

COMPUTER RESOURCES CAIRNS PTY LTD TERMS AND CONDITIONS Computer Resources Cairns Pty Ltd Terms & Conditions –

These Terms and Conditions are incorporated into every supply of goods and/or services to the Customer by Computer Resources Cairns Pty Ltd ABN 44 153 261 299. By instructing Computer Resources Cairns to provide any goods or services after receiving a copy of these Terms and Conditions (or after receiving a document into which these Terms and Conditions are incorporated by reference), the Customer agrees to be bound by these Terms and Conditions. IMPORTANT NOTES: While the Customer will be appointing Computer Resources Cairns to carry out the Services to the customers computing equipment at the Service Address(es), the Customer acknowledges that it must continue to monitor, clean and maintain the use of the equipment in accordance with the requirements in accordance with the manufacturers guidelines and these Terms and Conditions and the Service Guide.

These Terms and Conditions include important terms such as renewal of the contract term, indemnities and limitations of liability.

DEFINITIONS Agreement means the Terms and Conditions, together with the Quotation, as may be amended from time to time by Computer Resources Cairns.

Authorised Person means the individual(s) listed in the Quotation authorised by the Customer to request changes or amendments to the agreed Services and Quotation.

Claim means any cost, expense, action, proceeding, claim, demand, remedy, damage or loss.

Customer means the individual or entity referred to in the Quotation.

Further Term is defined in clause 2(b).

Induction and Compliance Requirements means the requirements with which Computer Resources Cairns personnel or representatives must comply in order to gain access to the Service Address and perform the Services.

Computer Resources Cairns means Computer Resources Cairns Pty Ltd ABN 44 153 261 299.

Proof of Service Report means the record kept by Computer Resources Cairns of the attendance on any Service Address in accordance with this Agreement and commonly provided as details for each service provided within the invoice for that service.

Quotation means a quotation provided by Computer Resources Cairns to the Customer.

Service Address means each address of the Customer listed in the Quotation.

Service Frequency means the recommended service frequency set out in the Quotation.

Services means all services provided by Computer Resources Cairns to the Customer, including any services described in the Quotation.

Term means 12 months, unless otherwise stated in the Quotation.

Terms and Conditions means this document.

## 1. QUOTATIONS AND AGREEMENT

- (a) All Quotations are made on and subject to these Terms and Conditions.
- (b) Unless expressly agreed by Computer Resources Cairns, previous dealings between Computer Resources Cairns and any Customer will not vary or replace these Terms and Conditions.
- (c) Computer Resources Cairns may withdraw or vary a Quotation at any time before the Customer accepts the Quotation in writing.
- (d) In providing a Quotation to the Customer, Computer Resources Cairns will rely on the accuracy and completeness of all information provided by Customer. If any such information is or becomes inaccurate or incomplete, or otherwise changes, Computer Resources Cairns reserves the right to vary a Quotation and the Customer agrees to be bound by any such varied Quotation.
- (e) This Agreement prevails over any terms and conditions of trade, purchase order, invoice or any other document of the Customer whether or not any inconsistency arises.

## 2. TERM

- (a) This Agreement will commence on the date that Computer Resources Cairns agrees to provide the Services referred to in a Quotation accepted by the Customer, and will continue for the Term and any Further Term unless otherwise terminated in accordance with this Agreement.
- (b) At the end of the Term and any further term, this Agreement will automatically renew for successive 12 month terms (each, a Further Term) until terminated in accordance with clause 13 of this Agreement (including under clause 13(a) which allows for termination on 30 days' notice during any Further Term).

## 3. COMPUTER RESOURCES CAIRNS' OBLIGATIONS

- (a) Computer Resources Cairns will provide the Services in a proper and workmanlike manner at each Service Address, or at its workshop.
- (b) Computer Resources Cairns will use reasonable endeavors to provide the Services in accordance with the Service Frequency.

