



Cirrus Communications trading as Swoop

ABN 87 109 931 731  
1A, 10 William St  
Gosford 2250 NSW

1300 333 200  
hello@  
swoop.com.au

## Terms and conditions

### 1. Definitions

- 1.1. “We”, “Us”, “Our” means Swoop, its successors and assigns or any person acting on behalf of and with the authority of Swoop (including, but not limited to, Our suppliers or the wholesale/carrier or third-party provider of a service.
- 1.2. “You”, “Your” means the person/s requesting Us to provide to You the Services, as specified in any invoice, document or order, and if there more than one person requesting the Services is a reference to each person jointly and severally.
- 1.3. “Services” means interactive access to the Internet provided by Us to You (for Your use), including any computer resources, software, data storage, computer communications facilities, goods, IP address and/or any other equipment supplied ancillary to the Services (“Products”) in order to facilitate the provision of Services. Where the context so permits the terms ‘Services’ or ‘Products’ shall be interchangeable for the other. Any Products supplied to You by Us on a loan basis (for the duration of the Services):
  - a. remains Our sole property;
  - b. may be changed, substituted, revoked or repossessed by Us at Our sole discretion at any time; and
  - c. is not transferable.



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- 1.4. "Charges" shall mean the cost of the Services (and any associated costs or fees) as agreed between You and Us, subject to clause 4 of this agreement, and are quoted, and payable, in Australian Dollars (\$AUD).
- 1.5. "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this agreement, either party's Intellectual Property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information and pricing details.

## **2. Acceptance**

- 2.1. By requesting, or using, the Services, You confirm that You have read, understood and accept and agree to the following terms and conditions. These terms and conditions form a binding agreement between You and Us for the provision of the Services.
- 2.2. You warrant that You are at least eighteen (18) years of age and acknowledge that there are some areas of the Internet which are unsuitable for minors. You shall be responsible for the use of the Services by a minor authorised by, or the responsibility of You, and the costs arising from such use.
- 2.3. These terms and conditions may only be amended with both party's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement



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between the both You and Us.

- 2.4. Where this agreement stated that the Services are provided for a particular purpose, You must only allow the Services to be used for that purpose. You may not use the Services to Commit an offence or allow anybody else to do so. You are responsible for ensuring that no one interferes with the operation of the Services or makes it unsafe. You must follow Our reasonable instructions if We determine that Your use of the Services interferes, or threatens to interfere, with the efficiency of Our network or Our supplier's networks.
- 2.5. Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.6. These terms and conditions may be implied to be read in conjunction with Our 'Service Order Form', and if there are any inconsistencies between the two documents, then the terms and conditions contained therein shall prevail.

### **3. Change in Control**

- 3.1. You shall give Us not less than fourteen (14) days prior written notice of any proposed change of ownership and/or any other change in Your details (including but not limited to, changes in Your name, address, contact phone or fax



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number/s, or business practice). You shall be liable for any loss incurred by Us as a result of Your failure to comply with this clause.

- 3.2. You must notify Us immediately of any change to the details of Your designated credit card (including where the card has been lost, stolen or cancelled, or the card has expired, exceeded its limit or is no longer valid, or if there has been a breach of security of the card details).

#### **4. Charges and Payment**

- 4.1. At Our sole discretion the Charges shall be:
- a. as indicated on any invoice/s furnished to You by Us; or
  - b. fixed for the duration of any fixed contract term; or
  - c. Our quoted Charges (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2. We reserve the right to amend the Charges:
- a. if a variation to the Services, specifications of any Products, or Your information and instructions, is requested (including, but not limited to, additional work required due to hidden or unidentifiable difficulties not evident prior to provision of the Services, any request to investigate and/or repair any faults or defects outside Our normal business hours, etc.);



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- b. as a result of increases beyond Our reasonable control in the cost of materials or labour (e.g. third-party suppliers' costs, etc.), or due to currency exchange rates.
- 4.3. Time for payment for the Services being of the essence, the Charges will be payable by You on the date/s determined by Us, which may be:
  - a. by way of instalments/progress payments in accordance with Our payment schedule;
  - b. the date which is thirty (30) days following the date of any invoice/s emailed to You by Us.
- 4.4. All invoices and receipts will be emailed to You, unless otherwise agreed between the two parties.
- 4.5. Payment may be made by electronic/online banking, credit card (which must be approved by Us and properly authorised by the designated credit card issuer and/or bank at the appropriate date, and may incur a surcharge per transaction), or by any other method as agreed to between You and Us.
- 4.6. GST and other taxes and duties that may be applicable shall be added to the Charges except when they are expressly included in the Charges.



