

Terms and Conditions of Supply - Goods + Services

1. OUTLINE

- 1.1 **Currency:** These Terms + Conditions apply to the supply of all Goods and/or Services by us to you.
- 1.2 **Product Specific Terms + Conditions:** *Product Specific Terms + Conditions* (if any and as relevant) apply to certain Goods and Services supplied to you by us.
- 1.3 The **Agreement** between us with respect to relevant Goods and/or Services comprises:
- 1.3.1 all relevant *Product Specific Terms + Conditions* concerning the applicable Goods and/or Services to be supplied by us;
- 1.3.2 the terms of the relevant Quote;
- 1.3.3 these Terms + Conditions;
- 1.3.4 the terms of the relevant Order (subject to clause 2.6);
- 1.3.5 the terms of any annexures or attachments to a Quote or Order (including for this purpose any document, attachment or SOW which carries the same identification number as may be relevant).
- 1.4 **Acceptance:** An Agreement is accepted and binding on the parties when:
- 1.4.1 you accept a Quote (if it has not been withdrawn by us) that by its terms is expressed to be capable of acceptance;
- 1.4.2 we accept an Order communicated by you to us in accordance with clause 2.4;
- 1.4.3 you accept delivery of, or any part of, Goods and/or Services pursuant to an Order or Quote (in circumstances where the Order or Quote has not been formally accepted in accordance with its terms); or
- 1.4.4 you make a Payment, or partial Payment, for any Goods and/or Services supplied by us (in circumstances where the Order or Quote has not been formally accepted in accordance with its terms, or none exists).
- 1.5 **Inconsistency or conflict:** In the event of a conflict or inconsistency between the parts of the Agreement, the part listed earlier in clause 1.3 prevails to the extent of the inconsistency unless expressly agreed otherwise in a Quote or Order.

1.6 **Multiple Agreements:** For the avoidance of doubt, the purpose and intent of this document is to facilitate the conclusion of Agreements between us concerning the supply of Goods and/or Services to you. Accordingly, it is contemplated that one or more Agreements may be concluded between the parties, each of which shall be treated as a separate contract between the parties in respect of its subject matter.

1.7 **No obligations to supply:** The existence of this document or any Order or Quote does not obligate us to supply any Goods and/or Services to you, unless an Agreement is accepted in accordance with clause 1.4.

2. QUOTES+ ORDERS

2.1 **Requesting a Quote:** You may request a Quote from us relating to the potential supply of Goods and/or Services.

2.2 **Providing a Quote:** We may provide to you a Quote relating to the potential supply of Goods and/or Services, which may include the Fees and quantity of the Goods and/or Services proposed to be supplied by us and other relevant details as necessary. We may withdraw a Quote before its acceptance at any time unless the Quote otherwise expressly provides in writing. If you request additional or out of scope services, we reserve the right to either issue a new Quote or variation form in writing (including by text, email or otherwise) or verbally where appropriate. By continuing to instruct us, making a payment or accepting delivery of part or all of our Services you will be deemed to have accepted any additional Quote or variation.

2.3 **Accepting a Quote:** If our Quote is on satisfactory terms, you may accept a Quote in accordance with its terms (if expressly capable of acceptance), including by signing the Quote, via electronic means, by return email or by continuing to instruct us to provide the Goods and/or Services, subject to clause 2.4.

2.4 **Subject to acceptance:** All Orders are subject to our review and acceptance, which we may withhold in our absolute discretion and is subject to clause 2.5. Acceptance of an Order by us will be communicated in writing (which may include by email) to you. We also reserve the right to provide substitute brand Goods of a similar quality and value where the original brand in the Quote are no longer available (and will notify you of any proposed substitutes where practicable).

2.5 **Delay in placing an Order/Quote expiry:** If an Order is not placed with us within 30 days of the date of a Quote or where

expressly capable of acceptance the Quote is not accepted within the required time period stated in it, the details and terms provided to you in the Quote may be subject to further written confirmation by us in our absolute discretion.

2.6 **Additional or alternative conditions:** Unless otherwise expressly agreed by us in writing (which acceptance shall include a reference to this clause 2.6), we will not be bound by any additional or inconsistent conditions added by you in an Order or other communication from you or on your behalf (express or implied) or any other attempt to impose your own contractual terms on us. Without limiting this clause 2.6, we do not agree to any cash retention terms, policies or similar requirements.

