



Nehos 13/1300/1800 Smart Number Order Form and Contract

CUSTOMER

DATE:		REF. No.	
Customers Details: <input type="checkbox"/> Individual <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Other :			
Full or Legal Name:		ABN	
Physical Address:		State:	Postcode:
Billing Address:		State:	Postcode:
Email Address:		Phone No:	
Trading Name (if applicable)		Fax No:	

SERVICE REQUIREMENTS

Details of Products and/or Services which are to be supplied		Activation (inc GST)	Total Contract (inc GST)
<input type="checkbox"/>	13 Number (12 months @ \$660.00 inc GST per month)	\$55.00	\$7,975.00
<input type="checkbox"/>	1300 Number (12 months @ \$9.90 inc GST per month)	\$55.00	\$173.80
<input type="checkbox"/>	1800 Number (12 months@ \$9.90 inc GST per month)	\$55.00	\$173.80

I accept the supply of Services as specified above and certify that the information stated herein is true and correct. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Nehos Communications Pty Ltd which form part of, and are intended to be read in conjunction with this 1300 / 1800 Order Form and Contract and Voice Services Terms and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein.

SIGNED (CUSTOMER):		SIGNED (WITNESS TO CUSTOMER'S SIGNATURE):	
_____		_____	
Name: _____	Name: _____	Date: _____	
Position: _____	Address: _____		
ID: _____	Date of Birth: _____	Post Code: _____	
<i>(Drivers Licence, Passport etc Individual or Sole Trader Only)</i>			

SIGNED (SELLER): _____ Name: _____ Date: _____

Number Activation

- Porting (including Smart Number activation)
- New Activation (Number/s selected from a list provided by Nehos Sales)
- New Activation (First available number)

Number Provisioning

13/1300/1800 Number
** New Activation only*

13/1300/1800 Number to Port

Current Provider and Account Number

Target once provisioned

- SIP
- Phone Number
- Backup Number
- Porting Date
(can be ASAP or 7 working days notice)

Notes / Special Instructions

OFFICE USE ONLY

Account Code			
Sales Rep		Order ID	
Processed By		Date	

NEHOS COMMUNICATIONS VOICE SERVICE TERMS

1. GENERAL

- 1.1. Only authorised contacts can order, change or remove services from your account. Nehos will not accept any changes, cancels or adds to an account (for security purposes) except via the Nehos customer panel or from an email address listed within the Accounts Contacts section of the customer panel.
- 1.2. We provide access to Emergency 000 services free of charge. However we are under no liability whatsoever if You are unable to access Emergency services from the service at anytime.
- 1.3. If payment of any Charges is overdue for 14 days or more Nehos may suspend provision of the Service on 24 hours notice to the Customer. Nehos reserves the right to charge the Customer a fee for reconnection of the service.
- 1.4. You must notify Us (before We connect the Service) whether Your End User receives any priority assistance service, medical alert service, alarm service or any other service with similar service levels.
- 1.5. Any initial setup fee is non-refundable.
- 1.6. You will not use, or allow the use of the Services:
 - (i) to infringe another person's rights;
 - (ii) in a manner that may expose Us to liability;
 - (iii) in any way that may damage any Equipment, or interfere with or interrupt the Service or any other telecommunications network, equipment, facilities or cabling controlled or utilised by Us, or any other supplier of telecommunications services;
 - (iv) in any way that may damage any property or injure or kill any person;
 - (v) to transmit, publish or communicate any defamatory, offensive, abusive, indecent or menacing material;
 - (vi) to make any hoax call(s), including calls to an emergency service;
 - (vii) to violate or infringe any duty or obligation owed to any person under law; and
 - (viii) to commit, or in relation to the commission of, an offence under any law of the Commonwealth or any of the States or Territories.

2. FAULT REPORTING

- 2.1. Nehos will provide a fault reporting service between 9:00 am and 5:00 pm Monday to Friday Eastern Standard Time.
- 2.2. To report a fault please log into your customer account panel and proceed to the Support tab and log a fault under the appropriate section.
- 2.3. You agree to provide all necessary assistance to enable Us to locate and repair a reported fault but we will not be liable for any expenses incurred by the customer to find or rectify a fault unless by prior written agreement.
- 2.4. When requesting support for a voice fault please check that your own equipment is not at fault before proceeding with support. An incorrect call out charge may apply if it has been determined that no fault is found or the fault occurred within the customers own equipment. Rates are charged as per the "Nehos Support Agreement".
- 2.5. We are responsible for correcting faults that are present in Our Network and equipment, but not for:
 - (i) any fault which is caused by Your equipment, Your internet service provider or the Premises, but will, where possible, advise You of that fault and its probable cause and location; or
 - (ii) any fault which is within a Supplier Network of an interconnected Supplier, although We will notify that Supplier of the fault and request that it be corrected promptly.
- 2.6. Nehos provides support and diagnostics of customer premises equipment and network (outside of our Network and Equipment) as the Nehos Support Agreement.
- 2.7. After Hours Urgent Support
 - (i) This service is available outside normal operating hours and is strictly for critical service effecting issues. This service is only to be used for Nehos voice / broadband network faults ONLY and not for issues with your own equipment or local network. Non critical issues e.g a individual destination failure or suspected performance issues can be reported at anytime but will be responded to within normal working hours.
 - (ii) Messages left for the urgent support team must include your customer account code, the authorised contact name, contact email and a detailed description of the fault, as well as any information that you believe would help us identify and resolve the fault. We will not respond to requests for assistance unless sufficient information is provided to help us identify the fault should also be submitted as email request to support@nehos.net
 - (iii) We reserve the right to charge as per the Nehos Support Agreement to customers using the After hours Urgent Support system for any non urgent support issues as defined above or if the fault was with your own equipment or local network.