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- 4.7. Our receipt of any form of payment shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then:
- a. Your subscription, renewal or selection of a plan will not be processed; and
  - b. Our ownership or rights in respect of the Services, and this agreement, shall continue.
- 4.8. Unless agreed to by Us, You shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to You by Us, nor to withhold payment of any amount because part of the Services are in dispute.

## **5. Fixed Contract Term**

- 5.1. The Services shall continue for the term stipulated in this agreement and, upon expiration of this term, will continue on a monthly basis, unless terminated in accordance with clause 13.
- 5.2. Subject to clause 14.1, if You wish to terminate the Services during the term stipulated, We may charge You an early termination fee, the amount of which will depend on the Services acquired by You and the date of termination.
- 5.3. We may terminate the Services prior to the expiry of the fixed contract term at any time (without charging an early termination fee) if We get Your consent to do so, and:



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- a. We appropriately off-set the effect of the termination on You, e.g. credit or rebate; and/or
- b. We migrate You to alternative services for the remainder of the fixed contract term.

## 6. Terms of Use

6.1. When You use the Services, You must:

- a. comply with all laws, all directions by a regulator, all notices issued by authorisation of, or under, law (e.g. Copyright Act 1968) and reasonable directions by Us; and
- b. keep Your account information, password, data and Products confidential and secure. You remain responsible for any use or misuse of such; and
- c. follow any reasonable instructions provided by Us in relation to the Services; and
- d. access and use the Services solely in accordance with these terms and conditions and any reasonable instructions provided by Us; and
- e. respond promptly to Our communications in relation to the Services; and
- f. provide accurate and prompt responses to Our requests for any information or documentation reasonably required by Us to provide the Services.

6.2. You must not:

- a. use, or attempt to use, or permit another person to use or attempt to use, the Services:



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- i. so as to cause offence, to defame, abuse, communicate obscenities, menace or annoy;
- ii. for any purpose or activity of an illegal or fraudulent nature in any jurisdiction, including damaging any property or injuring or killing any person, to breach the security of any computer network (hacking), to breach any persons privacy, or to distribute unsolicited software or junk mail;
- iii. for advertising purposes without Our express written consent;
- iv. to breach any of the intellectual property rights held by Us or any third party;
- v. to transmit, publish or communicate materials which is defamatory, offensive, abusive, indecent, menacing or unwanted;
- vi. to expose Us to liability (including any claims for damages);
- vii. in any way which damages, interferes with or interrupts the Services, or a supplier's network used to provide the Services;
- viii. to intercept or attempt to intercept any communication not otherwise intended for You; and
- ix. contact Our suppliers or the wholesale / carrier or third party provider of a service (e.g. NBN Co., Telstra Wholesale, etc.) in relation to the Services or service faults. The supplier may impose a fee for doing so and this fee will be passed onto You.





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They may, however, contact You in relation to any reported service difficulties in relation to appointment making and service restoration, and for this reason We will need to provide Your contact details to such parties.

- 6.3. If, in Our opinion, the Services are being used by anyone in breach of these terms and conditions (including clause 6) or Internet etiquette, We may:
- a. refuse to post such infringing information to public areas;
  - b. remove, review or edit such infringing information from any computer on Our network, with the exception of private electronic messages;
  - c. discontinue any infringing communication;
  - d. suspend the Services indefinitely, or for a specific period;
  - e. terminate the Services, and refuse to provide the Services to You, or Your associates, in the future;
  - f. inform appropriate government and regulatory authorities of suspected illegal or infringing conduct.
- 6.4. You authorise Us to delete without notice or liability any information or materials found on the Products (or equipment controlled by Us) that is found to be of an obscene nature, unauthorised, unlawful, uncollected for an excessive period of time or excessive in volume.



