



General Terms and Conditions

For Elliotts Tech



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GENERAL

1. APPLICATIONS OF THESE CONDITIONS

Unless otherwise agreed by Us in writing, these Conditions are deemed incorporated in and are applicable to (and to the extent of any inconsistency will prevail over) the terms of every Order, Plan, contract, or other arrangement in connection with the supply of Goods and/or Services by Us to You, unless you have signed a Managed Services Agreement, in which case any inconsistent terms in such an Agreement will prevail over any inconsistent terms in these Conditions.

The invalidity or enforceability of any one or more of the provisions of these Conditions will not invalidate, or render unenforceable, the remaining provisions of these Conditions.

2. REPRESENTATIONS

You acknowledge that no employee or agent of Ours has any right to make any representation, warranty or promise in relation to the supply of Goods or Services other than subject to and as may be contained in the Conditions.

3. NOTICES

Any notices given under the Conditions shall be in writing and sent by e-mail to Your last notified e-mail address .

4. GOVERNING LAW

The Conditions shall be governed by and construed in accordance with the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the Courts of Western Australia.

5. ASSIGNMENT

You may not assign Your rights and obligations under these Conditions without Our prior written consent.

6. VARIATION OF THESE TERMS AND CONDITIONS

We may at any time vary these Conditions by publishing the varied terms and conditions on Our website. You accept that by doing this, We have provided You with sufficient notice of the variation. We are under no other obligation to notify You of any variation to these Conditions, but We may ask You to accept any variation to these Conditions, formally, using any manner we choose – which may include having You sign an electronic or physical document.

GOODS AND SERVICES

7. ORDERS

7.1 **Order forms:** You may place an Order for Goods and/or Services with Us.

Normally, but not always, We will require that You provide us with a written request or that You approve a quote or estimate we send you electronically.

Normally, but not always, we will ask you to include **Your full legal name or description and any applicable ABN or ACN number** (including **the full name or description of any person on whose behalf the order is placed**), along with **Your address**.

- 7.2 **Reliance on appearance of validity:** Absent actual knowledge to the contrary, We may rely upon the apparent validity of an Order. If any Order is signed or sent by email or approved through the web based ordering system by a named person, that person warrants that the Order is, and it is acknowledged the Order is deemed in favour of Us to be:
- 7.2.1 signed by, and duly authorised by, both the person who signed the Order and the person who sent the email; and
 - 7.2.2 duly authorised by the person on whose behalf the Order is placed or apparently placed.
- 7.3 **No obligation to deliver:** We are not obliged to deliver any Order until we have received payment in full for the Order, including any related freight, delivery and (where applicable) in-transit insurance costs. There may be times where We are unwilling or unable to complete an Order and we are not obliged to complete an Order even if payment has been received. We will use our best endeavours to inform You as soon as We are aware we do not wish to complete an Order.
- 7.4 **Cancellation of Orders:** You will not cancel an Order unless We agree to allow you to do so in writing and in Our absolute discretion. You acknowledge that, amongst other things, We cannot cancel an Order once the manufacturer or supplier has dispatched any Goods and that such dispatch often occurs the same day as the Order is placed by Us.
- 7.5 **Processes and Procedures:** We have processes and procedures that We follow in the course of the provision of Our Services and the supply of Goods. You agree to co-operate with Us and to comply with such processes and procedures as advised to You from time to time.

8. PRICING AND RATES

- 8.1 **Rates exclude GST:** All rates and amounts charged or quoted for Goods and/or Services by Us are exclusive of GST and any other applicable taxes or government charges (unless otherwise stated in writing by Us).
- 8.2 **Rates Schedule:** You must pay for Goods and Services at the Rates set out in any applicable Plan and the Rate Schedule as applicable from time to time.
- 8.3 **Vary Rates:** We reserve the right to vary any Plan and/or the Rate Schedule from time to time (subject to any fixed pricing we clearly offer you in writing), in Our absolute discretion and without notice to You.
- 8.4 **Call-out fees:** You acknowledge that call-out fees may be charged in addition to the Rates at Our absolute discretion and that the amount of the call-out fee will depend upon where and when Services are provided.

