

1. Preamble

- 1.1 All Services of Vital Holdings Pty Ltd T/A Vital IT, whether gratuitous or not, are supplied subject to these Conditions and:
- (a) The provisions of Part I shall apply to the provision of all and any Services.
 - (b) The provisions of Part II shall apply to the provision of Hosting Services.

PART I - GENERAL CLAUSES

2. Definitions

- 2.1 "Vital IT" shall mean Vital Holdings Pty Ltd T/A Vital IT its successors and assigns or any person acting on behalf of and with the authority of Vital Holdings Pty Ltd T/A Vital IT.
- 2.2 "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 Vital IT to the Client.
- 2.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 2.4 "Goods" shall mean all Goods supplied by Vital IT 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 Vital IT to the Client.
- 2.5 "Services" shall mean all Services supplied by Vital IT to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 2.6 "Materials" shall mean all data, graphics, pictures, trademarks, software and other materials to be stored on Vital IT's Web Server (including, but not limited to), user data created by the operation of the Client's website (and where the context so permits shall include any supply of Services as hereinafter defined);
- 2.7 "Price" shall mean the Price payable for the Goods as agreed between Vital IT and the Client in accordance with clause 5 of this contract.
- 2.8 "Prohibited Content" means any content on a Website that:
- (a) is, or could reasonably be considered to be, in breach of the Broadcast Services Amendment (Online Service) Act 1999 (Cth); the Trade Practices Act 1974 (Cth); or any other applicable law or applicable industry code; or
 - (b) contains, or could reasonably be considered to contain, any misrepresentations; or is, or could reasonably be considered to be, misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or
 - (c) is, or could reasonably be considered to be, in breach of any person's Intellectual Property Rights.
- 2.9 "Website" means a location which is accessible on the Internet through the World Wide Web and which provides multimedia content via a graphical User Interface.

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

- 3.1 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.

4. Acceptance

- 4.1 Any instructions received by Vital IT from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by Vital IT shall constitute acceptance of the terms and conditions contained herein.
- 4.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 4.3 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 Vital IT.
- 4.4 The Client shall give Vital IT 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 Vital IT as a result of the Client's failure to comply with this clause.
- 4.5 Goods are supplied by Vital IT only on the terms and conditions of trade contained 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.

5. Price and Payment

- 5.1 At Vital IT's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Vital IT to the Client in respect of Goods supplied; or
 - (b) Vital IT's quoted Price as stated on Vital IT's Vital IT Support Plan or other quotation form (subject to clause 5.2) which shall be binding upon Vital IT provided that the Client shall accept Vital IT's quotation in writing within thirty (30) days.
- 5.2 Vital IT reserves the right to change the Price in the event of a variation to Vital IT's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of fluctuations in foreign currency rates of exchange and/or international freight and insurance charges for foreign sourced components or as a result of increases to Vital IT in the cost of materials and labour) will be charged for on the basis of Vital IT'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.

- 5.3 At Vital IT's sole discretion a non refundable deposit may be required.
- 5.4 At Vital IT's sole discretion:
 - (a) payment shall be due on delivery of the Goods; or
 - (b) payment shall be due before delivery of the Goods.
- 5.5 Time for payment for the Goods 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 seven (7) days following the date of the invoice.
- 5.6 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to five percent (5%) of the Price), or by direct credit, or by any other method as agreed to between the Client and Vital IT.
- 5.7 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.
- 5.8 Any discounts applicable to the Price shall become null and void if payment is not made by the due date stated on the invoice and/or statement.
- 5.9 A callout fee shall be charged in addition to the Price on all onsite service calls unless expressly stated otherwise on the Vital Support Plan.
- 5.10 Services provided outside Vital IT's normal working hours of 9am to 5:30pm, Monday to Friday shall incur an additional surcharge.

