

NBIT Townsville – Terms & Conditions of Trade

1. **Definitions**
 - 1.1 "Seller" means NBIT Townsville, its successors or assigns or any person acting on behalf of and with the authority of NBIT Townsville.
 - 1.2 "Client" means the person/s requesting the Seller to provide the Services as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
 - 1.3 "Services" means all Goods (which includes any hardware or software, whether supplied from a third party or where custom developed or programmed for the Client, accessories or parts, etc.) and/or Services (which includes any advice or recommendations, installation of Goods, product support, etc.) provided by the Seller to the Client at the Client's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).
 - 1.4 "Price" means the cost of the Services as agreed between the Seller and the Client in accordance with clause 4 below.
 2. **Acceptance**
 - 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts, Services provided by the Seller.
 - 2.2 These terms and conditions:
 - (a) sets forth the entire and final understanding of the Client and the Seller pertaining to the subject matter hereof and supersedes all prior arrangement, whether oral or written; and
 - (b) may only be amended with the Seller's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Seller.
 - 2.3 The Client shall as soon as practicable make available to the Seller all information, documents, software, hardware, and other particulars required by the Seller for the provision of Services.
 - 2.4 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Director of the Seller in writing nor is the Seller bound by any such unauthorised statements.
 - 2.5 Any advice, recommendations, information, assistance or service provided by the Seller in relation to the Services provided is given in good faith, is based on information provided to the Seller, and the Seller's own industry knowledge, and experience. Whilst it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client 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 Client.
 - 2.6 Provided the Seller acts reasonably, they are entitled to assume that any request in connection with the Services that the Seller receives from the Client (or the Client's agents, employees or contractors) or from the premises where the Services are being supplied or accessed, is authorised by the Client.
 - 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.
 3. **Change in Control**
 - 3.1 The Client shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client's failure to comply with this clause.
 4. **Price and Payment**
 - 4.1 At the Seller's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by the Seller to the Client; or
 - (b) the Seller's quoted price (subject to clause 4.2) which will be valid for the period stated in this agreement, or otherwise for a period of seven (7) days;
 - (c) as per the Seller's set non-refundable monthly charges for Maintenance Services (see clause 9), which will be as stipulated (including when due and payable) by the Seller in the Maintenance and Support Agreement.
 - 4.2 The Seller reserves the right to vary the Price:
 - (a) if a variation to the plan of scheduled Services, or Client specifications is requested (including, but not limited to, additional work required due to hidden or unidentifiable difficulties not evident prior to commencement of the Services, any request to investigate and/or repair any faults or defects outside the Seller's normal business hours);
 - (b) as a result of increases beyond the Seller's reasonable control in the cost of materials or labour (e.g. third-party network operator or supplier costs, etc.). Where the Client has entered into a Maintenance and Support Agreement, the Seller will provide thirty (30) days' written notice to the Client of any adjustment to the monthly charges thereof. If the Client does not agree to the adjusted monthly charges, the Client may terminate the Services by notice in writing to the Seller no later than thirty (30) days after the Client's receipt of the Seller's notice thereof. Thereinafter, the Client is deemed to have accepted the adjustment.
 - 4.3 At the Seller's sole discretion, a deposit may be required prior to provision of the Services.
 - 4.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by the Seller, which may be:
 - (a) on provision of the Services; or
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Seller.
 - 4.5 Payment may be made by cash, cheque, bank cheque, electronic/online banking, credit card, or by any other method as agreed to between the Client and the Seller.
 - 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Seller an amount equal to any GST the Seller must pay for any provision of Services by the Seller under this or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price, except where they are expressly included in the Price.
 - 4.7 The Client acknowledges and agrees that the Client's obligations to the Seller for the provision of the Services shall not cease, and ownership of the Goods (if applicable) shall not pass, until:
 - (a) the Client has paid the Seller all amounts owing thereto for the particular Services; and
 - (b) the Client has met all other obligations due by the Client to the Seller in respect of all agreements between the Seller and the Client.