- 8.5 **Return/Cancellation Fee:** Where We arrange a return or refund to a manufacturer or supplier that is not Us on Your behalf, or where an Order is cancelled by You after acceptance by Us, We may charge You a Return/Cancellation fee to cover the administration costs to Us in processing the return or refund, or in processing the Order, the cancellation and any refund. We may deduct the Return/Cancellation fee from out of any moneys otherwise due to be refunded to You by Us.
- 8.6 **Expenses:** You must pay any out of pocket expenses incurred by Us in providing the Services to You in addition to the Rates, charges and call-out fees, upon written demand. Such expenses may include travel costs, flights, car hire, petrol, insurance, taxi fares, accommodation and related meal allowance, tolls and car parking expenses. Where reasonable, We will endeavour to obtain prior written authorisation from You before such expenses are incurred.
- 8.7 **Separate charges for Goods and Services:** We may in Our absolute discretion charge for Goods separately from Services or may charge for Goods and Services together.
- 8.8 **Calculation of increments:** Where a Rate is calculated based on increments of time, e.g. 1 hour or 15 minutes, We will charge the applicable rate for the whole increment of time even if Work is done during part of, but not for the whole of, that increment of time (including where you by Pre-Paid Blocks of Service). For example, if We charge \$120 for 1 hour of a technician's time and a task takes one of Our technician's 50 minutes to complete, you will still pay Us for the whole hour.
- 8.9 **Change in underlying costs:** Without prejudice to any other rights of Ours under these Conditions, where there is any increase in the underlying costs incurred by Us in connection with the supply of Goods or Services to You, We may, in our absolute discretion, vary any of Our Rates.
- 8.10 **Pre-Paid Blocks of Service:** Where You agree to buy Pre Paid Blocks of Service during a Period, payment **must be made in advance** for the Pre-Paid Blocks of Service.

9. SERVICES AND PLANS

- 9.1 **Service and Plan Variations:** Currently, We offer the Services referred to in the Rates Schedule. For some Clients, we agree a Plan. We may withdraw the provision of, or vary the scope or terms of, or add to or change, the Services offered in the Rates Schedule or in the Plan without notice to You, from time to time in Our absolute discretion.
- 9.2 **Copies on Request:** We will provide You with a copy of the current Rates Schedule upon request. Plans are tailored for particular Clients. If We have a Plan with You, You can request a copy of the Plan.

10. CONTRACTING

- 10.1 We may subcontract any or all the Services to be performed but shall retain prime responsibility for the Services under these terms.

11. DELIVERY, TITLE AND RISK

- 11.1 **Delivery liability:** We will use all reasonable endeavours to dispatch Goods by the due date, but do not accept any liability for non-delivery or failure to deliver on time where this is caused by circumstances beyond Our reasonable control, including, for example, due to failures in supply to Us or delays caused by third parties, such as delivery companies or manufacturers.
- 11.2 **Availability to accept delivery:** You must be available to accept the Goods at Your nominated delivery address during Business Hours unless otherwise arranged.
- 11.3 **Passing of Risk:** Delivery is deemed to take place when the Goods are delivered to Your nominated address, whereupon risks of loss, breakage and all damage and all other risks pass to You. Nothing in this clause will affect title to the Goods.
- 11.4 **Obligation to insure:** You will ensure that Goods are adequately insured from the time of delivery.
- 11.5 **Retention of Title:** Until We receive full payment in cleared funds for any moneys due to Us by You on any account or for any reason:
- 11.5.1 title to, and property in, Goods supplied to You remain vested in Us and does not pass to You;
 - 11.5.2 You must hold those Goods as agent for Us and must not sell them;
 - 11.5.3 You must keep those Goods separate from other goods and maintain the Goods and their labelling and packaging intact;
 - 11.5.4 Where You sell the Goods in breach of these Conditions, You are required to hold the proceeds of any sale of those Goods on trust for Us in a separate account (however any failure to do so will not affect Your obligation to deal with the proceeds as trustee and remit them to Us);
 - 11.5.5 We may, without prior notice, enter into any premises where We suspect those Goods may be, take possession of those Goods and sever and remove those Goods (notwithstanding that they may have been attached to other goods not the property of Ours) and for this purpose, You hereby irrevocably authorise and direct Us (and Our employees and agents) to enter into such premises as Your duly authorised agent and You hereby indemnify and hold harmless Us from and against any costs, claims, allegations, demands, damages or expenses or any other acts or omissions arising from or in connection with, such entry, repossession or removal; and
 - 11.5.6 You irrevocably appoint Us as Your attorney to do anything We consider necessary in order to enter such premises and repossess the Goods as contemplated by this clause.

