

Accord Technologies (WA) PTY. LTD. (Accord™)
STANDARD TERMS AND CONDITIONS

1 Definitions, Interpretation and Priority

Definitions

Company means Accord Technologies (WA) Pty. Ltd (Accord).

Confidential Information means all information of a confidential nature that a party first becomes aware of as a result of its involvement with the other party for the purposes of this Agreement but excluding information that:

- (a) the party creates independently;
- (b) is public knowledge (other than as a result of a breach of confidentiality by that party); or
- (c) is obtained without restriction from a third party through no breach of confidentiality by that third party.

Consequential Loss means loss of revenue, loss of profits, loss of anticipated savings, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair or replacement) loss of opportunity or expectation loss and any other form of consequential, special, indirect, punitive or exemplary loss or damages.

Customer means the recipient of the Quotation.

Customer Data means data relating solely to the Customer provided by the Customer to the Company.

Intellectual Property Rights means any intellectual or industrial property rights (including any registered or unregistered trademarks, patents, designs or copyright).

Loss means any loss, cost, liability or damage, including reasonable legal costs on a solicitor/client basis and includes Consequential Loss, unless otherwise stated.

Price means the charge(s) for the Products and Services.

Products means any goods provided by the Company to the Customer under this Agreement.

Quotation means the attached quotation, proposal or other similar document.

Related Body Corporate has the meaning given in the *Corporations Act 2001 (Cth)*.

Services means any services provided by the Company to the Customer under this Agreement.

Interpretation

- (a) The expressions 'Company' and 'Customer' will include respective successors and permitted assigns and novatees.
- (b) A reference to a person includes a reference to a person, firm, corporation or other legal entity.
- (c) A term which is defined in any part of the Agreement has the same meaning in every other part of the Agreement.

(d) The singular includes the plural and vice versa.

(e) Different grammatical forms of the same word have the corresponding meaning.

(f) A reference to a clause is to a clause in this Agreement, unless otherwise stated.

(g) Examples or words of inclusion are illustrative only and do not limit the generality of the relevant subject.

2 Provision

2.1 The Company will provide and the Customer will acquire the Products and Services set out in the Quotation.

2.2 The Customer must provide the Company with all reasonable information, access, storage, facilities and assistance that the Company requires in order to provide the Products and Services.

2.3 The Company may use any of its Related Bodies Corporate to assist it with the provision of the Products and Services under this Agreement.

2.4 Unless specified otherwise in the Quotation, all Services and Products are supplied on the basis that the Customer will be responsible for:

- (a) overall operational, design, installation, configuration and support; and
- (b) ensuring that it has valid licence arrangements for off the shelf software incorporated into, or necessary for the provision of, the Products of Services.

3 Products

3.1 Unless specified otherwise in the Quotation, the Customer must, in addition to the Price, pay for all freight, handling and insurance charges payable in connection with the delivery of the Products to the Customer.

3.2 The Company will use all reasonable endeavours to ensure that delivery times set out in the Quotation are met but the Customer acknowledges that such times are estimates only.

3.3 The Company may make part-delivery of any Products and this Agreement will apply separately to each part-delivery.

3.4 Risk in the Products passes upon delivery.

3.5 Title to the Products passes upon payment in full.

3.6 Until title has passed under clause 3.5, the Customer holds the Products as bailee and must clearly identify such Products as the property of the Company.

3.7 If the Company is reselling any third party software as part of the Products, the relevant third party licence and warranty terms and conditions apply to the provision of that software.

3.8 If the Company is not the manufacturer of the Products, the company does not make any warranties with respect to the Products and the only warranties available to the Customer are the standard third party manufacturer warranties that the

Company will use reasonable endeavours to transfer the benefit of, to the Customer.

4 Services

4.1 The Company reserves the right in its reasonable discretion to:

- (a) determine which personnel will perform the Services;
- (b) replace or reassign such personnel; and
- (c) sub-contract suitable third parties to perform the Services.

4.2 If the Company is providing any software or system support as part of the Services, the Customer must have installed the latest version of the relevant software as advised or provided by the Company.

4.3 Where the Company is reselling standard product maintenance services as part of the Services, the relevant third party maintenance terms and conditions of supply apply to the provision of those maintenance services.

5 Invoices and Payment

5.1 The Customer must pay each invoice by the due date shown on it and if there is no date, within 14 days of the date of invoice. Time is of the essence for payment of invoices.

5.2 If the Customer disputes any invoice it must:

- (a) raise that dispute with the Company as soon as reasonably possible and in any event within 14 days of the date of invoice; and
- (b) pay any undisputed amount included in the invoice in accordance with clause 5.1.

5.3 If the Customer raises a dispute under clause 5.2, the Company will conduct prompt investigations and advise the Customer of its findings.

5.4 If following an investigation by the Company under clause 5.3 the parties are unable to resolve the dispute, then either party may commence proceedings or take such other actions as they deem appropriate.

5.5 The Company may charge the Customer for all reasonable expenses it incurs in connection with late payments by the Customer and may also charge the Customer interest at the prime lending rate of the Company's principle banker calculated daily on the total overdue amount.

5.6 Unless stated otherwise, the Price and any other charge invoiced by the Company under this Agreement is exclusive of Tax and the Customer must pay an additional amount equal to the Tax.

6 Approaching Staff

6.1 Unless otherwise provided in this agreement, the Customer must not, and must procure that each of its directors, officeholders and employees does not, during the Term and for a period of 12 months following termination of this agreement, solicit directly or indirectly or through any interposed body corporate, trust, principal, agent, shareholder,

beneficiary, contractor, consultant or any other capacity) the employment or contract or consultancy or any other similar capacity any of the Provider's staff or contractors or to enter into any other paid services for or with the Customer.