 - 4.8 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 and until then the Seller's ownership or rights in respect of the Services, and this agreement, shall continue.
 5. **Provision of the Services**
 - 5.1 The Services are supplied on the basis of specifications, information and instructions provided by the Client to the Seller (whether written or verbal). The Client acknowledges that it is their responsibility to ensure that such are detailed sufficiently to satisfy the Seller's requirements of interpretation and understanding, as once accepted by the Client, the Seller's quotation shall be deemed to interpret correctly those specifications, information and instructions. Therefore, the Seller shall not accept any liability for the supply of Services contrary to the Client's intention, or errors or omissions in the Services, due to insufficient or inadequate provision of detailed specifications, information and instructions by the Client or oversight or misinterpretation thereof, and the Seller may charge the Client additional costs incurred thereby in remedying the Services, and if reasonably practical, will notify the Client of such costs before they are incurred and the Client agrees to them.
 - 5.2 Where the performance of any contract with the Client requires the Seller to obtain products and/or services from a third party, the contract between the Seller and the Client shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to the Seller, and the Client shall be liable for the cost in full including the Seller's margin of such products and/or services.
 - 5.3 The Seller may supply Goods to the Client where it is required for the provision of Services. The Client may request upgrades to or newer versions of the Goods and the Seller will advise the Client of the availability of such Goods and the additional cost associated with the supply of the Goods.
 - 5.4 Whilst the Seller shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties (subject to the Seller's normal service hours of 9:00am to 5:00pm on business days), the Client acknowledges that any time specified thereby 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 any delay. In the event that the Seller is unable to provide the Services as agreed solely due to any action or inaction of the Client then the Seller shall be indemnified from any liability for any resulting failure to provide the Services and/or entitled to charge a reasonable fee for re-providing the Services at a later time and date.
 - 5.5 **Normal Working Hours:**
 - (a) Services may be requested outside of the hours of 9:00am to 5:00pm Monday through Friday, and including all public holidays by prior arrangement, but may be subject to additional charges.
 6. **Repair Notice**
 - 6.1 If the Client is a consumer within the meaning of the CCA, this clause constitutes a Repair Notice given under the Australian Consumer Law ("ACL"), and the Client acknowledges that:
 - (a) the repair of equipment may result in the loss of any files stored on the device. ("**User-Generated Data**"). It is the sole responsibility of the Client to back-up any User-Generated Data which they believe to be important, valuable, or irreplaceable prior to submitting the equipment for repair; and
 - (b) equipment presented for repair may be replaced by, or repaired with, refurbished Goods of the same type rather than being repaired.
 7. **Client's Obligations**
 - 7.1 The Client shall:
 - (a) cooperate with the Seller in connection with the provision of the Services, and provide full and free access to the Client's premises, equipment and adequate working space and facilities, such as electrical outlets, within a reasonable distance from the equipment;
 - (b) obtain, keep and make available to the Seller, machine readable copies of all programs, operating systems, drivers and data files relating to the equipment. The Seller does not assume any liability as a consequence of the Client's inability to use its machine readable data;
 - (c) not modify, create any derivative work of, or incorporate any other goods into the network or any portion thereof. The Seller shall not be responsible for the maintenance of, or the repair of problems or malfunctions caused by any modifications or enhancements made by the Client or by anyone else other than the Seller.
 8. **Client's Property and Materials**
 - 8.1 In the case of property and materials left with the Seller without specific instructions, the Seller shall be free to dispose of them at the end of three (3) months after the Seller receiving them and to accept and retain the proceeds, if any, to cover the Seller's own costs in holding and handling them.
 - 8.2 Where materials or equipment are supplied by the Client, the Seller accepts no responsibility for imperfect work caused by defects in or unsuitability of such materials or equipment.