12. RETURNS AND CLAIMS FOR GOODS AND SERVICES

- 12.1 **General Returns Policy:** notwithstanding anything in these Conditions, You acknowledge that We supply Goods of several manufacturers and suppliers. When we

do so, both You and We are bound by any returns and claims policies of those manufacturers or suppliers. You accept those Goods subject to those conditions and indemnify and hold us harmless in regard to any further or other obligation or any failure or default on the part of the manufacturer or supplier.

- 12.2 **Customised Goods not returnable:** Where Goods have some element of customisation for You, are supplied pursuant to an Order for Goods that is in the opinion of Ours special or unusual, the Goods are obtained from overseas, the Goods are obtained from a supplier who is no longer trading, or the Goods are otherwise not readily returnable by Us to the manufacturer or supplier or any related services may not be cancelled, You may not return the Goods to Us or cancel any related Services.
- 12.3 **Duty to inspect:** You will inspect all Goods immediately upon their delivery. Within 7 days of such delivery You may give written notice to Us of any matter or thing, by reason of which You might wish to return the Goods, ask for a refund, or make a claim. If no such notice is given in this timeframe, You will accept the Goods without any such return, refund or claim.
- 12.4 **Return Condition:** Where You are entitled to return Goods under these Conditions, You must return the Goods in their original condition and unopened, provided always that where, upon opening the packaging it becomes apparent that the Goods are different to what is described on the packaging or that the Goods are faulty, the Goods may be returned.
- 12.5 **Return costs:** You will pay all costs and expenses incurred by Us in arranging the return of the Goods to a manufacturer or supplier and/or the cancellation of any related Services unless that manufacturer or supplier pays such costs.
- 12.6 **Consequences of use, installation, customisation or sale:** You will indemnify and hold Us harmless in respect of all allegations and claims in respect of Goods once such Goods have been used, installed, customised or re-sold by You (without prejudice to the recourse of such a customer to the manufacturer of the Goods).

13. COMPUTER UTILITY, FUNCTIONALITY AND FITNESS FOR PURPOSE

- 13.1 **Service limitations given the science of computing:** You acknowledge that a reasonable incident of the Services may involve trial and error and that it is a science applied often in novel or unknown circumstances and involving experiment. In particular, You acknowledge that the Services may involve tests, troubleshooting, advice and recommendations that may prove incorrect or inappropriate, particularly in an attempt to cure a problem You are having. While We will make what We consider (in Our absolute discretion) to be all reasonable endeavours to provide appropriate tests, troubleshooting, sound advice and good recommendations in order to assist You, You will always indemnify and hold Us harmless in the provision of our Services to You, including because We may not, ultimately, be able to solve the problem.
- 13.2 **Reasonable Assistance Limits:** We are only obliged to provide what We consider, in Our absolute discretion, to be reasonable assistance in the circumstances (including with the installation and customisation of new software or hardware for You or any other Work) under any Plan and You will pay for additional Work at the Rates unless

otherwise agreed. Without limiting the Our discretion to determine what reasonable assistance is, normally, reasonable assistance is limited to Work done during Business Hours over a period of time not exceeding any period that We have allowed for the Work or have estimated the Work will take, whether or not notice of the time allowed or estimate is given by Us to You.

