

General Terms and Conditions

1 Definitions and interpretation

1.1 In these General Terms and Conditions, unless the contrary intention appears:

Business Day means a day other than a Saturday, Sunday or public holiday in jurisdiction where the obligation is to be performed or notice is to be provided (as applicable).

Business Hours means 8am to 5pm on a Business Day.

Charges means the amount payable by Customer calculated in accordance with, or as specified in, the applicable Order.

Confidential Information means all information (regardless of the form of disclosure or the medium used to store it) treated by a disclosing party as confidential and of which the recipient first becomes aware either: (1) through disclosure by the disclosing party to the recipient; or (2) otherwise through the recipient's involvement with the disclosing party, and, in the case of Customer, includes all Customer Data.

Contract has the meaning given in clause 1.3.

Contracted Items means the Services and Deliverables.

Contract Representatives means the party's Personnel as specified in the Order.

Customer means the person identified as the 'Customer' in the Order.

Customer Data means all data and information: (1) relating to the Customer or the Customer's business; (2) provided by the Customer as part of a Service.

Customer Items means those activities, work, deliverables, hardware, equipment or software to be supplied by the Customer.

Delay means a failure by Huon IT to perform an obligation (including a failure to supply a Deliverable) by the applicable Due Date.

Deliverable means the Systems, Hardware, Software and Documentation identified in an Order in as a Deliverable.

Documentation means (1) any standard owner or user documentation supplied with any System, Hardware or Software; and (2) any reports or documentation developed and supplied by Huon IT under a Contract.

Due Date means the date or time specified in a Contract by or on which an obligation must be performed as specified in the Proposal or Service Schedule, as extended in accordance with the terms of the Contract.

General Terms and Conditions means these terms and conditions

GST means any goods and services tax imposed by Law.

Huon IT Pty Limited means Huon IT Pty Limited (ABN 45 117 675 153) of Unit 24, 14 Narabang Way, Belrose NSW 2085.

Initial Term has the meaning given in clause 2.1.

Intellectual Property Rights means all intellectual property rights, registered or unregistered, and related rights, including but not limited to the following rights: (1) patents, copyright (including software), registered designs, trade marks, know-how, and inventions; and (2) any application or right to apply for registration of any of the rights referred to in (1).

Law means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the relevant jurisdiction and includes any industry codes of conduct.

Losses means all liabilities, losses, damages, costs and expenses suffered or incurred by any person whether arising in contract or tort (including negligence) or under any statute or under any other cause of action. Loss has a corresponding meaning.

Order means an order (in a form provided by Huon IT) for the supply of Contracted Items signed by the Customer.

Personnel means the officers, employees, contractors (including subcontractors) and agents of that person or any of its Related Bodies Corporate, but in the case of Customer, excludes Huon IT and any of its Personnel.

Pre-existing IP means (1) all Intellectual Property Rights owned or licensed by a party prior to Initial Term, and (2) all amendments, adaptation or enhancements of the Intellectual Property Rights referred to in (1).

Privacy Law means the *Privacy Act 1988* (Cth) including the National Privacy Principles set out in the Privacy Act.

Proposal means has the final proposal submitted by Huon IT to the Customer for the supply of Contracted Items which these General Terms and Conditions are attached.

Related Body Corporate has the meaning set out in section 50 of the *Corporations Act 2001* (Cth).

Services means the services, work, activities, functions and responsibilities to be performed or provided by Huon IT under a Contract and as further specified in the Proposal or a Service Schedule (or both).

Service Levels means the service levels for the Services as set out in Service Schedules, Proposal or Order (as applicable).

Service Schedule means the document identified as a 'Service Schedule' for the relevant Services to be provided under a Contract.

Site means each location specified in an Order at, or to which, one or more Contracted Item are to be performed or supplied.

Software means all software which has been, or is to be, supplied by Huon IT under, or relating to, this Contract including, as specified as a Deliverable in an Order, incorporated or supplied with or relating to another Deliverable.

