

## 1 INTERPRETATION

In these Conditions, unless the contrary intention appears:

- (a) **Client / you** means the person to whom we issue a Quote or who places the order or, where no quote or invoice is issued, the person to whom we supply or are to supply the Services, including (at our discretion) their successors and assignee;
- (b) **Conditions** mean these terms and conditions for the supply of the Services by us to you, as amended or varied from time to time, and which will form part of the Contract.
- (c) **Confidential Information** means all spoken, written or electronically stored information belonging to or relating to either party and includes without limitation:
  - (i) any kind of technical, financial, or business information, including marketing strategy in advance of implementation;
  - (ii) details of employees, suppliers or customers;
  - (iii) intellectual property, concepts, know-how and trade secrets; and
  - (iv) material developed by us under the Contract,
 but excludes information in the public domain (other than by default under the Contract) or information independently known to the other party;
- (d) **Contract** means an agreement between the Supplier and the Client relating to the supply of Services, as evidenced by a Quote, Order or otherwise, and which hereby incorporates these Conditions;
- (e) **Delivery Date** means the date stipulated in a Quote for delivery of Products and any related Services;
- (f) **Delivery Location** means the point of delivery for the Products and any related Services, specified in the Quote by the Client;
- (g) **GST** has the meaning given by A New Tax System (Goods and Services Tax) Act 1999 (Cth) ('**GST Act**');
- (h) **Intellectual Property Rights** means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs;
- (i) **Loss** means includes losses, damages (including damage to persons or property), fines, claims, liabilities (whether in contract or tort, pursuant to statute or otherwise) and all expenses and costs, legal or otherwise (including fees and disbursements reasonably incurred) of any kind and nature;
- (j) **Order** means the Quote for the supply of Services accepted by the Client;
- (k) **Product** means the products and any related Services the Supplier supplies to the Client under a Contract, provided that:
  - (i) a reference to 'Products' which relates to goods provided by the Supplier to the Client includes the proceeds of such goods; and
  - (ii) for the purposes of the Personal Property Securities Act 2009 (Cth), where Products are supplied to a Client as inventory, all references to the Products will be to them as inventory only while they are held as inventory by the Client;
- (l) **Quote** means a written and/or oral request from the Client, approved in writing by the Supplier and provided to the Client, specifying:

- (i) the Product and / or Services to be supplied;
- (ii) the quantity and price of Products and / or Services to be supplied;
- (iii) the Delivery Date; and
- (iv) the Delivery Location;
- (m) **Services** means any Product or related services the Supplier supplies to the Client under the Contract, including but not limited to the supply of products, project services, support services and/or general services provided to you as set out in the Quote;
- (n) **Supplier / we / us / our** means ETGROUP PTY LTD ABN 37 609 322 885 trading as 'Essential Technologies Group', including (at its discretion) its successors, assignees and agents;
- (o) **Trade Credit Account** means an approved credit facility with the Supplier under which amounts payable for Services supplied to the Client by the Supplier become due for payment at an agreed later time.

## 2 WHEN WILL THESE CONDITIONS APPLY?

- 2.1 These Conditions apply to all transactions between the Supplier and the Client for the supply or potential supply of Products or Services and prevail over any conflicting provision contained in any other document, instrument or agreement, whether or not the Supplier has notice of this.

## 3 RELATIONSHIP OF PARTIES

- 3.1 The Supplier supplies Services to the Client as an independent third-party contractor at the request of the Client. The parties acknowledge and agree they are not (nor intended to be) the agent, partner or joint-venturer of the other.

## 4 QUOTE AND ORDER

- 4.1 Any Quote provided by us to you is deemed an offer made by us to you for your consideration and acceptance under these Conditions.
- 4.2 Any Order we receive is deemed an accepted offer made by you to us for the supply of Services described in the Quote under these Conditions. We reserve our right to decline any Order or part thereof. Any Order or part thereof not accepted is deemed cancelled. An Order accepted by us cannot be cancelled without our prior written consent at our sole discretion.

