

## 1 INTERPRETATION

In these Conditions, unless the contrary intention appears:

- (a) **Client / you** means the person to whom we issue a Quote or who places the order or, where no quote or invoice is issued, the person to whom we supply or are to supply the Services, including (at our discretion) their successors and assignee;
- (b) **Conditions** mean these terms and conditions for the supply of the Services and / or Products by us to you, as amended or varied from time to time, and which will form part of the Contract.
- (c) **Confidential Information** means all spoken, written or electronically stored information belonging to or relating to either party and includes without limitation:
  - (i) any kind of technical, financial, or business information, including marketing strategy in advance of implementation;
  - (ii) details of employees, suppliers or customers;
  - (iii) intellectual property, concepts, know-how and trade secrets; and
  - (iv) material developed by us under the Contract,
 but excludes information in the public domain (other than by default under the Contract) or information independently known to the other party;
- (d) **Contract** means the agreement between the Supplier and the Client relating to the supply of Products and / or Services, as evidenced by the Order or otherwise, and which hereby incorporates these Conditions;
- (e) **Delivery Date** means the date stipulated in a Quote for delivery of Products and any related Services;
- (f) **Delivery Location** means the point of delivery for the Products and any related Services, specified in the Quote by the Client;
- (g) **Emergency Maintenance** means any time outside of a Scheduled Maintenance Window that the Supplier undertakes urgent maintenance activities. If Emergency Maintenance is to be performed, the Supplier will notify the Client of the actual or anticipated start time and planned duration of the Emergency Maintenance;
- (h) **GST** has the meaning given by A New Tax System (Goods and Services Tax) Act 1999 (Cth) (**'GST Act'**);
- (i) **Intellectual Property Rights** means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs;
- (j) **Loss** means includes losses, damages (including damage to persons or property), fines, claims, liabilities (whether in contract or tort, pursuant to statute or otherwise) and all expenses and costs, legal or otherwise (including fees and disbursements reasonably incurred) of any kind and nature;
- (k) **Order** means any offer to purchase or order for the supply of Services and / or Products provided by the Client;
- (l) **Performance Rebate** means a 10% reduction of the Price adjusted to reflect substantial performance by the Supplier;
- (m) **"PPSA"** means the *Personal Property Securities Act 2009* (Cth);
- (n) **Price** means the amount payable for the Services and / or Products set out in the Order;

- (o) **Product** means any hardware and / or software, the products and any related Services the Supplier supplies to the Client under a Contract, provided that:
  - (i) a reference to 'Products' which relates to goods provided by the Supplier to the Client includes the proceeds of such goods; and
  - (ii) for the purposes of the Personal Property Securities Act 2009 (Cth), where Products are supplied to you as inventory, all references to the Products will be to them as inventory only while they are held as inventory by the Client;
- (p) **Quote** means a written and / or oral request from the Client, approved in writing by the Supplier and provided to the Client, specifying:
  - (i) the Product and / or Services to be supplied;
  - (ii) the quantity and price of Products and / or Services to be supplied;
  - (iii) the Delivery Date; and
  - (iv) the Delivery Location;
- (q) **Scheduled Maintenance Window** means the scheduled period specified in the Order for the Supplier to perform regular maintenance. The Supplier will advise the Client of Scheduled Maintenance Windows not less than fourteen (14) days in advance of any change to the schedule.
- (r) **Services** means any Product or related services the Supplier supplies to the Client under the Contract, including but not limited to the supply of products, project services, support services and / or general services provided to you as set out in the Quote;
- (s) **Service Levels** means the performance criteria set out in the Order which must be satisfied throughout the Term and / or Renewed Term of the Contract;
- (t) **Supplier / we / us / our** means ETGROUP PTY LTD ABN 37 609 322 885 trading as 'Essential Technologies Group', including (at its discretion) its successors, assignees and agents;
- (u) **System Availability** means the total time during which the Services are available to the Client, excluding any Scheduled Maintenance Window and any Emergency Maintenance;
- (v) **Term** means the period for which you have agreed to receive the Services and / or Products as set out in the Order.
- (w) the terms "accession", "financing change statement", "financing statement", "perfected", "personal property", "PPS lease", "proceeds", "processed or commingled goods", "purchase money security interest", "security agreement", "security interest" and "verification statement" have the respective meanings given to them under, or in the context of, the PPSA.