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## **7. Provision of the Services**

- 7.1. We shall provide the Service to You at such times and in such a manner as We, from time to time, decides at Our absolute discretion. We make no expressed or implied warranties whatsoever as to the fitness of the Services for a particular purpose or as to any other aspect of the Services.
- 7.2. During Our Installation Services We will;
- a. act reasonably with due diligence and care; and
  - b. make “good or remediate” on termination of the Services.
- 7.3. We will use reasonable care and skills in providing the Services to ensure You receive continual, uninterrupted and fault-free Services for the duration of this agreement. However, given the nature of telecommunications systems, including Our reliance on systems, equipment and services We do not own or control (including third party network or service suppliers), We cannot guarantee the availability of the Services at all times, which shall be subject to regularly scheduled maintenance cycles, and any events/circumstances beyond Our control. Any failure or delay by Us to provide the Services (promptly or at all) due to circumstances beyond Our control shall not itself constitute a default by Us under this agreement. Where necessary for commercial, technical or other reasons:



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- a. a network or service supplier connected to this agreement may suspend or terminate its connection to any services provided; and
- b. those services may suspend or terminate their connection to another network or service provider.

7.4. We have no responsibility:

- a. to provide training in the use of the Services and/or related applications; or
- b. for any failure in providing the Services where attributable to a fault in Your phone line, and no credit or refund in relation to the Charges will be considered for such outages.

7.5. No guarantee is given by Us as to the availability (at any or all times) of the Services (including stability and connection speeds of data transmitted when using the Services) as advertised, as such may vary depending on the service kind and delivery infrastructure, including:

- a. whether You are located in a coverage area;
- b. the number of users sharing the network;
- c. the computer hardware and software You use;
- d. general activity on the Internet;
- e. speed and capacity of the server being accessed.

7.6. You have no intellectual property rights in the domain name, email address, User ID or password allocated by Us, and



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these are not transferable to You once the Services are terminated.

## **8. Wireless Broadband**

- 8.1. The Services provides access to the Internet and other data related services via a wireless connection, subject to available coverage areas and network availability. In areas where the Services are available, We do not warrant that:
- a. the Services will be available in each place within the area where there is coverage;
  - b. drop-outs will not occur;
  - c. there will be no congestion on the network.

## **9. Access**

- 9.1. We may need to access the property in order to provide the Services. You agree to provide us safe access to the property to:
- a. install any Products to facilitate the provision of Services to You;
  - b. inspect, test, maintain and repair or replace the Products; and
  - c. recover the Products after the Services have been terminated.
- 9.2. If You do not own the property, it is Your responsibility to get the owner's permission for Us to access the property and install any Products.



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- 9.3. You owe Us the value of the Products as a debt due if We cannot access the property to recover it, or in the event the Products are lost or damaged.

## **10. Advice and Recommendations**

- 10.1. None of Our employees, agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by Our director, in writing, nor are We bound by any such unauthorised statements.
- 10.2. Any advice, recommendations, information, assistance or service provided by Us in relation to Services provided is given in good faith, is based on information provided to Us, and Our own knowledge and experience. Whilst it shall be Your responsibility to confirm the accuracy and reliability of the same in light of the use to which You make, or intend to make, of the Services, human error is possible under these circumstances, and We shall make all effort to offer the best solution to You.
- 10.3. There are many ways that undesirable content could reach Your computer, including through web browsing, email, instant messenger applications and physical access to Your computer by other people. We cannot guarantee that Your connection will be free of viruses, worms, Trojan horses or any other harmful materials and We recommend that You



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take reasonable precautions to protect Your computer and data, including:

- a. operating firewall to filter Internet traffic;
- b. running and regularly updating anti-virus and anti-spyware software; and
- c. taking reasonable precautions with passwords, credit card numbers and allowing physical access to Your hardware by other people.

- 10.4. You must prepare and maintain regular back-up files and data storage capacity for all Your files and data, including websites, emails and any other electronic data. We shall not be held responsible or liable for any loss, corruption, or deletion of files or data.