## 5 CANCELLATION

- 5.1 An Order may only be cancelled, varied or suspended by you with our prior written consent. If we consent to the cancellation, variation or suspension of the Order you undertake to reimburse and indemnify us against any costs, expenses or charges incurred by us in preparing for and performing the Contract, as well as any profit which we may reasonably have been expected to receive. We may by notice in writing, cancel, vary or suspend the Contract and any agreement to supply the Services.

## 6 PRICE

- 6.1 The price of Services will be specified in the Order and unless specified otherwise does not include delivery or GST.
- 6.2 We may change the price at which we supply Services from time to time. Prices quoted in any price list or any other place are subject to change at any time without notice.

## 7 PAYMENT

- 7.1 You will pay us without deduction the price payable:
  - (a) On terms we specify in the Order or, if you have a Trade Credit Account, in accordance with clause 7.2; or

- (b) On such further or different terms we expressly agree to in writing from time to time; or
- (c) If neither (a) nor (b) applies, on or before we deliver or perform the Services in accordance with clause 8.1.

7.2 Your Trade Credit Account must be paid without deduction on or before the last day of the month in which the Services (or any part thereof) are performed, supplied or delivered.

7.3 If we are not paid on the date specified in these Conditions, without prejudice to any other right or remedy we may have:

- (a) Interest is payable on amounts due at the standard contract default rate published by the Queensland Law Society from time to time, calculated daily and compounding monthly, until we are paid in full.
- (b) We may recover the price of the Services together with all interest as a liquidated debt, irrespective of any offsetting claim that you may have against us.
- (c) You indemnify us for any and all Loss, fees or outlay we incur in trying to recover any amounts owed by you.

7.4 Time for payment is of the essence of the Contract.

**8 DELIVERY**

8.1 Any date quoted for delivery is indicative only and not guaranteed unless a guarantee is given by us in writing.

8.2 Delivery will be deemed to be made at such time as any Services are received by you, your servant, agent, client or any other person or carrier nominated by you.

8.3 We may deliver Services by more than one delivery, in which case you will not be entitled to terminate the Contract, withhold payment, or reimbursement of any Loss.

8.4 If, due to any act, matter or thing beyond our control, delivery cannot be affected we may in our sole discretion store the Services at your risk and expense or take such other steps we consider appropriate.

8.5 We reserve our right to withhold a delivery if the terms of payment are not strictly adhered to or we, in our sole discretion, consider this reasonably necessary to protect our interests.

**9 OUR PRICING POLICY**

9.1 We reserve the right to change fees and charges in connection with the Services at any time (a 'New Pricing Scheme').

9.2 If we make any changes to fees and charges, we will provide you with at least 14 days' notice of that.

9.3 If you do not wish to proceed under the New Pricing Scheme, you must give us notice in writing expressly stating that before the expiry of the notice period in clause 9.2, in which case the Contract terminates pursuant to clause 13.

9.4 If we do not receive a valid notice under clause 9.3, the New Pricing Scheme will take effect immediately and is incorporated into the Contract from that time.

**10 YOUR INSTRUCTIONS**

10.1 We will only take your instructions in respect of the Services from one person, being the person named in Order or some other person nominated by you in writing to us from time to time.

**11 OUR PERFORMANCE**

11.1 We will perform the Services according to your instructions to a professional standard, but otherwise in whatever manner we elect.

11.2 Unless we receive a notice from you pursuant to clause 11.3, you are deemed to have accepted each part of the Service 14 days from when that part of the Service is performed.

11.3 If you are not satisfied with our performance of the Services (or part thereof) you may give written notice setting out substantive reasons for non-acceptance not more than 14 days from:

- (a) when that part of the Service is performed; or
- (b) you give an instruction under clause 10,

in which case upon receipt of a notice in compliance with this clause 11.3 we will aim to rectify any issues at no additional cost as soon as practicable. Any reasons given for non-acceptance outside the scope the Contract or given after the period of acceptance will not be acted upon.