6.2 If the Customer hires or contracts with any employee, contractor or consultant of the Provider contrary to the terms of this agreement, the Customer agrees to pay to the Provider liquidated damages, and not as a penalty, an amount equal to the total compensation, including but not limited to, salaries, wages, bonuses, commissions, employee benefits, fees and other payments which the employee or subcontractor or consultant during the prior 12 months of his or her employment, contract or consultancy with the Principal.

6.3 This clause 6.3 shall not limit any other remedies available to the Provider for any other breach of this clause or this agreement, nor shall it preclude the Provider from asserting any cause of action independent of this clause 6.3.

7 Intellectual Property

7.1 Intellectual Property Rights in:

- (a) the Customer Data will be owned by the Customer;
- (b) in the Products (including any third party licensed software provided) will be owned by the manufacturer; and
- (c) all other materials, information, know-how, systems, processes and technology of any nature that is created or used in connection with this Agreement (Material) that is not covered by clauses 7.1(a) or (b) will, as between the parties, be owned by the Company.

7.2 The Company grants the Customer a perpetual, royalty free, non-exclusive, non-transferable licence to use the Intellectual Property Rights in the Material for its own internal purposes in Australia.

7.3 The Customer grants the Company a non-exclusive licence to use the Customer Data for the purposes of providing the Products and Services.

7.4 Any third party software provided by the Company to the Customer under this Quotation will be licensed to the Customer on the terms and conditions provided by the vendor of that software.

8 Liability

8.1 To the extent permitted by law, the Company excludes all conditions and warranties implied into the Agreement and limits its liability for non-excludable conditions and warranties to, at the Company's complete discretion, repairing or replacing the relevant Products, resupplying the relevant or equivalent Services or, in either case, paying the Customer the cost of doing so.

8.2 Each party accepts liability for Loss suffered by the other party (excluding Consequential Loss) arising from personal injury, to the extent that such Loss is caused or contributed to by a negligent act or

omission of that party in connection with this Agreement.

8.3 The parties agree that any liability of the Company to the Customer for Consequential Loss suffered or incurred by the Customer in connection with the Agreement is excluded.

8.4 The parties agree that any liability of the Company to the Customer for Loss under or in connection with the Agreement (whether based in contract, tort (including negligence), statute or otherwise) is reduced to the extent that the Customer's acts, omissions or equipment or the acts, omissions of a third person, including a Supplier, cause or contribute to that Loss.

8.5 Subject to clauses 8.1-8.4, the Company's liability for Loss suffered or incurred by the Customer in connection with this Agreement whether based in contract, tort (including negligence), statute or otherwise, is limited in aggregate to the lesser of:

(a) the aggregate of all invoices paid by the Customer in respect of Products and Services during the preceding 12 months prior to the occurrence of the event causing the Loss; and

(b) AU \$5,000,000.

8.6 This Agreement is between the Company and the Customer and the Company does not have control over End Users. The Customer indemnifies and will keep indemnified the Company for any Loss suffered by the Company in connection with an End-User claim (whether based in contract, tort (including negligence), statute or otherwise).

9 Assignment

9.1 To the extent they are assignable, the Customer may assign its rights under the Agreement so long as it has the Company's prior written consent.

9.2 To the extent they are assignable, the Company may at any time assign some or all of its rights under the Agreement to any person. The Company may also transfer some or all of its obligations under the Agreement to any Accord Group Company that is able to perform those obligations.

9.3 The Company may perform any of its obligations under the Agreement by arranging for them to be performed by a Subcontractor.

10 Confidentiality

10.1 Each party agrees to keep the other party's Confidential Information confidential and to only disclose such Confidential Information to those of its employees, agents, contractors or advisers, or, in the case of the Company, the employees, agents, contractors or advisors of its Related Bodies Corporate, who have a need to know for the purposes of this Agreement.

10.2 The obligations of confidentiality in clause 10.1 do not apply to the extent that disclosure is required by law or the listing rules of a stock exchange or pursuant to a direction of a government body.

11 Termination

11.1 Either party may terminate Agreement with immediate effect by giving written notice to the other party if the other party:

(a) breaches a material term of this Agreement and that breach is not capable of remedy or if capable of remedy is not remedied within 30 Business Days after notice is given; or

(b) suffers an Insolvency Event.

11.2 On termination of this Agreement for any reason:

(a) the Customer must pay all outstanding invoices within 14 days of the date of termination (including any relevant Cancellation Fee);

(b) each party must, if requested by the other party, return all Confidential Information of the other party or if not requested then destroy such Confidential Information;

(c) the Customer must grant the Company access to any relevant Customer premises to retrieve any Products in respect of which title has not passed to the Customer; and

(d) the accrued rights and obligations of each party are unaffected.

12 General

12.1 Any notice given under this Agreement must be in writing delivered to the recipient's registered office or principal place of business.

12.2 A waiver of any right under this Agreement must be in writing.

12.3 If a provision of this Agreement is void, voidable or unenforceable, it will be severed and the remainder of the Agreement will not be affected.

12.4 The Company may, in connection with this Agreement, pay commission to any of its employees or any third party.

12.5 Nothing in the Agreement constitutes a relationship of employer and employee, principal and agent, partnership or joint venture between the Customer and the Company and neither party has any right to bind the other in contract or otherwise.

12.6 Each party will be relieved of its obligations to the extent that it is unable to fulfil them as a result of circumstances beyond its reasonable control. If such an event occurs, the affected party must notify the other party as soon as reasonably possible.

12.7 This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on the matter.

12.8 The Agreement is governed by the laws applicable in the state of Western Australia and the parties submit to the nonexclusive jurisdiction of the courts of that state.

12.9 This Agreement may only be varied in writing signed by both parties.