13.3 Recommendations, suitability, functionality and fitness for purpose: The parties acknowledge that:

13.3.1 We may recommend that You purchase Goods provided by third parties from time to time;

13.3.2 Recommendations may be made in situations where You have made known to Us the purpose for which the Goods will be used or some function sought to be fulfilled;

13.3.3 You acknowledge that We have no control over many factors involved with the suitability, function or fitness for purpose of Goods in an existing or new computer environment, including:

13.3.3.1 the compatibility or ability of the Goods to fit into or perform to expectations in the receiving computer/internet environment; or

13.3.3.2 the behaviour of third party supplier, e.g. in relation to support;

13.3.4 You acknowledge that for a whole number of reasons outside of Our control, the Goods may fail to meet Your expectations, may not turn out to be fit for all or any of the purposes sought, may not be suitable or may not function properly in all or any respects;

13.3.5 You acknowledge that the Services provided by Us may involve the very task of seeking to customise Goods so they may be fit for particular purposes and that customisation may be a very substantial project in itself;

13.3.6 Accordingly You will accept the sole responsibility for, and indemnify and hold Us harmless in respect of:

13.3.6.1 decisions as to whether or not to follow Our recommendations;

13.3.6.2 decisions as to whether or not to purchase or customise Goods or obtain Services for that or any other purpose; and

13.3.6.3 any failure or defect in suitability, function or fitness for purpose of any Goods and/or Services, including a responsibility to obtain Your own independent advice or second opinion from a suitably qualified person;

13.3.7 Where We provide Services, You must pay for those Services on time without any set-off or counter-claim, whether or not We are able to achieve any or all of your purposes. We will act in good faith and provide what We consider, in Our absolute discretion, to be making all reasonable endeavours to achieve your wished for outcomes.

- 13.4 **Testing Procedures:** You will follow Our instructions with regard to testing or troubleshooting any problems and that if those do not resolve the outstanding problems, We will, subject to these Conditions, allocate such resources as We consider reasonable in the circumstances towards their resolution.

14. FORCE MAJEURE

- 14.1 **Force Majeure:** If We are unable to supply any Goods or Services due to circumstances beyond Our reasonable control, We may cancel the Order (even if we have already accepted your Order) or cease to provide the Services by written notice to You, in which case You will hold Us harmless.
- 14.2 We will not be liable for any breach of contract due to any matter or thing beyond Our control, including failures by third parties to supply goods, services of transport, stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lock-outs, work stoppages, wars, riots or civil commotion, intervention or public authority, explosion or accident.

15. PRODUCT SPECIFICATIONS

- 15.1 **Alterations to Specifications:** We make every effort to supply the Goods in accordance with the Order however We may supply alternate Goods subject to minor variations in actual dimensions and specifications where these are changed by the manufacturer of the Goods after the Order date and before delivery.
- 15.2 **Substitute Goods:** If We cannot supply the Goods ordered by You, We may supply alternate Goods of equal or superior quality and we may, at Our discretion, absorb the increased costs of the Goods.

16. WARRANTIES

- 16.1 **Reliance on Manufacturer's Warranty:** You will rely on the warranties provided by the manufacturer of Goods supplied by Us (where applicable) and will deal direct with such manufacturer rather than Us for all claims covered by such warranties.
- 16.2 **No claim for manufacturer's default:** You indemnify and hold Us harmless in respect of the performance or otherwise, by any manufacturer of Goods supplied to You by Us, of any of the obligations of such manufacturer in respect of such Goods. This includes any damages or moneys due to You arising under, or in connection with, any breach by the manufacturer of any of the manufacturer's warranties in respect of the Goods.