 9. **Maintenance Services**
 - 9.1 **Term:**
 - (a) The Services shall continue for the term stipulated in the Maintenance and Support Agreement and, upon expiration of this term, will continue on a monthly basis, unless terminated in accordance with clause 9.3.
 - 9.2 **Provision of Maintenance Services:**
 - (a) The Services do not include the supply of any parts, software, manuals, materials, travel or other disbursements which may be necessary or requested by the Client. These costs shall be invoiced to the Client in addition to the Price.
 - (b) The Seller agrees to provide the Services to the Client in respect of the Windows-based equipment on the terms and conditions set out in this agreement.
 - (c) The Seller shall provide preventative maintenance services during the Seller's normal service hours at intervals necessary to keep the equipment in good working conditions.
 - (d) Subject to the Client fulfilling their obligations under this agreement, the Seller will provide the following Services:
 - (i) installing Microsoft Windows and Microsoft Office security patches and stability updates;
 - (ii) antivirus, anti-spyware and anti-adsware program updates;
 - (iii) scan for any viruses, adware or spyware and remove them if found;
 - (iv) delete any temporary files, cookies, cache, recycle bin files that the computer accumulates;
 - (v) delete e-mails in the "junk folder" of the primary e-mail application;
 - (vi) delete oldest e-mails from the "deleted items" folder;
 - (vii) remove unnecessary programs;
 - (viii) prevent unnecessary program from automatically starting when the computer boots;
 - (ix) listen for possible problems in moving parts in the computer, such as fans and hard drives;
 - (x) complete a full disc defragmentation.
- 9.3 **Termination:**
 - (a) The Seller may terminate the Services at any time by giving at least fifteen (15) days prior written notice to the Client, but not earlier than thirty (30) days from the commencement date of the Maintenance and Support Agreement.
 - (b) The Client may terminate the Services immediately at any time, provided the Client pays to the Seller the full amount of the Price.
 - (c) Either party may terminate the Services immediate at any time by notice in writing if the other party:
 - (i) commits a breach of this agreement and fails to remedy it within a reasonable amount of time;
 - (ii) ceases to continue its business or substantially the whole of its business;
 - (iii) is declared insolvent or a liquidator, manager, trustee, receiver or similar officer is appointed over any of its assets.
10. **Risk and Limitation of Liability**
 - 10.1 The Client acknowledges and agrees that the Seller shall not be held responsible or liable for:
 - (a) any loss, corruption, or deletion of files or data (including, but not limited to software programmes) resulting from illegal hacking or Services provided by the Seller. Whilst the Seller will endeavour to restore files or data (at the Client's cost), it is the sole responsibility of the Client to back-up any data as per clause 6.1(a). The Client accepts full responsibility for the Client's software and data and the Seller is not required to advise or remind the Client of appropriate backup procedures;
 - (b) any loss or damage to the Client's software or hardware caused by any 'updates' provided for that software;
 - (c) any unlicensed software, data loss or problems arising caused by the user or software.
 - 10.2 The Seller, its directors, agents or employees will not be liable in any way for any form of loss or damage of any nature whatsoever suffered, whether arising directly or indirectly, by the Client or any person related to or dealing with the Client out of, in connection with or reasonably incidental to the provision of Services by the Seller to the Client.
 - 10.3 The Client agrees to defend, hold harmless and indemnify the Seller for any and all claims, causes of action, damages, demands, fines, liabilities and penalties arising out of the Client's breach of any warranty made by the Client pursuant to this agreement. The Client further agrees to defend, hold harmless and indemnify the Seller for any and all claims, causes of action, damages, demands, fines, liabilities and penalties arising out of the Client's negligent or reckless acts or omissions arising out of this agreement.
 - 10.4 The Client acknowledges that it is the policy of the Seller to report all findings of illegal material (including, but not limited to, images and software) to the relevant authorities.
 - 10.5 All risk for the Goods shall pass to the Client as soon as such items are delivered to the Client. The Client must insure all Goods on or before delivery.
