

Important Notice – This notice forms part of these conditions.  
Effective Date: 1st May 2011

The supply of goods and/or the performance of Services by Optimised to all its customers is offered only and exclusively on the following terms and conditions. By requesting, ordering or otherwise permitting us to supply goods to, or perform Services for you, you hereby accept irrevocably and unconditionally our offer without derogation or qualification. These conditions also apply (as and to the extent relevant) to all contractual commitments entered into by the company in accordance with their terms and as referred to in the Company's standard forms of agreement for supply of equipment and/or Services. A soft copy of these terms is available on the company's website at [www.optimisedsolutions.com.au/standardterms.pdf](http://www.optimisedsolutions.com.au/standardterms.pdf).

These conditions also apply to all quotations and other pre-contractual dealings by The Company. All such dealings are invitations to treat only; no such dealings constitute an offer on the part of The Company to enter into any contractual commitment on any particular terms or at all. No contract will in any event come into existence unless and until accepted by The Company, or otherwise in writing, and then only the basis referred to in the previous paragraph.

The Company may amend these conditions from time to time at its discretion (prospectively but not retrospectively). It will also display the latest version on its website under the link above. Each version is identified by the revision date in the footnote at the bottom of this page.

#### 1. INTERPRETATION – IN THESE CONDITIONS:

- 1.1 Conditions means these Conditions of Provision of Goods and Services;
- 1.2 Optimised (also referred herein as "The Company" or "Company" or "us" or "We" or "Consultant" or "The Consultant") means Velocity Systems Group Pty Ltd (ABN 64 118 296 503).
- 1.3 Computer Systems means The Customer's servers and operating systems, networks, UPS, backup systems, virus protection systems, e-mail systems, Internet systems and workstations;
- 1.4 Customer or The Customer or The Purchaser or You means a person, firm or corporation, jointly and severally if there is more than one, that requests goods or services from Optimised;
- 1.5 Goods (also referred herein as "Equipment") means all products and other goods (including any software) supplied by Optimised to The Customer;
- 1.6 Customers' Information means any documents or other materials, and any data provided by The Customer to The Company necessary for or relating to the Service;
- 1.7 Customers' Works means all works produced or provided by The Customer to The Company during the term of this Agreement capable of attracting Intellectual Property Rights;
- 1.8 Company's Information means any Documents or other materials, and any data provided by The Company to The Customer which relates to The Company or relates to or is provided as part of the Service;
- 1.9 Company's Works means all works produced or provided by The Company to The Customer during the term of this Agreement capable of attracting Intellectual Property Rights;
- 1.10 Services means all services supplied by Optimised to The Customer;
- 1.11 Intellectual Property Rights means copyright, trademarks, design rights and patents including rights to apply for, and pending applications in respect of, any of them and in any jurisdiction (whether in Australia or not);
- 1.12 Party and Parties means severally and not jointly The Company and/or The Customer as the context requires.
- 1.13 The clause headings are for ease of reference only and shall not be relevant to interpretation;
- 1.14 The words 'include' and 'including' are to be construed as importing the term 'without limitation'

#### 2. BASIS OF CONTRACT:

- 2.1 Unless otherwise agreed by us in writing, these Conditions apply to every supply of Goods and provision of Services by The Company to The Customer and cannot be varied, amended or supplemented by any other terms or conditions without our prior written consent.
- 2.2 Any written quotation provided by The Company to The Customer concerning the proposed supply of Goods or Services is valid for fourteen (14) days and is an invitation only to The Customer to place an order based upon that quotation. These Conditions may be supplemented by additional terms in our quotation which are not inconsistent with these Conditions.

#### 3. CHARGES AND PAYMENT

- 3.1 Payment of accounts must be made by cash or credit card on or prior to the supply of the Goods or the performance of the Services unless you have a credit account with us. Credit card payments will attract a Merchant Service Fee (MSF) of 2.5% for Visa or MasterCard and 3% for American Express.
- 3.2 For Approved Credit accounts, payment for Goods and Services must be made within seven (7) days unless otherwise approved in writing by The Company.
- 3.3 All Company onsite visits are chargeable and are charged in half hour units after the first hour. Any part thereof is chargeable at the same rate as a full half hour.
- 3.4 For onsite visits call-out fees may be applied at rates dependent on The Customer's suburb.
- 3.5 All remote support (including that performed via The Company's remote support system or via telephone) and work performed in any of The Company's premises is chargeable and is charged in fifteen (15) minute increments.
- 3.6 Surcharges may be applied on some visits. All afterhours work incurs a 1.5x surcharge.
- 3.7 Where there is any change in the costs incurred by The Company in relation to the Goods or Services, The Company may vary its price for Goods or Services in order to take account of any such change, without giving notice to The Customer.
- 3.8 Any sum payable under the Agreement which under applicable legislation is properly subject to GST shall be increased by the addition of GST at the prevailing rate. The Party from which payment is due shall make payment accordingly. The other Party shall promptly issue and deliver to that Party an invoice valid for GST purposes to enable the applicable GST to be reclaimed without delay as an input tax credit by the Party making payment.