## **11. Usage**

- 11.1. Other than circumstances where We have incorrectly charged You for the use of the Services, You are responsible for and have to pay for any use of the Services, whether You authorise it or not. You are in the best position to monitor and control the usage of the Services and must ensure that they are not being used without Your authorisation by reviewing usage regularly. If You believe the Services are being used without Your authorisation, please contact Us immediately.
- 11.2. If You do not disconnect the Services when You vacate the property, you have to pay for any use of the Services by any



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subsequent occupants or other parties. We therefore suggest You make every effort to ensure the disconnection of the Services when You vacate the property.

- 11.3. You acknowledge that, in some circumstances We may:
- a. monitor usage of the Services for excessive or unusual usage patterns, but We do not promise to do so. You remain responsible for monitoring the use of the Services in accordance with this clause 11; and
  - b. be required to intercept/monitor communications sent over the Services.

## **12. Your Equipment**

- 12.1. Where You use equipment that does not belong to Us in the course of utilising the Services:
- a. You are responsible for maintaining and repairing that equipment. We will not be responsible for any faults resulting from Your failure to maintain and repair that equipment;
  - b. Where the equipment causes a fault in the Services that We need to repair, We may charge you for repairing the fault. We will advise You of the call-out fee and hourly rates applicable prior to commencing work on the fault;
  - c. You must only connect equipment that complies with relevant technical standards and other relevant requirements;



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- d. You must make all reasonable changes to the equipment when We request You to do so to avoid damage or interference;
- e. You must advise Us of any changes to the equipment and/or telecommunications services that may affect Our ability to provide the Services to You;
- f. it remains Your responsibility to contact the manufacturer directly in the event of any defect, etc.

12.2. You are responsible for any equipment at the property (including any Products that belong to Us) and You must pay Us for any loss or damage to the Products at the property, fair wear and tear excepted.

### **13. Confidentiality**

13.1. Subject to clause 13.2, each party agrees to treat as confidential the other party's Confidential Information, and agree not to divulge it to any third party, without the other party's written consent.

13.2. Both parties agree to:

- a. use the Confidential Information of the other party only to the extent required for the purpose it was provided;
- b. not copy or reproduce any of the Confidential Information of the other party in any way;
- c. only disclose the other party's Confidential Information to:





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- i. employees and third-party providers who need access to the information and who have agreed to keep it confidential;
  - ii. its legal advisers and insurance providers if those persons undertake to keep such information confidential; and
  - iii. not disclose the other party's Confidential Information to any person not referred to in this clause except with the other party's prior written consent or if required by law, any stock exchange or any regulatory body.
- 13.3. Either party must promptly return or destroy all Confidential Information of the other party in its possession or control at the other party's request unless required by law to retain it.
- 13.4. Confidential Information excludes information:
  - a. generally available in the public domain (without unauthorised disclosure under this agreement);
  - b. received from a third party entitled to disclose it;
  - c. that is independently developed.
- 13.5. The obligations of this clause 13 shall survive termination or cancellation of this agreement.



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## **14. Termination, Suspension and/or Restriction**

14.1. Either You or Us may terminate the Services:

- a. (subject to the payment of all outstanding Charges) by providing the other with thirty (30) days written notice of the intention to do so. However, if You are on a fixed term contract, such notice can only be given (without consequence) on the expiry of the contract term; or
- b. at any time if the other is in material breach of this agreement and:
  - i. have been notified of such in writing and have failed to remedy it within thirty (30) days of such notification; or
  - ii. the material breach is something incapable of remedy, in which case the Services can be terminated upon immediate notification to the offending party.
- c. by providing the other with reasonable notice if:
  - i. the other becomes bankrupt or insolvent or appears likely to do so; or
  - ii. the law requires it; or
  - iii. the provision of the Services becomes illegal, or either party has reasonable grounds to believe they may become illegal.

14.2. If You terminate the Services prior to provision thereof to You, We may charge You any reasonable costs incurred by Us while preparing to provide the Services to You.



