

# **GENERAL TERMS AND CONDITIONS**

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# GENERAL

## 1. DEFINITIONS AND INTERPRETATION

In these Conditions, the Rate Schedule and every Quote, Order, Plan contract, or other arrangement in connection with the supply of Goods or Services by [BITS Consulting LLC](#) the following words have the following meanings:

**"After Hours"** means from 5:30 PM to 09:00 AM Monday to Friday and all day Saturday and Sunday, including Public Holidays;

**"Agreement"** means these [Terms and Conditions](#);

**"Business Hours"** means Monday to Friday from 09:00 AM to 5:30 PM excluding Public Holidays;

**"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 and order is placed, and in any case each of their heirs, successors and assigns;

**"Conditions"** means these [Terms and Conditions](#);

**"Goods"** means any goods and/or services sourced by Us or provided by Us in connection with any such goods and/or services including computer hardware and software and any goods or services provided in connection with any of those things;

**"Sales Tax"** means a consumption tax imposed by the government on the sale of goods and services in the localities where we have a physical presence and is charged as a percentage of the retail cost at the point of purchase.

**"Order"** means any order requested by You to Us for Goods or Services in any form;

**"Quote"** means a quote provided to You by Us;

**"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 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, including as set out in a Plan Schedule;

**"Plan Schedule"** means the key terms applicable to Plans as set, and as may be varied by Us, from time to time in its absolute discretion without notice to You;

**"Public Holidays"** means any day which is a public holiday in [New Jersey](#);

**“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, a Plan, Plan Schedule, Quote, contract or arrangement entered into by Us and You or in these Conditions, and includes any monies payable to Us on a quantum meruit basis for any work it has done;

**“Rate Schedule”** means the schedule of rates, charges and conditions for the services of Ours as set, and as may be varied, by Us from time to time in its absolute discretion without notice to You;

**“Reasonable Assistance Limits”** has the meaning set out in clause 17.2;

**“Return/Cancellation Fee”** means a fee charged pursuant to clause 12.5 as set by Us from time to time;

**“Service request”** means a request for service such as adds, moves, changes and technical assistance;

**“Services”** means the provision of any services by Us including Work, 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 **BITS Consulting LLC (EIN 46-5401055)** and its heirs, successors and assigns; and

**“Work”** means anything We may do, provide, customize, 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 and quoting for complex items.

In these Conditions, the Rate Schedule and every Quote, Order, Plan, contract, or other arrangement in connection with the supply of Goods or Services 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 Congress, Statute or Regulation shall include any amendment** currently in force at the relevant time and any Act of Congress, Statute or Regulation enacted or passed in substitution therefore;

**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 **United States Dollars**;

A reference to time is to **Eastern Standard Time or Eastern Daylight Time**, whichever is in effect on the relevant date;

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**;

A reference to **"will"** imports a condition not a warranty; 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.

## 2. 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 Quote, Order, Plan, contract, or other arrangement in connection with the supply of Goods and/or Services by Us to You.

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

## 3. COMMITMENT TERM

- 3.1 The minimum term that You acquire the service for is outlined in Our Quote to You, beginning from the first of the next month after the date of signing or approving the Quote.
- 3.2 After the expiration of the Committed Term, an extension of the Term will automatically commence for the same period as the original Committed Term and will continue indefinitely, unless earlier terminated by you as specified in Clause 4.

## 4. TERMINATION

- 4.1 This Agreement may be terminated by You upon ninety (90) days' written notice if We:

- 4.1.1 Fail to fulfil in any material respect its obligations under this Agreement and do not cure such failure within thirty (30) days of receipt of such written notice.
- 4.1.2 Breach any material term or condition of this Agreement and fail to remedy such breach within thirty (30) days of receipt of such written notice.
- 4.1.3 Terminate or suspend our business operations, unless it is succeeded by a permitted assignee under this Agreement.
- 4.2 This Agreement may be terminated by Us upon ninety (90) days' written notice to you.
- 4.3 If either party terminates this Agreement, we will assist you in the orderly termination of services, including timely transfer of the services to another designated provider. You agree to pay us for rendering such assistance at our normal rates as outlined in our current Rate Schedule.
- 4.4 Should You wish to terminate this Agreement before the end of the commitment term, You agree to pay all of the remaining payments up until the end of the commitment term.

