

**1. AGREEMENT**

- 1.1 The Agreement, including these General Terms and Conditions, any exhibits and annexure to the Agreement, constitute the entire agreement between you and us in respect of the matters dealt in the Agreement and supersedes all prior communications and representations, inducements, undertakings, agreements or arrangements in respect of the matters dealt with in this Agreement. No Party shall, after the date of execution of this Agreement, be entitled, as against any other Party hereto, or the officers of any such Party, to bring suit on the basis of any verbal or written communications, representations, inducements, undertakings, agreements or arrangements except expressly as provided by this Agreement.
- 1.2 By signing the Agreement, you agree to be bound by these General Terms and Conditions and no such Agreement will be construed as giving effect to a contractual relationship between you and us until we confirm our acceptance of your offer by signing the Agreement.
- 1.3 We may amend these General Terms and Conditions from time to time at our discretion. A new version of General Terms and Conditions will become effective as soon as they are made available on our website.
- 1.4 Any changes to the General Terms and Conditions made in accordance with sub-clause 1.3 will not affect your Order placed before the changes are made.

**2. DELIVERY AND ACCESS TO PREMISES**

- 2.1 You acknowledge that the Goods or Services are delivered directly from the Manufacturers unless otherwise specified in the Agreement.
- 2.2 We will use all reasonable endeavours to arrange for the Goods or Services to be delivered to your Premises on the Delivery Date which date may change without prior notice to you.
- 2.3 We may require you to prepare the Premises prior to delivery of the Goods or Services. You must use all reasonable endeavours to comply with our requirements and do everything that is reasonably necessary to give us full and safe access to your Premises for the purpose of delivering the Goods or Services.
- 2.4 If you fail to accept the delivery or if we are unable to deliver the Goods or Services to your Premises on the Delivery Date due to your failure to comply with your obligations under this clause, we may incur additional costs (including Delivery Fee for re-delivery) for which you will be liable.

**3. PRICES AND PAYMENT**

- 3.1 The Price for the Goods or Services will be specified in the Agreement.
- 3.2 The Price is subject to change by us to take into account any error or omission by us or any GST or government or statutory charges, taxes and duties which may become applicable after the Price is quoted in the Agreement.
- 3.3 If there is any variation of the scope or specification of the Goods or Services in the Agreement, the variations will be shown in the invoice.
- 3.4 You must pay the Price without set-off in accordance with the payment terms in the Agreement and in the absence of such payment terms within 14 days of the date of the invoice.
- 3.5 Save and except for the cash payment, any other form of payment will not be deemed to be payment until it is honoured, cleared or recognised.
- 3.6 If any monies payable under the Agreement remains unpaid by the due date, you may be charged an interest on the outstanding amount at 2% above the rate charged by our principal banker.

**4. GOODS AND SERVICES TAX**

- 4.1 Expressions used in this clause and in the GST Act have the same meaning as when used in the GST Act.
- 4.2 In addition to the payment for the Goods or Services, you must also pay the GST payable in respect of the Goods or Services.
- 4.3 You are not obliged to pay the GST until we give you a valid tax invoice.

**5. RISK AND TITLE**

- 5.1 Risk of loss or damage to the Goods passes to you on delivery.
- 5.2 Upon delivery of the Goods we strongly recommend that you insure the Goods against all risks of loss or damage in the amount equal to the amount payable by you under the Agreement.

- 5.3 The property and title in the Goods do not pass to you until all payments required under the Agreement are paid in full.
- 5.4 If the payment for the Goods is not made in full in accordance with the Agreement, we may enter your premises to take possession of the Goods and you must not make any claim against us for any loss or damage you may suffer as a result of us taking possession of the Goods.

## **6. CANCELLATION AND RETURNS**

- 6.1 If you cancel an Order or wish to return the Goods to us, you must:
- (a) strictly comply with the Manufacturer's Return Policy; and
  - (b) pay for all costs, charges or expense for the cancellation of the Order or for returning the Goods to us and/or to the Manufacturer directly.
- 6.2 If the Manufacturer refuses to accept the return of the Goods for reasons other than due to our fault or negligence, you will still be liable to pay us the Price under the Agreement.

## **7. SUB-CONTRACTING**

- 7.1 We may license or sub-contract a third party for all or any part of our rights or obligations under the Agreement including delivery of the Goods or performance of Services without your consent.
- 7.2 You must not sub-contract a third party for the performance of the Agreement without our prior written consent which may be withheld at our sole discretion.