- 3.9 The Customer shall pay all reasonable out-of-pocket expenses (including telephone, parking, mileage, accommodation, and airfares) incurred by The Company in providing the Services, and The Company shall retain and provide copies of receipts upon request.
- 3.10 If The Customer disputes the whole or any portion of the amount claimed in an invoice submitted by The Company, The Customer shall make due payment of the portion of the amount stated in the invoice which is not in dispute and shall notify The Company in writing (within seven (7) days of receipt of invoice) of the reasons for disputing the balance. If it is resolved that some or all of the amount in dispute ought properly to have been paid at the time it was invoiced, then The Customer shall pay the amount forthwith. In the event that the Parties cannot agree on the disputed amount, they shall resolve the dispute in accordance clause 22 of the Agreement.

#### 4. PAYMENT DEFAULT

- 4.1 If The Customer defaults in payment by the due date of any amount payable to The Company, or if any cheque drawn by The Customer is dishonoured, then all money which is then due as well as all monies that are payable by The Customer to The Company at a later date on any account, shall be due and payable immediately without the requirement of any notice to The Customer, and The Company may, without prejudice to any other right or remedy available to it:-
  - (a) charge The Customer interest on any sum due at the rate of 2% above the corporate reference rate of The Company's principal banker. This interest shall be calculated daily and compounded every thirty (30) days for the period from the due date until the date of payment in full; and
  - (b) charge The Customer for all expenses and costs (including debt collection commission and fees, legal costs on a full indemnity basis and dishonoured cheque fees) suffered or incurred by The Company resulting from the default and in The Company taking whatever action it deems appropriate to recover any amounts due (which, for the avoidance of doubt, shall include engaging Dun & Bradstreet or other debt collection agencies to seek to recover the amounts due); and
  - (c) cease or suspend for such period as The Company thinks fit, supply of any further Goods or Services to The Customer; and
  - (d) by notice in writing to The Customer, terminate any contract with The Customer so far as unperformed by The Company, without effect on the accrued rights of The Company under any contract.
- 4.2 Clause 4.1 may also be relied upon, at the option of The Company:
  - (a) where The Customer is an individual, he or she becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
  - (b) where The Customer is a corporation, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of The Customer.
- 4.3 If a cheque presented by The Customer to The Company is dishonoured by The Company's Bank, The Customer will be responsible for the fee charged to The Company by its bank together with an administration fee of \$50 AUD. Similarly, if The Customer has in place a direct debit system for payment of Goods or Services and there are insufficient funds in the account, The Company is entitled to charge an administration fee of \$50 AUD.

#### 5. PASSING OF PROPERTY

- 5.1 Until full payment in cleared funds is received by The Company for all Goods supplied by it to The Customer, as well as other amounts owing to The Company by The Customer, including amounts owing for any Services related to the installation of any such goods:
  - (a) title and property in all Goods remain vested in The Company and do not pass to The Customer;
  - (b) The Customer must hold the Goods as fiduciary bailee and agent for The Company;
  - (c) The Customer must keep the Goods separate from its Goods and maintain the labelling and packaging of the Goods; The Customer is required to hold the proceeds of any sale of the Goods on trust for The Company in a separate account however failure to do so will not affect The Customer's obligation to deal with the proceeds as trustee;
  - (d) The Company and its agents and employees may without notice, enter any premises where it suspects the Goods or any part of such Goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of The Company, and for this purpose The Customer irrevocably licenses The Company to enter such premises and also indemnifies The Company from and against all costs, claims, demands or actions by any party arising from such action.
  - (e) The Company shall have authority to retake, sell or otherwise deal with and/or dispose of all or any part of such Goods.