## **5. REPRESENTATIONS**

- 5.1 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.

## **6. NOTICES**

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

## **7. GOVERNING LAW**

- 7.1 The Conditions shall be governed by and construed in accordance with the laws of New Jersey and the parties submit to the exclusive jurisdiction of the state or federal courts of New Jersey in Essex County.

## **8. ASSIGNMENT**

- 8.1 You may not assign Your rights and obligations under this Agreement without the prior written consent of Us.

## **9. VARIATION OF THESE TERMS AND CONDITIONS**

- 9.1 We may at any time vary these Terms and 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 terms and conditions.

# GOODS AND SERVICES

## 10. QUOTES

- 10.1 Term and effect: Quotes will only be valid for seven (7) days unless otherwise specified in the Quote. A Quote is merely an invitation to You to place an Order with Us and the acceptance of a Quote by You will not create a binding contract between You and Us.
- 10.2 Quote is valid for seven (7) days only. Expiration dates on quotes are set to indicate whether the quote is still active or to be discarded. Once a quote has expired, the recipient must request a new with respect to the services in question. We are not required to give you notice of the expiration of a quote.
- 10.3 The prices in the quote shall not be deemed the final agreed price unless and until they have been confirmed by us and both parties agree with the final price considering any final changes to the services or specifications requested by You.
- 10.4 The price in the final quote may vary from the original request if there are any price or product changes requested by You. We reserve the right to alter products and prices in the quote as long as the quote has not been confirmed with You.
- 10.5 Quotes and estimates shall be deemed to correctly interpret the original specifications and are based on the cost at the time the quote or estimate is given. If You later require any changes to the specifications and We agree to the changes, these changes will be charged at Our prevailing rate.
- 10.6 Notwithstanding any of the foregoing, we may vary or withdraw a Quote at any time in Our absolute discretion and without prior notice to You. We may do so for any reason We consider fit, including, e.g., unavailability of the Goods or Services or an increase in the cost of Goods or Services after the date of the Quote.
- 10.7 Once the Quote has been confirmed and converted to an Order, the Order will be subject to our normal Terms and Condition of Sale.
- 10.8 Minimum turnaround time for Quote request to be processed is 24 hours. If a quote is required in less time than this, we will make every reasonable effort to accommodate you if we are appropriately apprised of its urgency.
- 10.9 When a special price or discount offer has been applied to this Quote, no other special promotion, discount or bonus offer will be applicable.
- 10.10 In the event that non-stocked products specified in the Quote are subject to price or supply fluctuations outside of Our control We reserve the right to update the price and product in the Quote accordingly. If a specified product

is no longer available, the product will then be replaced or substituted subject to Your final approval.

- 10.11 Estimates as to the date or time of completion of work specified in a quote or Order is based in part on estimates given by our vendors and shall not be deemed the actual promised date. Such time estimates shall not be a material term of an Order.
- 10.12 Freight charges will be added to the Order unless otherwise stated. Any included delivery charges in a quote are estimates only.
- 10.13 Because We do not keep inventory and only order products after we confirm a completed Order from a client, a restocking fee may apply to cancellations or changes where products are returnable. If our vendor will not accept a return of a product shipped to us for your Order, we cannot refund the cost of that order.
- 10.14 Prices are based upon total Quote Purchase.
- 10.15 Unless specified, all items on quote are covered by manufacturer's warranty covering parts and labor for hardware only on a return to depot basis.

## 11. ORDERS

- 11.1 You may place an Order for Goods and/or Services with Us either via a completed Order form or a quote approved electronically via email or a web based system.
- 11.2 Orders must be signed or duly executed on Your behalf, unless the Order is sent by email or via the web-based ordering system, in which case the Order will be treated or deemed as if signed by or on behalf of You by the person whose name appears as the sender of the email or submitter of the form.
- 11.3 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 may for all purposed deemed by Us to be:
  - 11.3.1 signed by, and duly authorized by, both the person who signed the Order and the person who sent the email; and
  - 11.3.2 duly authorized by the person on whose behalf the Order is placed or apparently placed.
- 11.4 Notwithstanding the foregoing, an Order has no effect unless or until it is:
  - 11.4.1 accepted by You in writing and;