6. Delivery of Goods

- 6.1 At Vital IT's sole discretion delivery of the Goods shall take place when:
 - (a) the Client takes possession of the Goods at Vital IT's address; or
 - (b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by Vital IT or Vital IT's nominated carrier); or
 - (c) the Client's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Client's agent.
- 6.2 At Vital IT's sole discretion the costs of delivery are:
 - (a) in addition to the Price; or
 - (b) for the Client's account.
- 6.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Vital IT shall be entitled to charge a reasonable fee for redelivery.
- 6.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 6.5 The failure of Vital IT to deliver shall not entitle either party to treat this contract as repudiated.
- 6.6 Vital IT shall not be liable for any loss or damage whatsoever due to failure by Vital IT to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of Vital IT.
- 6.7 At Vital IT's sole discretion, a storage fee may be charged for any Goods that have not been collected by the Client within one month of completion of the Services by Vital IT.

7. Risk

- 7.1 If Vital IT retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Vital IT is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Vital IT is sufficient evidence of Vital IT's rights to receive the insurance proceeds without the need for any person dealing with Vital IT to make further enquiries.
- 7.3 Where the Client expressly requests Vital IT to leave Goods outside Vital IT's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all.
- 7.4 It is the intention of Vital IT and agreed by the Client that the system backup at the recommended frequency shall solely be the Client's responsibility. Vital IT accepts no liability for any loss or damage that may arise as a result of failure on the Client's behalf to correctly backup the system at the agreed intervals. Vital IT shall perform weekly audits of the Client's backup data and verify that the Client's backups are successful however shall accept no liability for any loss or damage that may arise from corrupt data, tape failure and or hardware failure.
- 7.5 Whilst Vital IT shall make every effort to ensure a quick response time, Vital IT makes no guarantee of response times in emergency situations.

8. Title

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

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

9. Defects

- 9.1 The Client shall inspect the Goods on delivery and shall within fourteen (14) days of delivery (time being of the essence) notify Vital IT of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Vital IT an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Vital IT has agreed in writing that the Client is entitled to reject, Vital IT's liability is limited to either (at Vital IT's discretion) replacing the Goods or repairing the Goods except where the Client has acquired Goods 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 Goods, or repair of the Goods, or replacement of the Goods.
- 9.2 Goods will not be accepted for return other than in accordance with 9.1 above.

10. Warranty

- 10.1 Subject to the conditions of warranty set out in clause 10.2 Vital IT warrants that if any defect in any system builds performed by Vital IT becomes apparent and is reported to Vital IT within twelve (12) months of the date of delivery (time being of the essence) then Vital IT will either (at Vital IT's sole discretion) replace or remedy the defective system component.
- 10.2 The conditions applicable to the warranty given by clause 10.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Goods; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by Vital IT; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and Vital IT shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Vital IT's consent.
 - (c) in respect of all claims Vital IT shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 10.3 For Goods not manufactured by Vital IT, the warranty shall be the current warranty provided by the manufacturer of the Goods. Vital IT 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 Goods. Where Vital IT is required to perform labour associated with the replacement or repair of defective Goods under manufacturer's warranty, the labour performed shall be charged at Vital IT's hourly rate.

11. Intellectual Property

- 11.1 Where Vital IT has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in Vital IT, and shall only be used by the Client at Vital IT's discretion.
- 11.2 The Client warrants that all designs or instructions to Vital IT will not cause Vital IT to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Vital IT against any action taken by a third party against Vital IT in respect of any such infringement.
- 11.3 The Client hereby authorises Vital IT to utilise images of the Goods designed or drawn by Vital IT in advertising, marketing, or competition material by Vital IT.
- 11.4 Where Vital IT has provided computer software and documentation, Vital IT retains ownership of the computer software and documentation, but grants the Client a non-exclusive and non-transferable licence for its use (solely in relation to the operation of the Client's own business). The Client will use any third-party software supplied by Vital IT, and identified as such, strictly in terms of the licence under which it is supplied.

11.5 The Client further agrees that they shall not without Vital IT's prior written consent:

- (a) copy the software; or
- (b) allow any third party to have access to the software; or
- (c) alter, modify, tamper with, or reverse engineer the software; or
- (d) combine the software with any other software.

12. Confidentiality

12.1 Each party agrees to treat all information and ideas communicated to it by the other confidentially and agrees not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.

13. Default and Consequences of Default

13.1 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 Vital IT's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

13.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by Vital IT.

13.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify Vital IT from and against all costs and disbursements incurred by Vital IT in pursuing the debt including legal costs on a solicitor and own client basis and Vital IT's collection agency costs.

13.4 Without prejudice to any other remedies Vital IT may have, if at any time the Client is in breach of any obligation (including those relating to payment) Vital IT may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. Vital IT will not be liable to the Client for any loss or damage the Client suffers because Vital IT has exercised its rights under this clause.

13.5 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.

13.6 Without prejudice to Vital IT's other remedies at law Vital IT shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Vital IT shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to Vital IT becomes overdue, or in Vital IT'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.

14. Cancellation

14.1 Vital IT may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Vital IT shall repay to the Client any sums paid in respect of the Price. Vital IT shall not be liable for any loss or damage whatsoever arising from such cancellation.

14.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by Vital IT (including, but not limited to, any loss of profits) up to the time of cancellation.

14.3 Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will definitely not be accepted, once production has commenced.

15. Privacy Act 1988

15.1 The Client and/or the Guarantor/s agree for Vital IT 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 Vital IT.

15.2 The Client and/or the Guarantor/s agree that Vital IT 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.

15.3 The Client consents to Vital IT being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

15.4 The Client agrees that personal credit information provided may be used and retained by Vital IT for the following purposes and for other purposes as shall be agreed between the Client and Vital IT or required by law from time to time:

- (a) provision of Goods; and/or
- (b) marketing of Goods by Vital IT, its agents or distributors in relation to the Goods; and/or

- (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Goods; 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 Goods.
- 15.5 Vital IT 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.

16. Unpaid Seller's Rights

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

17. General

- 17.1 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.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
- 17.3 Vital IT 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 Vital IT of these terms and conditions.
- 17.4 In the event of any breach of this contract by Vital IT the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 17.5 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 Vital IT nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.6 Vital IT may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 17.7 The Client agrees that Vital IT 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 Vital IT notifies the Client of such change.
- 17.8 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.
- 17.9 The failure by Vital IT to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Vital IT's right to subsequently enforce that provision.

PART II: HOSTING

18. What Vital IT Will Do

- 18.1 Vital IT will, at its sole cost and expense:
- (a) install the Client Materials on Vital IT's Web Server;
 - (b) host the Client Website or Domain on Vital IT's Web Server;
 - (c) ensure that from the Live Date:
 - (i) sufficient capacity is maintained on Vital IT's Server to enable Users access to the Client Website and/or Domain in a timely manner;
 - (ii) the Client Website and/or Domain is accessible to Users in accordance with the Service Levels (subject to reasonable downtime for server maintenance which has been notified to the Client prior to the commencement of the downtime or Website and/or Domain Maintenance in accordance with Clause 18.1(d));
 - (d) provide the Client with reasonable access to the Client Website and/or Domain to perform maintenance services.

19. What Vital IT Will Not Do

- 19.1 Vital IT will not:
- (a) alter or amend, or permit any person to alter or amend the Client's Website and/or Domain without the written consent of the Client;
 - (b) post or display on the Client's Website and/or Domain any advertisement, sponsorship or promotion without the written consent of the Client;
 - (c) use any User Data for marketing, referral or other purposes except as expressly authorised by this agreement;
 - (d) sub-licence, rent, time-share, lease, lend or grant any rights to use the Client's Website and/or Domain; or
 - (e) assign, transfer or authorise anyone else to exercise the rights in any licence granted pursuant to this agreement.

20. What The Client Will Do

20.1 The Client will, at its sole cost and expense:

- (a) develop and maintain the Client's Website and/or Domain;
- (b) provide the Client's Materials to Vital IT, in such form as reasonably prescribed by Vital IT from time to time, and hereby grants Vital IT a non-exclusive, worldwide, irrevocable licence to use the Client's Materials for the purposes of hosting the Client's Website or Domain;
- (c) do all things reasonably necessary to enable Vital IT to host the Client's Website and/or Domain on Vital IT Web Server;
- (d) ensure that the Client's Materials supplied to Vital IT do not contain:
 - (i) Prohibited Content;
 - (ii) a Link to any Web Site that contains Prohibited Content; or
 - (iii) any viruses, trojan horses, worms, time bombs or any other software program or routine designed for or capable of interfering with the operation of the Hosting Services.

21. What The Client Will Not Do

21.1 The Client will not do anything that prevents or hinders Vital IT from providing hosting services to any other person.