3. BILLING

- 3.1. All services are billed 1 month in advance. Services ordered before your next monthly billing anniversary date will be pro-rata.
- 3.2. All call detail records, including date, destination number and timing where applicable, will be recorded.
- 3.3. Unless otherwise stated all call durations are rounded up to the nearest whole second. Call charges are calculated for each call are rounded up to the nearest whole cent.
- 3.4. You agree that the records of call details are conclusive evidence of Your use of the Services and Your liability to pay the Call and Service charges to Us, unless it can be shown that the records are incorrect. You are responsible for all usage on Your account and all the relevant costs relating the provision of services to You;
- 3.5. We will endeavour to include all charges for calls made using the Services within 6 months of such use. However, You acknowledge that where this is not possible, We may include the charges in any subsequent invoice, and such delay will not affect the validity of the charges contained in the bill.
 - (i) Service disconnects (except where Nehos must be notified of a local number port), We will refund the overpayment after Your request and after deduction of any other amounts due by You to Us or any related entity.
 - (ii) To protect against fraud, We randomly monitor for unusually high usage levels & If detected on Your account, We may at Our discretion issue You with a high usage alert at any point in time. We may then suspend or restrict the Service (or any part of the Service) and issue an interim invoice & The Service will be restored once the invoice has been paid.
 - (iii) You may view your 'Real time calls' (un-invoiced call charges) or access Your account at any time by visiting Our website at www.nehos.net.
- 3.6. We may at our sole discretion:
 - (i) impose a credit limit on Your account;
 - (ii) vary the credit limit at anytime without notice to you;
 - (iii) impose a restriction on ordering new services;
 - (iv) require payment of a security deposit;
 - (v) apply the security deposit, if collected under this clause, to meet any any cost, loss or liability incurred as a result of Your failure to comply with these terms or to pay any amount payable by You.

4. REQUIRED EQUIPMENT

- 4.1. It is Your responsibility to install, configure and connect the Required Equipment even if You purchased it from Us.
- 4.2. The Customer must provide and maintain the appropriate equipment and network connection to Nehos network. It is the customers responsibility to check with Nehos before ordering any services that your current equipment and or network that will be used to connect to the Nehos network is recommended and compatible.
- 4.3. The Customer is responsible for payment of any costs associated with the data communications line (telephone line or similar link) used for Connection to Nehos network.
- 4.4. You must, upon becoming aware of an occurrence described in this clause, immediately disconnect or deactivate (or procure the immediate disconnection or deactivation of): any networks, systems, equipment or facilities owned or operated by You or any End Users that are:
 - (i) damaging, interfering with, or degrading or deteriorating the operation or performance of the Nehos Network or the supply of products or services to Us or any other customer of Our suppliers; or
 - (ii) incompatible with the Nehos Network or in order for Us to comply with the terms of supply by a third party; and
 - (iii) any connections referred to in this clause that are not made and maintained in accordance with the Service Agreement and all applicable laws.
- 4.5. You must ensure that any equipment used by You or any End Users in connection with the Service or the Nehos Network has all necessary regulatory approvals, the uses to which such Equipment is put are not prohibited by any Regulator and comply with the Service Agreement and all applicable laws, and is maintained in good repair and working condition.
- 4.6. You consent to Nehos and Our suppliers (and our respective Personnel) entering any premises owned, controlled or occupied by You, any of Your Related Bodies Corporate or any End User at which the Service will be provided, and doing anything that is necessary at that premises in connection with:
 - (i) the installation and supply of the Service;
 - (ii) the delivery, installation, connection, inspection, modification, replacement, maintenance, repair, servicing, disconnection or removal of any Nehos Equipment.

5. SECURITY

- 5.1. All Voice services have a number of security mechanisms to prevent or minimise the customer exposure to unauthorised use of their account. It is the customers responsibility to use the tools provided to "lock down" their account.
- 5.2. These tools include.
 - (i) Account credit limits are employed (set by Nehos) based on an assessment of credit risk. If you wish to reduce or increase this amount please contact us via email at accounts@nehos.net.
 - (ii) International daily call limits are enforced on each account. The default is \$10 per day and can be changed by the customer in the customer panel.
 - (iii) International calls should be limited to a set destination list from within the customer panel based on international destinations you normally dial. Most toll fraud breaches happen to international destinations not normally called.
 - (iv) Every SIP account has tools to lock calls to a single IP address.
 - (v) All SIP account passwords should be a minimum of 6 chars and least 1 number and upper case letter and not be based on a dictionary word.
 - (vi) The customer panel employs industry standard SSL encryption. All correspondence, account changes should be done in the customer panel to encrypt communications over the internet.
- 5.3. It is the responsibility of each customer IT consultant to secure their system as they would secure their internet connection and local area network from outside intruders". This also extends to use of your SIP accounts outside or inside of your network.
- 5.4. The customer is liable for all unauthorised call charges on their account.
- 5.5. Nehos will at the Customer's request endeavour to implement access restrictions to the Customer's network via the Connection and in accordance with any Customer's specifications approved by Nehos.
- 5.6. The Customer acknowledges that to the extent permitted by law Nehos does not make any representations or warranties concerning the fitness for purpose or effectiveness of any access restrictions or Nehos's network security or the Customer's network security.
- 5.7. The Customer acknowledges that Nehos's network is not a secure and confidential method of communication and shall transmit data on Nehos's network at its own risk.
- 5.8. It is the customers responsibility for implementing, maintaining the security of their account, usernames and passwords, equipment and network.
- 5.9. Without being in any way liable, Nehos shall endeavour to ensure that all data transmitted on Nehos's network is transmitted to the person to whom it is addressed.

