



Terms and Conditions of Trade

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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 “TITA” means The IT Agency Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of The IT Agency Pty Ltd.
- 1.3 “Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting TITA to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 “Services” means interactive access to the Internet provided by TITA to the Client (for the Client’s use), including any computer resources, software, data storage, computer communications facilities, Products, IP address and/or any other equipment supplied ancillary to the Services (“**Products**”) in order to facilitate the provision of Services. Where the context so permits the terms ‘Services’ or ‘Products’ shall be interchangeable for the other. Any Products supplied to the Client by TITA on a loan basis (for the duration of the Services):
 - (a) remains TITA’s sole property;
 - (b) may be changed, substituted, revoked or repossessed by TITA at TITA’s sole discretion at any time; and
 - (c) is not transferable.
- 1.5 “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.
- 1.6 “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 Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Services via the website.**
- 1.7 “Price” means the price payable (plus any GST where applicable) for the Services as agreed between TITA and the Client in accordance with clause 5 of this Contract.
- 1.8 “GST” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

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 TITA.
- 2.2 These terms and conditions may only be amended with both parties consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and TITA.

- 2.3 None of TITA's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of TITA in writing nor is TITA bound by any such unauthorised statements.
- 2.4 Once accepted by the Client, TITA's quotation shall be deemed to interpret correctly the Client's instructions, whether written or verbal. Where verbal instructions only are received from the Client, TITA shall not be responsible for errors or omissions due to the oversight or misinterpretation of those instructions.
- 2.5 Any advice, recommendations, information, assistance or service provided by TITA in relation to Services provided is given in good faith, is based on information provided to TITA, and TITA's own 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 TITA shall make all effort to offer the best solution to the Client.
- 2.6 The Client warrants that it has not relied on any representation made by TITA which has not been stated expressly in this agreement or upon any descriptions or illustrations or specifications contained in any document, including any catalogues or publicity material produced by TITA.
- 2.7 The Services supplied under this agreement do not include, unless otherwise specified in writing by TITA:
- (a) travel and accommodation required to provide authorised on-site Services;
 - (b) courier and freight charges;
 - (c) products and services supplied by a third party. Where the provision of Services requires TITA to obtain products and/or services from a third party, the agreement between TITA and the Client shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to TITA, and the Client shall be liable for the cost in full including TITA's margin of such products and/or services;
 - (d) support of other software, accessories, attachments, machines, hardware, peripherals, systems or other devices not supplied by TITA;
 - (e) rectification of lost or corrupted data arising from any reason other than the negligence, fault or omission of TITA;
 - (f) support which is rendered more difficult because of any changes, alternation, addition, modifications or variations to the Services, the operating system or the operating environment;
 - (g) attendance to faults caused by using the Products;
 - (h) diagnosis or rectification of problems not associated with the Products;
 - (i) loss or damage caused directly or indirectly by operator error or omission and over which TITA has no control; and
 - (j) any direct costs other than TITA's personnel's time and ordinary overheads.
- 2.8 These terms and conditions may be meant to be read in conjunction with TITA's 'Managed Service Agreement', and if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.
- 2.9 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, or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.10 At no time shall a part payment be deemed as a full and final payment for an outstanding invoice unless accepted by TITA.

3 Errors and Omissions

- 3.1 The Client acknowledges and accepts that TITA 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 TITA 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 TITA in respect of the Services.

3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of TITA; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4 Change in Control

4.1 The Client shall give TITA 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, change of trustees, or business practice). The Client shall be liable for any loss incurred by TITA as a result of the Client's failure to comply with this clause.

5 Price and Payment

5.1 At TITA's sole discretion the Price shall be either:

- (a) as indicated on any invoice provided by TITA to the Client; or
- (b) TITA's quoted price (subject to clause 1.1(b)) which will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days.

5.2 Additional and/or Varied Services:

- (a) TITA agrees that there will be no charge in the preparation of the initial quotation, which may include Client discussions, project scoping, research, testing and business analysis, etc. However, in some instances the aforementioned services may be charged to the Client additionally (at TITA's sole discretion).
- (b) TITA reserves the right to amend the Price where there is any variation to the accepted plan of scheduled Services, or instructions/specifications, which will be charged for on the basis of TITA's standard hourly rates (and double such rate for any Services provided outside TITA's normal business hours) and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion;
- (c) as a result of increases beyond TITA's reasonable control in the cost of materials or labour (e.g. third-party suppliers' costs, etc.), or to currency exchange rates.