Specifications means for a Deliverable (in order of priority for the purposes of resolving any inconsistencies): (1) any functional, technical or performance specification or other requirements for that Deliverable specified in the Proposal or Service Schedule; and (2) Huon IT's, or if Huon IT is not the manufacturer (or in the case of Software the developer), the manufacturer's (or developer's) published specifications.

System means a computing environment (consisting of hardware, software and/or telecommunications networks or equipment).

Taxes: all duties and taxes but excluding GST.

Third Party Items means Systems, Hardware, Software Huon IT's, or if Huon IT is not the manufacturer (or in the case of Software the developer), the manufacturer's (or developer's) published specifications.

Third Party Terms means the terms and conditions that apply to supply and use of the Third Party Items as supplied and notified to the Customer from time to time

- 1.2 In these General Terms and Conditions, unless the contrary intention appears:
- (a) the singular includes the plural and vice versa, and a gender includes other genders;
 - (b) another grammatical form of a defined word or expression has a corresponding meaning;
 - (c) a reference to A\$, \$A, dollar or \$ is to Australian currency;
 - (d) a reference to time is to Sydney, New South Wales, Australia time; and
 - (e) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Contract or any part of it.

- 1.3 The agreement between Huon IT and the Customer to supply the Contracted Items comprises:
- (a) any Third Party Terms;
 - (b) the Order;

- (c) the Service Schedules specified in the Order;
- (d) these General Terms and Conditions; and
- (e) the Proposals,

(Contract).

- 1.4 To the extent that there is any inconsistency between any of the terms in those documents listed in clause 1.3, the terms in the document listed first will govern to the extent of the inconsistency.
- 1.5 No confirmation, delivery order, purchase order or other similar document issued by either party will vary or form part of a Contract.

2 Term

- 2.1 Each Contract will commence on the date specified in the Order and (unless terminated under clause 14) continue for the period specified in that Order (**Initial Term**).
- 2.2 On expiry of the Initial Contract Term, the Contract will automatically extend by 12 months periods (each period being a **Further Term**) unless a party gives the other party at least 30 days prior to end of the Initial Term or a Further Term.

3 Huon IT obligations

- 3.1 Huon IT warrants that it will supply the Contract Items:
- (a) to meet all applicable Due Dates; and
 - (b) at or to the relevant Sites.
- 3.2 Huon IT warrants that it supply the Services:
- (a) in a proper, timely and efficient manner, using due care and skill; and
 - (b) to meet or exceed the Service Levels.
- 3.3 Huon IT warrants that the Deliverables will conform to the applicable Specifications.
- 3.4 Huon IT will not be liable for any failure to comply with any of its obligations under a Contract or otherwise be liable for any Loss suffered by the Customer, to extent the failure or Loss was caused or contributed by:
- (a) the Customer's failure to perform an obligation (including any failure or delay in providing the Customer Item);
 - (b) an event or circumstance outside of the scope of Huon IT's responsibilities (including without limitation telecommunication network issues);

- (c) modifications made by the Customer or Customer's Personnel without the written approval of Huon IT;
- (d) Customer's combination of the Contracted Items with items not furnished, specified or reasonably anticipated by Huon IT or contemplated by the Contract;
- (e) the failure of the Customer to use corrections or modifications provided by Huon IT offering equivalent features and functionality;
- (f) use of the Contract Items in a manner not contemplated by the Contract and for which such Contracted Item are not designed;
- (g) Huon IT's compliance with specifications or directions provided by the Customer; or
- (h) any Third Party Item, except to the extent that such failure arises from Huon IT not obtaining the necessary licenses or to abide by the limitations of the applicable Third Party Terms.