17. LIABILITY

- 17.1 **Exclusion:** Except as specifically set out herein and so far as may be permitted by law, any term, condition or warranty in respect of the quality, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.
- 17.2 **No liability for program or data loss:** You indemnify and hold Us harmless in respect of any allegation, claim, loss or expense of Yours or any third party for any program or data loss or damage suffered by You or that third party arising directly or indirectly from

the supply of the Goods or Services by Us to You. You acknowledge You are solely responsible for backing up Your programs and data in order to mitigate Your own potential loss of programs and data.

- 17.3 **Limit on consequential damage:** You indemnify and hold Us harmless in respect of any allegation or claim as to any indirect or consequential losses or expenses suffered by You or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to You or any third party.
- 17.4 **Limit on damage from a failure in supply:** You indemnify and hold Us harmless for any allegation or claim for loss or damage by You or a third party where We have failed to meet any delivery date or cancel or suspend the supply of Goods or Services.
- 17.5 **General limit on liability:** Except as otherwise expressly stated in these conditions, We are not liable for any loss or damage of any kind however caused (including, but not limited to, by the negligence of Us) which is suffered or incurred by You in connection with:
- 17.5.1 Goods or Services provided to You or any Work;
 - 17.5.2 these Conditions;
 - 17.5.3 Your use of Our website (including the use of a credit card or other debit device) or any linked website;
 - 17.5.4 the non-availability of Goods or Our Services for any reason;
 - 17.5.5 any act or omission of Ours or the provision of inaccurate, incomplete or incorrect information by You, or
 - 17.5.6 for any other reason whatsoever.
- 17.6 **Limitation options:** To the extent that any legislation implies a condition or warranty that cannot be excluded but can be limited, Our liability for any breach of that condition or warranty is limited to Our doing any one or more of the following (at Our election):
- 17.6.1 replacing the Goods or supplying equivalent Goods, Services or Work;
 - 17.6.2 repairing the Goods or the Work;
 - 17.6.3 paying the cost of replacing the Goods or the Work or acquiring equivalent Goods, Services or Work; or
 - 17.6.4 paying the cost of having the Goods or the Work repaired.
- 17.7 **Laws still apply:** Nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the supply of the Goods or Services which cannot be excluded, restricted or modified.
- 17.8 **Severance:** If any provision contained in the Conditions is unlawful, invalid or unenforceable, those provisions may be severed without prejudice to the validity and enforceability of the remaining provisions of the Conditions.

18. ERRORS AND OMISSIONS

- 18.1 We make every effort to ensure that all prices and descriptions provided to You are correct and accurate. In the case of an error or omission, We may rescind the affected document by written notice to You, notwithstanding that We have already communicated the document to you and/or received payment from You. Our liability in that event will be limited to the return of any money You have paid in respect of the Order.

OUR RESPONSIBILITIES

19. PRIVACY STATEMENTS AND YOUR RIGHTS

- 19.1 We are collecting Your personal information for the fulfilment of Orders and the provision of Goods or Services to you and We may retain and use that information for any such purposes (“Authorised Purposes”).
- 19.2 You are required to provide your personal information to Us for Authorised Purposes.
- 19.3 We may disclose Your personal information to other persons for the purposes of the fulfilment of Orders and Work for you or in order to provide Goods or Services to You, to verify the information You provide, for enquiries about Goods or Services that may be suitable for your purposes, or to confirm Your requirements and You agree this may be outside our business where we have no control over its use.
- 19.4 Otherwise We will not disclose Your personal information without Your consent unless authorised by law.
- 19.5 Your personal information will be held by Us and You can contact Us to request to access or correct it.
- 19.6 We rely on You to submit correct information and details where requested. You accept that You may incur additional expenses if you submit incorrect information.

20. OUR WEBSITE

- 20.1 We make no representations or warranties in relation to information available on Our website, including without limitation:
- 20.1.1 that the information on Our website is complete or correct;
 - 20.1.2 that Our website will be continuously available or free from any delay in operation or transmission, virus, communications failure, internet access difficulties or malfunction in hardware or software; and
 - 20.1.3 We do not endorse any internet site linked to Our website or any third party products or services referred to on Our website.