5.3 Variations will be charged for on the basis of TITA's quotation, and will be detailed in writing, and shown as variations on TITA's invoice. The Client shall be required to respond to any variation submitted by TITA within ten (10) working days. Failure to do so will entitle TITA to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

5.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by TITA, which may be:

- (a) by way of instalments/progress payments in accordance with TITA's payment schedule;
- (b) fifteen (15) days following the date of the invoice;
- (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 seven (7) days following the date of any invoice given to the Client by TITA.

5.5 Payment may be made by cheque (an administration fee may apply), electronic/on-line banking, credit card (plus a surcharge may apply per transaction), or by any other method as agreed to between the Client and TITA.

5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to TITA an amount equal to any GST TITA must pay for any supply of Services by TITA 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.

- 5.7 Receipt by TITA 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 TITA's ownership or rights in respect of the Services, and this agreement, shall continue.
- 5.8 If the Client pays any Charges in advance and they are varied, or the Services are terminated, TITA will refund the Client any overpayment, and the Client has to pay TITA any underpayment. This clause is strictly exclusive of all pre-paid plans and services, and does not detract from any obligations the Client may have to give notification to terminate the Services, or to pay early termination fees, where applicable.
- 5.9 Unless agreed to by TITA, the Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by TITA, nor to withhold payment of any amount because part of the Services are in dispute. Any invoice query/dispute will not be recognised if notified outside of fourteen (14) days from the date of the invoice.

6 Fixed Contract Term

- 6.1 The Services shall continue for the term stipulated in this agreement and, upon expiration of this term, will continue on a monthly basis, unless terminated in accordance with clause 17.
- 6.2 Subject to clause 17.1, if the Client wishes to terminate the Services during the term stipulated, TITA may charge the Client an early termination fee, the amount of which will depend on the Services acquired by the Client and the date of termination.
- 6.3 TITA may terminate the Services prior to the expiry of the fixed contract term at any time (without charging an early termination fee) if TITA gets the Client's consent to do so, and:
- (a) TITA appropriately off-set the effect of the termination on the Client, e.g. credit or rebate; and/or
 - (b) TITA migrates the Client to alternative services for the remainder of the fixed contract term.

7 Terms of Use

- 7.1 When the Client uses the Services, the Client must:
- (a) comply with all laws, all directions by a regulator, all notices issued by authorisation of, or under, law (e.g. Copyright Act 1968) and reasonable directions by TITA; and
 - (b) keep the Client's account information, password, data and Products confidential and secure. The Client shall remain responsible for any use or misuse of such; and
 - (c) follow any reasonable instructions provided by TITA in relation to the Services; and
 - (d) access and use the Services solely in accordance with these terms and conditions and any reasonable instructions provided by TITA; and
 - (e) employ back-up power and surge protectors at the Client's premises; and
 - (f) respond promptly to TITA's communications in relation to the Services; and
 - (g) provide accurate and prompt responses to TITA's requests for any information or documentation reasonably required by TITA to provide the Services.
- 7.2 The Client must not:
- (a) use, or attempt to use, or permit another person to use or attempt to use, the Services:
 - (i) so as to cause offence, to defame, abuse, communicate obscenities, menace or annoy;
 - (ii) for any purpose or activity of an illegal or fraudulent nature in any jurisdiction, including damaging any property or injuring or killing any person, to breach the security of any computer network (hacking), to breach any persons' privacy, or to distribute unsolicited software or junk mail;
 - (iii) for advertising purposes without TITA's express written consent;
 - (iv) to breach any of the intellectual property rights held by TITA or any third party;
 - (v) to transmit, publish or communicate materials which is defamatory, offensive, abusive, indecent, menacing or unwanted;

- (vi) to expose TITA to liability (including any claims for damages);
- (vii) in any way which damages, interferes with or interrupts the Services, or a supplier's network used to provide the Services;
- (viii) to intercept or attempt to intercept any communication not otherwise intended for the Client; and
- (ix) contact TITA's suppliers or the wholesale / carrier or third party provider of a service in relation to the Services or service faults. The supplier may impose a fee for doing so and this fee will be passed onto the Client. They may, however, contact the Client in relation to any reported service difficulties in relation to appointment making and service restoration, and for this reason TITA will need to provide the Client contact details to such parties.