**12 GENERAL DUTIES AND WARRANTIES**

12.1 Our Duties – We will carry out the work required with skill and diligence and will, as far as is reasonable, keep you informed of the progress of the Service.

12.2 Instructions and Delay – We need your assistance to perform the best possible service and to achieve the best result. You can help us, and yourself, by giving clear instructions, telling us if you have any important time limits, telling us if you change your contact details or will be unavailable for any periods, satisfying yourself as to any commercial aspects, and asking us about anything you are uncertain about. It is important you respond to our requests promptly as this ensures continuity of the Service. Ask us for a progress report at any time if you are worried about any aspect of your Service or if you have not heard from us when you think you should. Delay is particularly a risk where we cannot obtain from you the instructions or materials we need on a timely basis. We do not accept, and you release us from, all loss or damage resulting from delays.

12.3 Intellectual Property & Safety Warranties – You warrant that:

- (a) you have all necessary, current and enforceable rights and licences to provide the instructions and other materials you provide to us;
- (b) following your instructions and providing related Services will not cause us to contravene any laws, including advertising standards, competition or consumer laws, gambling regulations, copyright or other intellectual property laws;
- (c) our use for the Service of instructions or other materials you supply to us will not infringe upon any other entity's Intellectual Property Rights; and
- (d) where any of our employees, contractors or agents attends at a location nominated by you, the location will be safe, secure and suitable for the performance of the work.

**13 TERMINATION**

13.1 If at any time during the Contract:

- (a) a party (the 'defaulting party') is in material breach or default of the Contract, including but not limited to an obligation to make payment; and
- (b) that breach or default is not capable of being remedied or, if capable of remedy, continues for a period of 30 days after delivery of a written notice by other party (the 'non-defaulting party') detailing the breach or default and proposed remedy,

the non-defaulting party can terminate the Contract with immediate effect upon written notice to the defaulting party.

13.2 If we terminate the Contract under clause 13.1, you must pay us within 7 days in accordance with clause 7 as liquidated damages, in addition to interest and any other amount due and payable by you under the Contract.

13.3 If you terminate the Contract (or part thereof) for any reason and, prior to receiving notice of termination from you, we have irrevocably acquired or committed with a third party to acquire or receive Products or services for the purpose of fulfilling our obligations under the terminated contract (or part thereof), then:

- (a) you must reimburse us for the cost we incur, up to the full contract price for those goods or services; and
- (b) subject to payment being received within reasonable time, we will transfer ownership of such goods and / or

assign any such agreement to receive services to you, as relevant and where possible.

**14 INTELLECTUAL PROPERTY**

14.1 You agree that you have obtained all relevant Intellectual Property Rights over any images, written text, video, software or other content which you post, display, transmit, provide or otherwise make available to us ('Content').

14.2 By providing Content to us, you agree that that Content is your sole responsibility and that we have no responsibility to you or to any third party for any Content which may infringe a trade mark, copyright, patent or any other Intellectual Property Right of a third party.

14.3 Our Rights – All Intellectual Property Rights (including any and all moral rights) and materials in relation to any part of the Service or the whole Service developed pursuant to and from the date of the Contract:

- (a) vest in and are owned by us upon creation; and
- (b) are assigned to you upon payment in full of all fees and disbursements applicable to your Service.

For the sake of clarity, any intellectual property associated with the Service created prior to the date of the Contract will remain vested in the relevant rights holder(s).

14.4 Licences – For the duration of the Contract we grant to you, and you grant to us a limited, royalty-free licence to use intellectual property provided to us by you and developed by us for you under the Contract for testing and review purposes internally only and in accordance with the Contract. The parties agree that the consideration for the licence is encompassed with the price.

