

TERMS AND CONDITIONS

1. DEFINITIONS

- “**Account**” means an account set up by Aish to allow the Customer to utilise the Services or order the Goods from Aish.
- “**Aish**” means Aish Solutions Pty Ltd.
- “**Confidential Information**” means the information set out in Section 14 of these Terms and Conditions.
- “**Customer**” means the purchaser of the Goods and/or Services from Aish and its agents.
- “**Data Storage Limit(s)**” means the data storage limit initially agreed to by the Customer and Aish.
- “**Fee**” means the fee agreed to be paid by the Customer to Aish for the Services.
- “**Goods**” means all items of computer equipment or software supplied by Aish to the Customer.
- “**Hardware**” means printers, computers and associated accessories.
- “**Intellectual Property Rights**” means all rights in or to any patent, copyright, registered design or other design rights, utility model, trademark (whether registered or not and including any rights in get up or trade dress), brand name, services mark, trade name, eligible layout right, chip topography and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether registrable or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for any of the forgoing rights.
- “**Order**” means each individual agreement between the Customer and Aish whereby Aish supplies the Goods or the Services.
- “**Price**” means the cost of the Goods as agreed between Aish and the Customer and, unless is exclusive of GST and freight charges specified by Aish to the contrary.
- “**Privacy Policy**” means the Privacy Policy of Aish.
- “**PPSA**” means the Personal Properties Security Act.
- “**Services**” means the services of backing up data and providing remote computer support for the Customer by Aish.
- “**Software**” means that software referred to in Section 7 of the Terms and Conditions.

2. MINIMUM MONTHLY SPEND

- 2.1. By signing this Account application form, the Customer agrees to spend a minimum of \$100 per month with Aish, excluding Hardware purchases, averaged out over three months. Should the Account not meet the minimum spend of \$100, the Customer will be asked to provide a Visa or MasterCard credit card. Payment of all invoices (up to \$1,500), will automatically be processed on the first business day of the month after the transaction occurred. Should the Customer not provide a credit card, the offer of credit will be removed, tracking information and discounts will be maintained however payment will be required upfront for all Goods and Services.
- 2.2. Once the offer of credit has been removed, the Customer is required to show a history of spending \$100 per month on average for six months with Aish to obtain a credit Account.

3. CONDITION OF SUPPLY ACCEPTANCE BY AISH

- 3.1. These Terms and Conditions apply to every Order agreed between Aish and the Customer.
- 3.2. By using the Aish provided credit facility, our terms and conditions override any terms and conditions you may have on your correspondence and must be adhered to.

4. TERM

- 4.1. The term for the provision of Services under an Order commences on the date the Order is accepted by Aish and it continues in force until terminated in accordance with these Terms and Conditions.

5. QUOTATION

- 5.1. Where a quotation is given by Aish for Goods and Services:
 - 5.1.1. Unless otherwise agreed the quotation shall be valid for fourteen (14) days from the date of issue; and
 - 5.1.2. Aish reserves the right to alter the quotation because of circumstances beyond its control.

6. PROVISION OF INFORMATION BY THE CUSTOMER

- 6.1. The Customer must promptly provide Aish with all of the details of the Customer required by Aish to set up the Account.
- 6.2. Aish will only use the contact details of the Customer in accordance with the Privacy Policy.
- 6.3. Aish may contact the Customer using any of the Contact Details in relation to matters to do with the Customer’s Account and other relevant matters in respect of providing the Services or supplying the Goods.

7. PROVISION OF SERVICES BY AISH

- 7.1. Aish may provide the Customer with Software for use in relation to the Services (“**Software**”).
- 7.2. Subject to any law to the contrary, Aish makes no warranty in relation to the Software and will not be liable for any damages or loss (including indirect or consequential loss) of any kind arising from:
 - 7.2.1. The Software; or
 - 7.2.2. Aish’s storage of the data of the Customer (including where such damage or loss is caused by negligence).
 - 7.2.3. Aish’s provision of the Services.
 - 7.2.4. Any incorrect use, abuse or corruption of the Software by the Customer.
- 7.3. To the extent that Aish has any liability to the Customer, such liability will be limited to the value of any Fee paid or payable to Aish for the month in respect of which such liability arose.
- 7.4. The Software may be updated or changed at any time at Aish’s sole discretion.
- 7.5. The Customer acknowledges that Aish remains the sole owner of all Intellectual Property Rights in the Software. This ownership is absolute, worldwide and includes all Intellectual Property Rights arising from or in relation to any future Software.
- 7.6. The Customer agrees to install the Software on their computer and agrees not to alter, modify or disable the Software, or its settings or configurations.
- 7.7. Aish shall not be liable for any indirect, special, incidental or consequential damages, loss of business, loss of profits, loss of backup data, or the like, whether based on breach of contract, tort (including negligence), product liability or otherwise, even if Aish or its representatives have been advised of the possibility of such damages.

- 7.8. Aish does not warrant that the Services will always be uninterrupted or error free, that defects in the backup Service will be corrected, that Aish will be able to completely repair the computer of the Customer remotely, or that the Software and/or Services is/are virus and/or harmful component-free.
- 7.9. There may be extended times that the Services are unavailable. In such circumstances, Aish will endeavour to resolve these unavailability issues as soon as practicable, but does not warrant that its servers will be available at all times and will not be held responsible for backup failure due to electrical faults, internet failure or any other issues that contribute to or cause backup failure.
- 7.10. Data speeds are dependent on current network throughput and may vary due to network congestion and/or volume of traffic on the Aish or carrier networks. Aish does not warrant that any particular data speed will be available at any particular time.
- 7.11. Aish will use all reasonable endeavours to organise a mutually convenient time to perform the remote computer support. The Customer acknowledges that Aish may encounter circumstances that significantly delay the time frame to perform the remote computer support. The Customer agrees that Aish shall not be liable for any loss, directly or indirectly, by the Customer as a result of any such delay by Aish.
- 7.12. Aish does not warrant that it is an authorised service provider for any third party Software or for any equipment. The Customer agrees to be solely liable to determine if support by Aish in respect of third party Software or equipment is authorised.
- 7.13. The Customer indemnifies Aish against all and any demands, claims, actions and proceedings whatsoever and howsoever arising in connection with and arising out of:
 - 7.13.1. The Customer's use of the Software and the Services;
 - 7.13.2. Any data that is stored by Aish under these Terms and Conditions, including (without limitation) where such data infringes a third party's Intellectual Property Rights, or the data is in any way contrary to law or offensive to a third party; and
 - 7.13.3. Any breach of the Customer's obligations under these Terms and Conditions.

8. SUPPLY OF THE GOODS BY AISH

- 8.1. Each Order for Goods cannot be modified or cancelled after acceptance without the written consent of Aish.
- 8.2. The Goods remain at the risk of Aish until delivery to the Customer.
- 8.3. Delivery of the Goods shall be deemed complete when Aish gives possession of the Goods directly to the Customer or possession of the Goods is given to a courier, carrier or other bailee for the purposes of transmission to the Customer.
- 8.4. Aish will replace or provide credit for defective Goods only if the Customer complies with the following procedure:
 - 8.4.1. The Customer must provide Aish with written claim within fourteen (14) days from the date of delivery of the Goods;
 - 8.4.2. The claim must quote the Customer's invoice or packaging slip number and must specifically identify the defect or reason for the claim.
 - 8.4.3. The situation may require the Customer to liaise directly with the vendor before a return approval can be provided.
- 8.5. Aish will not be liable for any freight or other charges not authorised by Aish in respect of defective Goods.
- 8.6. Unless expressly agreed in writing between Aish and the Customer, Aish gives no warranty on any Goods beyond any warranty offered by the manufacturer of the Goods.
- 8.7. The judgment of the manufacturer as to the validity of any claim is final and binds both Aish and the Customer.