11. **Defects, Warranties and the Competition and Consumer Act 2010 (CCA)**
 - 11.1 The Client must inspect the Seller's Services on completion and must within seven (7) days notify the Seller in writing of any evident defect in the Services provided (including the Seller's workmanship) or of any other failure by the Seller to comply with the description of, or quote for, the Services which the Seller was to provide. The Client must notify any other alleged defect in the Seller's Services as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Seller to review the Services that were provided.
 - 11.2 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**").
 - 11.3 The Seller acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
 - 11.4 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 Services. The Seller's liability in respect of these warranties is limited to the fullest extent permitted by law.
 - 11.5 If the Client 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.
 - 11.6 If the Seller is required to rectify, re-provide, or pay the cost of re-providing the Services under this clause or the CCA, but is unable to do so, then the Seller may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.
 - 11.7 If the Client is not a consumer within the meaning of the CCA, the Seller's liability for any defective Services is:
 - (a) limited to the value of any express warranty or warranty card provided to the Client 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 Goods;
 - (c) otherwise negated absolutely.

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- 11.8 Notwithstanding clauses 11.1 to 11.7 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:
- the Client failing to properly maintain or store the Goods;
 - the Client using the Goods for any purpose other than that for which they were designed;
 - the Client continuing to use any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - interference with the Goods by the Client or any third party without the Seller's prior approval;
 - the Client failing to follow any instructions or guidelines provided by the Seller;
 - fair wear and tear, any accident, or act of God.
- 12. Title**
- 12.1 The Client acknowledges and agrees that, until ownership of the Goods passes to the Client in accordance with clause 4.7:
- the Client is only a bailee of the Goods and must return the Goods to the Seller on request.
 - the Client holds the benefit of the Client's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client 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.
 - the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client 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.
 - the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller.
 - the Seller may commence proceedings to recover the Price notwithstanding that ownership of the Goods has not passed to the Client.
- 12.2 If the Client fails to return the Goods, or refuses to allow the Seller to recover the Goods, the Client irrevocably authorises the Seller (as the invitee of the Client) to enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated, or the Seller believes the Goods are kept, and take/recover possession of the Goods, without being responsible for any damage thereby caused. Furthermore, provided the Seller acts with reasonable care, the Client must reimburse the Seller for any loss and/or costs incurred thereby.
- 13. Intellectual Property**
- 13.1 Where the Seller has supplied the Client with computer software (including coding and routines) and/or has designed, drawn or developed Goods for the Client, the Seller retains full ownership of the computer software and/or the copyright in any designs and drawings and documents shall remain the property of the Seller, and the Seller hereby grants to the Client an irrevocable, non-exclusive and non-transferable licence to use the software (under the terms of the licence it was supplied) and/or Goods.
- 13.2 The Client warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Client's order. Furthermore, the Client 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 Client during the use of the Services.
- 14. Cancellation**
- 14.1 The Seller may cancel any contract to which these terms and conditions apply or cancel provision of the Services at any time before the Services have commenced (or Goods are delivered) by giving written notice to the Client. On giving such notice the Seller shall repay to the Client any money paid by the Client for Services not yet provided. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 In the event that the Client cancels provision of the Services, the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 14.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once an order has been placed.
- 15. Unpaid Seller's Rights**
- 15.1 Where the Client has left any equipment with the Seller for repair, modification, exchange or for the Seller to perform any Services in relation to the equipment and the Seller has not received or been tendered the whole of any moneys owing to it by the Client, the Seller shall have, until all moneys owing to the Seller are paid:
- a lien on the equipment; and
 - the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected equipment.
- 15.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Seller having been obtained against the Client.
- 16. Personal Property Securities Act 2009 ("PPSA")**
- 16.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 16.2 Upon assenting to these terms and conditions in writing the Client 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 Goods and collateral (accounts) – being a monetary obligation of the Client for Services – that have previously been provided and that will be provided in the future by the Seller to the Client.