21. INSURANCE COVERAGE

- 21.1 We will maintain at Our own expense, commercial general liability insurance for personal injury and property damage for a general aggregate of \$2,000,000. At Your request We will provide You with certificates, including renewal certificates evidencing

such coverage within thirty (30) days of commencing these Conditions, and at other times as may be reasonably requested by You.

YOUR RESPONSIBILITIES

22. LODGING OF SERVICE REQUESTS

- 22.1 Our obligations to provide Goods and Services to You only arise under these Conditions when you have followed Our process of making a Service request as outlined in Appendix A.

23. ACCESS TO SYSTEMS, SITES AND PEOPLE

- 23.1 In order to provide You with the agreed Service, You agree to give Us access to various items of Yours including but not limited to, Equipment, people and sites as and when required.
- 23.2 You agree to allow Us to install software on Your Equipment that allows Our technicians to access Your Equipment and systems at any time. This software allows Us to view system statuses, send monitoring information, see users' desktops and control Your computers. This may require that devices be left on overnight or weekends.
- 23.3 The software we use is, primarily, Syncro and ConnectWise Control.
- 23.4 Our technicians may, but may not, require Your consent or the consent of your employees (given in the form of a Yes/No prompt) to gain access and control over Your Equipment.
- 23.5 However, consent is not always required by Our technicians. In other words, Our technicians may have access to your Equipment without Your knowledge.

24. THIRD PARTY AUTHORISATIONS

- 24.1 At times We may need to contact Your third party providers on Your behalf, such as Your internet provider. Some of these providers may require Your authorisation for Us to deal on Your behalf. It is Your responsibility to ensure that We are able to deal freely with these providers.

25. PAYMENT, LATE PAYMENT AND DEFAULT

- 25.1 **Payment due date:** All invoices issued to You are due and payable to Us within the terms stated on the invoice (unless otherwise agreed in writing) by cash, credit card or direct deposit in accordance with these Conditions and in the way set out in the Invoice.
- 25.2 **7 days late:** Where You fail to pay an invoice within seven (7) days of the due date, We may, in Our absolute discretion and without prior notice, suspend or discontinue the supply of Goods and/or Services to You.
- 25.3 **Recoveries:** All legal and other costs and expenses on a full indemnity basis incurred in connection with the recovery of late payments will be added to the amount due by You to Us and will be recoverable from You, in addition to the original invoice cost. Collectively, all of these moneys are referred to in these Conditions as a "Sum Due".

- 25.4 **Interest:** If payment of any Sum Due is not made on time, We will charge interest daily on the Sum Due at the rate of 7% per annum, calculated and charged daily on and from the due date until the Sum Due is paid in full.
- 25.5 **Application of funds:** All payments of the Sum Due made by You to Us will be applied as follows:
- 25.5.1 first in or towards payment of any costs (including legal costs), charges, expenses or outgoings paid by Us in relation to any dishonoured cheque fees, collection costs or any other action taken by Us for the recovery of any amounts owing by You to Us on a full indemnity basis;
 - 25.5.2 secondly, in or towards payment of any interest due or payable hereunder, and
 - 25.5.3 thirdly, in or towards payment of Your debts to Us in order from the longest standing due to the most recently incurred.
- 25.6 **Payment arrangements:** In the event that a repayment arrangement is made in relation to any Sum Due and the supply of Goods or Services is resumed, but then a repayment due under that arrangement is not made on time, We may, in Our absolute discretion and without prior notice, again suspend or discontinue the supply of Goods or Services to You.
- 25.7 **Other remedies:** We may exercise any of Our rights and remedies including taking legal action against You for the recovery of any moneys due to Us, notwithstanding We may have exercised other rights under these Conditions.