4 Customer obligations

Customer must:

- 4.1 provide the Customer Items;
- 4.2 ensure all Customer Item provided to the Huon IT in order for the Contracted Items to be delivered is technically compatible with the relevant Contracted Items;
- 4.3 not modify, alter, reverse engineer, restore or repair the Contracted Items;
- 4.4 (unless otherwise expressly specified in the Contract) be solely responsible for the supply and maintenance of Customer Item; and
- 4.5 be solely responsible for the content and data security of any information sent or received using the Contracted Items.

5 Invoicing, GST & payment & GST

- 5.1 In consideration of Huon IT providing the Contracted Items, Customer must pay to Huon IT the Charges.
- 5.2 Unless otherwise specified in the Order, all Charges exclude GST.
- 5.3 Subject to clauses 5.5, the Customer must pay each Huon IT invoice that is correct and issued:
 - (a) in accordance with payment terms specified to in the Order (including,

where applicable, any direct debit terms); or

- (b) if no payment term is specified in the Order, within 14 days of the date on which Customer receives the invoice.

5.4 If the Customer does not pay an invoice within the relevant time period specified in 5.3, Huon IT will issue a payment reminder notice. If payment is not received within 14 days of the date on which the Customer receives the payment reminder notice, Huon IT may do one or more of the following:

- (a) suspend provision of Services until receipt of payment; and
- (b) charge invoice on the outstanding amount at a rate of 3% above the St George Bank commercial base rate applicable from time to time.

5.5 If Customer disputes the validity of, or amount specified in, any invoice:

- (a) Customer will notify Huon IT as soon as practicable of the details and the nature of the dispute;
- (b) Customer will pay the undisputed amounts in accordance with clause 5.3 and Huon IT must reissue the invoice for the undisputed amount if required by Customer;
- (c) the parties must continue to perform their other obligations under the Contract; and
- (d) either party may invoke the dispute resolution procedure set out in clause 15 attempt to resolve the dispute.

6 Delivery, Title & Risk

- 6.1 Huon IT must deliver all Contracted Items to the Site in accordance with the Order.
- 6.2 Unless otherwise agreed, title to Deliverables (except to the extent that the Intellectual Property Rights) passes on payment of the Charge for the Deliverables.
- 6.3 Risk in Deliverables supplied to the Customer, passes to Customer when Huon IT delivers those Deliverables to the Customer.

7 Delays

- 7.1 Huon IT must use its reasonable endeavours to anticipate any potential failures by Huon IT to perform any of its obligations by the applicable then current Due Dates, and take any reasonable steps to avoid any such failures.

- 7.2 If Huon IT becomes aware of an actual or potential failure by Huon IT to perform any of its obligations by the applicable then current Due Date, Huon IT must:
- (a) notify Customer of that actual or potential delay specifying:
 - (1) the cause of the delay; and
 - (2) the impact of the delay, including any impacts on other Due Dates;
 - (b) take reasonable steps necessary to comply with the applicable Due Date.
- 7.3 If a Delay is caused by Customer failing to perform an obligation under a Contract (an **Extension Event**), then:
- (a) the then current Due Date for performing the obligation the subject of the failure will be extended by an amount of time equal to the proportion of the failure which was caused by the Extension Event; and
 - (b) if appropriate, Huon IT may submit a proposal to vary any other Due Dates or any other part of the Contract to which the failure relates.

8 Third Party Items

- 8.1 The Customer acknowledges and agrees that:
- (a) the supply and use of the Third Party Items are subject to the Third Party Terms;
 - (b) The Customer must comply with the Third Party Terms, and not do or omit to do anything which may cause Huon IT to breach the Third Party Terms;
 - (c) to the extent that there are any defect or failure in such Third Party Items, and the Customer does not have any direct rights under the Third Party Term, Huon IT will assign or pass on any benefits, rights or remedies available under the Third Party Terms; and
 - (d) the Customer's rights, and Huon IT liability, for any defective or failed Third Party Item is limited to the rights and obligations specified in clause 8.1(b)
- 8.2 Third Party Terms with respect to the Third Party Items will be provided through one or more of the following method::
- (a) as an annexure to the Service Schedule;
 - (b) on the Huon IT website; or
 - (c) on the relevant third party website,

and may be updated from time to time.