- 11.4.2 We have received from You payment in clear funds for the Order and any related freight, delivery and (where applicable) in-transit insurance costs.
- 11.5 We are not obliged to deliver any Order until we have received payment in clear funds from You for the Order, any related freight, delivery and (where applicable) in-transit insurance costs.
- 11.6 For the purposes of ascertaining the credit standing or history of a prospective customer to whom We are considering extending credit or payment terms, You hereby consent to Us undertaking a credit check in respect to You.
- 11.7 No Order may be canceled by You or deemed cancelled unless We agree to such cancellation so in writing in Our absolute discretion.
- 11.7.1 You acknowledge that once a the manufacturer or supplier has dispatched the Goods specified in an Order, which dispatch often occurs the same day as the Order is placed by Us, You are responsible for the cost, including shipping, of such Goods in the event of cancellation.

## 12. PRICING AND RATES

- 12.1 All rates and amounts charged or quoted for Goods and/or Services by Us are exclusive of Tax and any other applicable taxes or government charges (unless otherwise stated in writing by Us).
- 12.2 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 during the provision of the Goods and/or Services.
- 12.3 We reserve the right vary any Rate and/or the Rate Schedule from time to time (subject to any fixed pricing for specific periods in any Plan) in our absolute discretion and without notice to You.
- 12.4 You acknowledge that We may charge You for call-out/travel fees in addition to the Rates at Our absolute discretion and that the amount of such fee will depend on where the Services are provided.
- 12.5 Where We arrange a return or refund on behalf of You, or where an Order is cancelled by You after acceptance by Us, We may charge You a reasonable 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.
- 12.6 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/travel fees, upon written demand. Such expenses may include travel costs, flights, fuel, insurance, taxi fares, accommodation and related meal allowance, tolls and car parking

expenses. Where practical, We will obtain prior written authorization from You before such expenses are incurred.

- 12.7 We may in Our absolute discretion charge for Goods separately from Services or may charge for Goods and Services together.
- 12.8 Where a charge is calculated based on increments of time, e.g., 1 hour or 30 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.
- 12.9 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 at the rate applicable pursuant to the Rates Schedule for all Services, Each such rate being reduced by any discount agreed in writing between Us and You in respect of the Pre-Paid Blocks of Service. Services included in a Pre-Paid Block of Service rate during the Period:
- 12.9.1 are calculated in accordance with the applicable minimum time periods and **increments** set out in the Rates Schedule; and
- 12.9.2 **are only provided by Us during the applicable Period.** Where Services are provided for a specified Period:
- 12.9.2.1 the Services remaining unused for that Period cannot be rolled over into any subsequent Period; and
- 12.9.2.2 We are not liable to refund, re-imburse, pay damages or otherwise compensate or indemnify You in respect of those unused Services.

## 13. SERVICES AND PLANS

- 13.1 We offer the Services and Plans referred to in the Rates Schedule and any Plan Schedule. We may withdraw the provision of, or vary the scope or terms of, or add to or change, the Services without notice to You, from time to time in Our absolute discretion.
- 13.2 We will provide You with a copy of the current Rates Schedule upon request. Plan Schedules are tailored for particular Plans and are available to Clients participating in the Plan.

## 14. CONTRACTING

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

## 15. DELIVERY, TITLE AND RISK

- 15.1 We will make all reasonable efforts to deliver Goods by the estimated date, but We shall not be liable for non-delivery or failure to deliver on time 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.

- 15.2 You must be available to accept the Goods at Your designated delivery address during Business Hours unless otherwise arranged.
- 15.3 Delivery is deemed to take place when the Goods are delivered to Your designated address, at which time all risk of loss, breakage and all damage and all other risks pass to You. Nothing in this clause 15.3 will affect title to the Goods.
- 15.4 You will ensure that Goods are adequately insured from the time of delivery under clause 15.3.
- 15.5 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:
  - 15.5.1 title to, and property in, Goods supplied to You remain vested in Us and does not pass to You;
  - 15.5.2 You must hold those Goods as fiduciary bailee and agent for Us and must not sell them;
  - 15.5.3 You must keep those Goods separate from other goods and maintain the Goods and their labelling and packaging intact;
  - 15.5.4 In the event that You sell the Goods in breach of these Conditions, You agree to hold the proceeds of any sale of those Goods in trust for Us in a separate account. Any failure to do so will not affect Your obligation to deal with the proceeds as trustee and remit them to Us;
  - 15.5.5 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 authorize and direct Us (and Our employees and agents) to enter into such premises as its duly authorized agent.
    - 15.5.5.1 You hereby indemnify and hold Us harmless from and against any costs, claims, demands, damages or expenses or any other acts or omissions arising from or in connection with, such entry, repossession or removal.
    - 15.5.5.2 You irrevocably appoint Us as Your attorney to do anything We consider necessary to enter such premises and repossess the Goods as contemplated by this clause 15.5.