#### 6. RISK AND INSURANCE

- 6.1 The risk in the Goods and all insurance responsibility for theft, damage or otherwise in respect of the Goods shall pass to The Customer immediately upon delivery of the goods to the premises nominated by The Customer.
- 6.2 For dropship orders and orders delivered by courier, we only use person-to-person delivery services (i.e. where the recipient must sign for the delivery) to ensure orders can be tracked all the way through to delivery.
- 6.3 For such orders The Customer is responsible for ensuring that either they or their authorised representative inspect the Goods prior to accepting the delivery and signing the Proof Of Delivery (POD) document. Each delivery should be checked for completeness (i.e. enclosed Goods as per accompanying consignment note) and any transit damage. Failure to inspect the Goods prior to signing the POD will result in voiding of any insurance against loss or transit damage.
- 6.4 Signing of a Proof of Delivery (POD) document confirms that the consignment has been delivered in full and in good condition (i.e. no visible physical damage). The POD should only be signed once the Goods have been inspected as a clean signed POD will void any insurance against loss or transit damage.
- 6.5 If a shipment arrives with a damaged carton or item, the delivery should either be rejected with the POD not signed or the POD must have the exact damage noted on it, including any carton identifier

available, signature, name and date as above. If this information is not provided the POD will be treated as clean and will void any ability to claim loss or transit damage against shipping insurance.

#### 7. PROVISION OF GOODS:

- 7.1 Refund/Exchange: Please choose carefully, as we do not normally give refunds if you simply change your mind or make a wrong selection. You can choose between a refund, exchange or credit where Goods are faulty.
- 7.2 Returned Goods: All Goods returned must be returned in saleable condition with original packaging intact, together with all user manuals & software (where applicable).
- 7.3 Faulty Goods: Goods returned as faulty which are found to be in working condition may incur a 15% restocking fee at the discretion of The Company.
- 7.4 The Company shall not be liable for the repair or supply of spare parts for any Computer Systems of The Customer not supplied by The Company. The Customer may notify The Company in writing of any defect or suspected defect in any Computer Systems not supplied by The Company. The Company shall, to the extent necessary, and as soon as practicable after receiving notice from The Customer, inspect, replace or manage the repair of the Computer Systems concerned and may charge the Customer for doing so.
- 7.5 The Customer may, during the manufacturer's warranty period, notify The Company in writing of any defect or suspected defect in the Equipment. The Company shall, to the extent necessary, and as soon as practicable after receiving notice from The Customer, pursuant to this subclause, inspect, replace or manage the repair of the Equipment.
- 7.6 The Company shall have no obligation under this clause (7) in respect of Equipment designated by The Company in writing as being excluded from warranty coverage.
- 7.7 Warranty on Goods sold does not include home, office or on-site visits, nor freight or transport charges. On-site service work will be provided for a fee, if required. All items requiring repair under warranty must be returned to a location specified by The Company together with proof of purchase to avoid repair charges otherwise covered by warranty.
- 7.8 Goods presented for repair may be replaced by refurbished Goods of the same type rather than being repaired. Refurbished parts may be used to repair the Goods.
- 7.9 Software problems of any nature what-so-ever, are not covered by warranty. This includes compatibility, suitability, problems or consequential loss resulting from computer virus', software conflicts or operating system corruption.
- 7.10 Any consequential work required to be performed over and above replacing faulty hardware component/s, such as reloading software and/or recovering user data after a hard disk crash, is not part of our warranty for Goods and the cost of such consequential labour is born exclusively by The Customer.
- 7.11 Prices and delivery dates on all quotes provided by The Company are subject to change and availability. Any errors and omissions in any quotes provided are excluded.

#### 8. PROVISION OF SERVICES

- 8.1 If we cannot fix or diagnose your problem, we will not charge you for those Services in respect of that problem ("Service Guarantee"). In some cases, the solution may be that you need to upgrade or replace your software and/or hardware. If we advise you to do so and you choose not to upgrade or replace your software and/or hardware, you acknowledge that we have met our commitment to you by providing you with a solution to your problem, whether or not you choose to implement that solution.
- 8.2 We stand behind our service. If you notify us of a problem with the Services you were provided within seven (7) days of when they were performed (the "Guarantee Period"), and our diagnosis of the problem indicates that our Services were not performed satisfactorily, we will work to provide a solution to your problem and at no additional cost to you. Any identical or related issue which re-emerges, must be communicated to The Company within the Guarantee Period to have the matter fixed free of charge. The Company may perform this additional service remotely via our remote support system, and in such circumstances, The Customer agrees to co-operate with The Company to obtain such remote access. This work guarantee does not cover unrelated matters, nor does it extend to matters brought to our attention after the Guarantee Period has expired.
- 8.3 You acknowledge that computers are complicated and sometimes problems are more deeply rooted or complicated than initially diagnosed. You also acknowledge that a problem which occurs with your computer after our visit may be unrelated to the work we performed for you and is therefore outside the scope of our Service Guarantee.
- 8.4 Whilst every attempt will be made to perform the repairs onsite, it may be necessary to return your system to our base or third party for diagnosis and repair.
- 8.5 All quotes for Services made by us are estimates only. From time to time, unpredictable circumstances may give rise to additional work required to reconstruct or to get your systems running the way you want them to run. Please note that any such work required, as well as any additional work requested or required of our technicians, over and above that estimated (including any time taken to rectify system functionality or recover lost data on any of your systems), is payable by you at standard hourly rates over and above any quoted prices. At all times we will notify you as soon as practicable if such out of scope variations arise or if a task requested is an out of scope task.

