

National IT Solutions Pty Ltd – Terms & Conditions of Trade

- 1. Definitions**
 - 1.1 “Consultant” shall mean National IT Solutions Pty Ltd and its successors and assigns.
 - 1.2 “Customer” shall mean the Customer or any person acting on behalf of and with the authority of the Customer.
 - 1.3 “Guarantor” means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer on a principal debtor basis.
 - 1.4 “Goods” shall mean Goods supplied by the Consultant to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).
 - 1.5 “Services” shall mean all services supplied by the Consultant to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
 - 1.6 “Price” shall mean the cost of the Goods as agreed between the Consultant and the Customer subject to clause 4 of this contract.
- 2. Acceptance**
 - 2.1 Any instructions received by the Consultant from the Customer for the supply of Goods and/or the Customer’s acceptance of Goods supplied by the Consultant shall constitute acceptance of the terms and conditions contained herein.
 - 2.2 Where more than one Customer has entered into this agreement, the Customer’s shall be jointly and severally liable for all payments of the Price.
 - 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Consultant.
 - 2.4 None of the Consultant’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Consultant in writing nor is the Consultant bound by any such unauthorised statements.
 - 2.5 The Customer undertakes to give the Consultant not less than fourteen (14) days prior written notice of any proposed change in the Customer’s name and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s address, facsimile number, or business practice).
 - 2.6 Should the Consultants staff member or independent contractor be placed as a permanent member of a Customers staff within the duration of the contract or within twelve (12) months of the completion of the Contract then this may incur a fee as determined by the Consultant.
 - 2.7 Upon acceptance of these terms and conditions the Customer consents to the Consultant remotely accessing the Customers network to supply support and perform maintenance services.
- 3. Goods**
 - 3.1 The Goods are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Consultant to the Customer.
- 4. Price And Payment**
 - 4.1 At the Consultants sole discretion;
 - (a) The Price shall be as indicated on invoices provided by the Consultant to the Customer in respect of Goods supplied; or
 - (b) The Price shall be the Consultant’s current price at the date of delivery of the Goods according to the Consultants current Price list; or
 - (c) The Price of the Goods shall, subject to clause 4.2, be the Consultants quoted Price, which shall be binding upon the Consultant provided that the Customer shall accept in writing the Consultants quotation within thirty (30) days.
 - 4.2 At the Consultant’s sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods and shall become immediately due and payable.
 - 4.3 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods.
 - 4.4 At the Consultant’s sole discretion, for certain approved Customers payment will be due seven (7) days following the date of the invoice.
 - 4.5 At the Consultant’s sole discretion, payment for approved Customers shall be due on 20th day of each month following the posting of an invoice to the Customer’s address or address for notices.
 - 4.6 The Consultant may withhold delivery of the Goods until the Customer has paid for them, in which event payment shall be made before the delivery date.
 - 4.7 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by credit card (plus any charges that maybe applicable), or by direct credit, or by any other method as agreed to between the Customer and the Consultant.
 - 4.8 At the Consultants discretion a minimum charge for onsite service of
 - (a) fifteen (15) minute minimum for phone, email support and remote access; and
 - (b) two (2) hour minimum for after hour’s service.
 - 4.9 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Consultant.
 - 4.10 Whilst every care is taken by the Consultant to protect the Customer’s computer systems from computer viruses, including but not limited to installation and maintenance of the latest versions of anti-virus software. The Consultant shall be under no liability whatsoever for any computer viruses, which affect the Customers system, the Customer will be responsible for the costs of consulting time and materials required to remove any computer viruses.
- 5. Delivery Of Goods / Services**
 - 5.1 Delivery of the Goods shall be made to the Customer’s address. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Customer at the Consultant’s address.
 - 5.2 Delivery of the Goods to a carrier, either named by the Customer or failing such naming to a carrier at the discretion of the Consultant for the purpose of transmission to the Customer, is deemed to be a delivery of the Goods to the Customer.
 - 5.3 The costs of carriage and any insurance which the Customer reasonably directs the Consultant to incur shall be reimbursed by the Customer (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Customer’s agent.
- 5.4 Where there is no agreement that the Consultant shall send the Goods to the Customer, delivery to a carrier at limited carrier’s risk at the expense of the Customer is deemed to be delivery to the Customer.