3. FEES

3.1 **Fees:** Unless otherwise agreed to in writing by us, subject to clause 3.2, the fees and amounts payable by you for the relevant Goods and/or Services shall be the fees and amounts in Australian dollars stated in the relevant Agreement. In addition, you must pay to us all applicable taxes (including GST), charges, disbursements, insurance and delivery costs in relation to the relevant Goods and Services.

3.2 **Variation of fees:** Fees and amounts payable in any Agreement are based on the cost prevailing and the specification supplied at the date of acceptance (in accordance with clause 1.4) of the relevant Agreement. Subject to your rights under law (including the ACL), we reserve the right to vary the fees and amounts payable by you to us (whether as an increase or a decrease) if there is any substantive (as reasonably determined by us) movement in the cost of supplying the relevant Goods and/or Services concerning an Agreement (at any time before or after the relevant Agreement is accepted).

3.3 Such a variation of fees or amounts due may arise and be imposed upon you, without limitation, as a result (directly or indirectly) of changes to applicable exchange rates, an increase in energy costs, a third party vendor or licensor varying its pricing, or for any other reason of any kind that increases the input costs or the of supply of the relevant Goods and/or Services. In certain circumstances, subject to applicable laws, we may invite you to terminate the relevant Agreement if a variation of fees or amounts is proposed.

4. PAYMENT

4.1 **Invoice:** Unless otherwise specified in an Agreement, we will issue you an Invoice upon acceptance of the relevant Agreement for all fees and amounts payable under it.

4.2 **Deposit:** A 50% deposit will be required prior to the scheduling or commencement of the supply of the Goods or Services to you, or such other amounts or on payment terms as may be specified by us in an Agreement.

4.3 **Payment:** Unless otherwise specified in an Agreement, all final balances and Payments shall be made in full on or before the date of substantial completion of the supply (and where applicable, installation) of the Goods or Services to you. For the purpose of this clause, substantial completion will be determined by us in our sole discretion. We reserve the right to request evidence of payment prior to completion of the Services. Where applicable, we may make payment claims under the *Building & Construction Industry Security of Payments Act 1999* (NSW).

4.4 **Periodic payments:** We may agree in a relevant Agreement that you may pay fees and amounts on deferred terms or in installments over a relevant period. We may withdraw any such deferred or installment terms and require a payment in full of all amounts owing for the balance of the Term or otherwise as may be relevant.

4.5 **Payment method:** All Payments are to be made to us, by credit card, direct credit to the bank account nominated by us (including by EFT or BPay), direct debit or as otherwise agreed by us in writing.

4.6 **Revocation of credit:** We reserve the right to revoke at any time any credit extended to you because of your failure to make any Payment when due or for any other reason.

4.7 **Costs of enforcement:** We may recover from you any costs we incur in the collection of Payment of any Invoice.

4.8 **No set off:** You may not set off (in law or in equity) against any Payment any claims which you may have against us.

4.9 **Call-out fees:** You acknowledge and agree that additional call out fees may be charged at our standard hourly rates where you or your site are not ready for or have not complied with the site preparation and access requirements (as notified), or there have otherwise been changes to site access, or you fail to provide reasonable access to the site, or are a no show for a scheduled delivery or installation.

5. DEFAULT INTEREST

5.1 **Amount:** If you fail to make a Payment in accordance with clause 4 or otherwise when due we may in our discretion charge default interest in addition at the cash rate from time to time set by the Reserve Bank of Australia plus 4% *per annum* (compounded daily).

5.2 **Default Interest amount credited first:** Any Payment you make to us shall first be credited against any Default Interest accrued pursuant to this clause 5 to the actual date of Payment.

6. TERMINATION

6.1 **Termination by us:** We may by notice in writing to you terminate with immediate effect any or all Agreements (in whole or in part, including for these purposes relevant licences and/or rights of use and/or Service Terms) without liability to you (save as required by relevant laws or expressly agreed in an Order Form, Quote or other relevant document) if:

6.1.1 you suffer or are subject to a Default Event;

6.1.2 you materially breach the requirements of an Agreement or any Order or Quote binding on you;

6.1.3 you fail to pay any amount for Goods and/or Services on the due date;

6.1.4 we reasonably form the opinion that supplying Goods and/or Services to you may have a negative impact upon our business or commercial reputation or image; or

6.1.5 as permitted by a relevant Agreement.

