

## 1. PURPOSE OF THIS DOCUMENT

- 1.1 This document concerns the right of relevant persons to receive Services concerning the *Export Growth China* program and the terms and conditions upon which NSWBC supplies or procures the supply of those Services to you.
- 1.2 To the extent permitted by law and subject to clause 12.6, we reserve the right at any time to vary the terms of this Agreement and/or the nature or extent (including exclusions and inclusions) of the Services and the *Export Growth China* program. Any such changes will appear on the Platform at [www.exportgrowth.com.au](http://www.exportgrowth.com.au).

## 2. EXPORT GROWTH CHINA PROGRAM

- 2.1 The *Export Growth China* program is a service whereby we will procure the promotion and representation of your products and/or services (as may be agreed by us) at the Shanghai Showroom and on the Showroom Platform.
- 2.2 The Service includes; the presentation of your accepted good(s) and/or service(s) in the Shanghai Showroom for a 6 month and any agreed extended rotation period;
- 2.2.1 the promotion of your accepted good(s) and/or service(s) via relevant Platform and/or digital media as we think fit;
- 2.2.2 Buyer Matching during such 6 month and any agreed extended rotation period; and
- 2.2.3 the provision to you of a Product Research Report at the end of the relevant 6 month rotation period.
- 2.3 The rotation period may be extended if we agree to a maximum of 1 year, subject to the payment of additional Fees.
- 2.4 We do not (subject to clause 12):
- 2.4.1 guarantee a buyer for goods and/or services but we will use reasonable endeavours to seek opportunities for the export trade of your goods and/or services which are accepted into the *Export Growth China* program; or
- 2.4.2 accept any liability for the infringement by you (or by us in connection with the provision of the Services to you) of the Intellectual Property Rights of any person or for any misrepresentation or incorrect, misleading or negligent description of your goods and/or services or how they may be used.
- 2.5 Subject to clause 12, you agree that we are neither responsible nor liable for any acts, omissions or decisions made by you in relation to the *Export Growth China* program or in connection with the Services.

## 3. ACCEPTANCE CONDITIONS

- 3.1 The pre-requisites to the provision by us of the Services contemplated by clauses 2.2.1 to 2.2.4 and acceptance into the *Export Growth China* program (which is in our sole discretion) includes:
- 3.1.1 the completion by you of the online assessment via the Platform at [www.exportgrowth.com.au](http://www.exportgrowth.com.au);

3.1.2 that you are a financial member of any Chamber of Commerce within Australia at the time of the online assessment and for the duration of the provision of the Services to you; and

3.1.3 such further requirements from time to time determined by us as we think fit.

3.2 The online assessment (which comprises an Application for the purposes of this Agreement) is to enable you to provide to us information relevant to your good(s) and/or service(s) and your business as well as enable us to consider and determine the export potential of your relevant good(s) and/or service(s), as well as to facilitate translation at an appropriate juncture into Chinese of relevant information.

3.3 As part of the this assessment process and Application you must:

3.3.1 provide all attributes and accurate information concerning the relevant goods and/or services which you would like to be considered for inclusion in the *Export Growth China* program;

3.3.2 answer all questions truthfully, honestly and not omit any information that may render any answer or information misleading;

3.3.3 disclose all information that may be material to our decision to accept your participation in the *Export Growth China* program; and

3.3.4 do all other things requested by us from time to time.

3.4 As a result of the assessment process you will be provided with the provision to you of an Export Readiness Report.

3.5 Refusal of acceptance into the *Export Growth China* program may be due to various reasons such as, without limitation:

3.5.1 misrepresentation or non-disclosure;

3.5.2 that the importation into or promotion of relevant goods and/or services into or in the PRC is not lawful or restricted, inadvisable, uneconomic or contrary to the objectives and purposes of the *Export Growth China* program or our policies, processes or requirements from time to time;

3.5.3 the production of an Export Readiness Report is deemed by us to be not acceptable for any reason or that the *Export Growth China* program is not suitable for you.

3.6 We may decline or refuse (without giving any reason) the provision of all or some of the Services to you.

3.7 In no circumstances may you use or benefit from the Services if you have not paid in full all amounts when due for the provision of the relevant Services by credit card directly to us via the Platform at [www.exportgrowth.com.au](http://www.exportgrowth.com.au) or been issued an invoice or receipt by us or our approved resellers or distributors for the *Export Growth China* program.