## **16. RETURNS AND CLAIMS FOR GOODS AND SERVICES**

- 16.1 Notwithstanding anything in these Conditions, You acknowledge that We supply Goods subject to all applicable conditions, including returns and claims policies, of any relevant manufacturer or supplier. You will accept Goods subject always to these Conditions and the terms of such conditions and will indemnify and hold Us harmless in respect of any further or other obligation or any failure or default on the part of that manufacturer or supplier.
- 16.2 Orders involving Customized Goods supplied pursuant to an Order for Goods that We deem special or unusual, Goods obtained from overseas, Goods obtained from a supplier that is no longer in business, or Goods otherwise not readily returnable by Us to the manufacturer or supplier or any related services may not be cancelled, and You may not return the Goods to Us or cancel the related services.
- 16.3 You are responsible to inspect all Goods promptly upon their delivery and to provide Us, in no event later than seven (7) days of delivery, with written notice of any defect or any other basis for returning the Goods, requesting a refund, or making a claim. Absent timely written notice pursuant to this clause 16.3, no such claim by You to return, or for a refund for, such Goods shall be considered.
- 16.4 Where You are entitled to return Goods under these Conditions, You must return the Goods in their original condition and unopened, unless the defect or non-compliant aspect of the Goods that are claimed as the cause of the return is not apparent unless their packaging has been opened.
- 16.5 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. This does not apply if the goods are DOA.
- 16.6 You will indemnify and hold Us harmless in connection with all claims by any person arising from the operation of the Goods once such Goods have been used, installed, customized or re-sold by You.

## **17. COMPUTER UTILITY, FUNCTIONALITY AND FITNESS FOR PURPOSE**

- 17.1 You acknowledge that our provision of Services may involve trial and error and that computer technology is often applied in novel or unknown circumstances requiring experiment. In particular, You acknowledge that the Services may involve tests, troubleshooting, advice and recommendations that may prove incorrect or inappropriate, particularly in connection with seeking a remedy to a problem You are having. While We will make what We consider (in Our absolute

discretion) to be all reasonable endeavors to provide appropriate tests, troubleshooting, sound advice and good recommendations in order to assist You, You will always indemnify and hold Us harmless for all third-party claims arising from Our provision of Services to You.

17.2 Reasonable Assistance Limits: These Conditions oblige Us only to provide what We consider, in Our absolute discretion, to be reasonable assistance in the circumstances (including with the installation and customization of new software or hardware for You or any other Work) under any Plan, and You agree to pay for additional work at the Rates unless otherwise agreed. Without limiting 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 or allows for the Work or has estimated or estimates the Work will take, whether or not We have given You notice of the time allowed or estimated.

17.3 You acknowledge that:

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

17.3.2 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;

17.3.3 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, e.g.,

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

17.3.3.2 the behavior of third-party suppliers, e.g., in relation to support;

17.3.4 For reasons outside 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;

17.3.5 The Services provided by Us may involve the very task of seeking to customize Goods so they may be fit for particular purposes and that customization may be a very substantial project in itself;

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

- 17.3.6.1 decisions as to whether or not to follow recommendations by Us;
  - 17.3.6.2 decisions as to whether or not to purchase or customize Goods or obtain Services for that or any other purpose; and
  - 17.3.6.3 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;
- 17.3.7 Where We provide Services with a view to achieving Your purposes, suitability, function or fitness for a particular purpose (whether expressed, agreed or otherwise), You must pay for those Services on time without any set-off or counterclaim, whether or not We are able to achieve any such purposes, suitability, function or fitness for purpose, provided always that We have acted in good faith and have made all reasonable endeavors to achieve those outcomes.
- 17.4 You will follow Our instructions with regard to testing or troubleshooting any problems. If these instructions fail to resolve such problems, We will, subject to these Conditions, allocate such resources as We consider reasonable in the circumstances to resolve them.

