

FRIENDLYWARE SERVICES PTY LTD - TERMS AND CONDITIONS OF SUPPLY AND SERVICE

1. INTERPRETATION

In these Terms:

- 1.1. "Agreement" means any agreement, whether written, oral or implied by conduct and/or business dealings, between the Company and the Customer for the supply of Products and/or performance of Services;
- 1.2. "Charges" means the moneys payable by the Customer for the provision of the Products and/or performance of the Services;
- 1.3. "Company" means Friendlyware Service Pty Ltd ABN 75 109 132 121;
- 1.4. "Consequential Loss or Damage" means loss of profits, revenue, use or opportunity, re-installation costs, removal costs and any indirect, remote, abnormal or unforeseeable loss or damage;
- 1.5. "Customer" means the party to whom the Company has agreed to supply the Products and/or perform the Services;
- 1.6. "GST" means the Goods and Services Tax imposed by *A New Tax System (Goods & Services Tax) Act 1999* and any related act and/or regulations;
- 1.7. "Products" means all goods, equipment, hardware, software, associated components and products including consumables sold, on-sold, supplied and/or delivered by the Company to the Customer from time to time;
- 1.8. "Services" means all planning, consultancy, installation, commissioning, maintenance, support, repair and on-site and remote access technical support services performed by the Company for the Customer from time to time; and
- 1.9. "Terms" means these Terms and Conditions of Supply and Service.

2. APPLICATION

- 2.1. These Terms apply to the supply of Products and/or the performance of Services to the Customer by the Company.
- 2.2. No amendment, alteration, waiver or cancellation of these Terms is binding on the Company unless confirmed in writing by the Company.
- 2.3. Any terms and/or conditions of the Customer relating to the supply of the Products and/or performance of the Services will be of no force or effect between the Company and the Customer unless and then only to the extent agreed to in writing by the Company.
- 2.4. The Customer acknowledges and agrees that no employee or agent of the Company may make any representation, warranty or promise in relation of the Products or the Services other than as contained in these Terms.

3. CHARGES

- 3.1. Prices quoted for Products and/or Services are fixed for 30 days from the date of quotation unless stated otherwise.
- 3.2. Unless waived by the Company, fees apply to all Services performed and are charged at 15 minute increments.
- 3.3. The Company reserves the right to charge for travel time that, in the Company's opinion, is excessive.
- 3.4. The Company must give the Customer a tax invoice.

4. TERMS OF PAYMENT

- 4.1. The Customer must pay the Charges in full without any deduction or discount other than as stated in these Terms or in the relevant invoice or statement issued by the Company.
- 4.2. Unless alternative arrangements have been made in advance, payments must be made on receipt of invoice by cheque or direct deposit.
- 4.3. Queries regarding invoices must be made within 7 days of receipt of invoice.
- 4.4. The Customer cannot set-off from any payment, any counter-claims that the Customer may have or considers it has against the Company.
- 4.5. Interest is payable on all accounts overdue by more than 30 days, calculated on a daily basis at the rate of interest equivalent to St. George Bank's indicator lending rate as at the final date of payment plus 2% until full payment is received by the Company.
- 4.6. The Company reserves its right to suspend supplying Products and/or performing Services for the Customer until any and all outstanding invoices have been fully paid.

5. SUPPLY OF PRODUCTS

The Customer acknowledges and agrees that:

- 5.1. the Company will supply the Products specified in the Agreement;
- 5.2. the Company reserves the right to supply the Products in whole or by instalments;
- 5.3. any failure by the Company to deliver instalments within any specified time does not entitle the Customer to repudiate the Agreement with regard to the balance remaining undelivered; and
- 5.4. legal and beneficial ownership of the Products will not pass to the Customer until the Products have been paid in full in cleared funds.