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14.3. We can suspend or restrict the provision of the Services to You:

- a. temporarily if We reasonably believe it is desirable to do so in order to maintain or restore part of a third party supplier's network. We will try and perform maintenance and repair work at time that will cause the least inconvenience to Our customers. We will not charge you for (and rebate if necessary) any Charges during any period of suspension exceeding twenty-four (24) hours. If We have no alternative but to cancel the Services due to necessary maintenance or restoration of any part of a third party supplier's network, We will not charge You any applicable termination fees; and
- b. during the period before We terminate the Services because You are in material breach of this agreement. You will be in material breach of this agreement if You:
  - i. do not pay the Charges for the Services when they become due and payable;
  - ii. use the Services in a way which We reasonably believe is fraudulent, poses an unacceptable risk to Our security or network capability (or that of Our suppliers or other customers), or is illegal or in contravention of this agreement.

14.4. If You ask Us to reconnect the Services following suspension for failing to pay the Charges, you will have to pay Us a reconnection fee, in addition to any Charges already



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outstanding.

14.5. If any suspension lasts for more than seven (7) days, We will not charge You any Charges during the period of suspension, but We may charge You a reconnection fee to restore the Services.

14.6. We may terminate, suspend or restrict the Services if:

- a. it is in accordance with clause 14.1(c);
- b. You die;
- c. there is an emergency that affects Our ability to provide the Services;
- d. We are unable to provide the Services to You due to events outside Our reasonable control, such as failure in equipment that is not owned or operated by Us, or any force majeure event;
- e. if We reasonably believe that providing the Services may cause death, personal injury or damage to property;
- f. We cannot enter the property because of Your actions or omission when We need to do something in connection with the Services, in order to provide the Services or make the Services (or related Products) safe;
- g. You vacate the property to which the Services are connected;



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- h. there is excessive or unusual use of the Services that is in breach of this agreement; or
- i. We reasonably consider that You pose an unacceptably high credit risk to Us.

## **15. Limitation of Liability**

- 15.1. You acknowledge that the Internet is separate from this agreement, and that use of the Internet is at Your own risk and subject to any applicable legislation. We have no responsibility for any goods, services, information (including the accuracy or appropriateness thereof), software, or other materials which You may obtain when using the Internet.
- 15.2. Whilst You and Us are liable to each other for breach of contract or negligence under the principles applied by the courts, neither You or Us are liable to each other for any loss to the extent that it is caused by the other, including negligence or breach of this agreement, or failure to take reasonable steps to avoid or minimise the loss suffered.
- 15.3. We are not liable for any indirect, incidental, special and/or consequential loss and/or expense, claim or cost (including legal fees and commissions, loss of profit/income, business, contracts, opportunity, goodwill, reputation and/or anticipated saving), any loss or corruption of data, or other liabilities (howsoever arising) which You may suffer/incur as a result of Us failing to comply with Our obligations in relation to the Services (including resulting from, or in



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relation to, any failure or delay in Us providing the Services under this agreement, or any loss or data), where that loss is caused by events outside Our reasonable control, such as failure in equipment that is not owned by Us, as a result of a suspension of services in accordance with clause 7.1 or any force majeure event under clause 23.3. Alternatively, Our liability shall be limited to damages which under no circumstances shall exceed the Charges (but only to the extent that such Charges shall take into account the nature or length of the breach in relation to this agreement, and any contributory negligence on Your part).

- 15.4. The provisions set out in this clause 15 will continue unaffected by termination or suspension of the Services.
- 15.5. This clause does not affect Your rights under statutory warranties referred to in clause 16.

## **16. Dispute Resolution**

- 16.1. If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the



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other party refer such dispute to arbitration. Any arbitration shall be:

- a. referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- b. conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

## **17. The Commonwealth Competition and Consumer Act 2010 (“CCA”) and Fair Trading Acts (“FTA”)**

17.1. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.

17.2. Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (“NonExcluded Guarantees”). We acknowledge that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees. Except as expressly set out in these terms and conditions, or in respect of the Non-Excluded Guarantees, We make no warranties or other representations under these terms and conditions, including



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but not limited to, the quality or suitability of the Services. Our liability in respect of these warranties is limited to the fullest extent permitted by law. If:

- a. You are a consumer within the meaning of the CCA, Our liability is limited to the extent permitted by section 64A of Schedule 2;
- b. We are required to rectify, re-provide, or pay the cost of re-providing the Services under this clause or the CCA, but are unable to do so, then We may refund any money You have paid for the Services, but only to the extent that such refund shall take into account the value of Services which have been provided to You which were not defective.