6.2 **Termination by you:** You may by notice in writing to us terminate with immediate effect an Agreement if:

6.2.1 we are subject to a Winding Up;

6.2.2 a receiver is appointed in respect of us;

6.2.3 we become insolvent, bankrupt or commit an act of bankruptcy; or

6.2.4 as permitted by the relevant Agreement.

6.2.5 **Consequences of termination:** Upon termination (in whole or in part) or expiry of an Agreement for any reason:

A all amounts payable under the relevant Agreement (including on deferred and credit terms, but not in respect of any part which is not terminated) immediately become payable in full by you;

B where applicable, 4G modems must be returned to us immediately;

C where applicable and upon request by us, on expiry or termination you must return any generic electronic key sets and card readers to us immediately and cease using same unless agreed otherwise;

D if all Agreements are terminated or expire, all our confidential information shall be returned to us or at our election in writing be permanently destroyed (including back-ups and notes or derivative materials which include confidential information); and

E termination of an Agreement (in whole or in part) for any reason does not extinguish or otherwise affect any rights or remedies of either party which arose prior to the time of termination, or the provisions of an Agreement which are expressed (or by their nature intended) to survive termination.

7. DELIVERY + RISK

7.1 **Delivery:** We, by our nominated carrier or otherwise, will deliver the Goods to you, your agent or nominee, to a carrier, place specified by you or as otherwise agreed in writing.

7.2 **Time of delivery:** For the purposes of these Terms + Conditions and without limiting your rights at law, delivery is deemed to take place upon the earlier of:

7.2.1 delivery of the Goods to you, your agent or nominee; or

7.2.2 to a carrier commissioned by us or on your behalf; or

7.2.3 at the place specified by you or as agreed in writing.

7.3 **Cost of delivery:** We may charge you for the cost of delivering the Goods to you. We may charge you insurance costs for cover in relation to risks of carriage and delivery.

7.4 **Installments:** We reserve the right to make deliveries in installments.

7.5 **No liability for delay:** We will use reasonable efforts to deliver the Goods to you by the date and to the place or person contemplated by clause 7.1.

7.6 We shall not be liable for late delivery or delay in delivery except where time is expressed to be of the essence in respect of a given delivery date.

7.7 **Risk passes on delivery:** The risk in Goods shall pass to you upon delivery of the Goods to you in accordance with clause 7.2.

7.8 **Insurance over Goods:** If requested by us, you shall from the delivery date until we have received Payment for all Goods in full, insure the Goods for their full replacement value and provide to us upon our request evidence of such insurance. We reserve the right to take out insurance (on any terms and in any amount or extent of cover) at your cost in relation to non-payment, carriage or Goods or their delivery.

7.9 **Disbursements:** You will pay us all disbursements and other out-of-pocket costs incurred by us in the provision of Goods and/or Services to you. This may include offsite travel or other costs.

8. RETURN OF GOODS

8.1 This clause is subject to clauses 9.1 and 10.

8.2 **Returns:** You may only return Goods if:

8.2.1 they do not materially comply with an express warranty (such as a manufacturer's warranty) in the relevant Agreement (provided that the relevant manufacturer's warranty or other applicable warranty conditions have been met); or

8.2.2 if permitted by law (to the extent not lawfully excluded or limited), including under the ACL (as applicable).

8.3 **Notification:** If you wish to return any Goods delivered to you, you must give to us:

8.3.1 notice within a reasonable time of your receipt of the Goods; and

8.3.2 the original Invoice details.

8.4 **Replacement or credit:** If we accept the return of Goods from you, we will at our option (subject to applicable laws) either:

8.4.1 replace the returned Goods (with similar Goods where an exact replacement is not feasible);

8.4.2 repair the Goods; or

8.4.3 give a credit or a refund for such Goods.

8.5 **Costs to return Goods:** Costs relating to the return of Goods under this clause 8 are payable:

8.5.1 if the defect is due to us or where required by applicable laws, by us and to be transported by our nominated carrier; or

8.5.2 otherwise, by you.

8.6 **Labour costs:** Where a defect, warranty claim or other issue in relation to our Goods or Services raised by you is determined by us to be caused by you or your system, we reserve the right to charge labour costs (and any other reasonably incurred out of pocket expenses) for any call outs and assistance requested by you to remedy the issue.