9 Intellectual Property Rights

- 9.1 Unless otherwise specified in the Contract, Customer will own all Intellectual Property Rights in any Deliverable developed as part of, or for the purposes of, supplying the Services or meeting any other obligation under a Contract but excluding Huon IT's Pre-existing IP (**New IPR**) and Huon IT:
- (a) retains all right and title in any and all New IPR; and
 - (b) grants to the Customer a royalty-free, non-exclusive licence for the Initial Term, and any Further Term, to the extent required for the Customer to use the Deliverables and enjoy the full extent of the Services supplied.
- 9.2 The Contract does not assign, and neither party may assert ownership of all or any part of, any Intellectual Property Rights of any person other than the New IPR.
- 9.3 To the extent that the Deliverables incorporate any of Huon IT's Pre-existing IP, Huon IT grants to the Customer a perpetual, non-exclusive, irrevocable, royalty-free licence to the Pre-existing IP to extent required to use Deliverables for the business purposes of the Customer.

10 Confidential Information

- 10.1 Each party (**Recipient**) agrees to keep confidential, and not to use or disclose, other than as permitted by a Contract, any Confidential Information of the other party (**Disclosing Party**).
- 10.2 The Recipient may disclose Confidential Information of the Disclosing Party to those of its Personnel that need to know for the Recipient to exercise any of its rights or perform any of its obligations under a Contract (and only to the extent that they need to know).
- 10.3 The obligations in clause 10.1 do not apply to Confidential Information that is:
- (a) required to be disclosed by Law;
 - (b) in the public domain otherwise than as a result of a breach of a Contract or another obligation of confidence;
 - (c) created by the Recipient independently of the Disclosing Party's Confidential Information; or
 - (d) already known by the Recipient independently of its involvement in a Contract or its interaction with the

Disclosing Party and free of any obligation of confidence.

- 10.4 Each party acknowledges that:
- (a) an award of damages or an account of profits may not adequately compensate the Disclosing Party if clause 10.1 is breached; and
 - (b) without in any way compromising its right to seek damages or any other form of relief, the Disclosing Party may seek and obtain an ex parte interlocutory or final injunction to prohibit or restrain the Recipient from any breach or threatened breach of clause 10.1.

11 Privacy

Huon IT must:

- 11.1 comply with the Privacy Laws;
- 11.2 not use or disclose personal information (as the term is defined under the Privacy Laws) for any purpose other than:
- (a) to the extent necessary to comply with any obligations of Huon IT under a Contract (which may include disclosure to a subcontractor);
 - (b) with the prior written approval of Customer; or
 - (c) as required by Law;
- 11.3 not access, transfer or make accessible Personal Information to or from a location outside Australia without Customer's prior written consent.

12 Liability

- 12.1 Each party's liability under or in connection with Contract is reduced to the extent the liability was caused by the other party or any of its Personnel.
- 12.2 If a party suffers Losses under or in connection with a Contract for which the other party is liable, the party suffering the Losses must use its best endeavours to mitigate its Loss.
- 12.3 Subject to clause 12.5, each party excludes all liability for any:
- (a) consequential and indirect loss; and
 - (b) loss of profit, revenue, reputation or goodwill, savings, corruption or loss data.
- 12.4 Subject to clause 12.5, each party limits its liability for Losses in connection with a

Contract to 6 months' the Charge previously paid under that Contract.

- 12.5 The exclusions and limitations of liability in clauses 12.3 and 12.4 do not apply to liability:
- (a) arising from death or personal injury caused by a party's negligence'
 - (b) for fraud;

13 Force Majeure Event

- 13.1 Unless otherwise expressly specified in a Service Schedule, a party will not be liable for any delayed or non-performance of any of its obligations under a Contract, to the extent such delay or non-performance was caused by a Force Majeure Event.
- 13.2 A Force Majeure Event for the purpose of clause 13 means fire, flood, earthquake, or act of God, riot, civil disorder, rebellion or revolution, or any cause beyond the reasonable control of the non-performing party.