26. NON SOLICITATION OF CLIENTS AND EMPLOYEES

- 26.1 You agree that employees are one of Our most valuable assets. Policy and professional ethics require that Our employees not seek employment with, or be offered employment by You during the course of Your engagement of Us and for a period of two 6 months thereafter (or the maximum amount permissible by a Court).
- 26.2 You agree that Our damages resulting from breach of this clause would be impracticable and that it would be extremely difficult for Us to ascertain the actual amount of damages. Therefore in the event You violate this provision, You agree to immediately pay Us 50% of the employee's total annual salary (including PAYG income tax amounts, long service leave accruals, superannuation and all other entitlements), as liquidated damages and We shall have the option to terminate provision of Goods and Services to You without further notice or liability to You. The amount of liquidated damages reflected herein is not intended as a penalty and is reasonably calculated based upon the projected costs We would incur to identify, recruit, hire and train suitable replacements for such personnel.

27. SOFTWARE

- 27.1 All Software licences are Your responsibility not Ours. It is Your duty to store all licences for all Software used, so that that they can be reproduced if and when required. This includes all Software installed by Us.

- 27.2 You indemnify and hold Us harmless against any claim, allegation, loss, damage or expense arising directly or indirectly from:
- 27.2.1 any unauthorised Software use by You;
 - 27.2.2 any breach of any Software licence in respect of Software provided to Us by You to be installed on one of Your computers;
 - 27.2.3 otherwise as a result of Us installing Software where You are not authorised to use the Software; and
 - 27.2.4 any problem, defect or malfunction associated with any Software (or related services) supplied by third parties.
- 27.3 All copyright in custom software We develop remains Our sole property unless alternate arrangements are made as part of a separate software agreement. It may not be sold, marketed or otherwise used by You for any purpose without Our permission. Our permission is likely to require the payment of a license fee.

28. COPYRIGHT AND CONFIDENTIALITY

- 28.1 **Warranty and breach:** You warrant that any confidential or copyright information or intellectual property (of any kind and in any form held) provided by You to Us belongs to You. In the event of any breach of this warranty, You will pay all sums due to Us as if such warranty had not been breached (and regardless of any non-performance of any obligation by Us on account of or in connection with the breach of such warranty). You indemnify and hold Us harmless in respect of any allegations, claims, loss, costs or expenses in connection with such breach of warranty by You.
- 28.2 **Retention of title:** All copyright and other intellectual property rights in any work created, commissioned or acquired by Us in the course of the supply of Services by Us to You will be Our exclusive property unless otherwise agreed in writing by Us and You.
- 28.3 **Confidential Information:** We acknowledge that in the course of providing Services to You, We may learn from You certain non-public personal and otherwise confidential information relating to You, including Your customers, consumers or employees. We shall regard any and all information We receive which in any way relates or pertains to You, including Your customers, consumers or employees as confidential.

You also acknowledge that all information and services, consulting techniques, proposals, and documents disclosed by Us or which comes to Our attention during the course of business and provided under this agreement constitute valuable assets of, and confidential and/or proprietary information to Us.

As such, both parties shall take all commercially reasonable steps to not disclose, reveal, copy, sell, transfer, assign, or distribute any part or parts of such information in any form, to any person or entity, or permit any of its employees, agents, or representatives to do so for any purpose except unless permitted in writing by the disclosing party or as required by applicable law.

29. DEFINITIONS

In these Conditions, the Rate Schedule and all other written agreements (or communications) between You and Us, the following words have the following meanings:

"After Hours" means all hours outside Business Hours and includes all day on Saturday, Sunday and on Public Holidays;

"Business Hours" means 09:00 hours to 17:30 hours Monday to Friday, apart from any day which falls on a Public Holiday;

"Client", "You" or "Your" means a person who seeks or obtains a quote for, or who orders, Goods or Services from Us, and includes both a person whose name is on the Order or on an email attached to which is an Order, a person who places an Order, and a person on whose behalf an Order is placed or on whose behalf it appears an Order is placed, and in any case each of their heirs, successors and assigns;

"Conditions" means these terms and conditions (which may also be referred to in Our documentation as General Terms and Conditions or *General Terms and Conditions*);

"Equipment" means all the equipment that makes up your IT system and includes your computers, devices, cables, modems, printers, all other hardware and all your software which makes it possible to have access to your hardware and your software.