8.7 **Payment for other Goods:** You may not withhold any Payment due to us in respect of any other Goods pending the resolution of a claim for a defect or breach of express warranty.

9. EXPRESS WARRANTIES

9.1 **Warranty:** We warrant to you that (subject to clauses 10.8 and 11):

9.1.1 Goods supplied by us will comply with any applicable specifications stated in the relevant Agreement;

9.1.2 all Services shall be provided within a reasonable time (or the time specified in the relevant Agreement).

10. EXCLUSIONS + LIMITATIONS

10.1 **ACL exception:** The exclusions and limitations in this clause 10 are subject to clause 11 (**Statutory Rights**).

10.2 **Excluded rights:** All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to an Agreement, that are not contained in it, are excluded to the fullest extent permitted by law

10.3 **Limitation of liability:** We exclude to the fullest extent permitted by law all liabilities arising in relation to each Agreement.

10.4 **Limitations:** No warranty is given and we will not be liable for:

In the case of Goods

10.4.1 alterations to Goods for which we are not responsible;

10.4.2 any transient over current issues at your site or other electrical or infrastructure faults or fluctuations in supply including lightning strikes;

10.4.3 your use of third party repairers or external trades in relation to Goods and Services supplied by us (including tampering with or opening Goods or panels) which you acknowledge voids your right to claim under our warranties or otherwise;

10.4.4 damage or failure caused by unusual or non-recommended use or application of the Goods; or

10.4.5 loss caused by any factors beyond our control; and

In the case of Services

10.4.6 interference with our Services for which we are not responsible;

10.4.7 damage or loss caused by unusual or non-recommended use of our Services; or

10.4.8 loss caused by any factors beyond our control.

10.5 **Indirect loss:** We will not be liable (whether we have been advised or not of the possibility and whether in the contemplation of the parties) for any special, indirect, consequential or economic or data loss or damage or loss of revenue or profits (in contract or tort or arising from any other cause of action) suffered by you or any other person resulting from any act or omission by us (including breach, termination or non-observance of an Agreement). For the avoidance of doubt, consequential loss includes (but is not limited to) losses which do not naturally arise in the ordinary course of things from the relevant breach.

10.6 **Total liability:** Our total and aggregate liability for breach of all Agreements and duties at law and in equity (however arising) is limited (subject to applicable laws) at our option to:

In the case of Goods

10.6.1 the replacement of the Goods or the supply of equivalent Goods;

10.6.2 the repair or rectification of the Goods;

10.6.3 the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or

10.6.4 the payment of the cost of the repair or rectification of the Goods; and

In the case of Services

10.6.5 the supply of the Services again; or

10.6.6 the payment of the cost of having the Services supplied again.

10.7 **No reliance:** You acknowledge and agree that:

10.7.1 you have and will make your own assessment of the fitness for purpose and suitability of any Goods supplied to you; and

- 10.7.2 you do not and will not rely on our skill or judgment nor that of any person by whom any prior negotiations or arrangements in relation to the acquisition of any Goods were conducted or have been or will be made; and
- 10.7.3 you have not made nor will make known to us or a manufacturer of goods (directly or via any person and whether expressly or impliedly), unless expressly so agreed in a Quote, the particular purpose for which you acquire Goods; and
- 10.7.4 we do not accept liability for or guarantee your personal safety or security (or that of your property) and strongly recommend you contact the police regarding any safety concerns or incidents.
- 10.8 **Third party supply:** If we obtain goods or services from a third party under a relevant Agreement:
- 10.8.1 subject to clause 11, we will not be liable for any breach of an Agreement if that breach is as a result of or is connected with the supply by a third party of such goods or services;
- 10.8.2 we acquire such goods or services as agent for you not as principal and will have no liability to you in relation to the supply of these goods or services;
- 10.8.3 any claim by you in relation to the supply of such goods or services must be made directly against that third party; and
- 10.8.4 you must pay for such goods or services (which may be to us as agent) including any agency or services fees as applicable.
- 10.9 We give no warranty or guarantee in respect of any goods or services that are supplied or carried out or provided to you by a third party even where forming part of an Agreement. Any warranties, statutory guarantees or other rights will be governed by the terms of supply by that provider to you and relevant laws.