## **8. LIMITED WARRANTIES**

- 8.1 We do not provide any warranty in relation to the Goods including interoperability or compatibility between hardware and software unless we specify otherwise in the Agreement.
- 8.2 You accept the Manufacturer's warranty details of which are provided on their respective website.
- 8.3 If you wish to make any warranty claim in respect of the Goods, you must follow the warranty claim procedures set out by the Manufacturer.
- 8.4 We warrant that:
- (a) all the Services will be provided to you in accordance with the Agreement and with due care, skills and diligence; and
  - (b) if there is any defect or fault in the Services we provided under sub-clause (a), we will rectify the fault at our expense promptly provided that the defect or the fault is not caused by you.
- 8.5 Save and except for the express terms, conditions and warranties contained in these General Terms and Conditions and to the extent permitted by law, all other terms, conditions and warranties expressed or implied by statute, the common law, equity or otherwise howsoever are expressly excluded.

## **9. OUR LIABILITIES**

- 9.1 Subject to clause 8, we are not liable for any loss or damage suffered by you including any consequential loss, damages or loss of profit as a result of:
- (a) any delay in delivering, or failing to deliver, the Goods or Services on the Delivery Date; and
  - (b) any defect in, or any failure, malfunction, breakdown or deterioration of, the Goods or Services, and
  - (c) this Agreement being terminated in accordance with clause 11, unless the loss or damage is caused by our negligence.
- 9.2 In any event, our liability will be limited to 50% of the amount invoiced.

## **10. YOUR LIABILITIES**

- 10.1 You must indemnify us and keep us indemnified against all costs, liability, losses and claims incurred by us as a result of your breach of any of your obligations under the Agreement.

## **11. TERMINATION OF AGREEMENT**

- 11.1 If you are in breach of the Agreement, we will give you a Notice of Default setting out the nature of the breach and requiring you to rectify the breach within 14 days. If you fail to remedy the breach within that period, we will give you another notice in writing terminating the Agreement effective immediately.
- 11.2 We may terminate the Agreement by a written notice immediately if:

- (a) you (being a corporation or a partnership) goes into liquidation, becomes or threatens to become or subject to any form of dissolutions, insolvency, receivership, administration or winding up;
  - (b) you (being a natural person, a partnership, or one of the persons who is a member of the partnership) commit any act of bankruptcy, are convicted of a serious offence, die or become unsound mind or infirm.
- 11.3 If we terminate the Agreement in accordance with this clause 11, then we may (without prejudice to any other legal remedies we may have):
- (a) Retain any moneys paid by you;
  - (b) charge a reasonable sum for any Goods or Services provided to you for which we have not invoiced; and
  - (c) seek additional legal remedies.

## **12. DISPUTE RESOLUTION**

- 12.1 If a dispute arises out of or in relation to the Agreement (including any dispute as to breach or termination of the Agreement), the Party may not commence any Court proceedings relating to the dispute (except for urgent interlocutory relief) unless it has complied with the following:
- (a) Either Party may serve the other Party a dispute notice specifying the nature of the dispute.
  - (b) The Parties must endeavour in good faith to resolve the dispute expeditiously.
  - (c) If the dispute is not resolved within 10 days of the dispute notice then the Parties may refer the matter to the President of the Law Institute of Victoria to appoint a Mediator.
  - (d) The Parties must pay an equal share of the costs of the mediation to the Mediator and each Party agrees to indemnify the Mediator against liability in respect of the mediation of the dispute.

## **13. INTELLECTUAL PROPERTY**

- 13.1 Unless otherwise specified in the Agreement:
- (a) the title to all Intellectual Property Rights in all documents, materials and information provided by you to us for the purpose and in the performance of the Services will remain with you at all time; and
  - (b) the title to all Intellectual Property Rights in all documents, materials and information provided by us to you for the purpose and in the performance of the Services will remain with us at all time.
- 13.2 Any rights or licence to use the Intellectual Property Rights granted by a Party to another Party will be non-exclusive, revocable and free of royalty or other payment.

## **14. CONFIDENTIALITY**

- 14.1 Each Party undertakes and agrees that:
- (a) any Confidential Information of the other Party will be treated, preserved and maintained in strict confidence unless the disclosure is agreed to in writing or required by law;
  - (b) it will not use any part of the Confidential Information for any purposes other than to comply with its obligations under the Agreement; and
  - (c) it will ensure that its employees, agents and any sub-contractors comply with the sub-clause 14.1.
- 14.2 Upon termination of the Agreement:
- (a) each Party must deliver to the other Party, or destroy at the request of the other Party, all copies of or documents or computer files containing the other Party's Confidential Information and all materials related to it immediately and confirm in writing that it has done so.
  - (b) the obligations under this clause will not merge and will continue in force.

## **15. PRIVACY**

All information about you obtained by us will be maintained in accordance with Privacy Act. Please refer to our website [www.crystalclear.net.au](http://www.crystalclear.net.au) for further details.