"Goods" means anything sourced by Us or provided by Us in connection with any Order including computer hardware and software and any services provided in connection with any of those things;

"GST" has the meaning given to it under *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

"Order" means any email, document, phone call or any other form of request made by You to Us in which you ask us to supply Goods or Services;

"Period" means a particular number of half-days, days, weeks, fortnights, months, or any other period, as may be agreed between Us and the You as the period during which some Services will be provided;

"Plan" means any arrangement (usually in writing) between Us and You (whether alone or in conjunction with any other person) for Services (including unlimited support) and/or the provision of Goods provided by Us under an arrangement in connection with Work agreed to be done or progressed for or on behalf of You or any other person at Your request;

"Public Holidays" means any day which is a public holiday throughout Western Australia;

"Rates" means the hourly rates and other charges for Services (including any call-out fees and any Return/Cancellation Fees) set out in the Rates Schedule, any Plan, contract or arrangement entered into by Us and You or in these Conditions;

"Rate Schedule" means the schedule of rates, charges and conditions charged for Our services, which may be varied by Us from time to time in Our absolute discretion without notice to You;

"Service request" means a request for Services as outlined in Appendix A.

"Services" means the provision of any services by Us for You, and includes the provision of advice and recommendations;

“**Software**” includes software and any installation, update, associated software and any services provided in connection with any of these things;

“**Us**”, “**Our**” or “**We**” means **Elliotts Tech PTY LTD ABN 79 627 270 606** and its heirs, successors, and assigns; and

“**Work**” means anything We may do, provide, customise, produce or acquire, whether or not in connection with, or for the purposes of, You or Your use or benefit, and includes testing, troubleshooting, installation and configuration of new equipment or software, consulting, scoping, planning, documenting, quoting and all other steps taken by Us to help You.

30. INTERPRETATIONS

In these Conditions, the Rate Schedule and every Order, Plan, contract, or other arrangement in connection with the supply of Goods or Services or Work by Us, unless the contrary intention appears:

Words denoting the **singular** number only **shall include the plural** number and vice versa;

Reference to **any gender shall include every other gender**;

Reference to **any Act of Parliament, Statute or Regulation shall include any amendment** currently in force at the relevant time and any Act of Parliament, Statute or Regulation enacted or passed in substitution;

Headings and words put in **bold** are for convenience of reference only and **do not affect the interpretation or construction** of these Conditions;

All references to dollars (\$) are to Australian Dollars.

A reference to time is to West Australian Standard Time (WAST)

A reference to an **individual or person includes a corporation**, partnership, joint venture, association, authority, trust, state or government and vice versa;

A reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to these Conditions;

A recital, schedule, annexure or description of the parties forms part of these Conditions;

A reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions), as amended, novated, supplemented or replaced from time to time;

Where an expression is defined, **another part of speech or grammatical form of that expression has a corresponding meaning**;

A reference to “**includes**” means **includes without limitation**; and

A reference to **bankruptcy or winding up** includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration, being subject to administration and the occurrence of anything analogous or having a substantially similar effect to any of those conditions or matters under the law of any applicable jurisdiction and to the procedures, circumstances and events which constitute any of those conditions or matters.

APPENDIX A

SERVICE REQUEST LODGEMENT PROCESS

When lodging a Service request, you may only use the following methods:

Phone: 08 9756 7273 or 08 9785 7000

Email: help@elliotts.tech

Include a short description of the problem and any screenshots of errors to assist in the resolution of the issue.

If the issue is being lodged by either phone or external email you must include your name, company and return contact details.

Service requests must not be lodged directly with technicians, as this detracts them from resolving the current issue.

SERVICE REQUESTS OUTSIDE OF OUR BUSINESS HOURS

Service Requests that must be addressed outside of business hours must be lodged by phone (charges apply for after hours work). If not, the Service Request will be viewed on Our next Business Day.