

**1. Definitions**

- 1.1 "AIT" shall mean Answers IT Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Answers IT Pty Ltd.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by AIT to the Client.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Products" shall mean all Products supplied by AIT to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by AIT to the Client.
- 1.5 "Services" shall mean all Services supplied by AIT to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Products as defined above).
- 1.6 "Price" shall mean the Price payable for the Products as agreed between AIT and the Client in accordance with clause 4 of this contract.

**2. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")**

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

**3. Acceptance**

- 3.1 Any instructions received by AIT from the Client for the supply of Products and/or the Client's acceptance of Products supplied by AIT shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 The Client acknowledges that the supply of Products on credit shall not take effect until the Client has completed a credit application with AIT and it has been approved with a credit limit established for the account.
- 3.4 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of AIT.
- 3.5 The Client shall give AIT not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by AIT as a result of the Client's failure to comply with this clause.
- 3.6 Products are supplied by AIT only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 3.7 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on AIT's website and/or AIT's Monitoring Agreements. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.
- 3.8 The Client acknowledges that it has satisfied itself as to the suitability of the Products for its business, hereby disclaims any right to rescind, or cancel any contract with AIT or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by AIT and the Client acknowledges that the Products are bought relying solely upon the Client's skill and judgment.
- 3.9 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.

**4. Price and Payment**

- 4.1 At AIT's sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by AIT to the Client in respect of Products supplied; or
  - (b) AIT's quoted Price (subject to clause 4.2) which shall be binding upon AIT provided that the Client shall accept AIT's quotation in writing within seven (7) days.
- 4.2 AIT reserves the right to change the Price in the event of a variation to AIT's quotation. Any variation from the plan of scheduled Services or Products specification (including, but not limited to, any variation as a result of additional Products and/or Services required due to hidden or unidentifiable difficulties, changes to the Client's requirements, or as a result of increases to AIT in the cost of Products and labour, or fluctuations in currency exchange rates and/or freight and insurance charges) will be charged for on the basis of AIT's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At AIT's sole discretion a deposit may be required.
- 4.4 At AIT's sole discretion:
  - (a) a non-refundable deposit may be required; or
  - (b) payment shall be due on delivery and/or completion of the Products/Services; or
  - (c) payment shall be due before delivery of the Products/Services; or
  - (d) payment for approved Clients shall be due thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices; or
  - (e) detailed progress payment claims may be submitted by AIT, in accordance with AIT's specified payment schedule at intervals as agreed between AIT and the Client for Services performed. Such payment claims may

include the reasonable value of authorised variations and the value of any Products delivered to the site but not yet installed.

- 4.5 Time for payment for the Products shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.
- 4.6 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two percent (2%) of the Price), or by direct credit, or by any other method as agreed to between the Client and AIT.
- 4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

## **5. Delivery of Products/Services**

- 5.1 At AIT's sole discretion delivery of the Products or the commencement of the Services shall take place when:
  - (a) the Client takes possession of the Products at AIT's address; or
  - (b) the Client takes possession of the Products or commences the Services at the Client's nominated address (in the event that the Products are delivered by AIT or AIT's nominated carrier); or
  - (c) the Client's nominated carrier takes possession of the Products in which event the carrier shall be deemed to be the Client's agent; or
  - (d) the Products are made available to the Client through any distribution channel (including, but not limited to, the internet) as agreed by AIT and the Client.
- 5.2 At AIT's sole discretion the costs of delivery are:
  - (a) included in the Price; or
  - (b) for the Client's account.
- 5.3 The Client shall make all arrangements necessary to take delivery of the Products whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Products as arranged then AIT shall be entitled to charge a reasonable fee for redelivery.
- 5.4 The failure of AIT to deliver shall not entitle either party to treat this contract as repudiated.
- 5.5 AIT shall not be liable for any loss or damage whatsoever due to failure by AIT to deliver the Products (or any of them) promptly or at all, where due to circumstances beyond the control of AIT.

## **6. Risk**

- 6.1 If AIT retains ownership of the Products nonetheless, all risk for the Products passes to the Client on delivery.
- 6.2 If any of the Products are damaged or destroyed following delivery but prior to ownership passing to the Client, AIT is entitled to receive all insurance proceeds payable for the Products. The production of these terms and conditions by AIT is sufficient evidence of AIT's rights to receive the insurance proceeds without the need for any person dealing with AIT to make further enquiries.
- 6.3 Where the Client expressly requests AIT to leave Products outside AIT's premises for collection or to deliver the Products to an unattended location then such Products shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Products are insured adequately or at all.

## **7. Limitation of Liability**

- 7.1 AIT shall not be held liable for any loss, corruption, or deletion of files or data (including, but not limited to software programmes) resulting from the Services provided by AIT. It is the sole responsibility of the Client to back-up any data which they believe to be important, valuable, or irreplaceable prior to AIT providing the Services. The Client accepts full responsibility for the Client's software and data and AIT is not required to advise or remind the Client of appropriate backup procedures.
- 7.2 AIT shall not be liable for any loss or damage to the Client's software or hardware caused by any modification, upgrade or update, whether to hardware or software.
- 7.3 AIT will make best efforts to ensure that the Client receives continual and uninterrupted services during the term of this agreement. In no event though, shall AIT be liable to the Client for damages resulting from or in relation to any failure or delay of AIT to provide services under this agreement. Such a failure or delay shall not constitute a default under this agreement.
- 7.4 AIT, 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 the Services by AIT to the Client.
- 7.5 The Client acknowledges that any advice or recommendations by AIT are provided on the basis of AIT's industry knowledge and experience only and shall not be deemed as specialist advice.