#### 9. WARRANTIES:

- 9.1 When we sell you equipment, hardware or software, we may be selling such equipment, hardware or software on behalf of a third party manufacturer or licensor. We do not warrant that the operation of any software we install or service will be uninterrupted or error-free. You acknowledge that software (and information technology and communications products generally), including your software, may have errors and may encounter unexpected problems, and accordingly, you may experience downtime and errors in the use of software. You also acknowledge that your use of such software may be subject to a third party licence.
- 9.2 We shall honour all terms (if any) that are implied under applicable State and Commonwealth laws concerning the supply of the Goods and/or the performance of the Services and nothing in this clause seeks to restrict, modify or exclude such terms. Our express warranty and guarantee are in addition to and do not affect your statutory rights and remedies.

- 9.3 Any period or date for delivery of Goods or provision of Services stated by The Company is intended as an estimate only and is not a contractual commitment. The Company will use its reasonable endeavours to meet any estimated dates for delivery of the Goods or completion of the Services.

#### 10. LIABILITY

- 10.1 To the full extent permitted by applicable law, all conditions, warranties, representations, indemnities and guarantees with respect to the Goods and/or the Services, or other Goods or Services that may be provided by The Company under these Conditions, that may otherwise be implied by statute, law, equity, trade custom, prior dealings between the Parties or otherwise (including, but not limited to, any implied warranty of merchantability, fitness for particular purpose, quiet enjoyment or non-infringement) are hereby expressly excluded.
- 10.2 Except to the extent specifically provided in these Conditions, our sole liability to you for any and all breaches of any term or terms of these Conditions, whether express or implied, shall be limited to:
  - (a) subject to sub-clauses 10.2.b and 10.2.c, the aggregate amount of the fees and charges paid by you under these Conditions as at the date of the breach;
  - (b) in relation to Goods if supplied to you as a consumer (as defined in the Trade Practices Act 1974):
    - (i) the replacement of the Goods or the supply of equivalent Goods; or
    - (ii) payment of the cost of replacing the Goods or acquiring equivalent Goods; or
    - (iii) the repair of the Goods or payment of the cost of having the Goods repaired, as in each case we may elect; and
  - (c) in relation to Services if supplied to you as a consumer (as defined in the Trade Practices Act 1974):
    - (i) the supplying of the Services again; or
    - (ii) the payment of the cost of having the Services supplied again, as in each case we may elect.
- 10.3 In no event shall we be liable to you or to any third party under or in connection with these Conditions or in respect to the use of (or failure or performance of) the Goods or the provision of the Services for:
  - (a) malfunctions or failures caused directly or indirectly by:
    - (i) any third party;
    - (ii) our actions that were expressly or impliedly authorised by you, or by your employees or agents;
    - (iii) accident, misuse or abuse by anyone other than us;
    - (iv) alteration or modification of the Goods by anyone other than us;
    - (v) products (including any hardware or software) not licensed or supplied by us that are attached to or used with the Goods;
    - (vi) your failure to provide a proper operating and working environment for the Goods;
    - (vii) damage during any movement, relocation or re-installation of the Goods;
    - (viii) power surge or failure,
    - (ix) acts of God or acts outside our reasonable control;
    - (x) any other condition not arising under normal operating conditions; or
    - (xi) normal wear and tear; or
  - (b) any loss or damage of any nature arising or caused directly or indirectly by any breach of your obligations or responsibilities set out in these Conditions.
- 10.4 Any replacement of parts under warranty will be carried out at the premises nominated by us. The cost and risk of transport of any defective part to the nominated premises is your responsibility.
- 10.5 In no event will we be liable to you or to any third party under or in connection with these conditions or in respect to the use of (or failure or performance of) the Goods or the supply of the services for:
  - (a) any loss of profit, business interruption, loss of or damage to goodwill, and/or any expectation benefit;
  - (b) your liability to any third party; or
  - (c) incidental, consequential, special, exemplary or punitive damages of any nature, howsoever arising or caused, including without limitation the breach of these Conditions or any expiration or termination of these Conditions, whether such liability is asserted on the basis of statute, contract, tort (including negligence or strict liability), equity or otherwise, even if we have been advised of the possibility of such loss or damage.
- 10.6 We will not be liable for any loss or damage suffered by you where we have failed to meet any delivery date or cancelled or suspended the supply of Goods or Services.
- 10.7 Nothing contained in these Conditions excludes, restricts or modifies any:
  - (a) implied condition, warranty or other implied obligation in relation to these Conditions or the Goods and Services where pursuant to applicable law to do so is unlawful or void; or
  - (b) liability for fraud or deceit; or
  - (c) liability for death or personal injury caused by the negligence of either Party.

#### 11. CUSTOMER'S RESPONSIBILITIES

- 11.1 Customer shall be solely responsible for all data inputs, the manner of use of the Goods by all those to whom it provides access and all outputs derived, and all other results of such processing.
- 11.2 Customer shall comply, at its own expense, with any recommendations and guidelines with respect to the use of the Goods, including any adjustments or replacements required in respect of equipment and software that is incidental or collateral to the use of the Goods.
- 11.3 Customer shall ensure that its operators are adequately trained and informed as to the use of the Goods and shall comply with guidelines and procedures supplied by The Company and/or any third party manufacturer from time to time.
- 11.4 You shall promptly report errors or faults in the operation of any aspect of the Goods or any provision of the Services in accordance with applicable fault reporting procedures from time to time.
- 11.5 Customer shall perform general "housekeeping", testing, adjustment and/or maintenance as recommended by The Company in respect of any Goods supplied by The Company in order to maximise the availability of and performance of the Goods or permit performance by The Company of any of its obligations hereunder.
- 11.6 Customer agrees to exercise due care and carry out such precautions which may be recommended by The Company or otherwise required as a matter of prudence in connection with the performance by The Company of any of its obligations hereunder, for example, but without limiting the generality of the

- foregoing, advising its staff of system restarts or scheduled downtime, recording of error information, and will co-operate with other system administration activities such as, but not limited to, running diagnostic tests and operational readiness tasks.
- 11.7 The Customer shall as a fundamental term of these Conditions back up all software, data and files that are stored on its Computer and Systems and/or on any other storage devices it may have prior to any remote or onsite repair or Service of any computer equipment, hardware or software by The Company. Data backup is the sole responsibility of the customer.
- 11.8 Whilst The Company takes every precaution in the preparation of its information sheets, guides, web site and other literature, these documents and the particulars therein are for the The Customer's general guidance only and shall not constitute representations by The Company and The Company shall not be bound thereby.
- 11.9 Nothing in this Agreement is intended by the parties to be, and shall not be construed or interpreted to be, a representation, term, warranty or condition that the operation, use or functionality of The Customers equipment will be uninterrupted or error free. The Customer understands and accepts that all such Goods and products (and information technology and communications products generally), may have errors (or "bugs") and may encounter unexpected problems, and accordingly The Customer may experience downtime and errors in the use of the Goods and products. Given this The Customer will put in place reasonable internal procedures and processes to enable it to minimise any inconvenience and any adverse impact of any such downtime or error resulting from its Systems being unavailable.
- 11.10 Onsite Services involve our technicians visiting you at your business, home or other location ("Premises") requested by you.
- (a) You must ensure that a person of at least eighteen (18) years of age is present for the duration of the provision of onsite Services.
- (b) You must provide our technicians with:
- (i) access to the areas of your premises necessary to provide Services;
- (ii) necessary passwords to your Computer;
- (iii) a safe working environment and working space;
- (iv) electrical power and internet access (where applicable).
- (c) If the Services involve the installation of software, then you must provide our technicians with the installation disks for your operating system or software along with a legally obtained, valid product key for this software.
- 12. EQUIPMENT**
- 12.1 The Company will use reasonable endeavours to deliver the Equipment to the Customer on the Delivery Date at the Site during the Customer's normal business hours but may at its sole discretion make delivery elsewhere if so requested by the Customer upon not less than seven days' notice and may charge the Customer for doing so.
- 12.2 If The Customer requests delivery of the Equipment in advance of the estimated Delivery Date or postponed beyond the estimated Delivery Date, the Company shall use reasonable endeavours to re-schedule delivery accordingly (and may charge the Customer for doing so) but shall otherwise be under no obligation to comply with the Customer's request.
