

Networks Now Pty Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 “Service Provider” shall mean Networks Now Pty Ltd and its successors and assigns.
- 1.2 “Client” shall mean the Client or any person or Service Provider acting on behalf of and with the authority of the Client.
- 1.3 “Guarantor” means that person (or persons), or entity who agrees herein to be liable for the debts of the Client if a Limited Liability Client on a principal debtor basis.
- 1.4 “Services” shall mean all services supplied by the Service Provider to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as hereinafter defined).
- 1.5 “Goods” shall mean Goods supplied by the Service Provider to the Client (and where the context so permits shall include any supply of Goods as defined supra).
- 1.6 “Price” shall mean the cost of the Services as agreed between the Service Provider and the Client subject to clause 4 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Service Provider from the Client for the supply of Services and/or the Client’s acceptance of Services supplied by the Service Provider shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Service Provider.
- 2.3 None of the Service Provider’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Service Provider in writing nor is the Service Provider bound by any such unauthorised statements.
- 2.4 These terms and conditions are to be read in conjunction with any service contract/agreement between the Service Provider and the Client. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.

3. Services & Term

- 3.1 The Services shall be as described on the invoices, quotation, work authorisation, sales order or any other work commencement forms as provided by the Service Provider to the Client.
- 3.2 Renewal Term(s). Each Service will continue automatically for additional terms equal to the Initial Term (“Renewal Term”) unless Customer notifies ENET21 in writing at least thirty (30) days prior to the end of the Initial Term or a Renewal Term, as applicable, that it has elected to terminate such Service, in which case such Service shall terminate at the end of such term.

4. Price And Payment

- 4.1 At the Service Providers sole discretion;
 - (a) The Price shall be as indicated on invoices provided by the Service Provider to the Client in respect of Services supplied; or
 - (b) The Price of the Services shall be the Service Provider’s quoted Price, which shall be binding upon the Service Provider provided that the Client shall accept in writing the Service Provider’s quotation within thirty (30) days; or
 - (c) The Price shall be the Service Provider’s current price at the date of delivery of the Services according to the Service Providers current Price list.
- 4.2 At the Service Providers sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Services and shall become immediately due and payable.
- 4.3 The Service Provider may by giving notice to the Client at any time up to seven (7) days before delivery increase the Price of the Services to reflect any increase in the cost to the Service Provider beyond the reasonable control of the Service Provider.
- 4.4 Time for payment for the Services shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Services.
- 4.5 At the Service Provider’s sole discretion, payment for approved Clients shall be made by instalments in accordance with the Service Providers delivery/payment schedule. Such instalments will not necessarily be invoiced monthly by the Service Provider.
- 4.6 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by Bpay, or by credit card (Visa, MasterCard, or Bankcard only), or by EFT, or by any other method as agreed to between the Client and the Service Provider. At the Service Providers sole discretion credit card transactions may attract a service charge.
- 4.7 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Service Provider.

Networks Now Pty Ltd – Terms & Conditions of Trade

5. Delivery Of Goods

5.1 Delivery of the Goods shall be made to the Client's site address. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Client at the Service Providers address.

5.2 Where there is no agreement that the Service Provider shall send the Goods to the Client, delivery to a carrier at limited carrier's risk at the expense of the Client is deemed to be delivery to the Client.

5.3 The costs of carriage and any insurance which the Client reasonably directs the Service Provider to incur shall be reimbursed by the Client (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Client's agent.

5.4 The Service Provider may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.

5.5 The failure of the Service Provider to deliver shall not entitle either party to treat this contract as repudiated.

5.6 The Service Provider shall not be liable for any loss or damage whatever due to failure by the Service Provider to deliver the Goods (or any of them) promptly or at all.

6. Defective Goods

6.1. The Client shall inspect the Goods on delivery or installation and shall within seven (7) days of delivery or installation notify the Service Provider of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Service Provider an opportunity to inspect the Goods and installation within a reasonable time following delivery. If the Client shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

7. Return Of Goods

7.1 For defective Goods which the Service Provider has agreed in writing that the Client is entitled to reject, the Service Provider's liability is limited to either (at the Service Provider's discretion) replacing the Goods or repairing the Goods provided that:

- (a) the Client has complied with the provisions of clause 6.1;
- (b) the Service Provider will not be liable for Goods which have not been stored or used in a proper manner.
- (c) the Client returns the Goods to the Service Provider within seven (7) days of delivery.

7.2 Goods must be returned in as new condition as is reasonable possible in the circumstances.

7.3 The Seller may (in its discretion) accept the Goods for credit but this may incur a handling fee of 20% of the value of the returned Goods plus any freight.

8. Warranty as to Goods

8.1 The warranty shall cease and the Service Provider shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Service Provider's consent.