6. QoS Requirements

- 6.1. You acknowledge that a Voice service requires a properly installed and configured router that provides QoS (traffic prioritisation and policing) solution, a NAT/Firewall that can handle SIP/RTP traffic and a reliable high quality internet service to ensure that a high quality and reliable experience. Please note that QoS can only be successfully implemented if the solution is implemented not just by the customer but the internet service provider as well. QoS prioritises important traffic such as voice (SIP/RTP) is not compromised by less important traffic.
- 6.2. Nehos highly recommend the Nehos Broadband Managed routing solution in order to be able to correctly control the flow of traffic over your LAN and WAN network. Without properly controlling traffic between Nehos and your site less important traffic on your LAN and over the WAN can interfere with more important traffic such as voice.
- 6.3. If you choose to use a 3rd party router and/or ISP, it may increase the likelihood of technical issues, delays in providing support and general complexity of configuring and maintaining your service due to local factors beyond our control.
- 6.4. If you would like to know more information please see our wiki - wiki.nehos.net/?p=517

7. Issue of In-Dial Number/s or DID Number/s

- 7.1. Number reservation or reactivation fee of \$100 per batch of numbers.

8. Integrated Public Number Database

- 8.1. You acknowledge that We are obliged by law to supply specified Customer Information with respect to any person who is allocated a In-Dial Number for the purposes of the Integrated Public Number Database (IPND).
- 8.2. The information held in this database may only be provided for an approved purpose to approved organisations such as directory information organisations or the assistance of emergency service or law enforcement organisations.
- 8.3. If You require that Your Customer Information that appears on that database be altered, You must request such alteration via your customer panel.
- 8.4. You must provide a valid physical address (PO Box not acceptable) on each In-Dial Number or DID Number that is created.

9. Fax Services

- 9.1. If a fax service is added to a single DID Number that number becomes a "Fax to E-Mail Service" number charged at the DID Number rate as listed in the Pricing Schedule listed on our website.
- 9.2. Single DID Number from a 100 number range can be converted to be used with our "Fax to E-Mail Service" but will be charged as a single DID Number.
- 9.3. A Fax service is an analogue product that relies on a high quality broadband service to deliver the fax such as direct fibre with QoS applied. As such a fax service comes with no guarantee's of reliability. Failures in Fax transmission or reception will not be classified as a technical fault or an issue with the service.

10. Local number portability - porting in.

- 10.1. Category A Port is defined as a copper based PSTN line with a single number with no hunt groups, fax duet or any special services associated with it. Category A Port costs are a once of fee of \$45 inc GST per number. Local Number Ports ordered as a Category A port that are rejected from the losing carrier for the wrong category classification will be rejected.
- 10.2. Category C Port is a Complex port normally associated with an ISDN service or a copper based PSTN line with hunt groups or fax duet or any special services attached to it. Category C Port are \$380 inc GST
- 10.3. LNP Batch Reject : Applications for Local Number Porting that are rejected for whatever reason will incur a rejection fee of \$20.00 per number or batch of numbers.
- 10.4. Category A Emergency returns / reversal fee / reschedule fee is \$100.00 inc GST per number. Category C Emergency returns / reversal fee / reschedule fee is \$660.00 inc GST
- 10.5. Late Re target Notification: A Port Re-Schedule where Nehos receives the rescheduling request from the customer within 5 business days of the scheduled cut over = \$250 inc GST.
- 10.6. Please note that the losing carrier in a Local Number Port may charge a "Port out fee". You should contact the losing carrier be made aware of these fees before commencing a Local Number Port request with Nehos Communications. Nehos will not be held liable for the losing carrier fee's or charges.
- 10.7. Ports scheduled outside 9am to 3pm EST Monday to Friday time period will incur an additional charge.
- 10.8. Ported numbers will be charged as per Direct-Inward-Dial (DID) Numbers monthly rate as specified on website - www.nehos.net/did-number.html.
- 10.9. We are not obliged to procure for and/or provide to You any particular number allocated or assigned to You by another Carrier or Carriage Service Provider.
- 10.10. We will not be liable to You for any loss or damage incurred or sustained by You if such number is not, or is no longer available.
- 10.11. Price for DID's www.nehos.net/voice/did-number.php

11. Local number portability - porting out.

- 11.1. If you decide to "Port Out" a number(s) from your Nehos account a fee of \$126.50 inc GST per number or batch of number/s. Porting out from Nehos must be initiated from the gaining carrier. Nehos will not be held liable for gaining carrier fee's or charges.
- 11.2. We will not be liable to You for any loss or damage incurred or sustained by You if such number is not, or is no longer available.
- 11.3. Please refer to 14.2 of the Nehos Communications Terms & Conditions of Trade informing Nehos of any number being "Ported Out" with 7 days of the port.