## **8. Title**

- 8.1 AIT and the Client agree that ownership of the Products shall not pass until:
  - (a) the Client has paid AIT all amounts owing for the particular Products; and
  - (b) the Client has met all other obligations due by the Client to AIT in respect of all contracts between AIT and the Client.
- 8.2 Receipt by AIT 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 AIT's ownership or rights in respect of the Products shall continue.
- 8.3 It is further agreed that:
  - (a) where practicable the Products shall be kept separate and identifiable until AIT shall have received payment and all other obligations of the Client are met; and

- (b) until such time as ownership of the Products shall pass from AIT to the Client AIT may give notice in writing to the Client to return the Products or any of them to AIT. Upon such notice the rights of the Client to obtain ownership or any other interest in the Products shall cease; and
- (c) AIT shall have the right of stopping the Products in transit whether or not delivery has been made; and
- (d) if the Client fails to return the Products to AIT then AIT or AIT's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Products are situated and take possession of the Products; and
- (e) the Client is only a bailee of the Products and until such time as AIT has received payment in full for the Products then the Client shall hold any proceeds from the sale or disposal of the Products, up to and including the amount the Client owes to AIT for the Products, on trust for AIT; and
- (f) the Client shall not deal with the money of AIT in any way which may be adverse to AIT; and
- (g) the Client shall not charge the Products in any way nor grant nor otherwise give any interest in the Products while they remain the property of AIT; and
- (h) AIT can issue proceedings to recover the Price of the Products sold notwithstanding that ownership of the Products may not have passed to the Client; and
- (i) until such time that ownership in the Products passes to the Client, if the Products are converted into other products, the parties agree that AIT will be the owner of the end products.

## **9. Defects, Errors and Omissions**

- 9.1 The Client shall inspect the Products on delivery and shall within three (3) days of delivery (time being of the essence) notify AIT of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford AIT an opportunity to inspect the Products within a reasonable time following delivery if the Client believes the Services (Products) are defective in any way. If the Client shall fail to comply with these provisions the Services (Products) shall be presumed to be free from any defect or damage. For defective Services (Products), which AIT has agreed in writing that the Client is entitled to reject, AIT's liability is limited to either ((at AIT's discretion)) replacing the Services (Products), rectifying the Services (Products) or repairing the Services (Products), except where the Client has acquired Products as a consumer within the meaning of the Trade Practices Act 1974 (Cwth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Services (Products), rectification of the Services, replacement of the Services (Products), or repair of the Products.

## **10. Returns**

- 10.1 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 9.1; and
  - (b) AIT has agreed in writing to accept the return of the Products; and
  - (c) the Products are returned at the Client's cost within seven (7) days of the delivery date; and
  - (d) AIT will not be liable for Products which have not been stored or used in a proper manner; and
  - (e) the Products 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 reasonably possible in the circumstances.
- 10.2 AIT may (in its discretion) accept the return of Products for credit but this may incur a handling fee of two percent (2%) of the value of the returned Products plus any freight.

## **11. Warranty**

- 11.1 To the full extent permitted by statute, no warranty is given by AIT as to the quality, suitability, fitness, merchantability, uninterrupted use, correspondence with any description or sample and accuracy of the Products for any purpose and any implied warranty, is expressly excluded. It is the Clients responsibility to determine the suitability of the Product for their individual requirements. Whilst AIT has endeavoured to ensure that the Products work substantially as per the specifications published by AIT from time to time, AIT does not guarantee that the Products will work on all computer hardware platforms or configurations. The Client acknowledges that AIT provides the Products on an 'as is' basis, and that neither AIT, nor any of its employees or representatives, have made any representations regarding the use, performance or results of the Products. AIT shall not be responsible for any loss or damage to the Products, or caused by the Products, or any part thereof however arising.
- 11.2 For Products not manufactured by AIT, the warranty shall be the current warranty provided by the manufacturer of the Products. AIT shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Products.

## **12. Intellectual Property**

- 12.1 The copyright in the Products and associated documentation (including, but not limited to, designs or specifications) shall remain vested in AIT, and shall only be used by the Client as per AIT's "Licence to Use". Where the Client is explicitly granted ownership of a final Product or Service, their ownership shall be limited to the final implementation. Copyright in all intellectual property used or developed in creating the Product or Service shall remain vested in AIT. Clients granted ownership over the implementation shall be allowed to use it as they wish, however they are forbidden to sell the same. The Client agrees to comply at all times with the provisions of clauses 12.5(b) and 12.5(d).
- 12.2 Where AIT has supplied or designed Products for the Client to use, then the Client undertakes to acknowledge AIT's intellectual property in those Products in the event that images of the Products are utilised in advertising or marketing material by the Client.