## **18. FORCE MAJEURE**

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

## **19. PRODUCT SPECIFICATIONS**

- 19.1 We make every effort to supply the Goods in accordance with the Order, but 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.
- 19.2 If We cannot supply the Goods ordered by You, We may supply alternate Goods of equal or superior quality, and You will not pay a higher price than the price Quoted or otherwise agreed for the Goods ordered.

## 20. WARRANTIES

- 20.1 You will rely solely on the warranties provided by the manufacturer of Goods supplied by Us (where applicable) and will deal directly with such manufacturer for all claims covered by such warranties.
- 20.2 You indemnify and hold Us harmless concerning and loss or damage arising from the performance or failure of Goods supplied to You by Us, including any claim by You arising under, or in connection with, any breach by the manufacturer of any the manufacturer's warranties for the Goods.

## 21. LIABILITY

- 21.1 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 a particular 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.
- 21.2 You indemnify and hold Us harmless in connection with any 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 to mitigate Your own potential loss of programs and data.
- 21.3 You indemnify and hold Us harmless for of any claim as to any indirect or consequential losses or expenses suffered by You or any third party, however caused, including but not limited to loss of revenue, profits, business or goodwill or any liability to You or any third party.
- 21.4 You indemnify and hold Us harmless for any claim for loss or damage by You or a third party where We have failed to meet any delivery date or on account of our cancellation or suspension of Services or the supply of Goods, regardless of the cause of such cancellation or suspension.
- 21.5 Except as otherwise expressly stated in these terms and conditions, We are not liable for any loss or damage of any kind regardless of cause (including, but not limited to, by Our negligence) which is suffered or incurred by You in connection with:
  - 21.5.1 Goods or Services provided to You or any Work;
  - 21.5.2 these Terms and Conditions;
  - 21.5.3 Your use of Our website (including the use of a credit card or other debit device) or any linked website;
  - 21.5.4 the non-availability of Goods or Our Services for any reason;

- 21.5.5 any act or omission of Ours or the provision of inaccurate, incomplete or incorrect information by You, or
- 21.5.6 any other reason whatsoever.
- 21.6 To the extent that applicable law implies a condition or warranty that cannot be excluded but can be limited, clause 21.5 does not apply to that liability and 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:
  - 21.6.1 replacing the Goods or supplying equivalent Goods, Services or Work;
  - 21.6.2 repairing the Goods or the Work;
  - 21.6.3 paying the cost of replacing the Goods or the Work or acquiring equivalent Goods, Services or Work; or
  - 21.6.4 paying the cost of having the Goods or the Work repaired.
- 21.7 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 law or regulation applicable to the supply of the Goods or Services which cannot be excluded, restricted or modified.
- 21.8 If any provision contained in these Conditions is deemed unlawful, invalid or unenforceable, such provision may be severed without prejudice to the validity and enforceability of the remaining provisions of these Conditions.

## **22. ERRORS AND OMISSIONS**

- 22.1 We make every effort to ensure that all prices and descriptions quoted are correct and accurate. In the case of an error or omission, but in the event of an error, we may rescind the affected contract by written notice to You, notwithstanding that We have already accepted Your Order and/or received payment from You. Our liability in that event will be limited to the return of any money You have paid in connection with the Order.

## **OUR RESPONSIBILITIES**

### **23. PRIVACY STATEMENTS AND YOUR RIGHTS**

- 23.1 We are collecting certain of Your personal information for the fulfilment of Quotes, Orders and the provision of Goods or Services to you and may retain and use it for any such purposes ("Authorized Purposes").
- 23.2 You are required to provide your personal information to Us for Authorized Purposes. 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.

- 23.3 We may disclose Your personal information to other persons for the purposes of the fulfilment of Quotes, Orders and Work for you or to provide Goods or Services to You, to verify the information You provide, for inquiries about Goods or Services that may be suitable for your purposes, to confirm Your requirements to anyone proposing to supply Goods or Services to You, to acquire Goods or Services on Your behalf, or in connection with any reasonable inquiries relating to any of the foregoing.
- 23.4 Other than as provided herein or otherwise unless authorized by law, We will not disclose Your personal information without Your consent.
- 23.5 Your personal information will be held by Us at Our Principal Place of Business and You may contact Us to request access to it or correct it.