14.5 Assignment – Upon our receipt in full of all sums payable for the Service during the Contract we, including our employees, contractors, agents and others, waive any and all Intellectual Property Rights (including any and all moral rights) in work provided to you in relation to the Service for the benefit of you and will do all things reasonably necessary to assign to you the Intellectual Property Rights in the Service, inclusive of any and all moral rights, by securing the execution of absolute assignments of such rights to you, if requested within a reasonable time.

14.6 Retained Rights – Upon assignment of the Intellectual Property Rights and materials developed under the Contract, you grant back to us a non-exclusive, worldwide, irrevocable, perpetual, royalty-free licence to:

- (a) retain and use all and any part of the intellectual property for commercial purposes, including for work for other clients, though always in accordance with the confidentiality obligations in clause 15; and
- (b) use, modify, transform, adapt and further develop the intellectual property in any form as it sees fit for future marketing, publications, competitions, promotional uses, work and/or to commercialise the intellectual property in its ordinary course of business, though always in accordance with the confidentiality obligations in clause 15.

**15 CONFIDENTIALITY**

15.2 Each party acknowledges that in the course of performing its obligations under the Contract it may receive Confidential Information which is proprietary and confidential to the other party.

15.3 Each party agrees not to use or disclose Confidential Information of the other party except to the extent necessary to perform obligations under the Contract.

15.4 Despite clauses 15.2 and 15.3 above, either party may use or disclose Confidential Information only to the extent necessary in the following circumstances:

- (a) to comply with any law, binding directive of a regulator or a court order;

(b) to comply with the listing rules of any stock exchange on which its securities are listed; or

(c) to obtain professional advice in relation to matters arising in connection with this document where the advisers agree to be bound by the same obligation of confidentiality and/or to enforce the terms of the Contract.

15.5 The obligations of confidentiality will survive termination of the Contract.

**16 PROTECTION OF OUR INTERESTS**

16.1 Your Obligations – During the Contract and for the lawfully longest of the following periods: 12 months; 6 months; or 3 months; following termination of the Contract, neither you, nor your associated entities (as that term is defined in the *Corporations Act 2001*), nor your employees, contractors, agents or clients may do any of the following without first obtaining our written consent:

- (a) directly or indirectly solicit, entice or persuade, or endeavour to solicit, entice or persuade any of our employees, contractors, consultants or agents to terminate or reduce their employment or engagement with us; or
- (b) accept or tolerate any employment or other engagement of any of our employees, contractors, consultants, agents, or associated entities to them.

16.2 Liquidated Damages – If you contravene clause 16.1:

- (a) in addition to other remedies we may have, if you employ or engage any person in contravention of clause 16.1(b) you must pay to us a fee equal to 25% of that person's total annual remuneration package (or other price you pay for their services, as the case may be) and such fee will be payable within 7 days of our invoice being issued by us to you; and
- (b) you agree that the amount payable in accordance with the preceding subclause 16.1(a) is reasonable and a genuine pre-estimate of the loss we may suffer by having the person poached from us, for example, foregone revenue and/or recruitment expenses to replace the person.

**17 RISK**

17.1 Products will be at your risk upon delivery to you, your servants, agents, customers or any person or carrier nominated by you. You bear the sole responsibility for and the risk of unloading.

**18 RETENTION OF TITLE**

18.1 Property in products supplied to you pursuant to these Conditions does not pass to you until all money due and payable to us by you has been fully paid.

18.2 Where products are supplied by us to you without payment in full of all moneys payable in respect of the products and any Services provided by us in respect of those products, you:

- (a) are a bailee of the products until property in them passes;
- (b) irrevocably appoint us as your attorney to do all acts and things necessary to ensure the retention of title, including registration of a security interest in our favour;
- (c) must be able to upon demand separate and identify as belonging to us the products from other goods held by you;
- (d) must not allow any person to have or acquire any security interest in the products;
- (e) agree that we may repossess the products if payment is not made when due; and
- (f) grant to the Supplier and its agents an irrevocable licence to enter any premises you may access in order to recover possession of products and you agree to

indemnify us in respect of any Loss or damage which occurs as a result.