## **18. Title**

- 18.1. Both You and Us agree that the Your obligations to Us for the provision of Services shall not cease (and where it is intended that ownership of any Products shall pass to You, such ownership shall not pass) until:
  - a. You have paid Us all amounts owing to Us for the particular Services; and
  - b. You have met all Your other obligations due to Us in respect of all agreements between You and Us.
- 18.2. It is further agreed that, until ownership of the Products passes to You in accordance with clause 18.1:
  - a. You are only a bailee of the Products, and must return the Products to Us on request.





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- b. You hold the benefit of Your insurance of the Products on trust for Us, and must pay to Us the proceeds of any insurance in the event of the Products being lost, damaged or destroyed.
- c. You must not sell, dispose, or otherwise part with possession of the Products, other than in the ordinary course of business and for market value. If You sell, dispose or part with possession of the Products, then You must hold the proceeds of any such act on trust for Us, and must pay or deliver the proceeds to Us on demand.
- d. You should not convert or process the Products, or intermix them with other equipment. But if You do, then You hold the resulting product on trust for Our benefit, and must sell, dispose of or return the resulting goods to Us as We so direct.
- e. You irrevocably authorise Us to enter any property where We believe the Products are kept and recover possession thereof, without Us being liable for any loss or damage caused thereby.
- f. You shall not charge or grant an encumbrance over the Products, nor grant nor otherwise give away any interest in the Products, while they remain Our property.
- g. We may commence proceedings to recover any Charges, notwithstanding that ownership of the Products has not passed to You.



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1A, 10 William St  
Gosford 2250 NSW

1300 333 200  
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## **19. Personal Property Securities Act 2009 (“PPSA”)**

- 19.1. In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 19.2. Upon assenting to these terms and conditions in writing, You acknowledge and agree that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
- a. all Products previously supplied by Us to You; and
  - b. all Products will be supplied in the future by Us to You; and
  - c. all Your present and after acquired property being a charge, including anything in respect of which You have at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all Your monetary obligations to Us for the Services – that have previously been provided and that will be provided in the future by Us to You.
- 19.3. You undertake to:
- a. promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which We may reasonably require to;
    - i. register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;



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- ii. register any other document required to be registered by the PPSA; or
    - iii. correct a defect in a statement referred to in clause 19.3(a)(i) or 19.3(a)(ii);
  - b. indemnify, and upon demand reimburse, Us for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
  - c. not register a financing change statement in respect of a security interest without Our prior written consent;
  - d. not register, or permit to be registered, a financing statement or a financing change statement in relation to the Products in favour of a third party without Our prior written consent.
- 19.4. Both You and Us agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 19.5. You waive Your right to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 19.6. You waive Your right as a grantor and/or a debtor under sections 142 and 143 of the PPSA.



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19.7. Unless otherwise agreed to by Us in writing, You waive Your right to receive a verification statement in accordance with section 157 of the PPSA.

19.8. You must unconditionally ratify any actions taken by Us under clauses 19.2 to 19.5.

19.9. Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

## **20. Security and Charge**

20.1. In consideration of Us agreeing to provide the Services, You charge all of Your rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by You either now or in the future, to secure the performance by You of Your obligations under these terms and conditions (including, but not limited to, the payment of any money).

20.2. You indemnify Us from and against all Our costs and disbursements, including legal costs on a solicitor and own client basis, incurred in exercising Our rights under this clause.

20.3. You irrevocably appoint Us, and each of Our directors, as Your true and lawful attorney/s to perform all necessary acts



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to give effect to the provisions of this clause 20 including, but not limited to, signing any document on Your behalf.