7.3 If, in TITA's opinion, the Services are being used by anyone in breach of these terms and conditions (including clause 7) or Internet etiquette, TITA may:

- (a) refuse to post such infringing information to public areas;
- (b) remove, review or edit such infringing information from any computer on TITA's network, with the exception of private electronic messages;
- (c) discontinue any infringing communication;
- (d) suspend the Services indefinitely, or for a specific period;
- (e) terminate the Services, and refuse to provide the Services to the Client, or the Client's associates, in the future;
- (f) inform appropriate government and regulatory authorities of suspected illegal or infringing conduct.

7.4 The Client authorise TITA to delete without notice or liability any information or materials found on the Products (or equipment controlled by TITA) that is found to be of an obscene nature, unauthorised, unlawful, uncollected for an excessive period of time or excessive in volume.

8 Provision of the Services

8.1 TITA 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.

8.2 Any time specified by TITA for provision of the Services is an estimate only and TITA 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 TITA is unable to provide the Services as agreed solely due to any action or inaction of the Client, then TITA shall be entitled to:

- (a) charge the Client additionally for re-providing the Services at a later time and date; or
- (b) subject to clause 1.1(b), terminate the contract.

9 Risk and Limitation of Liability

9.1 The Client acknowledges and agrees that TITA shall not be held responsible or liable for:

- (a) 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 the Services by TITA to the Client;
- (b) any supplied content breaching any Acts, legislation or regulations, unless due to the negligence of TITA;

9.2 The Client agrees that, in view of their nature, the Client's use of the Services is at their sole risk. Whilst TITA will endeavour to ensure that the Services are of a high quality, neither TITA (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.
- 9.3 The Client agrees that any such suspension or termination referred to in clause (b) above will not constitute a breach of this agreement by TITA and that the Services are provided on an "as is" basis without guarantee of any kind.
- 9.4 The Client further agrees that TITA will not be held liable for any costs, expenses, losses, damages or other liabilities (howsoever arising) which the Client may incur as a result of a suspension of the Services in accordance with clause (a) above.
- 9.5 Subject to clause 13, TITA shall be under no liability whatsoever to the Client 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 Client arising out of a breach by TITA of these terms and conditions and/or caused by any failure by the Client to comply with their obligations under this agreement (alternatively TITA's liability shall be limited to damages which under no circumstances shall exceed the Price).

10 Title

- 10.1 TITA and the Client agree that the Client's obligations to TITA for the provision of Services shall not cease (and ownership of any Products shall not pass) until:
- (a) the Client has paid TITA all amounts owing to TITA for the Services; and
 - (b) the Client has met all other obligations due by the Client to TITA in respect of all contracts between TITA and the Client.
- 10.2 It is further agreed that, until ownership of the Products passes to the Client in accordance with clause 10.1:
- (a) the Client is only a bailee of the Products and must return the Products to TITA on request.
 - (b) the Client holds the benefit of the Client's insurance of the Products on trust for TITA and must pay to TITA the proceeds of any insurance in the event of the Products being lost, damaged or destroyed.
 - (c) the Client 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 Client sells, disposes or parts with possession of the Products then the Client must hold the proceeds of any such act on trust for TITA and must pay or deliver the proceeds to TITA on demand.
 - (d) the Client should not convert or process the Products or intermix them with other Products but if the Client does so then the Client holds the resulting product on trust for the benefit of TITA and must sell, dispose of or return the resulting product to TITA as it so directs.
 - (e) the Client irrevocably authorises TITA to enter any premises where TITA believes the Products are kept and recover possession of the Products.
 - (f) TITA may recover possession of any Products in transit whether or not delivery has occurred.
 - (g) the Client 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 TITA.
 - (h) TITA may commence proceedings to recover the Price notwithstanding that ownership of the Products has not passed to the Client.

11 Personal Property Securities Act 2009 ("PPSA")

- 11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.2 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:
- (a) all Products previously supplied by TITA to the Client;
 - (b) all Products will be supplied in the future by TITA to the Client; and

- (c) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to TITA for Services – that have previously been provided and that will be provided in the future by TITA to the Client.

11.3 The Client 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 TITA 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 1.1(g)(i) or 1.1(g)(ii);
- (b) indemnify, and upon demand reimburse, TITA 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 TITA;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Products in favour of a third party without the prior written consent of TITA.