14 Termination

- 14.1 Where a party commits a material breach of the terms of a Contract and does not remedy the breach within 30 days of receiving a notice to do so, then the other party may terminate that Contract.
- 14.2 A party may terminate a Contract immediately on notice to the other party, if that other party:
- (a) goes into liquidation or receivership;
 - (b) ceases, or threatens to cease to carry on its business; or
 - (c) becomes unable to pay its debts as and when they become due.
- 14.3 Huon IT may terminate, or (at Huon IT's election) suspend to Services, one or more Contracts immediately on notice to the Customer:
- (a) if the Customer has not paid an invoice for amount due and which has not been disputed under clause 15;
 - (b) Huon IT has given the Customer notice specifying the failure to pay and giving the Customer at least 15 Business Days to pay the outstanding invoice; and
 - (c) the Customer fails to pay the outstanding invoice within the period specified Huon IT's notice .
- 14.4 When a Contract terminates or expires:

- (a) subject to (c)14.4(c), each party must return or destroy the copies other party's Confidential information in its possession or control;
 - (b) each party must continue to keep confidential the other party's Confidential Information in accordance with clause 10;
 - (c) Huon IT will be entitled to withhold Customer materials in Huon IT's control, or passwords, or access to any Customer Systems from the Customer, until all sums due and payable to Huon IT have been settled by the Customer; and
 - (d) where requested by the Customer, parties will use their reasonable endeavours to agree a disengagement plan to ensure a smooth and orderly exit. To extent Huon IT agrees to provide any disengagement services, Huon IT will be entitled to charge the Customer for the service provided on a time and material basis, at Huon IT's then standard rates.
- 14.5 The following clauses will survive the termination or expiry of a Contract 5, 9, 10, 11, 12, 14.4 and 14.5.
- 15 Dispute resolution**
-
- 15.1 A party must not start court proceedings (except proceedings seeking interlocutory relief) on any matter relating to a Contract unless it has complied with this clause 15.
 - 15.2 A party claiming that a dispute arising in connection with a Contract has arisen (**Dispute**) must give the other party notice of the details of the Dispute (**Dispute Notice**).
 - 15.3 When a Dispute Notice is given, the parties must first escalate the Dispute, each party's Contract Representatives (or their nominee) must meet and first attempt to resolve the Dispute.
 - 15.4 The parties must continue to perform their respective obligations under a Contract pending the resolution of a Dispute.
- 16 Non-Solicitation**
-
- 16.1 During the Initial Term and any Further Terms, and for 6 months thereafter, the Customer must not employ or solicit for employment any of the Huon IT's personnel involved in supplying the Services.
 - 16.2 If the Customer breaches the provisions of clause 16.1, the Customer must pay the sum of 35% of the annualised rate that Huon IT pays to the relevant personnel as liquidated damages to Huon IT for the loss suffered by Huon IT as a result of the breach, which amount the parties acknowledge to be a genuine pre-estimate of the loss so suffered and not a penalty.
- 16.3 Each party acknowledges that the restriction specified in this clause 16 is in the circumstances reasonable and necessary to protect Huon IT's legitimate interests.
- 17 Miscellaneous**
-
- 17.1 A notice, demand, consent, approval or communication under a Contract (**Notice**) must be signed by a person duly authorised by the sender, and hand delivered, sent by prepaid post, facsimile or email to the recipient's address for Notices specified in the 'Details' section of the Order.
 - 17.2 Any variation to a Contract must be in writing and executed by an authorised party.
 - 17.3 Each Contract constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with their subject matter.
 - 17.4 Neither party may assign its rights under a Contract without the other party's prior written consent.
 - 17.5 Each Contract is governed by the law of New South Wales and each party submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts having appeal from them.