## **16. GENERAL**

- 16.1 Neither Party is liable for breach of any of its obligations under the Agreement as a result of any act of God, war, terrorism, strike, lockout, industrial action, fire, flood drought, storm or other event beyond the reasonable control of either Party.

- 16.2 The Agreement is to be governed by the laws of the State of Victoria. Any proceeding under or in connection with it must be taken in the appropriate Court in the State.
- 16.3 A provision of or a right created under the Agreement may not be waived or varied except in writing signed by the Parties.
- 16.4 Notwithstanding that the Agreement is intended to be fully binding and effective according to its terms each of the Parties hereto shall procure each of their servants, agents or sub-contractors to, sign, execute and deliver all such assurances, deeds, documents, instruments and writings and shall do and shall procure to be done all such other acts and things as may be necessary or desirable to give full and better effect to the Agreement.
- 16.5 If any clause, sub-clause, paragraph, sub-paragraph or part thereof of this Agreement is held or found to be void, invalid or otherwise unenforceable, it shall be deemed to be severed to the extent that it is void or to the extent of violability, invalidity or unenforceability, but the remainder of the Agreement will remain in full force and effect.
- 16.6 Any notice given pursuant to the Agreement must be given in writing and it will be deemed served or given:
- (a) if personally served by being left at the address of the Party to whom the Notice is given between the hours of 9:00 am and 5:00 pm on any business day, then in such case at the time the Notice is so delivered;
  - (b) if sent by fax, then in such case when successfully transmitted provided that if the fax is transmitted outside business hours, then when business hours next commence.

## 17. DEFINITIONS

In our general terms and conditions:

<b>Agreement</b>	means the agreement, quotation, a purchase order form containing details of the Goods and Services to be supplied including but not limited to the price and description of the Goods, scope of the Services, payment terms, return policy, warranties and confidentiality provision.
<b>Confidential Information</b>	<p>means all information passing in between you and us relating to the performance of our respective obligations under the Agreement including but not limited to trade secrets, trademark and patent applications, drawings, know-how, techniques, source and object code, licences, arrangements and contracts with third parties, customer information, formulae, customer lists, concepts not produced in material form, designs, plans and models and without limitation includes:</p> <ol style="list-style-type: none"> <li>(i) information designated as confidential by a Party;</li> <li>(ii) information imparted in confidence to a Party by the other Party;</li> <li>(iii) any evaluation made by or on behalf of a Party, including all minutes, notes, papers, communications and other records capable of being reproduced;</li> <li>(iv) any other information capable of being classified by equity as Confidential Information,</li> </ol> <p>but does not include information:</p> <ol style="list-style-type: none"> <li>(v) disclosed by a Party to its professional advisers, but only to the extent that it is necessary for the Party to disclose Confidential Information in order that it may fulfill its obligations under the Agreement; or</li> <li>(vi) disclosed under a Court order or Legislation; or</li> <li>(vii) which a Party has agreed in writing is not Confidential Information; or</li> <li>(viii) which comes into the public domain other than by a breach of the Agreement by a Party or its agents; or</li> <li>(ix) independently known or developed by a Party.</li> </ol>
<b>Delivery Date</b>	means the estimated date of delivery as specified in the Agreement.
<b>Delivery Fee</b>	means the fee to deliver the Goods to your Premises in accordance with clause 2.
<b>Goods</b>	means hardware, equipment and software or combination of 2 or more goods in a package.
<b>GST</b>	means GST within the meaning of the GST Act.
<b>GST Act</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).

<b>Manufacturer</b>	means a manufacturer of the Goods.
<b>Mediator</b>	means an impartial third party who is engaged or appointed to assist the Parties in exploring options for resolution of conflicts
<b>Notice of Default</b>	means a written notice given by us to you in accordance with clause 11.1.
<b>Order</b>	means an order for the supply of the Goods or Services.
<b>Party</b>	means we or you.
<b>Premises</b>	means the premises or address nominated by you for the delivery of the Goods or Services.
<b>Price</b>	means the price for the Goods or Services and if applicable includes the Delivery Fee.
<b>Privacy Act</b>	means <i>Privacy Act</i> 1988 (Cth)
<b>Return Policy</b>	means the manufacturer's return policy specified in the Agreement.
<b>Services</b>	means the installation services, maintenance services, consultation services , labour or any combination of these services as specified in the Agreement
<b>we</b>	means Crystal Clear Business Services Pty Ltd (ACN 100 544 545) trading as "Crystal Clear", and its employees, agents and sub-contractors.
<b>you</b>	means the customer or client to whom we enter into an agreement for the supply the Goods or Services.