11.4 TITA and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

11.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

11.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

11.7 Unless otherwise agreed to in writing by TITA, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

11.8 The Client must unconditionally ratify any actions taken by TITA under clauses 11.3 to 11.5.

11.9 Subject to any express provisions to the contrary (including those contained in this clause 11), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

11.10 Only to the extent that the hire of the Products exceeds a ninety (90) day hire period (with the right of renewal) shall this clause 11 apply, and this contract a security agreement for the purposes of PPSA generally, and in particular Section 20.

12 Security and Charge

12.1 In consideration of TITA agreeing to supply 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).

12.2 The Client indemnifies TITA from and against all TITA's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising TITA's rights under this clause.

12.3 The Client irrevocably appoints TITA and each director of TITA as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.

13 Defects, Warranties and the Competition and Consumer Act 2010 (CCA)

- 13.1 The Client must inspect TITA's Services on completion of the Services and must within two (2) days notify TITA in writing of any evident defect in the Services or Products provided (including TITA's workmanship) or of any other failure by TITA to comply with the description of, or quote for, the Services which TITA was to supply. The Client must notify any other alleged defect in TITA's Services or Products as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Client must allow TITA to review the Services or Products that were provided.
- 13.2 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**).
- 13.3 TITA acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, TITA makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services. TITA's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.5 If the Client is a consumer within the meaning of the CCA, TITA's liability is limited to the extent permitted by section 64A of Schedule 2.
- 13.6 If TITA is required to rectify, re-supply, or pay the cost of re-supplying the Services under this clause or the CCA, but is unable to do so, then TITA 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 and Products which have been provided to the Client which were not defective.
- 13.7 If the Client is not a consumer within the meaning of the CCA, TITA's liability for any defective Services or Products is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by TITA at TITA's sole discretion;
 - (b) otherwise negated absolutely.
- 13.8 Notwithstanding clauses 13.1 to 13.7 but subject to the CCA, TITA 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 Client failing to properly maintain or store any Products;
 - (b) the Client using the Products for any purpose other than that for which they were designed;
 - (c) the Client continuing to use any Products after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Services by the Client or any third party without TITA's prior approval;
 - (e) the Client failing to follow any instructions or guidelines provided by TITA;
 - (f) fair wear and tear, any accident, or act of God.
- 13.9 TITA may in its absolute discretion accept non-defective Products for return in which case TITA may require the Client to pay handling fees of up to thirty percent (30%) of the value of the returned Products plus any freight costs.
- 13.10 Notwithstanding anything contained in this clause if TITA is required by a law to accept a return then TITA will only accept a return on the conditions imposed by that law.

14 Intellectual Property

- 14.1 If during the course of providing the Services, TITA develops, discovers, or puts into operation a

new concept, product or process which is capable of being patented, then such concept, product or process shall be and remain the property of TITA and the Client shall not use or supply the same in any way whatsoever without first obtaining the written consent of TITA.

- 14.2 The Client warrants that all designs, specifications, information and instructions to TITA will not cause TITA 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 TITA harmless from all loss incurred or suffered by TITA 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 its use of the Services.

15 Default and Consequences of Default

- 15.1 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 TITA's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Client owes TITA any money the Client shall indemnify TITA from and against all costs and disbursements incurred by TITA in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, TITA's contract default fee, and bank dishonour fees).
- 15.3 Further to any other rights or remedies TITA may have under this Contract, if a Client has made payment to TITA, 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 TITA under this clause 15 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 15.4 Without prejudice to any other remedies TITA may have, if at any time the Client is in breach of any obligation (including those relating to payment, whether or not the payment is due to TITA) TITA may suspend or terminate the provision of Services to the Client, and any of its other obligations under the terms and conditions. TITA will not be liable to the Client for any loss or damage the Client suffers because TITA has exercised its rights under this clause.
- 15.5 Without prejudice to TITA's other remedies at law TITA shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to TITA shall, whether or not due for payment, become immediately payable if:
- any money payable to TITA becomes overdue, or in TITA's opinion the Client will be unable to make a payment when it falls due;
 - the Client has exceeded any applicable credit limit provided by TITA;
 - 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.

16 Confidentiality

- 16.1 Subject to clause 16.2, 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.
- 16.2 Both parties agree to:
- use the Confidential Information of the other party only to the extent required for the purpose it was provided;
 - not copy or reproduce any of the Confidential Information of the other party in any way;
 - 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.