9. PRICES, PAYMENT AND INVOICING FOR THE PROVISION OF THE SERVICES

- 9.1. The Customer must pay the Fee (as agreed to by the Customer when placing an Order) to enable access to the Service.
- 9.2. Subsequent payments for the Services agreed to be paid by the Customer shall be by way of recurring monthly payments or in such other manner as agreed between the Customer and Aish.
- 9.3. Unless otherwise agreed by Aish in writing, payment for the Goods shall be made on or before the 14th day of the month following the date of invoice.
- 9.4. In the event that any part of the Fee required to be paid by the Customer for the Services is not received within fourteen (14) days from when it is due (for whatever reason):
 - 9.4.1. Interest may be charged by Aish on any amount owing after the due date at the rate of 2% per month;
 - 9.4.2. Any collection and legal costs or disbursements incurred by Aish in the recovery of any overdue amount will be the responsibility of the Customer;
 - 9.4.3. Aish may suspend and/or terminate the Services provided to the Customer immediately upon providing the Customer notice of the suspension or termination as a result of the non-payment.
- 9.5. While the Services are suspended, Aish will not backup any of the data of the Customer and may not provide any part of the Services at its sole discretion.
- 9.6. If the Services are terminated, Aish reserves the right to remove any client data from its system by the end of the month in which any outstanding payment was due.

10. PRICES, PAYMENT AND INVOICING FOR THE SUPPLY OF THE GOODS

- 10.1. The Price is as detailed on Aish's quotation, confirmation of Order, packing note, despatch docket, invoice or other similar document.
- 10.2. The Price may be increased by the amount of any reasonable increase in the cost of the supply of the Goods that is beyond the control of Aish.
- 10.3. Unless otherwise agreed by Aish in writing, payment for the Goods shall be made on or before the 14th day of the month following the date of invoice.
- 10.4. In the event that any part of the value required to be paid by the Customer for the Goods is not received within fourteen (14) days from when it is due (for whatever reason):
 - 10.4.1. Interest may be charged by Aish on any amount owing after the due date at the rate of 2% per month;
 - 10.4.2. Any collection and legal costs incurred by Aish in the recovery of any overdue amount will be the responsibility of the Customer.
- 10.5. A deposit may be required by Aish.
- 10.6. Notwithstanding that the Customer has possession of the Goods, property in, and ownership of the Goods remains with Aish and no legal or equitable interest or property in the Goods whatsoever shall pass to or vest in the Customer until the full amount due for the Goods and all other Goods supplied by Aish to the Customer (including any additional amounts payable by the Customer pursuant to these Terms) has been paid to Aish by the Customer.

11. CHANGES TO INFRASTRUCTURE LIMITS, FEE AND TERMS & CONDITIONS

- 11.1. Aish reserves the right to modify client infrastructure, including Data Storage Limit(s) for the Customer to ensure continued operation of their Services without notification.
- 11.2. Aish will endeavor to notify the Customer in advance of any change requirement.
- 11.3. Aish may amend its Fee for the provision of the Services from time to time at its discretion.
- 11.4. Aish may amend these Terms and Conditions from time to time at its discretion.
- 11.5. If Aish wishes to make changes to these Terms and Conditions, the following procedure applies:
 - 11.5.1. The Customer will be contacted and notified of the nature of the change/s these Terms and Conditions;
 - 11.5.2. If the Customer is unwilling to agree to the changes, the Customer may terminate the Services and/or the Account as per section 12.
 - 11.5.3. Use of the Aish provided credit facility for a transaction after notification of changes to the Terms and Conditions constitutes the consent to the changes to these Terms and Conditions.