- 16.3 The Client undertakes to:
- 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;
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA; or
 - correct a defect in a statement referred to in clause 16.3(a)(i) or 16.3(a)(ii);
 - 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 registration made thereby;
 - not register a financing change statement in respect of a security interest without the prior written consent of the Seller;
 - not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Seller.
- 16.4 The Seller and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement by these terms and conditions.
- 16.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 16.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 16.7 Unless otherwise agreed to in writing by the Seller, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 16.8 The Client must unconditionally ratify any actions taken by the Seller under clauses 16.3 to 16.5.
- 16.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 17. Security and Charge**
- 17.1 In consideration of the Seller agreeing to provide the Services, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 17.2 The Client 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.
- 17.3 The Client irrevocably appoints the Seller and each director of the Seller as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Client's behalf.
- 18. Default and Consequences of Default**
- 18.1 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.
- 18.2 If the Client owes the Seller any money the Client 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 fees, and bank dishonour fees).
- 18.3 Further to any other rights or remedies the Seller may have under this agreement, if the Client has made payment to the Seller by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 18.4 Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or where the Client fails to cooperate with the Seller or hinders the Seller's ability to provide the Services hereunder) under these terms and conditions the Seller may suspend the provision of Services to the Client or terminate this agreement. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.
- 18.5 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 Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to make a payment when it falls due;
 - the Client 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
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 19. Privacy Act 1988**
- 19.1 The Client 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, previous credit applications, credit history) about the Client in relation to credit provided by the Seller.
- 19.2 The Client agrees that the Seller may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- to assess an application by the Client; and/or
 - to notify other credit providers of a default by the Client; and/or
 - to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 19.3 The Client consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit.
- 19.4 The Client 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):
- the provision of Services; and/or
 - analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - enabling the collection of amounts outstanding in relation to the Services.
- 19.5 The Seller may give information about the Client to a CRB for the following purposes:
- to obtain a consumer credit report;
 - allow the CRB to create or maintain a credit information file about the Client including credit history.
- 19.6 The information given to the CRB may include:
- personal information as outlined in 19.1 above;
 - name of the credit provider and that the Seller is a current credit provider to the Client;
 - whether the credit provider is a licensee;
 - type of consumer credit;
 - details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - 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 Client 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);
 - information that, in the opinion of the Seller, the Client has committed a serious credit infringement;
 - advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.7 The Client shall have the right to request (by e-mail) from the Seller:
- a copy of the information about the Client retained by the Seller and the right to request that the Seller correct any incorrect information; and
 - that the Seller does not disclose any personal information about the Client for the purpose of direct marketing.
- 19.8 The Seller will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 19.9 The Client 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 Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 20. General**
- 20.1 Any notice to be given by either party to the other may be sent by either e-mail, fax or recorded delivery to the most recent e-mail address, fax number or address notified to the other party, and if sent by e-mail shall (unless the contrary is proved) be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by recorded delivery shall be deemed to be served two (2) days following the date of posting.
- 20.2 The Client acknowledges that they have relied on their own judgment to evaluate the suitability of the Services for the purpose for which they require them. The Client must not rely on any statement, representation or promise made by the Seller that is not expressly set out in this agreement.
- 20.3 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller'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.
- 20.4 Subject to clause 11, the Seller shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of business, profit or opportunity) suffered by the Client arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price, or where the Client has entered into a Maintenance and Support Agreement, the total net portion of the Price for the six (6) month period preceding the date on which the cause of action has arisen).
- 20.5 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which the Seller has its principal place of business, and are subject to the jurisdiction of the Townsville Court in that state.
- 20.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 20.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 20.8 This agreement does not create any rights in any third parties, except assigns, successors and heirs expressly permitted hereunder.
- 20.9 The Client agrees that the Seller may amend these terms and conditions at any time. If the Seller makes a change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Seller to provide Services to the Client.
- 20.10 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 20.11 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.