## 4. YOUR OBLIGATIONS

4.1 You will comply with the terms of use of this Agreement and will not:

4.1.1 misrepresent your goods and/or services;

4.1.2 fail to provide all information reasonably requested by us in respect of your goods and/or services; and

4.1.3 comply at your cost with all relevant laws (including the laws of the PRC) as may be applicable.

4.1.4 You are responsible for configuring your own IT, computer programs and platforms in order to access or use the Services (as may be relevant).

## 5. USE OF THE PLATFORMS

5.1 By using the Platforms, you agree to the Platform Access Conditions.

5.2 This document comprises Product + Services Conditions for the purposes of the Platform Access Conditions.

5.3 Notwithstanding any other provision in this Agreement, we reserve the right to change, suspend, remove, or disable access to the Platforms, or other materials comprising a part of the Platforms at any time without notice. In no event will we be liable (subject to clause 12) for making these changes. We may also impose limits on the use of or access to certain or all features or portions of the Platform, in any case and without notice or liability. Subject to clause 12, we may withdraw the *China Export Program* or prevent you (permanently or on a temporary basis) from benefitting from the provision of Services at any time without notice.

5.4 If you fail, or we suspect on reasonable grounds that you have failed, to comply with any of the provisions of this Agreement, we, at our sole discretion, without notice to you may preclude access to the Platforms (or any part of them).

## 6. FEES PAYABLE

6.1 You shall pay to us (or a relevant authorised reseller or distributor) all Fees when required.

6.2 The Fees are detailed on the Platform at [www.exportgrowth.com.au](http://www.exportgrowth.com.au) or any other relevant document, brochure or communication in writing sent or provided to you in (including by email).

6.3 In the event that any payment is not received by us (or a relevant authorised reseller or distributor) within the specified time period, we shall be entitled to withhold or suspend Services and any collateral services until such payment is received.

6.4 In the event that any payment by you is not made when due and payable to us, interest on any unpaid amount shall accrue at the rate of 1.5% per month (18% *per annum*) during the period of non-payment, or such lower rate as may be the maximum rate permitted under applicable law.

6.5 We may pay commissions or other amounts to authorised resellers, distributors or other persons in connection with this Agreement.

## 7. PRIVACY + DISCLOSURES

7.1 You acknowledge and agree that (despite any provisions to the contrary in our Privacy Policy) we may provide all information (including any

personal information), documents, marketing materials, video material, samples and other things provided by you to us in connection with this Agreement and the *Export Growth China* programs to our Affiliated Entities and prospective buyers or potentially interested persons or buyers in the PRC or elsewhere.

7.2 You agree to comply with our Privacy Policy.

## 8. LEGAL SERVICES

8.1 Except as may be provided under a separate legal services agreement entered into by you directly with Australian Business Lawyers & Advisors, being a law firm which is an Affiliated Entity of NSWBC, we will not procure or provide any legal advice for or to you in connection with the export of your goods and/or services to or the use or promotion of the same in the PRC or elsewhere or otherwise.

## 9. TRANSLATION SERVICES

9.1 Translation services are not included in the Services except as stated on the Platform at [www.exportgrowth.com.au](http://www.exportgrowth.com.au) or in any other relevant document, brochure or communication in writing sent or provided to you in (including by email).

## 10. SAMPLES

10.1 Acceptance into the *Export Growth China* program requires the provision to us by you of samples of your goods or a video representation of your relevant goods and/or services (as may be applicable) as we may require. There are certain size restrictions for samples of goods as well as requirements with respect to video presentations in respect of goods of a certain size. These requirements may be found on the [www.exportgrowth.com.au](http://www.exportgrowth.com.au) Platform. You must comply with such requirements from time to time.

10.2 All samples must arrive at the Shanghai Showroom 3 weeks prior to your scheduled launch rotation.

10.3 The sample shipment is at your cost.

10.4 You will be required to advise us of your proposed sample shipment date(s).

10.5 On receipt of samples by our Affiliated Entity at the Shanghai Showroom, your client dashboard on the [www.exportgrowth.com.au](http://www.exportgrowth.com.au) Platform will be updated.