12. SUSPENSION AND TERMINATION OF AGREEMENT

- 12.1. The Customer may terminate or suspend the Services provided by Aish through notification in writing.
- 12.2. The Customer termination or suspension will be effective from the last day of the month of the termination request, or other agreed periods for specific products.
- 12.3. Aish may notify the Customer, in the event of a termination, if they consider effective transition from the Services has not been completed. Without explicit confirmation in writing from the Customer, Aish may continue to charge for the Services until the transition is confirmed complete by Aish OR the Customer confirms in writing they have transitioned.
- 12.4. A Customer requested suspension will still require monthly payment for Services provided, Aish will provide breakdown at Customer request.
- 12.5. Aish may suspend or terminate a Service should the Customer be in breach of any Terms and Conditions.
- 12.6. If the Customer does not rectify the breach Aish may cancel the Services and/or the Account immediately without further notice, at Aish's sole discretion.
- 12.7. In the event that the Services or the Account are terminated by either party, the following applies:
 - 12.7.1. Any of the Customer's data held on Aish's servers will be permanently removed as soon as practicable;
 - 12.7.2. All of Aish's obligations under these Terms and Conditions cease;
 - 12.7.3. Any unpaid amounts due to Aish from the Customer must be paid by the time determined in section nine (9).
 - 12.7.4. Any Fee paid in advance by the Customer will be forfeited to Aish.

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1. The Customer agrees that all Intellectual Property Rights subsisting in the Confidential Information or any other information issued by Aish to the Customer or any other person or produced by Aish remains the exclusive property of Aish.
- 13.2. The Customer must not cause or permit anything to be done, which may damage or endanger Aish's Intellectual Property Rights or assist or allow any other person to do so.

14. CONFIDENTIAL INFORMATION

- 14.1. A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information including, but not limited to, the data of the Customer and all financial and technological information disclosed to the other party through the provision of the Services.
- 14.2. A party will not be in breach where it is legally compelled to disclose the other party's Confidential Information.
- 14.3. Each party will take all reasonable steps to ensure that its employees and agents do not make public or disclose the other party's Confidential Information.
- 14.4. This clause will survive the termination of the contract between the parties.

15. PERSONAL PROPERTIES SECURITIES ACT

- 15.1. Aish shall have a security interest (as defined by the PPSA) created under these Terms and Conditions in each item of Goods supplied to the Customer. The Customer shall treat that security as a continuing and subsisting interest in the relevant Goods with priority over any registered or unregistered general (or other) security and any unsecured creditor, even if the Goods become fixtures before paid in full and that security interest secures all monies owing to Aish under this Agreement or otherwise.
- 15.2. The Customer grants a purchase money security interest (PMSI) to Aish, which shall continue to apply to any Goods coming into existence or proceeds of sale of Goods coming into existence.
- 15.3. The PMSI has attached to all Goods now or in the future supplied by Aish to the Customer.
- 15.4. Aish may (at its absolute discretion) register its security interest in the Goods. The Customer agrees to sign any further documents and provide any further information that Aish reasonably requires to register (and keep registered) thereby perfecting that security interest, with the priority Aish requires.
- 15.5. The Customer waives its right to receive any notice under the PPSA unless required by the PPSA.
- 15.6. The Customer agrees, until title in the Goods passes to it, to keep and maintain all Goods free of any charge, lien or security interest except as created under these Terms and Conditions, and not otherwise to deal with Goods in a way that will, or may, prejudice the rights of Aish under these Terms and Conditions or the PPSA.
- 15.7. The Customer irrevocably grants to Aish the right to enter any premises or property of the Customer without notice, and without being in any way liable to the Customer or any other person, if Aish has cause to exercise any of its rights under the PPSA and the Customer agrees to indemnify Aish against any such liability.

16. MISCELLANEOUS

- 16.1. Aish shall not be liable for any delay or failure to perform its obligations if such delay or failure was beyond its control.
- 16.2. The laws of the Commonwealth of Australia and South Australia apply to this Agreement.
- 16.3. If any provision of this Agreement is invalid, void, illegal or unenforceable then the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.