 - 5.5 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
 - 5.6 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that;
 - (a) such discrepancy in quantity shall not exceed 5%, and
 - (b) the Price shall be adjusted pro rata to the discrepancy.
 - 5.7 The failure of the Consultant to deliver shall not entitle either party to treat this contract as repudiated.
 - 5.8 The Consultant shall not be liable for any loss or damage whatever due to failure by the Consultant to deliver the Goods (or any of them) promptly or at all.
- 6. Risk**
 - 6.1 If the Consultant retains property in the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
 - 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Customer, the Consultant is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and conditions by the Consultant is sufficient evidence of the Consultant’s rights to receive the insurance proceeds without the need for any person dealing with the Consultant to make further enquiries.
 - 6.3 Customer assumes all risk of data loss from all causes in any way related to or resulting from the repair or service of computer hardware, software or other equipment by Consultant. The Consultant accepts no liability relating to data loss for any reason whatsoever.
- 7. Customer’s Disclaimer**
 - 7.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Consultant and the Customer acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Consultant shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Customer and shall not be transferable to any subsequent Customer.
- 8. Defect/Returns**
 - 8.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Consultant of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Consultant an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
 - 8.2 For defective Goods, which the Consultant has agreed in writing that the Customer is entitled to reject, the Consultant’s liability is limited to either (at the Consultant’s discretion) replacing the Goods or repairing the Goods provided that:
 - (a) the Customer has complied with the provisions of clause 8.1;
 - (b) the Goods are returned at the Customer’s cost within seven (7) days of the delivery date;
 - (c) the Consultant will not be liable for Goods which have not been stored or used in a proper manner;
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonable possible in the circumstances.
 - 8.3 The Consultant may (in its discretion) accept the Goods for credit but this may incur a handling fee of 25% of the value of the returned Goods plus any freight.
 - 8.4 Whilst every care is taken by the Consultant to protect the Customer’s computer systems from computer viruses, including but not limited to installation and maintenance of the latest versions of anti-virus software. The Consultant shall be under no liability whatever for any computer viruses and the Customer will responsible for the costs of consulting time and materials required to remove any computer viruses.
- 9. Warranty**
 - 9.2 For Goods not manufactured by the Consultant, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Consultant shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturers warranty.
- 10. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts**
 - 10.1 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 11. Intellectual Property**
 - 11.1 Where the Consultant has designed or drawn Goods for the Customer, then the copyright in those designs and drawings shall remain vested in the Consultant, and shall only be used by the Customer at the Consultant’s discretion.
 - 11.2 Conversely, in such a situation, where the Customer has supplied drawings, the Consultant in its sale conditions may look for an indemnity (the specifications and design of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Consultant).
 - 11.3 Where any designs or specifications have been supplied by the Customer for manufacture, by or to the order of the Consultant then the Customer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.
 - 11.4 Where the Consultant has provided computer software and documentation, the Consultant retains ownership of the computer software and documentation, but grants a licence to the Customer for use of the computer software and documentation. The

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- Customer will use any third-party software supplied by the Consultant, and identified as such, strictly in terms of the licence under which it is supplied.
- 11.5 The Consultant does not support unlicensed software. It is the Customers responsibility to advise the Consultant of any unregistered software, so that compliance can be obtained.
- 12. Default & Consequences Of Default**
- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.
- 12.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Consultant from and against all the Consultant's costs and disbursements including on a solicitor and own client basis and in addition all of the Consultant's nominees costs of collection.
- 12.3 Without prejudice to any other remedies the Consultant may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Consultant may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Consultant will not be liable to the Customer for any loss or damage the Customer suffers because the Consultant exercised its rights under this clause.
- 12.4 If any account remains unpaid at the end of the second month after supply of the goods or services the following shall apply: An immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.
- 12.5 In the event that:
- any money payable to the Consultant becomes overdue, or in the Consultant's opinion the Customer will be unable to meet its payments as they fall due; or
 - the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer;
- then without prejudice to the Consultant's other remedies at law
- the Consultant shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and
 - all amounts owing to the Consultant shall, whether or not due for payment, immediately become payable.
- 13. Title**
- 13.1 It is the intention of the Consultant and agreed by the Customer that property in the Goods shall not pass until:
- The Customer has paid all amounts owing for the particular Goods, and
 - The Customer has met all other obligations due by the Customer to the Consultant in respect of all contracts between the Consultant and the Customer, and that the Goods shall be kept separate until the Consultant shall have received payment and all other obligations of the Customer are met.