10.6 The provision of the samples is on the basis that they are gifted to us by you for use in relation to the *Export Growth China* program.

10.7 At the end of the Term, or beforehand if we think fit, we may destroy or dispose of the samples provided by you for any reason. An environmentally friendly disposal method will be used where practicable, subject to the laws of the PRC and relevant circumstances.

10.8 We may agree to return samples to you (subject to payment of relevant Fees) and for that purpose will require you to provide return shipping account details.

10.9 All risks in the samples shall remain with you, until receipt of them by our Affiliated Entity at the Shanghai Showroom. Where samples are returned to you, all risks in samples so returned shall pass to you upon dispatch from the Shanghai Showroom.

10.10 We may arrange shipping insurance for you

at your request and subject to payment of relevant Fees.

10.11 We will provide inventory information as reasonably requested during the Shanghai Showroom rotation.

10.12 You are responsible for shipping replacement/ additional samples if required by us due to potential buyer/distributor interest.

10.13 We reserve the right to deny sample products a particular display space.

10.14 During the promotion of your goods and/or services, feedback will be provided to you via the Platform at [www.exportgrowth.com.au](http://www.exportgrowth.com.au) or via email, telephonic or digital means.

10.15 If your goods and/or services do not receive interest from potential buyers, wholesalers or distributors or any other distribution channel we will not accept responsibility for such outcome but written feedback will be provided at the end of the 6 month (or other longer agreed) rotation period in the form of a Product Feedback Report.

## 11. WARRANTIES + REPRESENTATIONS

11.1 We give you no warranty that the Services and our means of delivering them are compatible with your computer configuration.

11.2 Subject to the provisions of this Agreement, we warrant that your permitted use of the Platform at [www.exportgrowth.com.au](http://www.exportgrowth.com.au) will not infringe upon any person's Intellectual Property Rights.

11.3 We do not (subject to clause 12 and any relevant laws) warrant that:

11.3.1 the Platform at [www.exportgrowth.com.au](http://www.exportgrowth.com.au) is error-free or that such errors or defects may be corrected;

11.3.2 use of or performance of the Platform at [www.exportgrowth.com.au](http://www.exportgrowth.com.au) will be uninterrupted;

11.3.3 the functions of the Platform at [www.exportgrowth.com.au](http://www.exportgrowth.com.au) will operate in combinations selected by you;

11.3.4 the results obtained from the *Export Growth China* program or use of the Services will be in accordance with your expectations; or

11.3.5 that the *Export Growth China* program or use of the Services will be fit for your purposes.

11.4 The interpretation of any statement contained in any warranty or representation in this Agreement will not be restricted by reference to or inference from any other statement contained in any other warranty or representation.

## 12. STATUTORY GUARANTEES + LIMITATION OF LIABILITY

12.1 Certain provisions of the *Competition and Consumer Act 2010* (Cth) and State, Territory or Commonwealth laws in Australia, as amended or replaced from time to time (collectively, **ACL**) provide consumers (as that expression is used in the ACL) and others with certain statutory rights in relation to goods and/or services acquired by those persons (collectively, the **consumer guarantees**).

12.2 Nothing in this Agreement excludes, restricts

or modifies or purports to have the effect of excluding, restricting, limiting or modifying any condition, warranty, term or consumer guarantee specified or contemplated by the ACL or our liability under any such condition, warranty, term or guarantee or gives rise to any liability on our part or qualifies our liability in each case to the extent the same is unlawful or not permitted.

12.3 Subject to clauses 12.2 and 12.5, we do not give any guarantee, indemnity or warranty or make any representation of any kind, express or implied, with respect to the supply by us of any goods or services to any person, except as expressly set out in clause 11.2 of this Agreement.

12.4 Subject to clauses 12.2 and 12.5, our aggregate liability for breach of or liabilities under or in respect of or in connection with this Agreement and our duties at law and in equity (however arising) whether in contract, tort (including without limitation negligence), under statute, at common law, under any indemnity or guarantee and on any other basis is limited at our option to:

12.4.1 in the case of goods - the replacement of the goods, the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods; or

12.4.2 in the case of services - the supply of the services again or the payment of the cost of having the services supplied again.