11. STATUTORY RIGHTS

11.1 **ACL rights:** In circumstances where you are acquiring Goods and/or Services from us as a 'consumer' for the purposes of (and as defined in section 3 of Schedule 2 of) the ACL, we acknowledge and agree that certain statutory guarantees and rights shall apply to you as provided by relevant laws but subject

to the Agreement as applicable and where permitted by relevant laws.

11.2 **No restriction:** Nothing in an Agreement excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified, which may include the ACL and corresponding provisions and relevant laws of State or Territory legislation containing implied terms and/or statutory guarantees which operate to protect the purchasers of goods and services in various circumstances.

11.3 **Unfair contract:** If section 23 of the ACL applies to any provisions of an Agreement, any such provision(s) shall be void to the extent it is/they are unfair within the meaning of section 24 of the ACL.

12. SECURITY INTEREST + TITLE

12.1 **Security Agreement:** This clause 12 sets out the Security Agreement between you and us.

12.2 **Creation of Security Interest:** You (**Grantor**) grant to us (**Secured Party**) a Security Interest in all present and after-acquired Goods (**Collateral**) as security for all or part of the Payment for the Goods. This shall also create a Purchase Money Security Interest (**PMSI**).

12.3 **Attachment:** Our security interest attaches to the Collateral by virtue of your possession of the Goods as bailee under clause 12.7.

12.4 **Registration:** We may, without notice, apply to register a financing statement with respect to the Security Interest described in this clause 12.

12.5 **Identification:** Until full title in the Goods has passed to you, you will ensure that the Goods are identifiable and distinguishable:

- 12.5.1 from any other goods that may be in your possession; and
- 12.5.2 as to each particular Invoice of Goods.

12.6 **Title:** We will retain absolute title over the Goods until:

- 12.6.1 we have received Payment in full in respect of the Goods; or
- 12.6.2 you sell the Goods in the manner prescribed under clause 12.10.

Despite any other clause in this Agreement, you agree that we permanently retain absolute title and ownership rights in respect of all 4G modems supplied as part of the Service and generic electronic key / card sets.

12.7 **Possession as bailee:** After delivery of the Goods, until the full Payment has been made you shall possess the Goods as bailee only.

12.8 **Seizure:** Until Payment in full for the Goods has been received by us, we may, without notice, seize the Goods if:

- 12.8.1 a Default Event occurs; or
- 12.8.2 you are in breach of these Key Terms + Conditions.

12.9 **Entry into premises:** For the purposes of carrying out seizure under clause 12.8, we may without notice, enter your premises and seek any and all remedies provided under Chapter 4 of the PPSA and any other remedies provided at law or in equity or otherwise.

12.10 **Permitted use and sale:** You may only sell all or any of the Goods in respect of which full Payment has not been received to a third party if:

- 12.10.1 we have not exercised our right to seize the Goods under clause 12.8;
- 12.10.2 the sale is a *bona fide* transaction at market value in the ordinary course of business; and
- 12.10.3 all proceeds of sale of those Goods is:
 - A immediately paid to us; or
 - B held on trust for us in a separate account, payable immediately on demand.

12.11 **Waiver of notice:** Notice requirements under sections 95, 118, 121, 130, 132 and 135 of the PPSA shall not apply and not place any obligations on us in your favour.

12.12 **Financing statement:** You agree to waive your right to receive from us a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to the relevant Agreement and this Security Agreement.

12.13 **Change of name:** You shall immediately notify us in writing of any change of name.

12.14 **Acknowledgement:** You acknowledge receipt of a copy or due notice of these Terms+ Conditions and this Security Agreement.

13. INTELLECTUAL PROPERTY

13.1 **Your intellectual property:** If you provide us with Material to be used in the supply of Goods and/or Services:

- 13.1.1 you warrant and represent to us that any Goods and/or Services supplied to you based on or incorporating the Material you provide to us will not

infringe the Intellectual Property Rights of any third party; and

13.1.2 you indemnify and will keep us indemnified from and against any and all claims, liabilities, obligations, expenses or damages which we may suffer or incur as a result or in connection with the representation or warranty in clause 13.1.1 being untrue or breached.

13.2 **Licence:** You grant to us a non-exclusive, royalty free, worldwide license to use all Intellectual Property Rights in all Materials for so long as necessary or convenient for the production, delivery or provision of the Goods and/or Services and the matters contemplated in relation to the production, delivery, supply or provision of the relevant Goods and/or Services.