## 4. CUSTOMER'S OBLIGATIONS

- (a) The Customer must provide Computer Resources Cairns, its employees, agents and contractors with full access to every Service Address and the relevant computer equipment upon which the Services will be performed at the time set out in the Quotation.
- (b) The Customer must provide Computer Resources Cairns with complete and accurate information regarding the type and frequency of activities carried out at each Service Address. The Customer acknowledges that Computer Resources Cairns will rely on this information in

recommending a Service Frequency for any required computer maintenance work at client premises.

(c) While Computer Resources Cairns may recommend a frequency of Services, and send reminders and other notifications to the Customer from time to time, the Customer is solely responsible to arrange for the Services and to determine its obligations pursuant to all occupational health and safety, fire safety and any other relevant requirements and obligations.

(d) The Customer, or the Customer's agents, employees, or contractors must, on request by Computer Resources Cairns, sign any document to verify that Computer Resources Cairns has attended a Service Address on any date.

## 5. MONITORING AND SERVICE GUIDE

The Customer acknowledges that the computer equipment at each Service Address must be regularly monitored, and have an up to date anti-virus and anti-malware system serviced in accordance with the Service Guide to check that the Service Frequency at all times remains appropriate for each Service Address.

## 6. SERVICES

(a) Computer Resources Cairns is entitled, acting reasonably, to refuse to perform the Services if:

(i) Computer Resources Cairns cannot gain access to a Service Address; or

(ii) the Customer, its representatives or any other party denies or unreasonably delays permission for Computer Resources Cairns to perform the Services; or

(iii) Computer Resources Cairns, or its employees, agents or contractors, decide, that it would be unsafe to perform the Services on the Customer's site.

(b) If, as a result of an act or omission by the Customer and Computer Resources Cairns refuses to perform the Services under clause (a) above, the Customer must, without any, set off, credit or reduction, make payment to Computer Resources Cairns in accordance with the Quotation for the Services that would have been provided had the circumstances in clause (a) above not arisen.

(c) If the Customer wishes to re-schedule the service date for Computer Resources Cairns to perform any of the Services, then an Authorised Person must provide Computer Resources Cairns with not less than 2 business days' notice in writing of the proposed change. If the Customer does not provide Computer Resources Cairns with 2 business days' notice in writing, the Customer will be deemed to have received the Services on the service date and the Customer must pay Computer Resources Cairns in accordance with the Quotation, without any, setoff, credit or reduction.

(d) The computer Services Frequency does not constitute a promise or representation by Computer Resources Cairns as to intervals at which Computer Resources Cairns will provide any Service to the Customer.

(e) If the Customer wishes to increase or decrease the Service Frequency, an Authorised Person must submit a written request to Computer Resources Cairns.

## 7. CUSTOMER WARRANTIES.

The Customer warrants that:

- (a) it has read and understood this Agreement;
- (b) it has supplied Computer Resources Cairns with accurate and complete information about the Induction and Compliance Requirements, if any;
- (c) it has not relied on any representation or statement made by or on behalf of Computer Resources Cairns, unless clearly and expressly stated in this Agreement; and

## 8. COMPUTERS

If the Customer requests supply of Computer Resources Cairns computers, the Customer acknowledges that any computer supplied by Computer Resources Cairns will be covered by either a manufacturer's warranty or by Computer Resources Cairns warranty for a specified period and will not cover physical damage to the computer due to the computer being dropped or damaged by any action other than fair use of the computer supplied and only for the term of any relevant warranty.

## 9. RECORDS AND NOTICES If requested by the Customer:

Computer Resources Cairns will provide the Customer with detailed invoices detailing the services provided.

## 10. PAYMENT & RATES

- (a) The Customer must pay for the Services at the rates set out in the Quotation, and as otherwise required under this Agreement.
- (b) If there is a cost to Computer Resources Cairns of complying with Induction and Compliance Requirements during provision of the Services, Computer Resources Cairns reserves the right to invoice the Customer for the cost of the Services on account of any such cost, and the Customer agrees to make payment for such costs to Computer Resources Cairns.