8.2 The Warranty shall be the current warranty provided by the manufacturer of the Goods. The Service Provider shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturers warranty.

8.3 The Service Provider does not undertake that repair facilities and parts will be available for the Goods and will not be liable to repair any defective Goods and at its own discretion may:

- (a) notify the manufacturers of the Goods of any defect notified by the Client; and
- (b) request the manufacturers to repair or replace any defective Goods

8.3 In respect of all claims the Service Provider shall not be liable to compensate the Client for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Clients claim.

9. Risk

9.1 If the Service Provider retains property in the Services nonetheless all risk for the Services passes to the Client on delivery.

9.2 If any of the Services are damaged or destroyed prior to property in them passing to the Client, the Service Provider is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Services), to receive all insurance proceeds payable in respect of the Services. This applies whether or not the Price has become payable under these terms and conditions. The production of these terms and conditions by the Service Provider is sufficient evidence of the Service Provider's rights to receive the insurance proceeds without the need for any person dealing with the Service Provider to make further enquiries. The Service Provider will apply the insurance proceeds as follows:

- (i) first, in payment of the Price of the Services that are damaged or destroyed, if unpaid;
- (ii) second, in payment of the outstanding Price of any other Services supplied to the Client by the Service Provider whether under the terms and conditions or otherwise;
- (iii) third, in payment of any other sums payable to the Service Provider by the Client on any account;
- (iv) fourth, any balance is to be paid to the Client.

10. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

10.1 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

Networks Now Pty Ltd – Terms & Conditions of Trade

11. Clients Disclaimer

11.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Service Provider and the Client acknowledges that he buys the Services relying solely upon his own skill and judgement.

12. Default & Consequences Of Default

12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.

12.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Service Provider from and against all the Service Provider's costs and disbursements including on a solicitor and own client basis, all Bank dishonour fees and in addition all of EC Credit Control Pty Ltd's costs of collection.

12.3 Without prejudice to any other remedies the Service Provider may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Service Provider may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. The Service Provider will not be liable to the Client for any loss or damage the Client suffers because the Service Provider exercised its rights under this clause.

12.4 If any account remains unpaid at the end of the second month after supply of the Services or services the following shall apply: An immediate amount of fifty dollars (\$50.00) shall be levied for administration fees which sum shall become immediately due and payable.

12.5 In the event that:

- (a) any money payable to the Service Provider becomes overdue, or in the Service Provider's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client; then
- (i) the Service Provider shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies; and
 - (ii) all amounts owing to the Service Provider shall, whether or not due for payment, immediately become payable.

13. Title

13.1 It is the intention of the Service Provider and agreed by the Client that property in the Services shall not pass until:

- (a) The Client has paid all amounts owing for the particular Services; and
- (b) The Client has met all other obligations due by the Client to the Service Provider in respect of all contracts between the Service Provider and the Client, and that the Services, or proceeds of the sale of the Services, shall be kept separate until the Service Provider shall have received payment and all other obligations of the Client are met.

13.2 It is further agreed that:

- (a) The Client shall not deal with the money of the Service Provider in any way which may be adverse to the Service Provider.
- (b) Until such time as ownership of the Services shall pass from the Service Provider to the Client the Service Provider may give notice in writing to the Client to return the Services or any of them to the Service Provider. Upon such notice the rights of the Client to obtain ownership or any other interest in the Services shall cease.
- (c) If the Client fails to return the Services to the Service Provider then the Service Provider or the Service Provider's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Services are situated and take possession of the Services, without being responsible for any damage thereby caused.
- (d) The Client shall not charge the Services in any way nor grant nor otherwise give any interest in the Services while they remain the property of the Service Provider.
- (e) The Service Provider may require payment of the Price or the balance of the Price due together with any other amounts due from the Client to the Service Provider arising out of these terms and conditions, and the Service Provider may take any lawful steps to require payment of the amounts due and the Price.
- (f) The Service Provider can issue proceedings to recover the Price of the Services sold notwithstanding that ownership of the Services may not have passed to the Client.

Networks Now Pty Ltd – Terms & Conditions of Trade

14. Security And Charge

14.1 Notwithstanding anything to the contrary contained herein or any other rights which the Service Provider may have howsoever:

(a) Where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Service Provider or the Service Provider's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Service Provider (or the Service Provider's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

(b) Should the Service Provider elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Service Provider from and against all the Service Provider's costs and disbursements including legal costs on a solicitor and own client basis.

(c) To give effect to the provisions of clause [14.1 (a) and (b)] inclusive hereof the Client and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Service Provider or the Service Provider's nominee, namely EC Credit Control Pty Limited as the Client's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as the Service Provider and/or EC Credit Control Pty Limited shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Client and/or the Guarantor in any land, realty or asset in favour of the Service Provider and in the Client's and/or Guarantor's name as may be necessary to secure the said Client's and/or Guarantor's obligations and indebtedness to the Service Provider and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Service Provider's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

15. Privacy Act 1988

15.1 The Client and/or the Guarantor/s agree for the Service Provider to obtain from a credit-reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Service Provider.