18.3 Where products are supplied by us to you without payment in full of all amounts payable and you make a new object from the products (whether finished or not), mix the products with other products or the products become part of other products ('**New Products**'), you agree that the ownership of the New Products immediately passes to us. You will hold the New Products on trust for us until payment of all sums owing to us (whether under these Conditions or otherwise) have been made and at our direction we may require you store the New Products in a manner that clearly shows our ownership of them.

18.4 For the avoidance of doubt, ownership of New Products passes to us at the beginning of the operation or event by which products are converted into, mixed with, or become part of other goods.

18.5 Notwithstanding clause 18.2 you may transfer, sell or dispose of products, including New Products, to a third party in the ordinary course of business provided that:

- (a) where you are paid by a third party in respect of products, you hold the whole of the proceeds of sale less any GST on trust for us, in a separate account, until all amounts owned by you to us have been paid; or
- (b) where you are not paid by a third party, you agree to assign all of your rights against the third party to us if we give notice in writing to you to that effect and you hereby irrevocably appoint us as its attorney for the purpose of giving effect to that assignment.

## 19 CLAIMS FOR CREDIT

19.1 We are not liable to you for any claim for short delivery of products unless a claim is made in writing within seven (7) days of delivery in accordance with clause 8.2.

19.2 Subject to clause 20 and 21 and to the maximum extent permitted by law, products returned to us will only be accepted for credit where the products are defective or supplied in error by us and returned to us within fourteen (14) days of delivery in accordance with clause 8.2. Our prior written approval is required to return products for credit and will be subject to a restocking fee of at least 15% of the price of products as specified in the Order.

## 20 WARRANTIES

20.1 Subject to clauses 20.2 and 20.3, we warrant that the products will be free from defects in material and workmanship and fit for the purpose for which they are sold, provided that any defect is notified to us as soon as it becomes known.

20.2 In relation to a Contract valued at less than \$40,000: the products come with guarantees that may not be excluded under the Australian Consumer Law ('**ACL**'). You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the products repaired or replaced if the products fail to be of acceptable quality and the failure does not amount to a major failure.

20.3 In respect of products sold but not manufactured by us we will to the extent permitted by law extend any manufacturer's warranty to you in full to the exclusion of any other warranty by us.

20.4 No other warranty is provided by us unless provided by us in writing, and any implied terms, conditions or warranties are expressly negated to the maximum extent permitted by law.

20.5 As we retain ownership of the products until we are paid for them, we reserve our right to not honour any warranty unless and until we receive payment in full and may in our absolute discretion to the extent permitted by law elect to waive an amount owed to us by you (or part thereof) in lieu of honouring any warranty.

## 21 RELEASE AND INDEMNITY

21.1 You warrant and irrevocably agree to release, indemnify and hold us, our employees, agents and any related person or body corporate harmless against any and all Loss whatsoever (including without limitation all actions, proceedings, judgments, legal fees and charges) arising from or in connection with the performance or non-performance of obligations under the Contract, these Conditions or in the manufacture or supply of products or Services, including without limitation for personal injury, disease, illness or death.

## 22 LIMITATION

To the fullest extent allowable at law our liability is limited (at our election) to the following:

- (a) Provision of further services at no charge to rectify any defect in the product or services we supply; or
- (b) Payment of the cost of rectifying any defect in the product or services; or
- (c) Refund of an amount paid to us under the Contract; and
- (d) Our total liability under the Contract is capped at the total fees we receive under the Contract.

## 23 PRIVACY

23.1 You authorise us to collect, retain, record, use and disclose your information in accordance with the *Privacy Act 1988* (Cth). You also authorise us to make enquiries with respect to your creditworthiness, to exchange information with credit providers in respect to any previous commercial and / or consumer defaults, and to notify other credit providers of a commercial and / or consumer default by you.