## 11. GST

- (a) On or after the provision of the Services, Computer Resources Cairns must issue the Customer with a tax invoice for the computer Services.
- (b) Each tax invoice must be in a form and substance that will constitute a tax invoice (as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth)).
- (c) If GST (as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth)) is imposed on any supply made under or in connection with these terms and conditions (a taxable supply) the party obliged to pay for the taxable supply will pay additional consideration of an amount equal to the GST payable on or for the taxable supply.

## 12. DISPUTES

If a dispute arises in connection with the supply of any computer Services or otherwise, the Customer agrees to pay within seven days of an invoice being issued by Computer Resources Cairns, any undisputed amount in relation to the computer Services performed.

## 13. TERMINATION

(a) Either party may terminate this Agreement during any Further Term by giving the other party 30 days written notice.

(b) Without limiting or otherwise prejudicing any other rights under this Agreement or at law, the Customer may immediately terminate this Agreement by notice in writing if:

(i) Computer Resources Cairns commits a material breach (other than a breach causing no material harm) of any material provision of this Agreement and fails to remedy the breach within 30 days of receiving written notice do so; or

(ii) Computer Resources Cairns becomes insolvent, enters into liquidation or receivership, becomes subject to any form of external administration, or makes a composition or arrangement with its creditors generally.

(c) Without limiting or otherwise prejudicing any other rights under this Agreement or at law, Computer Resources Cairns may immediately terminate this Agreement by notice in writing and refuse to supply the Services to the Customer if any of the following occur:

(i) circumstances entitling Computer Resources Cairns to refuse to provide Services under clause 6(a) occur more than once;

(ii) any warranty given by the Customer is or becomes false or materially inaccurate;

(iii) Computer Resources Cairns does not accept any proposed changes to the Service Frequency requested by the Customer, and the Customer refuses to continue with the existing Service Frequency;

(iv) a payment is rejected under any authority for direct debit or credit card payment provided by the Customer to Computer Resources Cairns;

(v) the Customer ceases, suspends or threatens to cease or suspend the conduct of its business or disposes of or threatens to dispose of its computer assets other than in the ordinary course of business;

(vi) the Customer is unable to, or states that it is unable, or fails to pay its debts as and when they fall due;

(vii) the Customer is a company and passes a resolution to be wound up or otherwise is the subject of a winding up application or liquidation or a receiver, manager, administrator is appointed over the Customer or its assets;

(viii) the Customer commits an act of bankruptcy or has a controller or trustee appointed in respect of the Customer's estate or any part of the Customer's property or assets; or

(ix) Computer Resources Cairns believes, acting reasonably, that any of the above will, or is likely to, occur.

(d) If a party provides notice of termination for any reason, the Customer acknowledges that this Agreement continues until such relevant notice period has expired and agrees that Computer Resources Cairns is entitled to payment for the Services performed during that notice period, or scheduled during that notice period but not performed through no fault of Computer Resources Cairns.

#### 14. INDEMNITY

(a) Subject to clause (b), the Customer will indemnify Computer Resources Cairns (and keep Computer Resources Cairns indemnified) against all fines, penalties and Claims (including legal and any other expenses) in connection with any breach of this Agreement by the Customer.

(b) The amount of the indemnity under clause 14(a) will be reduced to the extent that Computer Resources Cairns could, by taking reasonable steps, have avoided or mitigated any loss or damage for which Computer Resources Cairns claims an indemnity, provided that the amount of the indemnity is also increased by the cost of the taking of any such reasonable steps.

(c) Without limiting the liability of the Customer under the indemnity above, Computer Resources Cairns may at its sole discretion by itself or in conjunction with the Customer defend, settle or compound any Claim brought or made against it by any person in connection with any breach of this Agreement by the Customer and the Customer agrees that the indemnity extends to any cost or expense incurred by Computer Resources Cairns in conducting that defence or in settling or compounding the Claim.