- 13.2 It is further agreed that:
- Until such time as ownership of the Goods shall pass from the Consultant to the Customer the Consultant may give notice in writing to the Customer to return the Goods or any of them to the Consultant. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease.
 - If the Customer fails to return the Goods to the Consultant then the Consultant or the Consultant's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
 - The Customer is only a bailee of the Goods and until such time as the Consultant has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Consultant.
 - The Customer shall not deal with the money of the Consultant in any way which may be adverse to the Consultant.
 - Receipt by the Consultant 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 Consultant's ownership of rights in respect of the Goods shall continue.
 - The Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Consultant.
 - The Consultant may require payment of the Price or the balance of the Price due together with any other amounts due from the Customer to the Consultant arising out of these terms and conditions, and the Consultant may take any lawful steps to require payment of the amounts due and the Price.
 - The Consultant can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer.
 - Until such time the Customer has the Consultant's authority to convert the goods into other products and if the goods are so converted, the parties agree that the Consultant will be the owner of the end products.
- 14. Security And Charge**
- 14.1 Notwithstanding anything to the contrary contained herein or any other rights which the Consultant may have howsoever:
- Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Consultant or the Consultant's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Consultant (or the Consultant's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - Should the Consultant elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Consultant from and against all the Consultant's costs and disbursements including legal costs on a solicitor and own client basis.
- To give effect to the provisions of clause [14.1 (a) and (b)] inclusive hereof the Customer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Consultant or the Consultant's nominee as the Customer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as the Consultant and/or the Consultant's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Customer and/or the Guarantor in any land, realty or asset in favour of the Consultant and in the Customer's and/or Guarantor's name as may be necessary to secure the said Customer's and/or Guarantor's obligations and indebtedness to the Consultant and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Consultant's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.
- 15. Cancellation**
- 15.1 The Consultant may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Consultant shall not be liable for any loss or damage whatever arising from such cancellation.
- 15.2 At the Consultants sole discretion the Customer may cancel delivery of Goods and/or Services. In the event that the Customer cancels delivery of Goods and/or Services the Customer shall be liable for a then this may incur a Change Order fee as determined by the Consultant, and will be charged to the invoice, as an extra.
- 16. Privacy Act 1988**
- 16.1 The Customer and/or the Guarantor/s agree for the Consultant to obtain from a credit-reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Consultant.
- 16.2 The Customer and/or the Guarantor/s agree that the Consultant may exchange information about Customer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
- To assess an application by Customer;
 - To notify other credit providers of a default by the Customer;
 - To exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and
 - To assess the credit worthiness of Customer and/or Guarantor/s.
- 16.3 The Customer consents to the Consultant being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.4 The Customer agrees that Personal Data provided may be used and retained by the Consultant for the following purposes and for other purposes as shall be agreed between the Customer and Consultant or required by law from time to time:
- provision of Services & Goods;
 - marketing of Services and or Goods by the Consultant, its agents or distributors in relation to the Services and Goods;
 - analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Services/Goods;
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and
 - enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services and Goods.
- 16.5 The Consultant may give, information about the Customer to a credit reporting agency for the following purposes:
- to obtain a consumer credit report about the Customer; and or
 - allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 17. Unpaid Consultant's Rights To Dispose Of Goods**
- 17.1 In the event that:
- the Consultant retains possession or control of the Goods; and
 - payment of the Price is due to the Consultant; and
 - the Consultant has made demand in writing of the Customer for payment of the Price in terms of this contract; and
 - the Consultant has not received the Price of the Goods,
- then, whether the property in the Goods has passed to the Customer or has remained with the Consultant, the Consultant may dispose of the Goods and may claim from the Customer the loss to the Consultant on such disposal.
- 18. General**
- 18.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.2 All Goods supplied by the Consultant are subject to the laws of Victoria and the Consultant takes no responsibility for changes in the law which affect the Goods supplied.
- 18.3 The Consultant shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Consultant of these terms and conditions.
- 18.4 In the event of any breach of this contract by the Consultant the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Consultant exceed the Price of the Services.
- 18.5 The Customer shall not set off against the Price amounts due from the Consultant.
- 18.6 The Consultant may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 18.7 The Consultant reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Consultant notifies the Customer of such change.
- 18.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.