13.3 **Our intellectual property:** Subject to clause 13.4, all Intellectual Property Rights in and relating to the production, delivery, supply or provision and supply of the Goods and/or Services (excluding Materials licensed to us pursuant to clause 13.2) will remain our property and will not be disclosed to any other person by you without our prior written consent. For the avoidance of doubt and without limiting this clause, you acknowledge and agree that we retain all ownership rights and Intellectual Property Rights in and relating to our Managed Services, systems, software licences (including any third-party licences) and generic electronic key sets.

13.4 **Third party intellectual property:** You acknowledge the right, title and interest of all third-party Intellectual Property Rights (where applicable) in and relating to the production, delivery, supply or provision and supply of the Goods and/or Services.

13.5 **Software:** Where Goods and/or Services supplied under an Agreement include software or software as a service (where we or a third party is the licensor or service provider), such software or software as a service will be licensed or provided to you only on the terms of the licence agreement provided with such software or service or as otherwise agreed between you and us or the relevant licensor in writing. Your rights under such licences will only commence upon the payment of all fees due to us in respect of such licences. In any event, you must comply with the terms of such licences and indemnify and shall keep us indemnified for and against any losses, expenses, damages or claims which may be made against or suffered by us as a result of your breach of any such third party licence.

13.6 **Confidentiality:** You shall keep confidential and shall not use any confidential information communicated by us to you without our prior written consent.

14. GST

14.1 **Fees exclusive of GST:** Unless otherwise agreed by us in writing, fees with respect to any taxable supply are exclusive of GST.

14.2 **GST payable in addition:** You must pay to us all GST in addition to any other amounts payable by you to us, which will be payable by you when required to pay for the Goods and/or Services.

14.3 **Issue of tax invoice:** We will issue a tax invoice for any taxable supply to you, which will enable you, if permitted by the GST Law, to claim a credit for GST paid by you.

14.4 **Third party supplies:** If GST is payable for a taxable supply by a third party, we will request that party to provide you with a tax invoice.

15. NOTICES

15.1 **Form:** Unless expressly stated otherwise in an Agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with an Agreement must be in writing, signed by the sender (if an individual) or a person appointed as an authorised officer of the sender and marked for the attention of the person identified in an Agreement for that purpose or, if the recipient has notified otherwise, then marked for attention in the way last notified.

15.2 **Delivery:** A communication must be:

- 15.2.1 left at the address set out in the Agreement;
- 15.2.2 sent by prepaid ordinary post (airmail if appropriate) to the address set out in the Agreement;
- 15.2.3 sent by email to the email address set out in the Agreement;
- 15.2.4 sent by fax to the fax number set out in the Agreement; or
- 15.2.5 given in any other way permitted by law.

However, if the intended recipient has notified a changed postal address or email address, then the communication must be to that address.

15.3 **When effective:** A communication will take effect from the time it is received unless a later time is specified.

15.4 If sent by post, a communication is taken to be received 3 days after posting (or 7

days after posting if sent to or from a place outside Australia).

15.5 If sent by fax, a communication is taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

15.6 If sent by email, a communication is taken to be received:

- 15.6.1 when the sender receives an automated message confirming delivery; or
- 15.6.2 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first, provided always that if any such date or time is not during Business Hours on a Business Day then the communication shall be taken to have been given at 9am on the next Business Day.

16. GENERAL

16.1 **Indemnity:** You agree to indemnify and keep us indemnified in respect of all damages, losses, costs and expenses (including legal costs) that we may incur as a result of your breach of an Agreement or any personal injury, property damage or death arising from our performance of the Services (including but not limited to on your premises), your negligence, or any acts or omissions by you, your employees, contractors, officers and agents.

16.2 **Lawful purpose:** You shall ensure that all Goods and Services are used only for lawful purposes and in accordance with any applicable laws.

16.3 **Binding:** Each Agreement shall bind our successors, administrators and permitted assigns and your executors and permitted assigns, or, being a company, its successors, administrators and permitted assigns.