12.5 In no circumstances, but subject to clauses 12.2 and 12.6, will we be liable for any indirect or special or consequential loss or damage arising out of, in connection with or relating to the performance, breach, termination or non-observance of this Agreement. Each Party agrees that loss of profits, revenue, goodwill, bargain, opportunities, loss or corruption of data or loss of anticipated savings however and whenever occurring, will constitute indirect or special or consequential loss or damage and none are in the contemplation of the Parties.

12.6 If section 23 of the ACL applies to any provisions in this Agreement, any such provision(s) shall be void to the extent it is unfair within the meaning of section 24 of the ACL.

## 13. INDEMNITY

13.1 You indemnify and shall keep us indemnified against any and all losses, claims, damages, liabilities, expenses arising, directly or indirectly, in relation to:

13.1.1 a breach of this Agreement by you;

13.1.2 damage to goods or property;

13.1.3 death or personal injury of any person;

13.1.4 the sequestration, seizure, re-export, destruction, inspection, sanction, delay, removal, re-labelling, re-shipment, or re-packaging of goods, documents or other things;

13.1.5 the actual or alleged infringement of the Intellectual Property Rights of any person (except to the extent of the warranty given by us under clause 11.2); and

13.1.6 compliance with all relevant laws (including the laws of the PRC)

## 14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 You shall notify us in writing if you become aware of any infringement of any of our Intellectual Property Rights.
- 14.2 You acknowledge our exclusive right, title and interest in and to any and all Intellectual Property Rights embodied in or pertaining to the Export Growth China program associated materials and that our right, title and interest in the Intellectual Property Rights, including any enhancements, Modifications and derivative works, shall at all times be and remain our exclusive property. You shall acquire no rights whatsoever in or to any such Intellectual Property Rights.
- 14.3 Subject to the provisions of this Agreement, all rights, including but not limited to all Intellectual Property Rights related to or arising in respect of or this Agreement, the *Export Growth China* program and our business (collectively, **Relevant Rights**), are expressly reserved to us and you must not use the Relevant Rights without our prior written consent. You shall acquire no Relevant Rights and must not claim ownership of or a right to use any Relevant Rights in any form or manner except as expressly permitted by this Agreement.
- 14.4 You must not do anything that will or is likely to damage or diminish the Relevant Rights or the reputation of NSWBC or any Affiliated Entities.

## 15. TERMINATION

- 15.1 We may terminate this Agreement by notice in writing to you if:
- 15.1.1 you fail to pay any sum payable under or in respect of this Agreement, on or before the due date for payment of that sum;
- 15.1.2 we decide to withdraw the *Export Growth China* program or the Services;
- 15.1.3 you are no longer a financial member of any Chamber of Commerce in Australia;
- 15.1.4 we end an applicable trial or evaluation period; or
- 15.1.5 you breach any term of this Agreement and you do not remedy the default or breach (if capable of remedy) to our full satisfaction within 5 days after your receipt of a notice from us specifying the relevant breach; and
- 15.1.6 such termination becomes effective on the date that notice in writing is delivered to you.
- 15.2 Upon termination of this Agreement neither Party will have any further obligations under this Agreement other than:
- 15.2.1 in respect of any liability for antecedent breach; or
- 15.2.2 any liability in respect of provisions of this Agreement which are expressed to continue in full force and effect notwithstanding termination.
- 15.3 Upon Termination of this Agreement, you must immediately:
- 15.3.1 cease to use the non-public areas, pages and facilities of the [www.exportgrowth.com.au](http://www.exportgrowth.com.au) Platform; and
- 15.3.2 destroy all copies of log-in details and passwords.

- 15.4 The following clauses of this Agreement shall continue in full force and effect notwithstanding termination of this Agreement: clauses 12 (*statutory guarantees + limitation of liability*) 14 (*intellectual property rights*), 15.2 to 15.4 inclusive (*termination*), 16 (*assignment*), 17 (*governing law*) and 18 (*definitions*).

## 16. ASSIGNMENT

- 16.1 You may not assign, dispose of or otherwise transfer this Agreement or any rights or obligations under this Agreement without our prior written permission.
- 16.2 We may assign, in part or in full, our rights under this Agreement without your consent.
- 16.3 Subject to this clause 16, this Agreement shall be binding on the Parties and their respective successors and permitted assigns.