12. 13/1300/1800 Services

- 12.1. The minimum contract period for all Inbound 13/1300/1800 services is 12 months unless specified on the Order Form.
- 12.2. Price for 13/1300/1800 services are as listed www.nehos.net/voice/13-1300-1800-numbers.php

Nehos Communications Terms & Conditions of Trade

3. **Definitions**
- 3.1. **"Contract"** means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this contract.
- 3.2. **"Seller"** means Nehos Communications Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Nehos Communications Pty Ltd.
- 3.3. **"Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Seller to provide the Services as specified in any proposal, quotation, order, invoice or other documentation; and:
 - (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 3.4. **"Products"** means all Products or Services supplied by the Seller to the Customer at the Customer's request from time to time (where the context so permits the terms 'Products' or 'Services' shall be interchangeable for the other).
- 3.5. **"Carriers"** shall mean the Carriers or networks through whom the Seller nominates to supply Services to the Customer.
- 3.6. **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 3.7. **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Products via the website.**
- 3.8. **"Charges"** means the Charges payable (plus any GST where applicable) for the Products as agreed between the Seller and the Customer in accordance with clause 8 below.
- 3.9. **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Gst).
4. **Interpretation**
- 4.1. In this Contract, unless it is stated to the contrary or the context requires otherwise:
 - (a) words in the singular shall include the plural (and vice versa), words importing one gender shall include every gender, a reference to a person shall include any other legal entity of whatsoever kind (and vice versa) and where a word or phrase is given a defined meaning in this Contract, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
 - (b) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction); and
 - (c) the words 'include' and 'including', and any variants of those words, will be treated as if followed by the words 'without limitation'; and
 - (d) a reference to dollars (\$) is a reference to Australian currency; and
 - (e) this Contract is not to be interpreted against the Consultant merely because they prepared this Contract; and
 - (f) the following order of precedence (in descending order) will be applied to resolve any conflict, ambiguity or discrepancy in this Contract:
 - (i) Terms and Conditions of Trade; and
 - (ii) any schedules.
 - (g) any reference (other than in the calculation of consideration, or of any indemnity, reimbursement or similar amount) to cost, expense or other similar amount is a reference to that cost exclusive of GST.
3. **Acceptance**
- 3.1. The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for Services or accepts Delivery of the Products in the absence of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 3.2. Any amendment to the terms and conditions contained in this associated Contract and/or associated schedule/s therein may only be amended in writing by the consent of both parties.
- 3.3. The Customer acknowledges that the supply of Products on credit shall not take effect until the Customer when requested completes a credit application with the Seller and it has been approved with a credit limit established for the account.
- 3.4. In the event that the supply of Products request exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Seller reserves the right to refuse Delivery or order acceptance.
- 3.5. Once accepted by the Customer, the Seller's quotation shall be deemed to interpret correctly the Customer's instructions, whether written or verbal. Where verbal instructions only are received from the Customer, the Seller shall not be responsible for errors or omissions due to oversight or any inadvertent misinterpretation of those instructions.
- 3.6. This Contract constitutes the entire Contract between the Seller and the Customer, and the Customer hereby acknowledges that no reliance is placed on any representation made by the Seller, but not embodied in this Contract.
- 3.7. Any advice, recommendations, information, assistance or service provided by the Seller in relation to Services provided is given in good faith, is based on information provided to the Seller, and the Seller's own knowledge, and experience. Whilst it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Services, human error is possible under these circumstances, and the Seller shall make all effort to offer the best solution to the Customer.
- 3.8. These terms and conditions are meant to be read in conjunction with the Seller's 'Services Agreement Form - Schedule/s'. If there are any inconsistencies between the documents, then the terms and conditions contained in that document shall prevail.
4. **Electronic Transactions Acts**
- 4.1. Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (NSW), the Electronic Communications Act 2000 (SA), the Electronic Transactions Act 2001 (ACT), the Electronic Transactions (Victoria) Act 2000, the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (TAS), Section 10 of the Electronic Transactions Act 2011 (WA), (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.
5. **Distribution of Products and/or Services via an Approved Reseller**
- 5.1. The Customer agrees that until they are authorised as a Reseller by the Seller and executed the Seller's Agency Agreement, (then hereinafter the Customer shall be referred to as "Reseller" for the purposes of this clause) the Reseller shall not be able to sell the Products on as a Reseller for the Seller or represent to any third parties that the Reseller is in any way acting for the Seller. The Seller shall not accept responsibility or agree to be bound in any way by any contracts with third parties to whom the Reseller is a party.
- 5.2. At the Seller's sole discretion the Reseller acknowledges that only approved Reseller's shall have the authority to accept internet orders via their respective website and/or any alternative online auction sites.
- 5.3. Orders from a Reseller are accepted on the basis that:
 - (a) unless otherwise agreed by prior approval between the Seller and the Reseller, Products may only be resold to consumers at retail level and may not be sold at wholesale level or to any other trader that is known or is suspected to be purchasing for resale; and
 - (b) Products are to be sold for retail or displayed for sale at only the nominated locations advised by the Reseller to the Seller, and
- (c) sale of Products by mail order, internet or any other method outside of the traditional display and sell at the approved location is prohibited without prior written consent of the Seller; and
- (d) Products are to be displayed, presented and marketed in the manner that is in the best interest of the brand name.
- 5.4. Any default of clauses 5.1-5.3 may at the Seller's sole discretion be subject to immediate and permanent closure of account facilities, with any account balances payable immediately on demand.
- 5.5. The Seller has sole discretion on which brands or Products are made available to any approved Reseller and the Seller does not guarantee continuing supply of any specific Brand or Product.
6. **Errors and Omissions**