- 12.3 Packing materials remain the property of The Company and shall be removed or otherwise disposed of at the sole discretion of The Company.
- 12.4 If The Company requests permission to deliver the Equipment prior to the estimated Delivery Date, the Customer shall use reasonable endeavours to prepare the Site and to do all other things necessary to enable it to comply with the request and to accept early delivery.
- 12.5 The Company may substitute any component of the Equipment or part of any component of the Equipment prior to delivery without consultation with the Customer (but nevertheless subject to advising The Customer on or before delivery) and may in any other respect modify the Equipment if, in the reasonable opinion of the Company, doing so will not:
- (a) adversely affect the performance or capacity of the Equipment;
- (b) alter the configuration of the Equipment in any material respect; or
- (c) otherwise materially affect the obligations of The Company or prejudice the rights of The Customer under the Agreement
- 12.6 Equipment shall be installed at the Site during normal business hours (unless otherwise agreed in writing, subject to clause 3.6 of this Agreement).
- 12.7 If The Customer requests installation of the Equipment at a location other than the Site, it shall make a request in writing to The Company to that effect not later than thirty (30) days prior to the Installation Date, and The Company may at its sole discretion determine whether to agree to such a request and whether to charge The Customer for doing so and what other conditions, if any, shall apply in the event of it agreeing to such a request.
- 13. CO-OPERATION – ACCESS AND SUPPORT**
- 13.1 The Customer shall, where relevant, ensure that The Company has full and safe access (including any applicable security clearance) to the Site and any necessary equipment, materials and information. The Customer shall ensure that The Company is provided with all facilities, services and accessories reasonably required, and generally co-operates with The Company, to enable The Company to perform its work.
- 13.2 The Customer shall, where relevant, provide on request a suitably qualified or informed person to accompany The Company's personnel and to advise The Company on project requirements, access, security procedures and any other matter within The Customer's knowledge or control which will assist The Company in complying with its obligations under the Agreement.
- 14. COPYRIGHT IN SOFTWARE**
- 14.1 The Company will not be responsible to The Customer or any third party for any breach of any software licence in respect of software provided to The Company by The Customer to be installed on a Customer's Computer Systems, or any software running on The Customers current systems.
- 14.2 The Customer hereby warrants that it has a valid licence in respect of such software and shall indemnify The Company against any loss, damage, costs, harm or other expense whatsoever arising either directly or indirectly.
- 15. CANCELLATION**
- 15.1 If The Customer gives less than four (4) hours' notice to The Company to cancel any request for on-site service, then The Company may charge a cancellation fee of \$80 AUD for the loss and damage caused.
- 15.2 If, through circumstances beyond the control of The Company, The Company is unable to effect delivery or provision of Goods or Services, then The Company may cancel The Customer's order (even if it has already been accepted) by notice in writing to The Customer.
- 15.3 Cancelled Orders: Confirmed orders which are subsequently cancelled, may incur a 15% restocking or administration fee.
- 16. SAME DAY ON-SITE COMPUTER SUPPORT...or its FREE!**
- 16.1 "Same Day onsite Computer Service...or it's FREE!" is only available in Brisbane. This guarantee applies exclusively to service scheduled with us through our service hotline 1800 774 263 for Windows-based systems. Same day service attracts a surcharge and must be requested over the phone no later than 10am Monday through Friday, excluding holidays. We may assign specific appointment times at our discretion, either for our own purposes or as a courtesy to you, but we only guarantee that a technician will arrive by midnight. Your request for specific appointment times are not covered by this guarantee in any way. This guarantee only applies to the initial visit by our technician and does not ensure that all necessary work can be completed on the same day. Any changes made by you to a same day service request that is already scheduled voids this guarantee in its entirety. In the event that we are unable to provide same day service to a customer, our only liability is to provide a credit of up to \$299 AUD, including GST, maximum toward labour charges on the next available appointment scheduled by you through our service hotline as listed above. This offer is limited to one (1) per customer. Additional restrictions may apply. We may cancel this offer at any time.