(d) It is not necessary for any cost or expense to be incurred before an indemnity is enforced under this Agreement.

#### 15. LIMITATION OF LIABILITY

(a) Any representation, warranty, condition or undertaking that would be implied in this Agreement by legislation, common law, equity, trade, custom or usage is excluded to the fullest extent permitted by law.

(b) If any statute implies any term, condition or warranty, and that statute prohibits provisions in a contract excluding or modifying the application of, exercise of, or liability under, such a term, condition or warranty, then that term, condition or warranty will be taken to be included. However, the liability of Computer Resources Cairns for any breach of such a term, condition or warranty will be limited, if permitted by the statute, at the option of Computer Resources Cairns, to any one or more of the following:

(i) if the breach relates to goods:

- (A) replacing the goods, supplying equivalent goods or repairing the goods; or (B) to the extent required by the relevant statute, paying the cost of replacing the goods, acquiring equivalent goods or having the goods repaired; and (ii) if the breach relates to Services: (A) re-supplying the Services; or (B) to the extent required by the relevant statute, paying the cost of re-supplying the services.
- (C) The Customer is solely responsible for determining the appropriate frequency of Services required at the Service Address, and Computer Resources Cairns will not be liable to the Customer for any loss or damage suffered because or in relation to the Service Frequency.
- (D) Subject to this clause 15, a party will not liable to the other party for:
  - (i) any losses or damages of any kind caused by or resulting from any wrongful, wilful or negligent act or omission of the other party, or any of its officers, employees, agents or contractors; or
  - (ii) any indirect, incidental, special or consequential damages, including loss of profits or anticipated loss.
- (e) Subject to this clause 15, the maximum aggregate liability of Computer Resources Cairns for all Claims or other liabilities arising under or in relation to this Agreement, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the sum of the amounts paid by the Customer to Computer Resources Cairns under this Agreement.

## 16. CONSUMER GUARANTEES

- (a) Consumer legislation contains certain guarantees for the supply of goods or services that cannot be excluded, restricted or modified, such as:
  - (i) non-excludable guarantees that goods will be of acceptable quality and fit for the purpose for which they are commonly acquired or for a purpose made known to Computer Resources Cairns and based on which the goods are supplied; and
  - (ii) non-excludable warranties that services will be provided with due care and skill and will be fit for the purpose for which they are commonly acquired or for a purpose made known to Computer Resources Cairns and based on which the services are supplied. (b) Nothing in this Agreement is intended to exclude or restrict the application of any guarantees provided under consumer legislation.

## 17. GENERAL

- (a) (Whole Agreement) This Agreement is the entire agreement in relation to the computer Services, and supersedes and excludes all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of Services.

(b) (Delegation and Subcontracting) Computer Resources Cairns may delegate the performance of the work necessary to complete the computer Services by engaging or appointing employees or contractors suitably qualified to perform the computer Services.

(c) (Privacy) The Customer consents to the terms of the Privacy Policy of Computer Resources Cairns available at [www.computer-resources.com.au](http://www.computer-resources.com.au).

(d) (Notices) All notices and consents will be given in writing by personal service, post, facsimile transmission or email at the addresses of the parties as set out in the Quotation or to such other address as a party may designate by written notice.

(e) (Assignment) This Agreement is binding upon and for the benefit of the successors in title of the parties but must not be assigned by the Customer without the prior written consent of Computer Resources Cairns. Computer Resources Cairns may assign its rights and obligations under this Agreement at its sole discretion.

(f) (Governing Law) This Agreement is governed and construed in accordance with the laws for the time being in force in the state of Queensland where the computer Services are performed and the parties agree to the jurisdiction of the Courts and Tribunals of Queensland.

(g) (Severance) To the extent that any provision of this Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision will be deemed not to be a part of this Agreement, it will not affect the enforceability of the remainder of this Agreement nor will it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.