the information supplied by the Office (including any credit card details) are at all times up to date, accurate and not misleading. Accurium relies on the accuracy and completeness of information submitted by or on behalf of the Office in the delivery of the Services.

## 8. TERMINATION

- 8.1 Without limitation to any other right or remedy it may have, Accurium reserves the right to terminate or suspend access to the Portal in whole or in part, or to a Service, at any time without notice and without giving any reason.
- 8.2 An Office may terminate their access to the Portal or a Service at any time by contacting Accurium by telephone on 1800 203 123 or by email on [enquiries@accurium.com.au](mailto:enquiries@accurium.com.au).
- 8.3 Where access to the Portal is terminated or suspended, the relevant Office must pay to Accurium any outstanding fees incurred by, or on behalf of, the relevant Office as at the date of termination or suspension (as applicable).
- 8.4 Termination of an Office's access to the Portal will not affect the accrued rights and remedies of either party.

## 9. RELEASE AND INDEMNITY

- 9.1 Accurium is in no way responsible for inaccurate or incomplete information supplied by an Office. Accurium does not accept any responsibility for any use or misuse by an Office of Records or content submitted by or on behalf of an Office.
- 9.2 Each Office unconditionally releases Accurium from any liability, claims, demands or damages of any kind arising out of or in connection with any use of or access to the Portal by each Office or any action taken or reliance upon any information provided by or on behalf of each Office.
- 9.3 Each Office indemnifies and holds harmless Accurium, its directors, officers, employees, agents (those indemnified) in respect of any loss, damage, costs or expenses suffered or incurred by those indemnified (including reasonable legal costs for investigating or defending any claim) related to or arising from:
- (a) an Office's breach of these Terms and Conditions, the Conditions of Use or any applicable law;
  - (b) any defect in a Service as a result of inaccurate, incomplete, incorrect or otherwise defective information submitted by or on behalf of the relevant Office;
  - (c) any unauthorised acts, fraud, wilful default, dishonesty or negligence of the relevant Office; or
  - (d) any access to or use or misuse of the Records or the Portal by the relevant Office.

## 10. LIMITATION OF LIABILITY

- 10.1 To the fullest extent permitted by law, Accurium disclaims:
- (a) all liability (including any indirect, special, incidental or consequential damage or loss) suffered or incurred by any person, whether directly or indirectly by reason of any use or misuse of, or reliance upon, the Portal or any Service, or any of the information on the Portal or a Service being inaccurate, incomplete, incorrect or misleading or deceptive, regardless of whether Accurium was aware or should have been aware of the possibility of such loss or damage; and
  - (b) any express or implied term, condition, guarantee, statutory or other warranty relating to the Portal or a Service, including but not limited to warranties and guarantees of acceptability, compliance with description, correspondence with sample, merchantability or fitness for purpose.

## 11. PRIVACY

- 11.1 For the purpose of this section:

**Personal Information** means all information about a person which is "personal information" as defined in the Privacy Legislation.

**Privacy Legislation** means the *Privacy Act 1998 (Cth)* and any other legislation, principles, industry codes and policies relating to the handling of Personal Information.

- 11.2 Each Office must comply at all times with all Privacy Legislation in respect of Personal Information collected, used, disclosed or submitted via the Portal.
- 11.3 Each Office consents to Accurium using any information provided or submitted by or on behalf of the relevant Office via the Portal, including any Personal Information, for the purpose of operating its business and for the purpose of offering goods and services to that Office.
- 11.4 Each Office also acknowledges and agrees that:
- (a) Accurium may use any Personal Information submitted via the Portal for statistical analysis and internal research purposes;
  - (b) if an Office provides Accurium with Personal Information about third parties who are individuals:
    - (i) the Office must ensure that the third parties are given information about the identity of Accurium and how Accurium handles Personal Information, including that they can contact Accurium to get access to their Personal Information; and
    - (ii) the Office warrants that the third party has consented to the disclosure of its Personal Information to Accurium, and to receiving communications regarding Accurium's Services.
- 11.5 Each Office should also refer to the Accurium Privacy Policy for further information about how we collect, use, maintain and disclose Personal Information.

## 12. DISPUTE RESOLUTION

- 12.1 If any dispute or difference arises in connection with these Terms and Conditions, then the parties will use their best endeavours to resolve the dispute or difference in accordance with this clause before initiating any court proceedings. This may include referring the dispute to senior management of each party.
- 12.2 If the parties cannot resolve a dispute within ten (10) Business Days of one party notifying the other of the existence of the dispute, the parties agree to mediate the dispute as follows:
- (a) by agreeing the appointment of a mediator within ten (10) Business Days or if the parties cannot agree on the identity of a mediator, the mediator is to be appointed by the President of the Law Society of Tasmania or the President's nominee within ten (10) Business Days thereafter;
  - (b) the mediation is to be held within ten (10) Business Days of the appointment of the mediator, unless otherwise agreed; and
  - (c) the parties will pay equal shares of the mediator's fees.
- 12.3 If the mediation does not proceed within the agreed timetable or is not successful in resolving the dispute, the parties shall be entitled to refer the dispute to an appropriate Court or Tribunal in Tasmania.
- 12.4 Nothing in this clause 12 prevents a party from seeking urgent interlocutory relief.

## 13. GST

- 13.1 In this clause 13:
- (a) **GST Law** has the meaning in *A New Tax System (Goods & Services Tax) Act 1999 (Cth)* and Regulations and any other similar or related Act or Regulation; and
  - (b) **taxable supply, tax invoice, recipient, supplier** and **supply** have the same meaning as defined in the GST Law.
- 13.2 Unless otherwise provided for in these Terms and Conditions or stated on the Website, any amount payable pursuant to these Terms and Conditions is expressed exclusive of GST.
- 13.3 If a supply made pursuant to these Terms and Conditions (or otherwise through the Website or the Portal) is a taxable supply, the recipient shall pay to the supplier, an additional amount equal to any GST payable on that supply in addition to and at the same time as any other amount that may be payable by the recipient to the supplier for that supply pursuant to these Terms and

Conditions, or otherwise on demand. The supplier will make available to the recipient a valid tax invoice in the form prescribed by the GST Law no later than ten (10) Business Days of such taxable supply.

#### **14. GENERAL**

- 14.1 Each party must do everything necessary or reasonably required by another party to give full effect to the purposes, and transactions contemplated by, these Terms and Conditions.
- 14.2 These Terms and Conditions may be amended by Accurium at any time, such amendments to take effect ten (10) Business Days after posting of the amendments on the Website.
- 14.3 Any notice required under these Terms and Conditions shall be served on an Office in writing to the email contact details nominated by that Office on registration.
- 14.4 The relationship between the parties is and will remain that of independent contractors, and nothing in these Terms and Conditions constitutes the parties as partners or joint ventures or constitutes any party as the agent of another party or gives rise to any other form of fiduciary relationship between the parties.
- 14.5 Any waiver of any provision of these Terms and Conditions is ineffective unless it is in writing and signed by the party waiving its rights. The failure of any party to enforce at any time any of the provisions of these Terms and Conditions must not be interpreted as a waiver of such provision.
- 14.6 If any provision of these Terms and Conditions is prohibited, invalid or unenforceable in any jurisdiction, that provision will, as to that jurisdiction, be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

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