6. PERFORMANCE OF SERVICES

The Customer acknowledges and agrees that:

- 6.1. the Company will perform the Services specified in the Agreement;
- 6.2. a quote for Services prepared by the Company assumes that all previous maintenance services have been completed in accordance with the manufacturer's specifications and manuals;
- 6.3. the Company will perform all Services in a professional and workmanlike manner;
- 6.4. in the course of performing the Services, the Company may require remote access to the Customer's computer system(s) and network(s);
- 6.5. in the course of performing the Services, the Company will need to access and collect information about the Customer's computer system(s) and network(s);
- 6.6. where Services involve the installation of software, the Company is authorised to agree to standard software licence agreements on the Customer's behalf;
- 6.7. where Services involve repair work, while the Company will use its best endeavours, the Company will not be responsible if the Customer's computer system, network and/or component(s) cannot be repaired; and
- 6.8. the Customer may be liable to pay Charges even if the Services are not successful.

7. APPLICATION OF AND COMPLIANCE WITH LAWS, TERMS AND CONDITIONS

Without limiting these Terms, the Customer must observe and comply with any and all:

- 7.1. manufacturer's, publisher's, licensor's and/or supplier's terms and conditions attaching to Products supplied under an Agreement; and
- 7.2. laws and regulations in relation to copyright, patents, trademarks and designs.

8. RISK AND INSURANCE

- 8.1. The Products are at the risk of the Customer from the moment the Products leave the Company's premises and the Customer must maintain insurance at its own cost for the full replacement value of the Products against loss, theft, destruction, fire, water damage and other risks.
- 8.2. The Customer is responsible for backing up all data stored on its computer system(s) and network(s) and for protecting such data from loss, theft and destruction.

9. NOTICE OF DEFECTS

Unless the Customer has given written notice to the Company within 7 days:

- 9.1. after the installation or delivery of the Products that the Products are defective, faulty, damaged or not compliant with relevant specifications or descriptions in the Agreement, the Products are deemed to have been accepted in good order and condition and compliant with the relevant specifications or descriptions; and
- 9.2. after the provision of the Services that the Services were not of the agreed standard, the Services are deemed to have been provided in a professional and workmanlike manner and compliant with the Customer's instructions.

10. TERMINATION

- 10.1. The Company may at any time and without prejudice to any other rights which it may have against the Customer, terminate any Agreement relating to the Products and/or Services if:
 - 10.1.1. the Products and/or Services are not paid for in accordance with these Terms or other applicable agreement, if any; or
 - 10.1.2. the Customer is in breach of any provision of these Terms and such breach is not remedied within 14 days of a request by the Company to do so; or
 - 10.1.3. any other event occurs which, in the Company's opinion, is likely to adversely affect the Customer's ability to pay for the Products and/or Services (including but not limited to the appointment of a receiver, administrator, liquidator or similar person to the Customer's undertaking).
- 10.2. The Customer may, subject to any separate agreement to the contrary, suspend or terminate its request for Services at any time without prior notice. In that event, the Customer will remain liable for all Charges up to receipt by the Company of such suspension or termination.

11. COMPANY'S LIABILITY LIMITED

- 11.1. The Company is not subject to, and the Customer releases the Company from, any liability (including, but not limited to, Consequential Loss or Damage) arising from:
 - 11.1.1. delay in the supply of Products and/or the performance of the Services; and
 - 11.1.2. fault, error or defect in the Products supplied and/or the Services performed.
- 11.2. If, despite clause 11.1, the provisions of the *Competition and Consumer Act 2010 (Cth)*, the *Sale of Goods Act 1923 (NSW)* or any other act or general law impose a liability on the Company for a defect or fault in the Products and/or Services then, to the extent to which the Company is able to do so, the Company's liability under those provisions is limited, at the Company's option, to:
 - 11.2.1. supplying the Products and/or providing the Services again; or
 - 11.2.2. the payment of the costs, limited to \$3,000.00, of having a third party supply the Products and/or perform the Services; or
 - 11.2.3. a refund of up to \$3,000.00 of moneys paid by the Customer to the Company in respect of the Products and/or Services, and in any case, the Company will not be liable for any Consequential Loss or Damage or any other direct or indirect loss or damage.