## 17. GOVERNING LAW

- 17.1 This Agreement is governed by the laws of New South Wales which shall have non-exclusive jurisdiction with respect to any disputes.

## 18. DEFINITIONS

- 18.1 **Personal pronouns:** Except where the context otherwise provides or requires:
- 18.1.1 the terms **NSWBC, we, us** or **our** refers to the NSW Business Chamber (or its assignee or successor in title); and
- 18.1.2 the terms **you** or **your** refers to the user, recipient of or applicant for the Services and the person entering into this Agreement as the recipient of the Services.

In this Agreement, unless the context otherwise requires or provides:

**Affiliated Entities** means NSW Business Chamber's subsidiaries, affiliates, associated entities and relevant partners as the case may be or the context requires from time to time.

**ABSG** means Australian Business Solutions Group which is a division and trademark of NSW Business Chamber and its relevant Affiliated Entities.

**Agreement** means the agreement on the terms of this document constituted by our acceptance of your Application for an Online Assessment, your receipt or use of the Services or request to be part of the *Export Growth China* program or receive an Online Assessment (as the case may be).

**Application** means the application and offer by you (including by way of a renewal or request to extend a period), or on your behalf, to receive or enjoy the Services howsoever submitted or provided (including by an online application via a Platform, order form, contract for purchase, request in writing or orally, as the case may be) and whether directly or indirectly (such as via an authorised agent, distributor or reseller).

**Buyer Matching** means the process of actively searching to find a qualified buyer interested in your goods and/or services (as the case may be), on a non-exclusive basis.

**Export Growth China program** means the program whereby we accept a request by you to promote and represent your goods and/or services (as the case may be) in the PRC facilitated by the offices of our Affiliated Entity at the Shanghai Showroom in Shanghai as further described in relevant publicity materials.

**Commencement Date** means the date of acceptance by us of an Application in respect of the purchase of Services.

**Export Readiness Report** means the product of the diagnostic tool identified by that name on the Platform located at [www.exportgrowth.com.au](http://www.exportgrowth.com.au).

**Fees** mean the fees payable by you in respect of the Services from time to time.

**Intellectual Property Rights** means all present and future intellectual and industrial property rights subsisting in any and all media and materials (whether now known or created in the future), conferred by statute, at common law or in equity and wherever existing.

**IT** means information technology.

**NSW Business Chamber** means NSW Business Chamber Limited ABN 63 000 014 504 (trading as Australian Business Consulting Solutions).

**Parties** means us and you.

**Platform Access Conditions** means the terms and conditions of access to the Platforms and any additional terms, conditions, notices and disclaimers displayed elsewhere on the Platforms, as amended from time to time.

**Platforms** means all or any of the relevant platforms, electronic interfaces and websites that are owned, provided and/or operated from time to time by NSW Business Chamber, ASBG or Affiliated Entities, regardless of how those websites are accessed by users (including via the internet, mobile phone or any other device or other means). The most relevant Platform for the purposes of this Agreement is [www.exportgrowth.com.au](http://www.exportgrowth.com.au).

**PRC** means the People's Republic of China, not including for these purposes and the avoidance of doubt the Special Administrative Regions of Hong Kong and Macau or Taiwan.

**Product Research Report** means a comprehensive report to be prepared at the end of the rotation for you.

**Products + Services Conditions** means relevant and applicable terms and conditions for the supply of products and services of or by New South Wales Business Chamber, ABSG or Affiliated Entities applicable to your NSW Business Chamber membership or purchased or contracted by you, as amended from time to time.

**Privacy Policy** means the privacy policies of the NSW Business Chamber, ABSG and Affiliated Entities, as amended from time to time, the most relevant one for the purposes of this Agreement being as found on the Platform at [www.exportgrowth.com.au](http://www.exportgrowth.com.au).

**Services** means the right to participate in the *Export Growth China* program and any ancillary or other services as contemplated by this document or which are applicable in connection with the *Export Growth China* program except as may be excluded expressly or by implication.

**Shanghai Showroom** means the showroom or other relevant premises from time to time of our Affiliated Entity or other relevant person in Shanghai, PRC.

**Term** means, from the Commencement Date, the applicable duration of the provision of Services (subject to earlier termination as provided in this document).