16.4 **New Terms + Conditions:** If we adopt new terms and conditions (which for these purposes includes any change to a version of this document or any relevant *Product Specific Terms + Conditions*) for the supply of Goods and/or Services from time to time:

16.4.1 you will be advised of such new terms (which includes by posting them on our website at <http://www.esecuritytech.com.au/> or by making them available to you by other means);

16.4.2 the new terms will apply to Agreements for the supply of Goods

and/or Services after the date of the notice; and

16.4.3 such varied terms will not affect the terms of Agreements concluded before the date you are so advised.

16.5 **Force Majeure:** If a Force Majeure Event occurs, we may:

16.5.1 totally or partially suspend performance of a relevant Agreement during any period in which we may be prevented or hindered from performing due to that Force Majeure Event; and

16.5.2 elect to extend at our discretion the period for performance of an obligation under the relevant Agreement as is reasonable in all the circumstances.

16.6 **Change control:** Subject to clause 3.2, no change or variation to an Agreement (or the manner or basis upon which it is performed) shall be made to:

16.6.1 the scope or description of any of the relevant Goods or Services;

16.6.2 any relevant specifications; or

16.6.3 any relevant service levels; or

16.6.4 otherwise,

unless the change or variation has been expressly agreed in writing by the parties.

16.7 **Severability:** Each clause in an Agreement is severable and if any clause is held to be illegal or unenforceable, then the remaining clauses will remain in full force and effect.

16.8 **Waiver:** No failure, delay, relation or indulgence on our part in exercising any power, right or remedy precludes any other or further exercise of that or any other power, right or remedy.

16.9 **Assignment:** We may without notice assign, transfer and/or sub-contract our rights and/or obligations (in whole or in part) under an Agreement. You may not assign, transfer, hold on trust or otherwise delegate any of your rights or obligations under an Agreement without our prior written consent.

16.10 **Dispute:** If a dispute arises out of or in relation to an Agreement, the parties shall in the first instance endeavour to settle the dispute in good faith within 10 Business Days. If the parties are unable to settle the dispute within the nominated time frame, the matter shall be internally escalated by the parties to senior management personnel, who must

within 10 Business Days meet and discuss in good faith the dispute. The parties may in writing agree to alternative dispute resolution methods or the involvement of an expert or other professional who may assist in the resolution of the dispute. The parties shall continue to perform their respective obligations under an Agreement pending the resolution of a dispute under this clause 16.10. Nothing in this clause 16.10 will preclude a party pursuing urgent interlocutory or other equitable relief and a failure to resolve a dispute pursuant to the provisions above shall not prevent the exercise by a party of all relevant rights in a court of competent jurisdiction.

16.11 **Governing law:** Each Agreement shall be governed by the laws of the State of New South Wales.

17. DICTIONARY + INTERPRETATION

17.1 **Personal pronouns:** Except where the context otherwise provides or requires:

17.1.1 the terms **we**, **us** or **our** refers to the Company; and

17.1.2 the terms **you** or **your** refers to the relevant Customer or Client.

17.2 **Dictionary:** In each Agreement, unless otherwise provided or the context requires, the following terms shall have their meaning as specified:

ACL means the Australian Consumer Law under the *Consumer and Competition Act 2010* (Cth) as amended.

Agreement has the meaning given in clause 1.3.

Business Day means a day other than a Saturday, Sunday or public holiday in New South Wales, Australia.

Business Hours means 9am to 5pm on Business Days.

Collateral means property that is the subject of a security interest.

Commencement Date means the date stated in the relevant Order Form, Quote or other relevant document in respect of an Agreement.

Company means Electronic Security Pty Ltd (ACN 161 967 148) trading as *Electronic Security Technologies* of 30 Cathrine St, Kotara South NSW 2289, Australia.

Customer or Client means any person or entity that places an Order with us, or accepts a Quote, or agrees by conduct or by virtue of notice or otherwise to be bound by these Terms + Conditions.

Default Event means any one or more of the following events:

- (a) you fail to make any payment when due, whether for Goods or Services or otherwise;
- (b) you are subject to a Winding Up;
- (c) you become insolvent, bankrupt or commit an act of bankruptcy;
- (d) you are unable to pay your debts as they fall due;
- (e) proceedings are commenced or an application is made for the appointment of any persons listed in item (b) above in respect of you;
- (f) a mortgagee or its agent enters into possession of your assets;
- (g) you breach any licence agreement or collateral agreement to which you are a party in relation to any Goods or Services; or
- (h) you materially breach any provision of an Agreement (which breach, if capable of remedy, is not remedied within 5 Business Days of a request to do so).