15.2 The Client and/or the Guarantor/s agree that the Service Provider may exchange information about Client and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:

(a) To assess an application by Client;

(b) To notify other credit providers of a default by the Client;

(c) To exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and

(d) To assess the credit worthiness of Client and/or Guarantor/s.

15.3 The Client consents to the Service Provider being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

15.4 The Client agrees that Personal Data provided may be used and retained by the Service Provider for the following purposes and for other purposes as shall be agreed between the Client and Service Provider or required by law from time to time:

(a) provision of Services & Services;

(b) marketing of Services and or Services by the Service Provider, its agents or distributors in relation to the Services and Services;

(c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services/Services;

(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and

(e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the

Services and Services.

15.5 The Service Provider may give, information about the Client to a credit reporting agency for the following purposes:

(a) to obtain a consumer credit report about the Client; and or

(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

16. Lien & Stoppage in Transit

16.1 Where the Service Provider has not received or been tendered the whole of the price, or the payment has been dishonoured, the Service Provider shall have:

(a) a lien on the Services;

(b) the right to retain them for the price while the Service Provider is in possession of them;

(c) a right of stopping the Services in transit whether or not delivery has been made or ownership has passed; and

(d) a right of resale,

(e) the foregoing right of disposal,

provided that the lien of the Service Provider shall continue despite the commencement of proceedings or judgement for the price having been obtained.

Networks Now Pty Ltd – Terms & Conditions of Trade

17. Unpaid Service Providers rights to dispose of Goods

17.1 In the event that:

- (a) the Service Provider retains possession or control of the Goods; and
- (b) payment of the Price is due to the Service Provider; and
- (c) the Service Provider has made demand in writing of the Client for payment of the Price in terms of this agreement; and

(d) the Service Provider has not received the Price of the Goods, then,

whether the property in the Goods has passed to the Client or has remained with the Service Provider, the Service Provider may dispose of the Goods and may claim from the Client the loss to the Service Provider on such disposal.

18. Intellectual Property

18.1 Where the Service Provider has designed or drawn Services for the Client, then the copyright in those designs and drawings shall remain vested in the Service Provider, and shall only be used by the Client at the Service Provider's discretion.

18.2 Conversely, in such a situation, where the Client has supplied drawings, the Service Provider in its sale conditions may look for an indemnity (the specifications and design of the Services (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Service Provider). Where any designs or specifications have been supplied by the Client for manufacture by or to the order of the Service Provider then the Client warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Services shall not infringe the rights of any third party.

18.3 The Client warrants that all designs or instructions to the Service Provider will not cause the Service Provider to infringe any patent, registered design or trademark in the execution of the Clients order.

18.4 Where the Service Provider has provided computer software and documentation, the Service Provider retains ownership of the computer software and documentation, but grants a licence to the Client for use of the computer software and documentation. The Client will use any third-party software supplied by the Service Provider, and identified as such, strictly in terms of the licence under which it is supplied.

19. Cancellation

19.1 In accordance with their service order and contracted period of service, the Client may cancel their service contract/agreement by giving one months written notice. At the time of cancellation any monies owed by the Client under the contract term shall become immediately due and payable.

19.2 In the event that the Client wishes to reactivate their service contract/agreement following cancellation a further set up fee will apply.

19.3 The Service Provider reserves the right to terminate the service contract/agreement without notice in the event of;

- (a) The Client being found to be 'Spamming' (the practice of sending unsolicited, unwelcome mass mailings to people);
- (b) The Client using Goods/Services outside the bounds of Internet Etiquette (as defined by the Service Provider from time to time).

19.4 In the event that the Service Provider terminates the service contract/agreement under clause 19.3, the Client remains liable for any monies owed to the Service Provider as well as for any damages that may occur as a result of the actions which lead to the termination of the service contract/agreement.

20. General

20.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

20.2 All Services/Services supplied by the Service Provider are subject to the laws of New South Wales and the Service Provider takes no responsibility for changes in the law which affect the Services supplied.

20.3 The Service Provider shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Service Provider of these terms and conditions.

20.4 The Client shall not set off against the Price amounts due from the Service Provider.

20.5 The Service Provider may license or sub-contract all or any part of its rights and obligations without the Client's consent.

20.6 In the event of any breach of this contract by the Service Provider the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Service Provider exceed the Price of the Services.

20.7 Neither party shall be liable for any default due to any act of god, war, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

20.8 The Service Provider reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Service Provider notifies the Client of such change.