## 2 WHEN WILL THESE CONDITIONS APPLY?

- 2.1 These Conditions apply to all transactions between the Supplier and the Client for the supply or potential supply of Products or Services and prevail over any conflicting provision contained in any other document, instrument or agreement, whether or not the Supplier has notice of this.

## 3 RELATIONSHIP OF PARTIES

- 3.1 The Supplier supplies Services to the Client as an independent third-party contractor at the request of the Client. The parties acknowledge and agree they are not (nor intended to be) the agent, partner or joint-venturer of the other.

#### 4 QUOTE AND ORDER

- 4.1 Any Quote provided by us to you is not deemed to be an offer made by us to you.
- 4.2 Any Order we receive is deemed an offer made by you to us for the supply of Services described in the Quote under these Conditions. We reserve our right to decline any Order or part thereof. Any Order or part thereof not accepted is deemed cancelled. An Order accepted by us cannot be cancelled without our prior written consent at our sole discretion.
- 4.3 Where the Supplier has given you a quote:
- The Supplier need not supply you until the Supplier has given written acceptance of your Order to purchase the Products or Services specified in the Quote;
  - The Supplier may confirm its acceptance of the Order in writing or by processing the Order.
  - Your confirmation to the Supplier that the Quote is acceptable is an offer to the Supplier to purchase the Products or Services specified in the Quote.
  - Unless otherwise specified, Quotes are valid for 30 days only.
- 4.4 Unless agreed by us, you cannot cancel or change an Order. You must carefully check the Order is accurate before submitting it to us.

#### 5 PRICE

- 5.1 The Price of Services and / or Products will be specified in the Order and unless specified otherwise does not include delivery or GST.
- 5.2 We may change the Price at which we supply Services and / or Products from time to time. Prices quoted in any price list or any other place are subject to change at any time without notice.
- 5.3 Any increase in the cost of supplying the Products which is outside the control of the Supplier and which occurs between the date of Order and the Delivery Date may be passed onto you by the Supplier.

#### 6 PAYMENT

- 6.1 You will pay us without deduction the Price payable:
- on the terms we specify in the Quote; or
  - on such further or different terms we expressly agree to in writing from time to time; or
  - if neither (a) nor (b) applies, on or before we deliver or perform the Services and / or Product in accordance with clause 7.1.
- 6.2 Unless otherwise specified the Supplier's terms of payment are strictly fourteen (14) days from the invoice date.
- 6.3 If we are not paid on the date specified in these Conditions, without prejudice to any other right or remedy we may have:
- interest is payable on amounts due at the standard contract default rate published by the Queensland Law Society from time to time, calculated daily and compounding monthly, until we are paid in full.
  - we may recover the price of the Services and / or Products together with all interest as a liquidated debt, irrespective of any offsetting claim that you may have against us.
  - you indemnify us for any and all Loss, fees or outlay we incur in trying to recover any amounts owed by you.
  - we may suspend or terminate the supply of Services or Goods at our sole discretion.
- 6.4 Time for payment is of the essence of the Contract.

#### 7 DELIVERY

- 7.1 Any date quoted for delivery is indicative only and not guaranteed unless a guarantee is given by us in writing.
- 7.2 Delivery will be deemed to be made at such time as any Services are received by you, your servant, agent, client or any other person or carrier nominated by you.
- 7.3 We may deliver Services by more than one delivery, in which case you will not be entitled to terminate the Contract, withhold payment, or reimbursement of any Loss.
- 7.4 If, due to any act, matter or thing beyond our control, delivery cannot be affected we may in our sole discretion store the Services at your risk and expense or take such other steps we consider appropriate.
- 7.5 We reserve our right to withhold a delivery if the terms of payment are not strictly adhered to or we, in our sole discretion, consider this reasonably necessary to protect our interests.