- 12.3 The Client warrants that all designs, instructions, files, information or data presented, uploaded, transferred or transmitted to AIT or any computer system owned, controlled or managed by AIT will not cause AIT to infringe any patent, copyright registered design or trademark and the Client agrees to indemnify AIT against any action taken by a third party against AIT in respect of any such infringement.
- 12.4 The Client shall use any third-party software supplied by AIT, and identified as such, strictly in terms of the licence under which it is supplied.
- 12.5 The Client agrees to only use AIT's intellectual Property and software as explicitly allowed and must not:
- (a) use or rely on the Software for any purpose or in any manner for which the Software are not purported to be designed or suitable for;
  - (b) copy, reproduce, replicate, translate, adapt, vary, merge or modify or create any derivative work based on the Software;
  - (c) reverse engineer, decompile, disassemble, reconfigure or otherwise attempt to discover the source code of the Software, or assist another party to do the same; and
  - (d) sell, market, network, transfer, lease, licence, sub-licence, rent, lend or otherwise dispose of or distribute the Software in any way whatsoever;
  - (e) use the software to commit a crime (including but not limited to sending spam), the Client agrees to indemnify AIT against any action taken by a third party against AIT in respect of any such infringement.

### **13. Confidentiality**

- 13.1 The Client acknowledges and agrees that they will not divulge any information supplied by AIT that AIT has not made publicly available, to any third party.
- 13.2 The Client agrees to protect all authorisation details, including but not limited to usernames and passwords and agrees that these details shall not be written or stored in any manner which could result in their unauthorised disclosure.
- 13.3 In the event that AIT requests the change of any password or identifier relating to AIT's system, the Client agrees to select a password or identifier meeting AIT's specifications and not to use commonly known details such as birthdays and or names.

### **14. Default and Consequences of Default**

- 14.1 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 AIT's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by AIT.
- 14.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify AIT from and against all costs and disbursements incurred by AIT in pursuing the debt including legal costs on a solicitor and own client basis and AIT's collection agency costs.
- 14.4 Without prejudice to any other remedies AIT may have, if at any time the Client is in breach of any obligation (including those relating to payment) AIT may suspend or terminate the supply of Products to the Client and any of its other obligations under the terms and conditions. AIT will not be liable to the Client for any loss or damage the Client suffers because AIT has exercised its rights under this clause.
- 14.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 14.6 Without prejudice to AIT's other remedies at law AIT shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to AIT shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to AIT becomes overdue, or in AIT's opinion the Client will be unable to meet its payments as they fall due; or
  - (b) 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
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### **15. Security and Charge**

- 15.1 Despite anything to the contrary contained herein or any other rights which AIT may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client 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 AIT or AIT's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that AIT (or AIT's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
  - (b) should AIT elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify AIT from and against all AIT's costs and disbursements including legal costs on a solicitor and own client basis.

(c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint AIT or AIT's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 15.1.

**16. Cancellation**

- 16.1 AIT may cancel any contract to which these terms and conditions apply or cancel delivery of Products at any time before the Products are delivered by giving written notice to the Client. On giving such notice AIT shall repay to the Client any sums paid in respect of the Price. AIT shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.2 In the event that the Client cancels delivery of Products the Client shall provide AIT within thirty (30) days written notice, and the Client shall be liable for any loss incurred by AIT (including, but not limited to, any loss of profits and/or the restocking fee as per clause 10.2, provided the returned Products comply with clause 10) up to the time of cancellation.

**17. Privacy Act 1988**

- 17.1 The Client and/or the Guarantor/s agree for AIT to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by AIT.
- 17.2 The Client and/or the Guarantor/s agree that AIT may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by 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 credit worthiness of Client and/or Guarantor/s.
- 17.3 The Client consents to AIT being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 17.4 The Client agrees that personal credit information provided may be used and retained by AIT for the following purposes and for other purposes as shall be agreed between the Client and AIT or required by law from time to time:
- (a) provision of Products; and/or
  - (b) marketing of Products by AIT, its agents or distributors in relation to the Products; and/or
  - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Products; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
  - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Products.
- 17.5 AIT may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

**18. Unpaid AIT's Rights**

- 18.1 Where the Client has left any item with AIT for repair, modification, exchange or for AIT to perform any other Service in relation to the item and AIT has not received or been tendered the whole of the Price, or the payment has been dishonoured, AIT shall have:
- (a) a lien on the item;
  - (b) the right to retain the item for the Price while AIT is in possession of the item;
  - (c) a right to sell the item.
- 18.2 The lien of AIT shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.

**19. General**

- 19.1 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.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.
- 19.3 AIT shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by AIT of these terms and conditions.
- 19.4 In the event of any breach of this contract by AIT the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Products.
- 19.5 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 AIT nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.6 AIT may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 19.7 The Client agrees that AIT may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which AIT notifies the Client of such change.

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- 19.8 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.
- 19.9 The failure by AIT to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect AIT's right to subsequently enforce that provision.