- 17. NO REPRESENTATION OR RELIANCE**
- 17.1 The Customer acknowledges that neither The Company nor any person acting on behalf of The Company has made any representation or other inducement to it to enter into these Conditions, except for representations or inducements expressly set out in these Conditions.
- 17.2 The Customer acknowledges and confirms that it does not enter into these Conditions in reliance on any representation or other inducement by or on behalf of The Company, except for representations or inducements expressly set out in these Conditions.
- 17.3 Without limiting the generality of clauses 17.1 and 17.2, The Customer understands and hereby confirms that:
- (a) its decision to enter into these Conditions was, and is, not based on any promise, representation, statement, warranty or undertaking made or given by The Company or any person on its behalf in relation to the capacity, uses or benefits that might or would be derived or obtained from the goods or services, except as expressly set out in this Agreement;
- (b) it has relied on its own skill and judgement in deciding to purchase and acquire the Goods and Services.
- 18. ENTIRE AGREEMENT**
- 1.1 The Agreement constitutes the entire Agreement between the Parties and supersedes all prior representations, agreements, statements and understandings, whether made orally or in writing.
- 19. LEGAL STATUS OF PARTIES**
- 19.1 The Company is an independent contractor without the authority to bind The Customer by contract or otherwise. Neither The Company nor any of The Company's personnel is an agent or employee of The Customer by virtue of the Agreement.
- 19.2 The Agreement does not create or evidence any partnership or agency or any relationship of trust between the Parties except to the extent, if any, expressly provided.
- 19.3 The obligations of The Customer under the Agreement are joint and several, as opposed to several, in any case where there is more than one person involved as The Customer.
- 20. SUB-CONTRACTING**
- 20.1 The Company may sub-contract a third party organisation for the performance of the Agreement or any part of the Agreement upon obtaining The Customer's prior written consent which will not be unreasonably withheld or delayed by The Customer in relation to a reputable third party with demonstrated technical skills and service capability.
- 20.2 The Company may, without the consent of The Customer, engage individuals on a sub-contract or consultancy basis, whether or not operating under a corporate structure, to assist in the provision of Services.
- 20.3 The Customer may not sub-contract a third party organisation for the performance of the Agreement or any part of the Agreement without The Company's prior written consent which may be given or withheld at its sole discretion and subject to any conditions it may think fit.
- 21. INTELLECTUAL PROPERTY RIGHTS**
- 21.1 The title to all Intellectual Property Rights in all documents, materials and information provided by The Customer to The Company for the purpose and in the performance of the Services shall remain at all times with The Customer.
- 21.2 The Customer grants to The Company the right to use such Intellectual Property Rights (on a non-exclusive and non-terminable basis and free of royalty or other payment) to the extent necessary or expedient for it to perform the Services.
- 21.3 Any Company Information and all Intellectual Property Rights in the same held by The Company shall, belong to and remain with The Company, subject only to the right of The Customer to use The Company's Information and such Intellectual Property Rights for the purposes of utilising the Service in accordance with the terms of this Agreement.
- 21.4 In addition to and without in any way derogating from any other provision of this clause (21)
- (a) The Company's Works shall remain the sole and complete property of The Company, subject to any written agreement to the contrary, whether or not such works are tangible;
- (b) The Company grants to The Customer (subject to sub-clause 21.5) a non-exclusive licence to use the Company's Works for the purposes (and only for the purposes) for which access to those works was given by The Company to Customer, without any further licence fee being payable to The Company, but the Customer must not assign, sublicense, lease, impose any charge upon any other party whatsoever for, reinstall, copy, disassemble, decompile or otherwise part with