Default Interest means an amount payable under clause 5.1.

Force Majeure Event means circumstances beyond our reasonable control or responsibility, and shall include, but not be limited to compliance with any laws, regulations, orders, acts, instructions or priority request of any government, or any department or agency, computer downtime or failure, internet failure, failure of a utility service, failure of electrical supply, civil or military authority, acts of God, pandemics, acts of the public enemy, your acts or omissions, fires, floods, strikes, lockouts, embargoes, wars, labour or material shortages, riots, insurrections, defaults of our suppliers or subcontractors, delays in transportation, or loss or damage to Goods in transit.

Goods means goods supplied by the Company from time to time, including hardware and software under licence.

Grantor means the person who has the interest in property to which a security interest is attached.

GST means a goods and services tax, or a similar value added tax, levied or imposed by the GST Law.

GST Law has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Invoice means a tax invoice issued in accordance with the GST Law and terms of the Agreement.

Intellectual Property Rights means all forms of intellectual property rights (whether registered or unregistered) in copyright, designs, patents, trademarks, domain names, trade secrets, know-how, confidential information, and all other similar proprietary rights and all extensions and renewals thereof anywhere in the world which currently exist and/or are recognised in the future.

Managed Services means the software subscription service and any other managed services provided by us to you from time to time as set out in a relevant Quote or Agreement and which may include hosting services, provision of electronic key sets, access cards and web portal access for clients provided either by us or through third party applications, manufacturers or licensors.

Material means any material in which you have Intellectual Property Rights provided by you for use by us in the production, development and/or supply of the Goods and/or Services to you.

Order means an order for Goods and/or Services in writing received by us.

Payment means payment of in full of any amount due or as stated in an Invoice in accordance with the relevant Agreement.

PPSA means the *Personal Property Securities Act 2009* (Cth) as amended.

PMSI means a purchase money security interest as defined by section 14 of the PPSA.

Product Specific Terms + Conditions means a document or the relevant section of a document (which may include a Quote) identified as *Product Specific Terms + Conditions* (or similar wording) which details specific terms and conditions relevant to particular Goods and/or Services.

Quote means a quotation, estimate or quote by us for the supply of particular Goods and/or Services containing details as specified in clause 2.2.

Secured Party means a person who holds the benefit of a security interest.

Security Agreement means the security agreement set out in clause 12 (**Security Interest + Title**).

Security Interest means the security interest created in clause 12 (**Security Interest + Title**).

Services means services provided by us from time to time and includes Managed Services, hosting services, software as a service and any other services offered from time to time in a

Quote or on our website at <http://www.esecuritytech.com.au/>.

Services Term means the term or duration specified in the Order Form, Quote or other relevant document for the supply of relevant Goods and/or Services (subject to earlier termination) but if a services term is not so specified where relevant, it means 12 months from the Commencement Date (**Initial Services Term**), and thereafter (subject to renewal in writing and payment of relevant Fees and other amounts owing or due) on a rolling annual 12 month basis (each a **Subsequent Services Term**). For the avoidance of doubt, there may be multiple and distinct Services Terms for different Goods and/or Services supplied under a relevant Agreement or they may be the same.

SOW means a statement of work.

Term means the duration of the Agreement (subject to earlier termination), being the contractual term or period specified in the Order Form, Quote or other relevant document during which the Agreement shall subsist (subject to provisions which continue in force after termination or expiry) but if a contractual term is not so specified, it means 12 months from the Commencement Date (**Initial Term**), and thereafter (subject to renewal in writing and payment of relevant Fees and other amounts owing or due) on a rolling annual 12 month basis (each a **Subsequent Term**). For the avoidance of doubt, the purpose and intent of the Agreement is that it shall subsist for so long as the Company has an obligation or the Customer has a right to receive relevant Goods and/or Services under it (excepting for these purposes provisions which survive termination) but that the supply of specific Goods and/or Services may have different durations (i.e. a Services Term) with distinct rights of termination and obligations with respect to Fees (as detailed in a relevant Order Form, Quote or *Product Specific Terms + Conditions* contemplated).

Terms + Conditions means the master supply key terms and conditions set out in this document.

Winding Up means commencing to be wound up (whether by order of the court or a resolution to that effect), or suffering a provisional liquidator, liquidator, receiver, official manager or administrator to be appointed.