#### 8 TERM

- 8.1 The Term will commence from the acceptance date of the Order and will continue for successive periods of the same duration as the Term (each a '**Renewed Term**') unless the Contract is terminated by either party by notice in writing at least 30 days prior to the expiration of the Term or any subsequent Renewed Term.

#### 9 OUR PRICING POLICY

- 9.1 We reserve the right to change our fees and charges in connection with the Services and/or Products at any time.
- 9.2 In any Renewed Term the Price payable for that Renewed Term may increase up to 10% upon renewal (a 'New Pricing Scheme') by giving you 30 days' notice of such increase.
- 9.3 If you do not wish to proceed under the New Pricing Scheme, you must give us notice in writing expressly terminating the Contract as a result of the New Pricing Scheme before the expiry of the Term or Renewed Term, in which case the Contract terminates pursuant to clause 15.
- 9.4 If we do not receive a valid notice under clause 9.3 within 30 days of us giving you notice of the New Pricing Scheme, the New Pricing Scheme will take effect immediately and is incorporated into the Contract from the date which is 30 days' after we give you notice of the New Pricing Scheme.

#### 10 YOUR INSTRUCTIONS

- 10.1 We will only take your instructions in respect of the Services and / or Products from one person, being the person named in the Order or some other person nominated by you in writing to us from time to time.

#### 11 OUR PERFORMANCE

- 11.1 We will perform the Services in accordance with the Service Level criteria set out in the Order, in conjunction with your instructions to a professional standard.
- 11.2 Unless we receive a notice from you pursuant to clause 0, you are deemed to have accepted each part of the Service 14 days from when that part of the Service is performed or delivered.
- If you are not satisfied with our performance of the Services (or part thereof) you may give written notice setting out substantive reasons for non-acceptance not more than 14 days from when the Service was performed or delivered in which case upon receipt of a notice in compliance with this clause 0 we will aim to rectify any issues at no additional cost as soon as practicable. Any reasons given for non-acceptance outside the scope of the Contract or given after the period of acceptance will not be acted upon.
- 11.3 If we are unable to rectify a compliant notice under clause 0 to meet the Service Levels (provided you are not at that time in default of any of your obligations under the Contract) you will be entitled to a Performance Rebate.

## 12 SYSTEM AVAILABILITY

- 12.1 The Supplier warrants constant System Availability during each calendar month for the Products and / or any related Services supplied by the Supplier under the Contract, so long as the Client has accepted and complied with the Supplier's recommendations relating to any Products and / or any related Services supplied by the Supplier.
- 12.2 The Supplier will not be liable for the System Availability being constant if the decrease was caused by:
- the affects in clause 32.13 'Force Majeure';
  - Client not accepting and complying with the Supplier's recommendations concerning the Products and / or any related Services; or
  - the failure or fault arises due to the act, omission or negligence of the Client, the Client's employees or contractors, affiliates or third parties engaged by the Client.
- 12.3 If your System Availability is not constant you must give written notice to us setting out the start time and date from which the System Availability was not constant, including any reasons as to what caused the decrease in the System Availability.
- 12.4 After receiving your notice, we will attend to rectifying the matter and if a refund is warranted, we will refund you the percentage of the Price you paid equal to the duration of the System Availability not being constant.

## 13 CLIENT SITE REQUIREMENTS

- 13.1 You will provide us with any necessary infrastructure services and access to the site as required to deliver the Products and any related Services.
- 13.2 In the event that you are unable to provide us with the necessary infrastructure services or access to the site on the Delivery Date we are entitled to charge a reasonable fee for redelivery of the Products and/or the storage of the Products until such time as the necessary infrastructure services or access to the site is provided.

## 14 GENERAL DUTIES AND WARRANTIES

- 14.1 Our Duties – We will carry out the work required with skill and diligence and will, as far as is reasonable, keep you informed of the progress of the Services.
- 14.2 Instructions and Delay – We need your assistance to perform the best possible service and to achieve the best result. You can help us, and yourself, by giving clear instructions, telling us if you have any important time limits, telling us if you change your contact details or will be unavailable for any periods, satisfying yourself as to any commercial aspects, and asking us about anything you are uncertain about. It is important you respond to our requests promptly as this ensures continuity of the Service. Ask us for a progress report at any time if you are worried about any aspect of your Service or if you have not heard from us when you think you should. Delay is particularly a risk where we cannot obtain from you the instructions or materials we need on a timely basis. We do not accept, and you release us from, all loss or damage resulting from delays.
- 14.3 Warranties – You warrant that:
- following your instructions and providing related Services will not cause us to contravene any laws, including advertising standards, competition or consumer laws, gambling regulations, copyright or other intellectual property laws; and
  - where any of our employees, contractors or agents attends at a location nominated by you, the location will be safe, secure and suitable for the performance of the work.

## 15 TERMINATION

- 15.1 At least 30 days prior to the end of the Term or Renewed Term you may provide us with written notice that you wish to terminate the Contract and the Contract will end on the last date of the Term or Renewed Term.
- 15.2 You may end the Contract at any other time without giving reason (other than in the circumstances described by clause 15.3) by providing us with 30 days written notice but you must pay us an early termination fee ('ETF'). The ETF decreases by equal instalments for each month of the Term and is calculated using the following formula:

$$\text{Price} \times \text{Balance Term} \times \text{Discount \%} = \text{ETF}$$

$$\text{e.g. } \$900 \times 6 \text{ months} \times 70\% = \$5,400 \text{ ETF}$$

where:

- Price is the price of Services that but for the early termination would have been payable by you in accordance with the Order;
- Balance Term means the number of calendar months remaining of the Term or Renewed Term; and

Discount % means 70% which is the percentage of the Price representing a genuine pre-estimate of lost net profits plus the costs of having to process your termination, collect any products for which payment has not been received and assist with the smooth transfer of services to you or your new service provider.

- 15.3 If at any time during the Contract:

- you are in material breach or default of the Contract, including but not limited to an obligation to make payment; and
- that breach or default is not capable of being remedied or, if capable of remedy, continues for a period of 30 days after delivery of a written notice by us detailing the breach or default and proposed remedy,

the we may terminate the Contract with immediate effect upon written notice to you.

- 15.4 If we terminate the Contract under clause 15.3, you must pay us within seven (7) days in accordance with clause 6 as liquidated damages, in addition to interest and any other amount due and payable by you under the Contract (including any ETF).

- 15.5 If you terminate the Contract (or part thereof) for any reason and, prior to receiving notice of termination from you, we have irrevocably acquired or committed with a third party to acquire or receive Products or services for the purpose of fulfilling our obligations under the terminated contract (or part thereof), then:

- you must reimburse us for the cost we incur, up to the full contract price for those goods or services; and
- subject to payment being received within reasonable time, we will transfer ownership of such goods and / or assign any such agreement to receive services to you, as relevant and where possible.

## 16 INTELLECTUAL PROPERTY

- 16.1 You agree that you have obtained all relevant Intellectual Property Rights over any images, written text, video, software or other content which you post, display, transmit, provide or otherwise make available to us ('Content').
- 16.2 By providing Content to us, you agree that that Content is your sole responsibility and that we have no responsibility to you or to any third party for any Content which may infringe a trade mark, copyright, patent or any other Intellectual Property Right of a third party.
- 16.3 Our Rights – All Intellectual Property Rights (including any and all moral rights) and materials in relation to any part of the Service or the whole Service developed pursuant to and from the date of the Contract:

- (a) vest in and are owned by us upon creation; and
- (b) are assigned to you upon payment in full of all fees and disbursements applicable to your Service.

For the sake of clarity, any intellectual property associated with the Service created prior to the date of the Contract will remain vested in the relevant rights holder(s).

**16.4 Licences –**

- (a) For the duration of the Contract, we grant to you a limited, royalty-free licence to use the intellectual property developed by us for you under the Contract for testing and review purposes internally only and for the purposes of providing the Services in accordance with the Contract. The parties agree that the consideration for the licence is encompassed with the price.
- (b) For the duration of the Contract, you grant to us a, royalty-free licence to use any intellectual property provided by you to us to allow us to provide the Services Including without limitation for testing and review purposes internally only and in accordance with the Contract.

**16.5 Assignment –** Upon our receipt in full of all sums payable for the Service during the Contract we, including our employees, contractors, agents and others, waive any and all Intellectual Property Rights (including any and all moral rights) in work provided to you in relation to the Service for the benefit of you and will do all things reasonably necessary to assign to you the Intellectual Property Rights in the Service, inclusive of any and all moral rights, by securing the execution of absolute assignments of such rights to you, if requested within a reasonable time.

**16.6 Retained Rights –** Upon assignment of the Intellectual Property Rights and materials developed under the Contract, you grant back to us a non-exclusive, worldwide, irrevocable, perpetual, royalty-free licence to:

- (a) retain and use all and any part of the intellectual property for commercial purposes, including for work for other clients, though always in accordance with the confidentiality obligations in clause 17; and
- (b) use, modify, transform, adapt and further develop the intellectual property in any form as it sees fit for future marketing, publications, competitions, promotional uses, work and/or to commercialise the intellectual property in its ordinary course of business, though always in accordance with the confidentiality obligations in clause 17.

**16.7 Warranties –** You warrant that:

- (a) you have all necessary, current and enforceable rights, authority and licences to provide and use the instructions, Content, software or any other materials you provide to us;
- (b) following your instructions and providing related Services will not cause us to contravene any laws, including advertising standards, competition or consumer laws, gambling regulations, copyright or other intellectual property laws;
- (c) our use of the instructions, Content, software or any other materials you supply to us in order to supply the Services does not infringe on any other entity's Intellectual Property Rights.

**17 CONFIDENTIALITY**

**17.2** Each party acknowledges that in the course of performing its obligations under the Contract it may receive Confidential Information which is proprietary and confidential to the other party.

**17.3** Each party agrees not to use or disclose Confidential Information of the other party except to the extent necessary to perform obligations under the Contract.

**17.4** Despite clauses 17.2 and 17.3 above, either party may use or disclose Confidential Information only to the extent necessary in the following circumstances:

- (a) to comply with any law, binding directive of a regulator or a court order;
- (b) to comply with the listing rules of any stock exchange on which its securities are listed; or
- (c) to obtain professional advice in relation to matters arising in connection with this document where the advisers agree to be bound by the same obligation of confidentiality and/or to enforce the terms of the Contract.

**17.5** The obligations of confidentiality will survive termination of the Contract.

**18 PROTECTION OF OUR INTERESTS**

**18.1 Your Obligations –** During the Contract and for the lawfully longest of the following periods: 12 months; 6 months; or 3 months; following termination of the Contract, neither you, nor your associated entities (as that term is defined in the *Corporations Act 2001*), nor your employees, contractors, agents or clients may do any of the following without first obtaining our written consent:

- (a) directly or indirectly solicit, entice or persuade, or endeavour to solicit, entice or persuade any of our employees, contractors, consultants or agents to terminate or reduce their employment or engagement with us; or
- (b) accept or tolerate any employment or other engagement of any of our employees, contractors, consultants, agents, or associated entities to them.

**18.2 Liquidated Damages –** If you contravene clause 18.1:

- (a) in addition to other remedies we may have, if you employ or engage any person in contravention of clause 18.1(b) you must pay to us a fee equal to 25% of that person's total annual remuneration package (or other price you pay for their services, as the case may be) and such fee will be payable within 7 days of our invoice being issued by us to you; and
- (b) you agree that the amount payable in accordance with the preceding sub-clause 18.1(a) is reasonable and a genuine pre-estimate of the loss we may suffer by having the person poached from us and includes without limitation the foregone revenue that that person would have continued to generate in our business and/or the recruitment expenses to replace the person.

**19 RISK**

**19.1** Products will be at your risk upon delivery to you, your servants, agents, customers or any person or carrier nominated by you. You bear the sole responsibility for and the risk of unloading.

**20 RETENTION OF TITLE**

**20.1** Property in products supplied to you pursuant to these Conditions does not pass to you until all money due and payable to us by you has been fully paid.

**20.2** Where products are supplied by us to you without payment in full of all moneys payable in respect of the products and any Services provided by us in respect of those products, you:

- (a) are a bailee of the products until property in them passes;
- (b) irrevocably appoint us as your attorney to do all acts and things necessary to ensure the retention of title, including registration of a security interest in our favour;

- (c) must be able to upon demand separate and identify as belonging to us the products from other goods held by you;
- (d) must not allow any person to have or acquire any security interest in the products;
- (e) agree that we may repossess the products if payment is not made when due; and
- (f) grant to the Supplier and its agents an irrevocable licence to enter any premises you may access in order to recover possession of products and you agree to indemnify us in respect of any Loss or damage which occurs as a result.
- 20.3 Where products are supplied by us to you without payment in full of all amounts payable and you make a new object from the products (whether finished or not), mix the products with other products or the products become part of other products ('**New Products**'), you agree that the ownership of the New Products immediately passes to us. You will hold the New Products on trust for us until payment of all sums owing to us (whether under these Conditions or otherwise) have been made and at our direction we may require you store the New Products in a manner that clearly shows our ownership of them.
- 20.4 For the avoidance of doubt, ownership of New Products passes to us at the beginning of the operation or event by which products are converted into, mixed with, or become part of other goods.
- 20.5 Notwithstanding clause 20.2 you may transfer, sell or dispose of products, including New Products, to a third party in the ordinary course of business provided that:
- (a) where you are paid by a third party in respect of products, you hold the whole of the proceeds of sale less any GST on trust for us, in a separate account, until all amounts owned by you to us have been paid; or
- (b) where you are not paid by a third party, you agree to assign all of your rights against the third party to us if we give notice in writing to you to that effect and you hereby irrevocably appoint us as its attorney for the purpose of giving effect to that assignment.
- 20.6 Receipt by us of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 21 SECURITY INTEREST, CHARGES AND POWER OF ATTORNEY**
- 21.1 You grant us a security interest in the Products to secure payment of all amounts payable under this Contract. The security interest:
- (a) extends to and continues in all proceeds, accessions and processed or comingled goods; and
- (b) is a purchase money security interest to the extent to which it secures payment of that part of the amounts payable under this Contract which comprises the aggregate unpaid purchase price of the Products.
- 21.2 You agree that we may also register on the Personal Property Securities Register a security interest over all your personal property.
- 21.3 For the purposes of section 19(2) of the PPSA, you:
- (a) warrant that you have rights in the Secured Property, or the power to transfer rights in the Secured Property, to us;
- (b) acknowledge that a purchase money security interest has arisen in the Products and related Intellectual Property;
- (c) warrant that you have rights in the personal property, or the power to transfer rights in the personal property, to us; and
- (d) acknowledge that we have given value for our security interest in the personal property, including by our promise to perform the Services under this Contract or by providing or continuing to make available any financial accommodation to you.
- 21.4 For the purposes of section 20(2)(b)(ii) of the PPSA, you acknowledge that the security interest over the Personal Property is taken in all of your present and after acquired property.
- 21.5 You must not do or permit anything to be done that may result in the security interests granted to us ranking in priority behind any other security interest.
- 21.6 You agree that sections 95, 130, 132(3)(d), 132(4), 135 and 143 of the PPSA will have no application to this Agreement and you waive all your rights under section 157 of the PPSA to receive a notice under that section.
- 21.7 You charge in favour of us all of your estate and interest in any real property that you own at present and in the future with the amount of its indebtedness hereunder until discharged and grant us the right to place a caveat in our favour over all such property.
- 21.8 You agree to execute all documents and do all acts, matters and things which we reasonably require to more effectively secure our rights pursuant to the security interest created under this Contract.
- 21.9 You appoint as its duly constituted attorney our authorised representative from time to time to execute in your name and as your act and deed any real property mortgage or consent to any caveat which we may choose to lodge against real property that you may own in any Land Titles Office in any state or territory of Australia, even though you may not have defaulted in carrying out its obligations hereunder.
- 21.10 Where you have previously entered into contract with us by which you have granted a charge, mortgage or other security over real or personal property, those charges, mortgages or other security interests will continue and co-exist with the obligations and security interests created in this Contract. We may, at our election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.
- 22 CLAIMS FOR CREDIT**
- 22.1 We are not liable to you for any claim for short delivery of products unless a claim is made in writing within seven (7) days of delivery in accordance with clause 7.2. In the event no claim is made by you, you are deemed to have accepted the number of items delivered as being correct.
- 22.2 Subject to clause 23 and 24 and to the maximum extent permitted by law, products returned to us will only be accepted for credit where the products are defective or supplied in error by us and returned to us within fourteen (14) days of delivery in accordance with clause 7.2. Our prior written approval is required to return products for credit and will be subject to a restocking fee of at least 15% of the price of products as specified in the Order.
- 23 WARRANTIES**
- 23.1 Subject to clauses 23.2 and 23.3, we warrant that the products will be free from defects in material and workmanship and fit for the purpose for which they are sold, provided that any defect is notified to us as soon as it becomes known.
- 23.2 Where you are considered a consumer as that term is defined in the Australian Consumer Law:
- Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:
- (a) to cancel your service contract with us; and
- (b) to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

- 23.3 In respect of products sold but not manufactured by us we will to the extent permitted by law extend any manufacturer's warranty to you in full to the exclusion of any other warranty by us.
- 23.4 No other warranty is provided by us unless provided by us in writing, and any implied terms, conditions or warranties are expressly negated to the maximum extent permitted by law.
- 23.5 As we retain ownership of the products until we are paid for them, we reserve our right to not honour any warranty unless and until we receive payment in full and may in our absolute discretion to the extent permitted by law elect to waive an amount owed to us by you (or part thereof) in lieu of honouring any warranty.

## 24 RELEASE AND INDEMNITY

- 24.1 You warrant and irrevocably agree to release, indemnify and hold us, our employees, agents and any related person or body corporate harmless against any and all Loss whatsoever (including without limitation all actions, proceedings, judgments, legal fees and charges) arising from or in connection with the performance or non-performance of obligations under the Contract, these Conditions or in the manufacture or supply of products or Services, including without limitation for personal injury, disease, illness or death.
- 24.2 We shall not be liable, whether claims are made or not, for physical or financial injury, loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Applicant.

## 25 LIMITATION

To the fullest extent allowable at law our liability is limited (at our election) to the following:

- (a) Provision of further services at no charge to rectify any defect in the product or services we supply; or
- (b) Payment of the cost of rectifying any defect in the product or services; or
- (c) Refund of an amount paid to us under the Contract; and
- (d) Our total liability under the Contract is capped at the total fees we receive under the Contract.

## 26 PRIVACY

- 26.1 You authorise us to collect, retain, record, use and disclose your information in accordance with the *Privacy Act 1988* (Cth). You also authorise us to make enquiries with respect to your creditworthiness, to exchange information with credit providers in respect to any previous commercial and / or consumer defaults, and to notify other credit providers of a commercial and / or consumer default by you.

## 27 PURPOSE AND TERMS OF CREDIT

- 27.1 You acknowledge and agree any credit provided to you by us is applied wholly or predominantly for commercial purposes.
- 27.2 We reserve the right to withdraw credit at any time, whether you are in default under the terms of this Contract or not.
- 27.3 Upon cancellation with or without notice all liabilities incurred by you become immediately due and payable to us.

## 28 NEGOTIABLE TERMS

- 28.1 For the sake of simplicity and consistency, our Quotes specify our preferred terms. You are invited to discuss the terms of any Quote before making an offer to purchase Services from us.

## 29 INSOLVENCY

- 29.1 If you become insolvent, you remain liable under the Contract and these Conditions for payment of all liabilities incurred. You remain liable under these Conditions even if we receive a dividend or payment as a result of you becoming insolvent.

## 30 TRADE PURCHASE

- 30.1 The parties agree and acknowledge that any products supplied or to be supplied under the Contract and these Conditions are acquired by you in trade or commerce and are not wholly or predominantly for personal, household or domestic use.

## 31 TAXES AND DUTY

- 31.1 You must pay GST on any taxable supply made by us to you under this Contract. The payment of GST is in addition to any other consideration payable by you for a taxable supply.
- 31.2 If as a result of:
  - (a) any legislation becoming applicable to the subject matter of this Contract; or
  - (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;

we become liable to pay any tax, duty, excise or levy in respect of the amounts received from you, then you must pay us these additional amounts on demand.

## 32 GENERAL

- 32.1 The Contract shall be governed by the law of the State of Queensland. In the event of dispute arising in relation to the Contract or these Conditions the parties agree to submit to the non-exclusive jurisdiction of competent courts of Queensland.
- 32.2 A waiver of any clause or a breach of these Conditions by us must be made in writing by an authorised officer.
- 32.3 If any dispute, controversy or claim arises between the parties, except a claim for payment by us, it must be dealt with in accordance with this clause and the following procedure applies:
  - (a) A party claiming that a dispute exists must notify the other (the '**Second Party**') in writing of the nature of the dispute ('**Notice of Dispute**').
  - (b) If the dispute is not resolved by agreement within five (5) business days of the Second Party receiving a Notice of Dispute, either party may refer the matter to mediation conducted by a mediator agreed between the parties within a further five (5) business days. The costs of the mediator shall be borne equally between the parties. The chosen mediator shall determine the procedures for the mediation, but will not have the power or authority to make any other determination in relation to the dispute.
  - (c) If the parties have not mediated a resolution of the dispute within ten (10) business days of the selection of a mediator or cannot agree on a mediator to appoint, neither is obliged to continue mediation under this clause, and either party may then commence such legal proceedings as it thinks fit.
  - (d) The parties must hold confidential, unless otherwise required by law or at the direction of a court, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution.
  - (e) In this part, '**business day**' means a day that is not a Saturday, a Sunday or a day that is a public holiday in a place the Supplier is located.
- 32.4 Nothing in these Conditions shall be read or applied so as to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by the law (including the Australian Consumer Law) and which by law cannot be excluded, restricted or modified.

32.5 Each party has been given the opportunity to seek independent legal advice with respect to the content and effect of this Contract and has sought such advice as it deems necessary.

32.6 No rule of construction applies to the disadvantage of a party on the basis that the party put forward this Contract or any part of it.

32.7 This Contract constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this Contract are merged in this Agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this Contract or constitutes any collateral agreement, warranty or understanding.

#### 32.8 **Set Off**

32.9 All payments required to be made by the Applicant under this Agreement will be made free of any set-off, or counterclaim and without deduction or withholding.

32.10 Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Applicant by the Supplier.

#### 32.11 **Severance**

If any provision of the Contract or these Conditions is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.

#### 32.12 **Variation**

- (a) We reserve the right to amend or vary these Conditions from time to time without needing to give reason.
- (b) You will be given notice of any change by the Supplier publishing its amended Conditions ('**Amended Conditions**') on its website or by being sent a copy of the Amended Conditions by email, post or facsimile.
- (c) Amended Conditions take effect seven (7) days after the date on which they are published or are sent to you in accordance with clause 32.12(b), whichever applies and is the earlier, and apply and are incorporated into each and all Contracts from that time.
- (d) You may elect not to proceed under the Amended Conditions. If so, you must give notice to us in writing clearly expressing your non-acceptance of the Amended Conditions at any time before they take effect. If no notice is given and in any case by continuing to order products and / or Services from us after that time, you are deemed to irrevocably accept the Amended Terms without reservation and are bound by them.
- (e) If you elect not to proceed under the Amended Conditions, the Supplier reserves its right not to provide further credit, accept further orders from or supply products and / or Services to you. You agree to indemnify and keep us indemnified against all Loss incurred by you or any third party in relation to or in any way directly or indirectly connected with our exercise of this right.
- (f) Not initialing or signing these Amended Conditions does not affect their enforceability or incorporation into any Contract.

#### 32.13 **Force majeure**

- (a) If circumstances beyond our control prevent or hinder our performance of any obligation under the Contract, we are free from any obligation to perform the obligation while those circumstances subsist. We may elect to terminate this Contract or keep the Contract on foot until such circumstances have ceased.
- (b) Circumstances beyond our control include, but are not limited to: unavailability of materials or components,

strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other technology.