

# Nehos Communications Terms & Conditions of Trade



Nehos Communications Pty Ltd  
ACN 108 343 095

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Call 1300 726 889 for help Mon-Fri (9am-5pm) EST or email  
accounts@nehos.net

## 1. Definitions

- 1.1. **"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.
- 1.2. **"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.
- 1.3. **"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.
- 1.4. **"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).
- 1.5. **"Carriers"** shall mean the Carriers or networks through whom the Seller nominates to supply Services to the Customer.
- 1.6. **"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.
- 1.7. **"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.**
- 1.8. **"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.
- 1.9. **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

## 2. Interpretation

- 2.1. 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 a 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.
- 3.2. In the event 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.
- 3.3. 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.
- 3.4. 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.
- 3.5. In the event that the supply of Products request exceeds the Customers credit limit and/or the account exceeds the payment terms, the Seller reserves the right to refuse Delivery or order acceptance.
- 3.6. 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.
- 3.7. 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.
- 3.8. 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.
- 3.9. 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.

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## 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/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 wilful 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 Customer 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) failing 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, Ezi-Debit, Direct Debit, Electronic/on-line banking or Credit Card.
- (a) Credit card payments via Ezi-Debit Visa/Mastercard will incur a 2.2% (min \$1.10) surcharge.
  - (b) Credit Card payments via Electronic/on-line banking will incur a 1.8535% surcharge per transaction.
  - (c) Ezidebit automatic payment from your bank account is free for transactions greater than \$20 inc GST per month. For amounts less than \$20 inc GST a surcharge of \$1.10 inc GST will apply.
  - (d) A \$4 inc GST processing fee will be charged for payments by cheque.
  - (e) 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.
- 8.6. 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.
- 8.7. 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 PPSA) in the Products.

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- 8.8. 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](mailto:accounts@nehos.net); and
  - (b) Invoice disputes will only be accepted if the notification sent to [accounts@nehos.net](mailto: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) Charges are only refundable if there is sufficient evident (i.e. written, logs, packet captures) than an error has been made; and
  - (d) the Seller will only re-issue an invoice and apply the appropriate credit if an error is subsequently discovered after being notified by the Customer; and
  - (e) the Seller will only issue credits for the billing error up to one hundred and sixty (160) days from the date the Charges were incurred.

- 8.9. 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. Where 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) have 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 maybe 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 for Services carried out up to that point.
- 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.

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## 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 chooses to "Port Out" their number from the Seller's Service, the Seller
- 14.3. 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 are 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 that the Services are provided on an "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 you 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 Carrier's network or the customer's 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 it so directs;
  - (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 nor 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 sold 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; or
    - (iii) correct a defect in a statement referred to in clause 17.3(a)(i) or 17.3(a)(ii);

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- (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)(d) 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 true and lawful 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 the 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.

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## 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 dishonour 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 undertake to keep such information confidential; 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 in its possession or control at the other party's request unless required by law to retain it.
- 22.4. Confidential Information excludes information:
- (a) generally available in the public domain (without unauthorised disclosure under this Contract);
  - (b) received from a third party entitled to disclose it;
  - (c) that is independently developed.
- 22.5. 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
- 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.

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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, 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 considered 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 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 information (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 notify other credit providers 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](http://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;
  - (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;

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(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 will 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 have no 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, earthquake, flood, riot, 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.