- 6.1. The Customer acknowledges and accepts that the Seller shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
 - (a) resulting from an inadvertent mistake made by the Seller in the formation and/or administration of this Contract; and/or
 - (b) contained in/on omitted from any literature (hard copy and/or electronic) supplied by the Seller in respect of the Services.
- 6.2. In the event such an error and/or omission occurs in accordance with clause 6.1, and is not attributable to the negligence and/or willful misconduct of the Seller; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
7. **Change in Control**
- 7.1. The Seller shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by the Seller as a result of the Customer's failure to comply with this clause.
8. **Charges and Payment**
- 8.1. At the Seller's sole discretion, the Charges shall be either:
 - (a) as indicated on any invoice provided by the Seller to the Customer; or
 - (b) the Charges as at the date of Delivery of the Products according to the Seller's current Charges list; or
 - (c) the Seller's quoted Charges (subject to clause 8.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 8.2. The Seller reserves the right to change the Charges if a variation to the Seller's quotation is requested. Any variation as a result of fluctuations in currency exchange rates will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice. The Customer shall be required to respond to any variation submitted by the Seller within ten (10) working days. Failure to do so will entitle the Seller to add the cost of the variation to the Charges. Payment for all variations must be made in full at the time of their completion.
- 8.3. At the Seller's sole discretion, a non-refundable deposit may be required.
- 8.4. Time for payment for the Products being of the essence, the Charges will be payable by the Customer on the date/s determined by the Seller, which may be:
 - (a) on or before Delivery of the Products and/or Services;
 - (b) by way of instalments in accordance with the Seller's payment schedule;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) falling any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Customer by the Seller.
- 8.5. Payment may be made by BPay, Direct Debit, Electronic/on-line banking or Credit Card.
- 8.6. Surcharge transaction fees via Electronic/on-line banking are listed within the payments section of the customer portal.
- 8.7. You agree that if any debit to Your nominated bank account or credit card is dishonoured, You will pay Our principal bank's dishonour for each and every dishonoured transaction, a 10% service charge and any outstanding amounts immediately.
- 8.8. Receipt by the Seller 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.
- 8.9. The Seller may in its discretion allocate any payment received from the Customer towards any invoice that the Seller determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Seller may re-allocate any payments previously received and allocated in the absence of any payment allocation by the Seller; payment will be deemed to be allocated in such manner as preserves the maximum value of the Seller's Purchase Money Security Interest (as defined in the PSPSA) in the Products.
- 8.10. The Customer shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Customer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute. The Customer accepts and agrees:
 - (a) Any invoice disputes must be made to Seller in writing within 14 Days of receipt of the invoice by contacting the Seller via email at accounts@nehos.net; and
 - (b) Invoice disputes will only be accepted if the notification sent to accounts@nehos.net lists the invoice number, the item/s under dispute and the reason why you believe the charge is incorrect. All undisputed amounts of an invoice must be paid by the due date; and
 - (c) Fees are only refundable where there is sufficient evidence (i.e. written, logs, packet captures) that an error has been made; and
 - (d) The Seller will only reissue an invoice and apply appropriate credits if an error is subsequently discovered after being notified by the customer; and
 - (e) The Seller will issue credits for billing error's up to 160 days from the date the charges were incurred.
- 8.11. Unless otherwise stated the Charges does not include GST. In addition to the Charges, the Customer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Products. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Charges. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.
9. **Trade-In Items**
- 9.1. Where the Seller is accepting a trade-in, the Customer warrants that they are the legal owner of the item(s) to be traded-in, and that there is no money owing on the item(s) prior to the Products being installed and/or supplied. The Customer also agrees to maintain full insurance cover for the item(s) until collection takes place.
- 9.2. Where a value for the item(s) has been provided, it is a condition of this Contract that the trade-in shall be made up of the Products specified on the Seller's invoice, quotation, or any other form provided to the Customer, unless otherwise noted in writing within the same document.
- 9.3. The Customer warrants that item(s) being traded-in are in good condition and working order, and the Seller reserves the right to alter the allowance for the trade-in if the description of the item(s) being traded-in or the quantities of the item(s) vary from those specified, or if the item(s) are found to be faulty and/or in poor condition.
10. **Carrier Liaison**
- 10.1. When the Seller submits an order form on behalf of the Customer for the connection, or alteration, of lines or services, the Customer agrees that the Seller shall not be liable for any delays or errors; and further that such a delay or error shall not constitute a reason for withholding any payments which would otherwise be due.
- 10.2. The Customer also acknowledges that under no circumstances is any connection, rental or other carrier fees included in the order, unless specified in writing by the Seller.
- 10.3. The Seller reserves the right to terminate any line orders, and transfer the responsibility back to the Customer, in the event the Customer is rejected for finance and/or cancels the order.
11. **Provision of the Services and Delivery of the Products**
- 11.1. Delivery of the Products ("Delivery") is taken to occur at the time that the Seller (or the Seller's nominated carrier) delivers the Products to the Client's nominated address, even if the Customer is not present at the address. At the Seller's sole discretion, the cost of delivery is included in the Charges.
- 11.2. The Seller may provide the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 11.3. The Customer agrees to provide the Seller with any information the Seller requests in connection with the provision of Services to the Customer under this Contract.
- 11.4. Services will be supplied through the Carriers that the Seller nominates in writing from time to time. The Customer agrees that the Seller:
 - (a) may change Carriers without reference to the Customer at any time; and
 - (b) has the Customer's express authorisation to notify any relevant Carrier in respect of, and to effect, any such change.