## **21. Default and Consequences of Default**

- 21.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Our sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2. If You owe Us any money, You shall indemnify Us from and against all costs and disbursements incurred by Us in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Our contract default fee, and bank dishonour fees).
- 21.3. Further to any other rights or remedies We may have under this agreement, if You made payment to Us by credit card or cheque, and the transaction is subsequently reversed, dishonoured or cancelled, You shall be liable for the amount of the reversed, cancelled or dishonoured transaction, in addition to any further costs incurred by Us under this clause 21 where it can be proven that such reversal, cancellation or dishonour is found to be illegal, fraudulent or in contravention to Your obligations under this agreement.
- 21.4. Without prejudice to any other remedies We may have, if at any time You are in breach of any obligation (including those



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relating to payment, whether or not the payment is due to Us) We may suspend or terminate the provision of Services to You (this includes but is not limited to, suspending or restricting the Services) under clause 13, and any of Our other obligations under these terms and conditions. We will not be liable to You for any loss or damage You may suffer because We have exercised Our rights under this clause, and all amounts owing to Us shall, whether or not due for payment, become immediately payable.

## **22. Privacy Act 1988**

- 22.1. You agree for Us to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about You in relation to credit provided by Us.
- 22.2. You agree that We may exchange information about You with those credit providers and with related body corporates for the following purposes:
  - a. to assess Your application; and/or
  - b. to notify other credit providers of a default by You; and/or
  - c. to exchange information with other credit providers as to the status of Your account, where You are in default with other credit providers; and/or



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- d. to assess Your creditworthiness, including Your repayment history in the preceding two (2) years.

22.3. You consent to Us being given a consumer credit report to collect overdue payment on commercial credit.

22.4. You agree that personal credit information provided may be used and retained by Us for the following purposes (and for other agreed purposes or required by):

- a. the provision of the Services; and/or
- b. analysing, verifying and/or checking Your credit, payment and/or status in relation to the provision of the Services; and/or
- c. processing of any payment instructions, direct debit facilities and/or credit facilities requested by You; and/or
- d. enabling the collection of amounts outstanding in relation to the Services.

22.5. We may give information about You to a CRB for the following purposes:

- a. to obtain a consumer credit report;
- b. allow the CRB to create or maintain a credit information file about You, including credit history.

22.6. The information given to the CRB may include:

- a. personal information as outlined in 22.1 above;



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- b. name of the credit provider and that We are a current credit provider to You;
- c. whether the credit provider is a licensee;
- d. type of consumer credit;
- e. details concerning Your application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- f. advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively, that You no longer have any overdue accounts and We have been paid, or otherwise discharged, and all details surrounding that discharge (e.g. dates of payments);
- g. information that, in Our opinion, You have committed a serious credit infringement;
- h. advice that the amount of Your overdue payment is equal to or more than one hundred and fifty dollars (\$150).

22.7. You shall have the right to request (by e-mail) from Us:

- a. a copy of the information about You retained by Us, and the right to request that We correct any incorrect information; and





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- b. that We do not disclose any personal information about You for the purpose of direct marketing.

22.8. We will destroy personal information upon Your request (by e-mail), or if it is no longer required, unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.

22.9. You can make a privacy complaint by contacting Us via e-mail. We will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that You are not satisfied with the resolution provided, You can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

## **23. General**

23.1. Failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

23.2. These terms and conditions, and any agreement to which they apply, shall be governed by the laws of New South



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Wales, the state in which We have Our principal place of business, and are subject to the jurisdiction of the Courts of that state.

- 23.3. Neither You or Us shall be liable for any default due to fires, explosions, severe weather, industrial disputes, insurrection, requirements or regulations, or any civil or military authority, acts of war (whether declared or not), civil unrest, acts of God, earthquake, flood, riot, embargo, government act, strike, lock-out, storm, terrorism, DNS caching, propagation, or other DNS issues outside the reasonable control of either party, or failure or outage of any telecommunications links or other connections forming part of the Internet which are beyond the reasonable control of either party.
- 23.4. Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.
- 23.5. You agree that We may amend these terms and conditions at any time, subject to the following:
- a. if We reasonably believe that any proposed amendment will benefit You, or have a neutral impact on You, We can make the amendment immediately; We will take reasonable steps to bring the general nature of such changes to Your attention; or



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- b. Where We reasonably believe that any proposed amendment will have a minor impact on You, We will provide You with fourteen (14) days written notice of such change, and if the amendment will have more than a minor impact on You We will allow You to terminate this agreement without incurring any early termination fees.