12. INDEMNIFICATION

The Customer indemnifies and keeps the Company indemnified from and against all losses, expenses, claims and demands (including but not limited to legal fees and disbursements on a solicitor-client basis), incurred, suffered or made against the Company in connection with any:

- 12.1. conduct, including negligence, by the Customer in the Customer's use of the Products and/or request for the Services;
- 12.2. infringement by the Customer of another person's intellectual property rights;
- 12.3. acts and/or omissions by the Company or its employees or agents in the supply of the Products and/or performance of the Services; and
- 12.4. representation, description, undertaking, warranty or promise in relation to the Products and/or Services, whether express or implied, other than as contained in these Terms.

13. WARRANTIES BY THE COMPANY

- 13.1. The Customer expressly acknowledges and agrees that it has not relied on, and the Company is not liable for, any advice given by the Company, its servants, agents, representatives or employees in relation to the suitability of the Products and/or Services for any purposes.
- 13.2. The provisions of any act or law (including, but not limited to, the *Competition and Consumer Act 2010 (Cth)* and the *Sale of Goods Act 1923 (NSW)*) implying terms, conditions and warranties, or any other terms, conditions and warranties which might otherwise apply to or arise out of the Agreement in relation to the Products and/or Services are hereby expressly negated and excluded to the full extent permitted by law.

14. WARRANTIES BY THE CUSTOMER

The Customer warrants that it will not:

- 14.1. use the Products and/or request the Services for an illegal purpose;
- 14.2. interfere with or otherwise disrupt networks (including the internet) connected with the Products and/or Services;
- 14.3. use the Products and/or request the Services to infringe any third party's intellectual property rights;
- 14.4. cause the Company to install counterfeit, unauthorised, unlicensed or otherwise illegal copies and/or versions of software and/or other applications; or
- 14.5. use the Products and/or request the Services to infringe any third party's rights of publicity and/or privacy.

15. PRIVACY

- 15.1. The Company will only disclose information about the Customer to third parties with the Customer's consent or where this is incidental and necessary for supplying the Products and/or performing the Services.
- 15.2. The Company will exercise due care to protect information about the Customer from unauthorised use and disclosure but will not be responsible for use or disclosure of information about the Customer in circumstances beyond the Company's reasonable control or where disclosure is required by law.

16. FORCE MAJEURE

The Company will not be liable for any breach of contract due to any matter or thing beyond the Company's control (including but not limited to transport stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lock-outs, work stoppages, wars, riots or civil commotion, intervention of public authority, explosion or accident).

17. WAIVER OF BREACH

No failure by the Company to insist on the strict performance of any of the terms in these Terms is a waiver of any right or remedy which the Company may have, and is not a waiver of any subsequent breach or default by the Customer.

18. ASSIGNMENT

Neither the Agreement nor any rights arising under the Agreement may be assigned by the Customer without the prior written consent of the Company which is at the Company's absolute discretion.

19. NO PARTNERSHIP OR AGENCY

The Company and the Customer are not partners or agents for the other for any purpose. With the exception of clause 6.6 of these Terms, neither the Company nor the Customer may act for, in any way pledge the credit of or incur any obligation on behalf of the other.

20. ENTIRE AGREEMENT

These Terms contain the entire agreement between the Company and the Customer in relation to the supply of Products to and/or performance of Services for the Customer and supersede all previous agreements or understandings between the Company and the Customer in connection with the supply of Products and/or performance of Services.

21. SEVERABILITY

If any provision contained in these Terms is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions are not affected.

22. GOVERNING LAW

These Terms and any Agreement entered under or pursuant to these Terms is governed by the laws of New South Wales, Australia, and each party submits to the non-exclusive jurisdiction of the arbitration tribunals and to the courts of New South Wales and waives any right it might have to claim that those tribunals and courts are an inconvenient forum.