- 11.5. Any time specified by the Seller for provision of the Services is an estimate only and the Seller will not be liable for any loss or damage incurred by the Client as a result of provision being late. However both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that the Seller is unable to provide the Services as agreed solely due to any action or inaction of the Customer, then the Seller shall be entitled to:
 - (a) charge the Customer additionally for re-providing the Services at a later time and date; or
 - (b) subject to clause 23.3(b), terminate this Contract.
12. **Installation of the Products**
- 12.1. The Customer acknowledges that, during the installation process, there may be a disruption to the Customer's normal telephone or broadband service. The Customer agrees that the Seller shall, in no way, be liable for any loss or damage suffered as a result of this.
- 12.2. The applicable Services shall be specified in the "Installation Description", and any amendments must be made in writing. Services requested by the Customer, which is not part of the Seller's quotation will be charged at the Seller's normal rates. Where it is found that the Services cannot reasonably be carried out for the calculated Charges due to:
 - (a) unforeseen problems with the running of cables or the use of existing cabling; or
 - (b) an unexpected change in the condition or structure of the installation site, health, safety or regulatory reasons; then the Seller reserves the right to re-quote the installation job.
- 12.3. Where there is an unavoidable delay which is not the fault of the Seller, and which prevents the Services from being completed for more than seven (7) days, then the Customer agrees to pay the Seller any amounts remaining due to the Seller for the period of the delay.
- 12.4. In the event that the installation needs to be postponed due to incomplete data collection, a rescheduling fee of shall be applicable. Note that data collection needs to be completed and returned a minimum of ten (10) days prior to installation to avoid having the installation rescheduled.
13. **Post-Installation Services**
- 13.1. The Seller will, where possible, get a representative of the Customer to sign the Seller's "Authorisation Form". In instances where the site contact is not available to sign the form, this does not remove the obligation by the Customer to pay invoice/s relating to the Services completed.
14. **Transfer of Services / Local Number Porting**
- 14.1. When the Customer transfers any services from a Carrier, a telecommunications service provider or equipment supplier who supplies telecommunications services or equipment to the Customer at the time of signing this Contract, to the Seller, the Customer authorises the Seller to sign on behalf of the Customer, and in the name of the Customer, any forms required to effect the transfer.
- 14.2. The Customer acknowledges and accepts that where the Customer choosing to "Port" from the Seller's Service, the Seller must be notified within seven (7) days of the Customer's number being "Ported Out", failure to comply will result in the billing continuing to be charged for the number/s. Billing will only cease from the date that the Seller is informed that the Port Out has been completed.
15. **Risk and Limitation of Liability**
- 15.1. Risk of damage to or loss of the Products passes to the Customer on delivery, and the Customer must insure the Products on or before delivery. If any of the Products are damaged or destroyed following delivery, but prior to ownership passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Products. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries. If the Customer requests the Seller to deliver the Products to an unattended location, then such Products shall be left at the Customer's sole risk.
- 15.2. The Customer acknowledges and agrees that the Seller shall not be held responsible or liable for any form of loss or damage of any nature whatsoever suffered, whether arising directly or indirectly, by the Customer or any person related to or dealing with the Customer out of, in connection with or reasonably incidental to the provision of the Services by the Seller to the Customer.
- 15.3. The Customer agrees that, in view of their nature, the Customer's use of the Services is at their sole risk. Whilst the Seller will endeavour to ensure that the Services is of a high quality, neither the Seller (nor any of their agents, contractors, licensees, employees or third-party providers involved in providing the Services) give any guarantee that the Services will be uninterrupted or free from error. Where necessary for commercial, technical or other reasons:
 - (a) any third-party provider connected to the Services may suspend or terminate its connection to the Services; and
 - (b) the Services may suspend or terminate their connection to any third-party provider.
- 15.4. The Customer agrees that any such suspension or termination referred to in clause (b) above will not constitute a breach of this Contract by the Seller and the Seller, its Services or provider or any "as is" basis without guarantee of any kind. The Customer further agrees that the Seller will not be held liable for any costs, expenses, losses, damages or other liabilities (howsoever arising) which may incur as a result of a suspension of the Services in accordance with clause (a) above.
- 15.5. The Seller shall be under no liability whatsoever to the Customer for any indirect, incidental, special and/or consequential loss and/or expense, claim and/or cost (including legal fees and commissions, loss of profit, business, contracts, opportunity, goodwill, reputation and/or anticipated saving) and/or for any loss or corruption of data suffered by the Customer arising out of a breach by the Seller of this Contract and/or caused by any failure by the Customer to comply with their obligations under this Contract (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Charges).
- 15.6. The Seller may from time to time conduct maintenance on network and infrastructure through which the Services are provided.
- 15.7. The Seller will not be responsible for rectifying any fault in the Service where that fault arises in or is caused by another Carriers network or the customers own equipment.
16. **Title**
- 16.1. The Seller and the Client agree that the Client's obligations to the Seller for the provision of Services shall not cease (and ownership of any Goods shall not pass) until:
 - (a) the Customer has paid the Seller all amounts owing to the Seller; and
 - (b) the Customer has met all of its other obligations to the Seller, in respect of all contracts between the Seller and the Client.
- 16.2. It is further agreed that, until ownership of the Products passes to the Customer in accordance with clause 16.1:
 - (a) the Customer is only a bailee of the Products and must return the Products to the Seller on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Products on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Products being lost, damaged or destroyed;
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Products other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Products then the Customer must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand;
 - (d) the Customer should not convert or process the Products or intermix them with other Products but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as its direct;