16.3 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.

16.4 Confidential Information excludes information:

- (a) generally available in the public domain (without unauthorised disclosure under this agreement);
- (b) received from a third party entitled to disclose it;
- (c) that is independently developed.

16.5 The obligations of this clause 16 shall survive termination or cancellation of this agreement.

17 Cancellation and Termination

17.1 Either party may, without liability, cancel these terms and conditions or cancel provision of the Services:

- (a) if there is no contract term specified, at any time by giving thirty (30) days' notice to the other party;
- (b) if a contract term is specified, at any time after the end of the contract term by giving thirty (30) days' notice to the other party;

17.2 TITA may, in addition to their right to cancel under clause 17.1:

- (a) do so at any time:
 - (i) prior to the commencement of the Services, by giving notice to the Client, in the event TITA determines it is not technically, commercially or operationally feasible to provide the Services to the Client;
 - (ii) in the event the Client materially breaches these terms and conditions, and such breach is not capable of remedy.

17.3 In the event that the Client:

- (a) cancels the provision of Services prior to the expiry of any specified contract term, then the Client shall be liable to pay for the provision of the Services until the expiration of the contract term;
- (b) fails to give notice of intention to cancel at least thirty (30) days prior to the expiration date of the contract term, the contract term shall automatically renew on a monthly basis, unless cancelled by way of the Client providing TITA with thirty (30) days' notice.

17.4 Should the Client, for any reason, cause the Services to be delayed for more than three (3) months after the acceptance date, this agreement will be terminated by TITA (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.

18 Privacy Policy

18.1 All emails, documents, images or other recorded information held or used by TITA is Personal Information, as defined and referred to in clause 18.3, and therefore considered Confidential Information. TITA 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 IIC 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"). TITA acknowledges that in the event it becomes aware of any data breaches

and/or disclosure of the Client's Personal Information, held by TITA that may result in serious harm to the Client, TITA will notify the Client 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 Client by written consent, unless subject to an operation of law.

- 18.2 Notwithstanding clause 18.1, privacy limitations will extend to TITA in respect of Cookies where transactions for purchases/orders transpire directly from TITA's website. TITA 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 Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to TITA when TITA sends an email to the Client, so TITA may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client 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 TITA's website.
- 18.3 The Client agrees for TITA 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 Client in relation to credit provided by TITA.
- 18.4 The Client agrees that TITA may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) 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
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 18.5 The Client consents to TITA being given a consumer credit report to collect overdue payment on commercial credit.
- 18.6 The Client agrees that personal credit information provided may be used and retained by TITA for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Services.
- 18.7 TITA may give information about the Client 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 Client including credit history.
- 18.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 18.3 above;
 - (b) name of the credit provider and that TITA is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) 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);
 - (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 Client no longer has any overdue accounts and TITA has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);

- (g) information that, in the opinion of TITA, the Client has committed a serious credit infringement;
- (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

18.9 The Client shall have the right to request (by e-mail) from TITA:

- (a) a copy of the Personal Information about the Client retained by TITA and the right to request that TITA correct any incorrect Personal Information; and
- (b) that TITA does not disclose any Personal Information about the Client for the purpose of direct marketing.

18.10 TITA 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 Contract or is required to be maintained and/or stored in accordance with the law.

18.11 The Client can make a privacy complaint by contacting TITA via e-mail. TITA 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.

19 Service of Notices

19.1 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;
- (e) if sent by email to the other party's last known email address.

19.2 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.

20 Trusts

20.1 If the Client 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 TITA may have notice of the Trust, the Client covenants with TITA as follows:

- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- (b) the Client 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 Client against the Trust or the trust fund. The Client 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 Client will not without consent in writing of TITA (TITA will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client 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.

21 Dispute Resolution

21.1 If a dispute arises between the parties to this contract, then either party shall send to the other

party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

22 General

- 22.1 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.
- 22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which TITA has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 22.3 TITA may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 22.4 The Client cannot licence or assign without the written approval of TITA.
- 22.5 TITA 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 Client agrees and understands that they have no authority to give any instruction to any of TITA's sub-contractors without the authority of TITA.
- 22.6 The Client agrees that TITA may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for TITA to provide Services to the Client.
- 22.7 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.
- 22.8 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.