- possession of any of The Company's Works without first obtaining The Company's written consent, which will be entirely within the discretion of The Company to give or refuse;
- 21.5 These rights will only pass to The Customer upon final payment to The Company in cleared funds of all sums payable by The Customer under the Agreement.
- 21.6 All Documents, information, intellectual property and associated rights, whether or not owned by or licensed to either party, and in any event provided to the other for the purposes of completing the terms of this Agreement ("Provided Data") shall be kept confidential by the other unless and until either:
- the other party obtains rights to disclose such Provided Data; or
  - such Provided Data becomes public knowledge (other than through a breach of confidentiality).
- 21.7 On termination, expiry or performance of the Agreement each of the Parties shall promptly upon request by the other confirm to the other that it has destroyed all documents and records (including computer files) insofar as they may contain any Confidential Information belonging to the other. This clause shall survive the termination, expiry or performance of the Agreement.
- 22. DISPUTES**
- 22.1 Any disputes arising in connection with the Agreement which cannot be settled by negotiation between the Parties or their representatives shall, unless otherwise expressly agreed, first be referred to mediation before a mediator selected by the then current President of the Queensland Law Society.
- 22.2 Prior to referring a matter to mediation pursuant to sub-clause 22.1, the Parties shall:
- formally refer the dispute to their respective contract managers for consideration;
  - refer the dispute to the respective chief executive officer (or other appropriate representative) of each Party if the respective contract managers are unable to resolve the dispute after five days (or such other period as is agreed between the Parties) from the date of referral; and
- 22.3 The mediation will be conducted in the English language as a structured negotiation between the Parties facilitated by the mediator who shall at all times act impartially, at such venue as may be agreed between parties, or failing agreement, at the chambers or office of the mediator. If any Party requires a translator, the costs of providing such translator will be borne by that Party.
- 22.4 With the sole exception of clause 22.3, all costs of mediation shall be shared equally between the Parties.
- 22.5 Each Party will bear its own travel and accommodation expenses and any legal fees they incur associated with the mediation.
- 22.6 If mediation fails, then the dispute, difference or question may be resolved by any other method the Parties see fit, including litigation.
- 22.7 The mediator shall not act as an arbitrator or any other decision maker and any decision or expressed view of the mediator shall not be binding on the Parties.
- 22.8 Each Party agrees to act in good faith and use their best endeavours to resolve any such dispute before and during (and after, if such dispute is not resolved by the end of) any such mediation.
- 22.9 The performance of the Agreement shall continue throughout the conduct of any mediation proceedings pursuant to this clause (22).
- 23. PARTIES RIGHTS**
- 23.1 An express statement of a right of either Party under the Agreement is without prejudice to any other right of that Party expressly stated in the Agreement or existing at law.
- 24. VARIATION**
- 24.1 A specific version of this Agreement shall not be varied except by Agreement in writing signed by both Parties. The Company may at its sole discretion charge The Customer for agreeing to any variation taking due account of costs (both internal and external) likely to be incurred by it as a result and with the addition of its usual margin for all Equipment or Services concerned.
- 25. FURTHER ASSURANCE**
- 25.1 Each Party shall do or cause to be done all things necessary or expedient to give full effect to the Agreement (including execution of documents) and refrain from doing or causing to be done anything that may hinder or delay due performance of the Agreement.
- 26. FORCE MAJEURE**
- 26.1 Should either party be affected by a force majeure, not arising out of its own negligence, which may include, but not be limited to floods, fires, storms or other natural disasters, any civil or labour unrest such as strikes, lockouts, riots or actions on the part of a government or other authority which interfere with a Party's ability to meet its obligations under this Agreement including embargoes, prohibitions or similar actions, that Party shall immediately advise the other of the force majeure.
- 26.2 Any delay or inability by a Party to perform its obligations under this Agreement shall not be deemed a breach if the delay or inability to perform is as a result of the force majeure of which the other Party has been notified.
- 26.3 Should the force majeure continue for a period of more than twenty (20) Business Days, the Parties will have discussion to determine what, if any, steps should be taken to remedy the situation in a fair and equitable fashion or to allow for the termination of this Agreement.
- 27. SURVIVAL OF AGREEMENT**
- 27.1 Subject to any provision to the contrary, the Agreement shall endure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assignees and receivers but shall not endure for the benefit of any other persons.
- 27.2 The provisions of the Agreement which are capable of having effect after its termination, expiry or performance shall remain in full force and effect thereafter. Termination, expiry or performance of this Agreement shall not affect the accrued rights of either Party.
- 28. SOLICITATION OF EMPLOYEES AND CONTRACTORS**
- 28.1 The Customer shall not solicit for employment, either directly or indirectly, any person or technician who is employed or contracted by The Company. This restriction shall apply both during the course of the Agreement and for a period of eighteen months after the date of final payment to The Company in cleared funds of all amounts payable by The Customer under the Agreement.
- 28.2 If in breach of sub-clause 28.1, The Customer shall pay (as a pre-estimate of liquidated damages and not as a penalty) a sum equal to six months of employment or engagement with The Company. For clarity this is to be calculated by multiplying the hourly rate paid to the person concerned x 8hours x 5days x 26weeks.
- 28.3 The Customer shall promptly advise The Company if a person who is employed or contracted by The Company seeks to be employed or contracted by The Customer.
- 29. SEVERABILITY**
- 29.1 If any provision of this Agreement is determined to be void, illegal or unenforceable by any law or regulation of any government or by any court, such provision will be severed from this Agreement and the remaining parts, terms and provisions will remain enforceable.
- 30. GOVERNING LAW + NOTICES**
- 30.1 This Agreement is governed by and must be construed according to the law applying in Queensland, Australia. The Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of Queensland, Australia.
- 30.2 Notices shall be in writing and hand delivered or sent by certified mail, courier or by facsimile, using the details most recently notified (in writing) by the recipient to the sender. If hand delivered or sent by courier, notice will be effective on the date of receipt. If sent by facsimile, on the date of transmission and if by certified mail, three (3) days after being posted.