- (e) the Customer irrevocably authorises the Seller to enter any premises where the Seller believes the Products are kept and recover possession of the Products;
- (f) the Seller may recover possession of any Products in transit whether or not Delivery has occurred;
- (g) the Customer shall not charge or grant an encumbrance over the Products nor grant or otherwise give away any interest in the Products while they remain the property of the Seller;
- (h) the Seller may commence proceedings to recover the Charges of the Products notwithstanding that ownership of the Products has not passed to the Customer.
- 17. Personal Property Securities Act 2009 ("PPSA")**
- 17.1. In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 17.2. Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Products and/or collateral (account) – being a monetary obligation of the Customer to the Seller for Services – that have previously been supplied and that will be supplied in the future by the Seller to the Customer.
- 17.3. The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to:
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA;
- (iii) correct a defect in a statement referred to in clause 17.3(a)(i) or 17.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Products charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of the Seller;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Products and/or collateral (account) in favour of a third party without the prior written consent of the Seller;
- (e) immediately advise the Seller of any material change in its business practices of selling the Products which would result in a change in the nature of proceeds derived from such sales.
- 17.4. The Seller and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 17.5. The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(g) and 132(4) of the PPSA.
- 17.6. The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 17.7. Unless otherwise agreed to in writing by the Seller, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 17.8. The Customer must unconditionally ratify any actions taken by the Seller under clauses 17.3 to 17.5.
- 17.9. Subject to any express provisions to the contrary (including those contained in this clause 17), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 18. Security and Charge**
- 18.1. In consideration of the Seller agreeing to supply the Products, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 18.2. The Customer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
- 18.3. The Customer irrevocably appoints the Seller and each director of the Seller as the Customer's solicitor and lawyer/attorney/s to perform all necessary acts to give effect to the provisions of this clause 18 including, but not limited to, signing any document on the Customer's behalf.
- 19. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 19.1. The Customer must inspect the Products on Delivery and must within seven (7) days of Delivery notify the Seller in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Products as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Seller to inspect the Products.
- 19.2. Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non- Excluded Guarantees).
- 19.3. The Seller acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 19.4. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Seller makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Products. The Seller's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 19.5. If the Customer is a consumer within the meaning of the CCA, the Seller's liability is limited to the extent permitted by section 64A of Schedule 2.
- 19.6. If the Seller is required to replace the Products under this clause or CCA, but is unable to do so, the Seller may refund any money the Customer has paid for the Products.
- 19.7. If the Customer is not a consumer within the meaning of the CCA, the Seller's liability for any defect or damage in the Products is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by the Seller at the Seller's sole discretion;
- (b) limited to any warranty to which the Seller is entitled, if the Seller did not manufacture the Products;
- (c) otherwise negated absolutely.
- 19.8. Subject to this clause 19, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 19.1; and
- (b) the Seller has agreed that the Products are defective; and
- (c) the Products are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
- (d) the Products are returned in as close a condition to that in which they were delivered as is possible.
- 19.9. Notwithstanding clauses 19.1 to 19.8 but subject to the CCA, the Seller shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Products;
- (b) the Customer using the Products for any purpose other than that for which they were designed;
- (c) the Customer continuing the use of any Products after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) the Customer failing to follow any instructions or guidelines provided by the Seller;
- (e) fair wear and tear, any accident, or act of God.
- 19.10. In the case of second hand Products, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Products prior to Delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Seller as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that the Seller has agreed to provide the Customer with the second hand Products and calculated the Charges of the second hand Products in reliance of this clause 19.10.
- 19.11. Notwithstanding anything contained in this clause if the Seller is required by a law to accept a return then the Seller will only accept a return on the conditions imposed by that law.
- 19.12. Subject to clause 19.1, customised, or non-stocklist items or Products made or ordered to the Customer's specifications are not acceptable for credit or return.
- 19.13. Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Competition and Consumer Act 2010, Telecommunications Act 1997 or the Fair Trading Acts in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 19.14. Where the Customer buys Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.
- 20. Intellectual Property**
- 20.1. If during the course of providing the Services, the Seller develops, discovers, or puts into operation a new concept, product or process, or creates any Products, which is capable of being patented, then such concept, product or process, or Products shall be and remain the property of the Seller and the Customer shall not use or supply the same in any way whatsoever without first obtaining the written consent of the Seller.
- 20.2. The Customer warrants that all designs, specifications, information and instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Customer's order. Furthermore, the Customer agrees to indemnify, defend, and hold the Seller harmless from all loss incurred or suffered by the Seller arising from any claims (including third party claims) or demands against them where such loss was caused by any infringement or alleged infringement of any person's Intellectual Property rights by the Customer during its use of the Services.
- 21. Default and Consequences of Default**
- 21.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2. If the Customer owes the Seller any money the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's contract default fee, and bank disbursement fees).
- 21.3. Notwithstanding clause 21.2 the Seller may at their discretion, levy a late payment fee of ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) should any account become overdue from the agreed payment due which sum shall become immediately due and payable.
- 21.4. Further to any other rights or remedies the Seller may have under this Contract, if a Customer has made payment to the Seller, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 21 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 21.5. Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Products to the Customer. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.
- 21.6. Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer has exceeded any applicable credit limit provided by the Seller;
- (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 22. Confidentiality**
- 22.1. Subject to clause 22.2, each party agrees to treat as confidential the other party's Confidential Information, and agree not to divulge it to any third party, without the other party's written consent.
- 22.2. Both parties agree to:
- (a) use the Confidential Information of the other party only to the extent required for the purpose it was provided;
- (b) not copy or reproduce any of the Confidential Information of the other party in any way;
- (c) only disclose the other party's Confidential Information to:
- (i) employees and third-party providers who need access to the information and who have agreed to keep it confidential;
- (ii) its legal advisers and insurance providers if those persons are necessary to the performance of the Confidential Information; and
- (iii) not disclose the other party's Confidential Information to any person not referred to in this clause except with the other party's prior written consent or if required by law, any stock exchange or any regulatory body.
- 22.3. Either party must promptly return or destroy all Confidential Information of the other party on request or control at the other party's request unless required by law to retain it.
- 22.4. Confidential Information excludes information:
- 22.1. generally available in the public domain (without unauthorised disclosure under this Contract);
- 22.2. received from a third party entitled to disclose it;
- 22.3. that is independently developed;
- 22.4. the obligations of this clause 22 shall survive termination or cancellation of this Contract.
- 23. Cancellation and Termination**
- 23.1. Either party may, without liability, cancel this Contract, or cancel provision of the Services upon thirty (30) days written notice to the other contracting party. The Seller will issue a termination receipt within two (2) business days of such notice, stating the service termination date, including any early termination fee (where applicable) and instruction relating to the return of equipment. If for any reason, this termination receipt is not received by the Customer, the Customer must notify the Seller immediately.
- 23.2. The Seller may, in addition to their right to cancel under clause 23.1:
- (a) do so at any time:
- (i) prior to the commencement of the Services, by giving notice to the Customer, in the event the Seller determines it is not technically, commercially or operationally feasible to provide the Services to the Customer;
- (ii) in the event the Customer materially breaches this Contract, and such breach is not capable of remedy.
- 23.3. In the event that the Customer:
- (a) cancels this Contract, or the provision of Services, prior to the expiry of any specified term, then the Customer shall be liable to pay for the provision of the Services subject to clause 14.2 up to and including the date of cancellation;
- (b) fails to give notice of intention to cancel at least thirty (30) days prior to the expiration date of the term, the term shall automatically renew on a monthly basis, unless cancelled by way of the Customer providing the Seller with thirty (30) days' notice.
- 23.4. Should the Customer, for any reason, cause the Services to be delayed for more than three (3) months after the acceptance date, this Contract will be terminated by the Seller (at their sole discretion) and all Services completed, but not billed or paid for, will be payable in full within seven (7) days from the date of the submitted invoice.
- 24. Privacy Policy**
- 24.1. All emails, documents, images or other recorded information held or used by the Seller is Personal Information, as defined and referred to in clause 24.3, and therefore constitutes Confidential Information. The Seller acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part III C of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation ("GDPR") (collectively "EU Data Privacy Laws"). The Seller acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by the Seller that may result in serious harm to the Customer, the Seller will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 24.2. Notwithstanding clause 24.1, privacy limitations will extend to the Seller in respect of Cookies where transactions for purchases/orders transpire directly from the Seller's website. The Seller agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to the Seller when the Seller sends an email to the Customer, so the Seller may collect and review that information collectively as Personal Information. In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via the Seller's website.
- 24.3. The Customer agrees for the Seller to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact or financial details (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by the Seller.
- 24.4. The Customer agrees that the Seller may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
- (b) to assess the creditworthiness of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 24.5. The Customer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit.
- 24.6. The Customer agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Products; and/or
- (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Products; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (d) enabling the collection of amounts outstanding in relation to the Products.
- 24.7. The Seller may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
- (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 24.8. The information given to the CRB may include:
- (a) Personal Information as outlined in 24.3 above;
- (b) name of the credit provider and that the Seller is a current credit provider to the Customer;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and the Seller has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of the Seller, the Customer has committed a serious credit infringement;
- (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 24.9. The Customer shall have the right to request (by e-mail) from the Seller:
- (a) a copy of the Personal Information about the Customer retained by the Seller and the right to request that the Seller correct any incorrect Personal Information; and
- (b) that the Seller does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 24.10. The Seller will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 24.11. The Customer can make a privacy complaint by contacting the Seller via e-mail. The Seller will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 25. Service of Notices**
- 25.1. Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract; or
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 25.2. Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 26. Trusts**
- 26.1. If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Seller may have notice of the Trust, the Customer covenants with the Seller as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Customer will not without consent in writing of the Seller (the Seller shall not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.
- 27. General**
- 27.1. The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 27.2. These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which the Seller has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 27.3. The Seller may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 27.4. The Customer cannot licence or assign without the written approval of the Seller.
- 27.5. The Seller may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they do not have any authority to give any instruction to any of the Seller's sub-contractors without the authority of the Seller.
- 27.6. The Customer agrees that the Seller may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Seller to provide Products to the Customer.
- 27.7. Neither party shall be liable for any default due to fires, explosions, severe weather, industrial disputes, insurrection, requirements or regulations, or any civil or military authority, acts of war (whether declared or not), civil unrest, acts of God, terrorism, riot, strike, embargo, government act, strike, lock-out, storm, terrorism, failure or outage of any telecommunications links or other connections which are beyond the reasonable control of either party.
- 27.8. Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.