## 24 PURPOSE OF CREDIT

24.1 You acknowledge and agree any credit provided to you by us is applied wholly or predominantly for commercial purposes.

## 25 NEGOTIABLE TERMS

25.1 For the sake of simplicity and consistency, we make offers on our preferred terms. You are invited to discuss the terms of any offer we make before electing to accept such an offer.

## 26 INSOLVENCY

26.1 If you become insolvent, you remain liable under the Contract and these Conditions for payment of all liabilities incurred. You remain liable under these Conditions even if we receive a dividend or payment as a result of you becoming insolvent.

## 27 TRADE PURCHASE

27.1 The parties agree and acknowledge that any products supplied or to be supplied under the Contract and these Conditions are acquired by you in trade or commerce and are not wholly or predominantly for personal, household or domestic use.

## 28 GENERAL

28.1 The Contract shall be governed by the law of the State of Queensland. In the event of dispute arising in relation to the Contract or these Conditions the parties agree to submit to the non-exclusive jurisdiction of competent courts of Queensland.

28.2 A waiver of any clause or a breach of these Conditions by us must be made in writing by an authorised officer.

28.3 If any dispute, controversy or claim arises between the parties, except a claim for payment by us, it must be dealt with in accordance with this clause and the following procedure applies:

- (a) A party claiming that a dispute exists must notify the other (the '**Second Party**') in writing of the nature of the dispute ('**Notice of Dispute**').
- (b) If the dispute is not resolved by agreement within five (5) business days of the Second Party receiving a Notice of Dispute, either party may refer the matter to mediation conducted by a mediator agreed between the parties within a further five (5) business days. The costs

of the mediator shall be borne equally between the parties. The chosen mediator shall determine the procedures for the mediation, but will not have the power or authority to make any other determination in relation to the dispute.

- (c) If the parties have not mediated a resolution of the dispute within ten (10) business days of the selection of a mediator or cannot agree on a mediator to appoint, neither is obliged to continue mediation under this clause, and either party may then commence such legal proceedings as it thinks fit.
- (d) The parties must hold confidential, unless otherwise required by law or at the direction of a court, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution.
- (e) In this part, '**business day**' means a day that is not a Saturday, a Sunday or a day that is a public holiday in a place the Supplier is located.

transport difficulties and failures or malfunctions of computers or other technology.

#### 28.4 Severance

If any provision of the Contract or these Conditions is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.

#### 28.5 Variation

- (a) We reserve the right to amend or vary these Conditions from time to time without needing to give reason.
- (b) You will be given notice of any change by the Supplier publishing its amended Conditions ('**Amended Conditions**') on its website or by being sent a copy of the Amended Conditions by email, post or facsimile.
- (c) Amended Conditions take effect seven (7) days after the date on which they are published or are sent to you in accordance with clause 28.5(b), whichever applies and is the earlier, and apply and are incorporated into each and all Contracts from that time.
- (d) You may elect not to proceed under the Amended Conditions. If so, you must give notice to us in writing clearly expressing your non-acceptance of the Amended Conditions at any time before they take effect. If no notice is given and in any case by continuing to order products and / or Services from us after that time, you are deemed to irrevocably accept the Amended Terms without reservation and are bound by them.
- (e) If you elect not to proceed under the Amended Conditions, the Supplier reserves its right not to provide further credit, accept further orders from or supply products and / or Services to you. You agree to indemnify and keep us indemnified against all Loss incurred by you or any third party in relation to or in any way directly or indirectly connected with our exercise of this right.
- (f) Not initialling these Amended Conditions does not affect their enforceability or incorporation into any Contract.

#### 28.6 Force majeure

- (a) If circumstances beyond our control prevent or hinder our performance of any obligation under the Contract, we are free from any obligation to perform the obligation while those circumstances subsist. We may elect to terminate this Contract or keep the Contract on foot until such circumstances have ceased.
- (b) Circumstances beyond our control include, but are not limited to: unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders,