



## GENERAL TERMS OF TRADE

These terms and conditions are between **Mac Centre Pty Ltd (ABN 18 105 125 237)** (**we, us or our**) and you, the party obtaining the Goods and Services from us (**you or your**), together the **Parties** and each a **Party**. Together, these terms and conditions, and any other terms and conditions we provide to you relating to the provision of the Goods and Services (**Additional Agreement**), form the entire agreement under which we will provide the Goods and Services to you (together, the **Terms**).

### 1. ACCEPTANCE

- 1.1 You have requested Goods and Services from us, and accept these Terms by:
- (a) if applicable, signing and returning any quote, proposal or invoice;
  - (b) if applicable, accepting any quote, proposal or invoice, online or sending an email accepting the quote, proposal or invoice (expressly or impliedly);
  - (c) if applicable, submitting an order or purchase order to us; or
  - (d) instructing us to proceed with the Goods and Services or making any payment of the Price (including any deposit).
- 1.2 **Please read these Terms (including any Additional Agreement) carefully and contact us if you have any questions.**

### 2. GOODS AND SERVICES

- 2.1 We agree to provide you the Goods and Services in accordance with these Terms (including any specifications) and all relevant laws.
- 2.2 You acknowledge and agree that any dates for completion or for delivery notified by us are estimates only, and we will have no Liability to you for failing to meet any delivery or milestone date.
- 2.3 We may provide the Goods and Services to you using our employees, contractors and third party providers (**Our Personnel**), and they are included in these Terms.
- 2.4 All variations to these Terms must be agreed in writing between the Parties, any schedule of rates provided by us, or otherwise as reasonably determined by us.
- 2.5 You may request a variation or change to the Goods and Services, including the timing for the provision of the Goods and Services, by providing written notice (including by email) to us, with details of the variation or change (**Variation Request**).
- 2.6 We will not be obliged to comply with a Variation Request unless we accept it, and any effect on the Price (**Price Variation**), and the Price has been adjusted to reflect the Price Variation.
- 2.7 If we consider that any instruction or direction from you constitutes a variation, then we will not be obliged to comply with such instruction or direction unless a Variation Request has been issued in accordance with clause 2.5.
- 2.8 Where the Goods and Services are varied or changed, or the costs of providing the Goods and Services increases (including as a result of any change in law), (**Variation Event**) and the cause of that Variation Event relates to, or is connected with, an event or circumstance beyond our reasonable control, you agree to pay us our reasonable additional costs and expenses that we may

suffer or incur as result of the Variation Event, as a debt due and immediately payable.

- 2.9 You are responsible for the acts or omissions, or the goods or services provided by, your employees, contractors, invitees or others engaged by you (**Your Personnel**), and you agree to ensure they cooperate with us and do not interfere with our supply of the Goods and Services.
- 2.10 You agree that any works, goods or services provided by you or Your Personnel (**Your Items**) will be:
- (a) provided solely at your own risk, and you agree that we will assume no responsibility or Liability for Your Items;
  - (b) fit for purpose, of merchantable quality and compliant with all applicable laws; and
  - (c) sufficient to enable us to comply with our obligations under these Terms and all applicable laws.

### 3. PRICE AND PAYMENT

- 3.1 You agree to pay us the Price in accordance with these Terms. All amounts are stated in Australian dollars and are exclusive of GST (unless otherwise stated).
- 3.2 Unless otherwise agreed between the Parties, any deposit is payable within 24 hours after acceptance of these Terms, and must be paid before we commence the provision of the Goods and Services.
- 3.3 We may issue invoices to you periodically in respect of the Price. You agree to pay our invoices at the times, and using the payment method, stipulated in our invoice, failing which, we may suspend the provision of the Goods and Services until we receive payment, and recover, as a debt due and immediately payable from you, our additional costs of doing so. If you dispute any invoice, you agree to notify us of your dispute in writing within 7 days of the date of our invoice, setting out full details of your dispute.
- 3.4 We may charge interest at a rate equal to the Reserve Bank of Australia's cash rate from time to time plus 8% per annum, calculated daily and compounding monthly, on any amounts unpaid 7 days after the payment date.

### 4. YOUR OBLIGATIONS AND WARRANTIES

You represent, warrant, acknowledge and agree that:

- (a) you have effected and will maintain appropriate insurance policies as required by law, for the duration of our provision of the Goods and Services under these Terms. You agree to provide us with evidence of such arrangements, if requested;
- (b) you (and any of Your Personnel) are not entitled to the benefit of any accident, third party liability, public liability or indemnity policies of insurance or workers compensation policies that we may hold;
- (c) there are no legal restrictions preventing you from engaging us, or agreeing to these Terms;
- (d) you have not relied on any representations or warranties made by us in relation to the Goods and Services (including as to whether the Goods and Services are or will be fit or

suitable for your particular purposes), unless expressly stipulated in these Terms;

- (e) you will cooperate with us, and provide us with all documentation, information, instructions and access necessary to enable us to provide the Goods and Services, as requested by us, from time to time, and in a timely manner;
- (f) the information you provide to us is true, correct and complete;
- (g) you will not infringe any third party rights in working with us and receiving the Goods and Services;
- (h) you will provide us and Our Personnel with sufficient access to the Site and other facilities at the Site, to enable us to provide the Goods and Services (including at the dates and times that we may reasonably request);
- (i) you will ensure that the Site is safe and free from harm or risk to health or safety;
- (j) you are responsible for obtaining, and providing to us if necessary, any access, consents, licences, Approvals and permissions from other parties necessary for the Goods and Services to be provided, at your cost;
- (k) you are not and have not been the subject of an Insolvency Event;
- (l) if applicable, you hold a valid ABN which has been advised to us; and
- (m) if applicable, you are registered for GST purposes.

## 5. YOUR STATUTORY RIGHTS:

- 5.1 Certain legislation, including the Australian Consumer Law (ACL) in the *Competition and Consumer Act 2010* (Cth) and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the Goods and Services which cannot be excluded, restricted or modified (**Statutory Rights**).
- 5.2 If the ACL applies to you as a consumer, nothing in these Terms excludes your Statutory Rights as a consumer under the ACL. You agree that our Liability for the Goods and Services is governed solely by the ACL and these Terms.
- 5.3 Subject to your Statutory Rights, we exclude all express and implied warranties, representations and guarantees of any kind (whether under statute, law, equity or on any other basis) and all materials, work, goods and services (including the Goods and Services) are provided to you without warranties, representations and guarantees of any kind.

## 6. DELIVERY, TITLE AND RISK

- 6.1 If the Parties agree that:
  - (a) we are responsible for delivering the Goods to you, we will use reasonable endeavours to deliver the Goods to the Site by the delivery time, as notified by us to you; or
  - (b) you are responsible for collecting the Goods from us, we will use reasonable endeavours to make available the Goods, and you agree to collect the Goods, at the collection location by the collection time, as notified by us to you. You agree to comply with any policies and procedures which apply at the relevant collection location.
- 6.2 If these Terms state that we are responsible for delivering the Goods to the Site, you agree to pay for all Delivery Costs.
- 6.3 Title in the Goods will remain with us until all amounts due and payable to us under these Terms are paid in full. Risk in the Goods will pass to you on delivery of the Goods to your nominated delivery address or collection of the Goods at the collection location (as applicable).

- 6.4 You agree that we hold a general lien over any Goods owned by us that are in your possession, for the satisfactory performance of your obligations under these Terms. You agree that these Terms and your obligations under these Terms create a registrable security interest in favour of us, and you consent to the security interest (and any other registrable interest created in connection with these Terms) being registered on any relevant securities register (and you must do all things to enable us to do so).

## 7. TERM AND TERMINATION

- 7.1 These Terms will commence upon your acceptance in accordance with clause 1.1, and will continue until the earlier of the date:
  - (a) we consider the Goods and Services to be complete or supplied to you in accordance with these Terms or any Additional Agreement you enter with us in relation to the Goods and Services; or
  - (b) these Terms are terminated in accordance with this clause 7.
- 7.2 Either Party may terminate these Terms if the other Party has materially breached these Terms and such breach is not rectified within 14 days from the date notice is received by that Party.
- 7.3 On termination of these Terms, you agree that:
  - (a) any amounts paid for Goods and Services rendered by us are non-refundable;
  - (b) you agree to pay us all amounts due and payable to us under these Terms (including for all Goods and Services provided by us) up to the date of termination, as a debt immediately due and payable; and
  - (c) you agree to return or give us access to recover all property belonging to us on request (including any Intellectual Property or Confidential Information), and to give us or Our Personnel such rights of access necessary to exercise our rights under this clause.
- 7.4 The accrued rights, obligations and remedies of the Parties are not affected by termination of these Terms.

## 8. LIABILITY, INDEMNITY AND EXCLUSIONS

- 8.1 **Exclusions:** Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by (whether directly or indirectly):
  - (a) acts or omissions of you or Your Personnel;
  - (b) your breach of these Terms, any law or third party rights;
  - (c) any information, documentation, specifications or directions given by you or Your Personnel;
  - (d) Your Items;
  - (e) loss or damage which is the inevitable part of performing the Goods and Services; or
  - (f) any event or circumstance beyond our reasonable control.
- 8.2 **Indemnity:** Despite anything to the contrary, to the maximum extent permitted by law, you are liable for, and agree to make good, indemnify us and hold us harmless in respect of, any Liability that we may suffer, incur or otherwise become liable for, arising from or in connection with:
  - (a) acts or omissions of you or Your Personnel;
  - (b) any information, documentation, specifications or directions given by you or Your Personnel; or
  - (c) Your Items.
- 8.3 **Limitation of liability:** Despite anything to the contrary, to the maximum extent permitted by law:

- (a) we will not be liable for any Consequential Loss;
- (b) a Party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel); and
- (c) our liability for any Liability in relation to the provision of the Goods and Services or these Terms will be limited to us resupplying the Goods and Services to you or, in our sole discretion, to us repaying you the amount of the Price paid by you to us in respect of the provision of the relevant Goods and Services to which the Liability relates.

## 9. INTELLECTUAL PROPERTY

9.1 As between the Parties, all Intellectual Property Rights developed, adapted, modified or created by or on behalf of us or Our Personnel (including in connection with these Terms or the provision of the Goods and Services), whether before or after the date of acceptance of these Terms, will at all times vest, or remain vested, in us.

9.2 You grant us a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, for the duration of the Term, to use your and Your Personnel's Intellectual Property for the performance of our obligations under these Terms.

## 10. CONFIDENTIALITY

10.1 Each Receiving Party agrees:

- (a) not to disclose the Confidential Information of the Disclosing Party to any third party;
- (b) to use all reasonable endeavours to protect the Confidential Information of the Disclosing Party from any unauthorised disclosure; and
- (c) to only use the Confidential Information of the Disclosing Party for the purposes for which it was disclosed or provided by the Disclosing Party, and not for any other purpose.

10.2 The obligations in clause 10.1 do not apply to Confidential Information that:

- (a) is required to be disclosed in order for the Parties to comply with their obligations under these Terms;
- (b) is authorised to be disclosed by the Disclosing Party;
- (c) is in the public domain and/or is no longer confidential, except as a result of a breach of these Terms; or
- (d) must be disclosed by law or by a regulatory authority, including under subpoena.

10.3 Each Party agrees that monetary damages may not be an adequate remedy for a breach of this clause 10. A Party is entitled to seek an injunction, or any other remedy available at law or in equity, at its discretion, to protect itself from a breach (or continuing breach) of this clause 10.

## 11. GENERAL

11.1 **Additional Agreement:** You agree that these Terms include any Additional Agreement we may provide to you for the provision of the Goods and Services.

11.2 **Assignment:** A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent is not to be unreasonably withheld).

11.3 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, these Terms (including any question regarding its existence, validity or termination) (**Dispute**) without first

meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the Law Society of New South Wales to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.

11.4 **Email:** You agree that we are able to send electronic mail to you and receive electronic mail from you. You release us from any Liability you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.

11.5 **Governing law:** These Terms are governed by the laws of New South Wales. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

11.6 **GST:** If GST is payable on any supply made under these Terms, the recipient of the supply must pay an amount equal to the GST payable on the supply. That amount must be paid at the same time that the consideration is to be provided under these Terms and must be paid in addition to the consideration expressed elsewhere in these Terms, unless it is expressed to be inclusive of GST. The recipient is not required to pay any GST until the supplier issues a tax invoice for the supply. If an adjustment event arises in respect of any supply made under these Terms, a corresponding adjustment must be made between the supplier and the recipient in respect of any amount paid by the recipient under this clause, an adjustment note issued if required, and any payments to give effect to the adjustment must be made. If the recipient is required under these Terms to pay for or reimburse an expense or outgoing of the supplier, or is required to make a payment under an indemnity in respect of an expense or outgoing of the supplier, the amount to be paid by the recipient is to be reduced by the amount of any input tax credit in respect of that expense or outgoing that the supplier is entitled to. The terms "adjustment event", "consideration", "GST", "input tax credit", "recipient", "supplier", "supply", "taxable supply" and "tax invoice" each has the meaning which it is given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

11.7 **Inconsistency:** If we enter an Additional Agreement with you for the Goods and Services and there is an ambiguity or inconsistency between the terms and conditions in this document and the Additional Agreement, the terms of the Additional Agreement will override the terms and conditions in this document to the extent of any ambiguity or inconsistency.

11.8 **Joint and Several Liability:** Where you constitute two or more individuals or entities, you will each be jointly and severally liable under these Terms.

11.9 **Notices:** Any notice given under these Terms must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.

11.10 **Publicity:** You acknowledge and agree that we may publicly announce that we have undertaken work for you, including in

website testimonials and in our marketing material. You can opt-out of publicity by contacting us at the email address provided at the beginning of these Terms.

- 11.11 **Relationship of Parties:** These Terms are not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
- 11.12 **Severance:** If any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.
- 11.13 **Survival:** Clauses 5 ~~Error! Reference source not found.~~, 7, 8, 9, 10 and 11 will survive the termination or expiry of these Terms.

## 12. INTERPRETATION & DEFINITIONS

12.1 In these Terms unless the context otherwise requires:

- (a) any reference to “Goods and Services” may mean “Goods and/or Services”, as the case may be;
- (b) a reference to these Terms or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
- (c) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
- (d) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity and vice versa;
- (e) no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
- (f) a reference to a party (including a Party) to a document includes that Party’s executors;
- (g) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally; and
- (h) a reference to time is to local time in New South Wales.

12.2 In these Terms, unless the context otherwise requires, capitalised terms have the meanings given to them in the Terms, and:

**Approval** means any approval, consent, permit, application, registration or equivalent required to be obtained in connection with the Goods and Services by any law.

**Confidential Information** includes information which:

- (a) is disclosed to a Party in connection with these Terms at any time;
- (b) is prepared or produced under or in connection with these Terms at any time;
- (c) relates to a Party’s business, assets or affairs; or
- (d) relates to the subject matter of, the terms of and/or any transactions contemplated by these Terms,

whether or not such information or documentation is reduced to a tangible form or marked in writing as “confidential”, and howsoever a Party receives that information.

**Consequential Loss** includes any consequential, special or indirect loss, damage or expense including any real or anticipated loss of revenue, loss of profit, loss of use, loss of occupation, loss of benefit, loss of financial opportunity, or economic loss whether arising out of a breach of these Terms, at law, under any statute, in equity, or in tort (including negligence).

**Delivery Costs** means the costs associated with the delivery or provision of the Goods and Services, including any insurance, customs, tariffs, duties or other such charges that may apply.

**Disclosing Party** means the party disclosing Confidential Information to the Receiving Party.

**Goods and Services** means the goods and services to be provided by us under these Terms.

**Insolvency Event** means any of the following events or any analogous event:

- (a) a Party disposes of the whole or any part of the Party’s assets, operations or business other than in the ordinary course of business;
- (b) a Party ceases, or threatens to cease, carrying on business;
- (c) a Party is unable to pay the Party’s debts as the debts fall due;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Party’s assets, operations or business;
- (e) any step is taken for a party to enter into any arrangement or compromise with, or assignment for the benefit of, a Party’s creditors or any class of a Party’s creditors; or
- (f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of a Party’s assets, operations or business.

**Intellectual Property** means any copyright, registered or unregistered designs or trade marks, domain names, know-how, inventions, processes, trade secrets or Confidential Information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

**Intellectual Property Rights** means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property.

**Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party, a Party or otherwise.

**Price** means the price for the provision of the Goods and Services, and all other reasonable expenses or disbursements properly incurred by us in the provision of the Goods and Services.

**Receiving Party** means the party receiving Confidential Information from the Disclosing Party.

**Site** means the site that may be necessary to access or use for the provision of the Goods and Services, and includes any other

property or sites adjoined to, surrounding or neighbouring the Site.