## **24. OUR WEBSITE**

- 24.1 Our website is in the nature of advertisement and promotion, and no information or content shall be deemed part of or integrated into these Conditions.
- 24.2 We make no representations or warranties in relation to information available on Our website, including without limitation:
  - 24.2.1 that the information on Our website is complete or correct;
  - 24.2.2 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
  - 24.2.3 We do not endorse any internet site linked to or by Our website or any third-party products or services referred to on Our website.

## **25. INSURANCE COVERAGE**

- 25.1 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 this Agreement, at every renewal and at other times as may be reasonably requested by You.

## **YOUR RESPONSIBILITIES**

### **26. LODGING OF SERVICE REQUESTS**

- 26.1 As a condition of our provision of the agreed Service, You agree to follow Our process for lodging of Service Requests outlined in Appendix A.

## **27.ACCESS TO SYSTEMS, SITES AND PEOPLE**

28. As a condition of our provision of the agreed Service, You agree to give Us access to various items of Yours including but not limited to, equipment, personnel and sites as and when required.

28.1 You agree to allow Us to install software on Your Equipment that allows Our technicians to monitor and gain access to Your systems at any time. This software allows Us to view system statuses, send monitoring information, see users' desktops and control Your PC's. This may require that devices are left on overnight or weekends. You bear all responsibility for any disclosure to users concerning such monitoring as may be required by law, employment contracts, collective bargaining agreements or otherwise and shall indemnify and hold us harmless for any claim arising from such installation.

## **29.THIRD PARTY AUTHORIZATIONS**

29.1 In connection with the Services, we may need to contact Your third-party providers on Your behalf, such as Your internet provider. Some of these providers may require Your authorization for Us to deal on Your behalf. It is Your responsibility to ensure that We are able to operate without restriction with respect to such authorization.

## **30.PAYMENT, LATE PAYMENT AND DEFAULT**

30.1 All invoices issued to You are due and payable to Us pursuant to the terms stated on the invoice (unless otherwise agreed in writing). by cash, check, credit card or direct deposit in accordance with these Terms and Conditions and as set out in the Invoice.

30.2 Late payment by more than seven (7) days of the due date, may, in Our absolute discretion and without prior notice, result in Our suspension or discontinuation of Our supply of Goods and/or Services to You.

30.3 All legal and other costs and expenses incurred by Us 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. If You default in payment of any invoice on time, moneys which would have become due by You at a later date shall be immediately due and payable without any further notice to You. Collectively, all of these moneys are referred to in these Conditions as a "Sum Due".

30.4 If payment of any Sum Due is not made on time, We will charge interest daily on the Sum Due at the maximum rate allowed by law, calculated and charged daily on and from the due date until the Sum Due is paid in full.

30.5 All payments of the Sum Due made by You to Us will be applied as follows:

- 30.5.1 first in or towards payment of any costs (including legal costs), charges, expenses or outgoings paid by Us in relation to any dishonored cheque fees, collection costs or any other action taken by Us for the recovery of any amounts owing by You to Us;
- 30.5.2 secondly, in or towards payment of any interest due or payable hereunder, and
- 30.5.3 thirdly, in or towards payment of Your debts to Us in order from the longest standing due to the most recently incurred.
- 30.6 We may require You to provide a lien on Your property (including the Goods or any other property of Yours) as collateral to be held as security for any Sum Due or as a condition precedent to the continuation of supply of Goods or Services by Us to You.
- 30.7 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.
- 30.8 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 or declined to exercise, in full or part, those or other rights under these Conditions.

## **31. NON-SOLICITATION OF CLIENTS AND EMPLOYEES**

- 31.1 You acknowledge that employees are one of Our most valuable assets, and that policy and professional ethics prohibit Our employees from seeking, accepting or entertaining offers of employment with You during the course of engagement and for a period of eighteen (18) months thereafter (or the maximum amount permissible by law).
- 31.2 You acknowledge that Our damages resulting from breach of this clause 31.1 would be impractical to calculate and that, for that reason, liquidated damages are reasonable and lawful, not intended as a penalty and are reasonably calculated based upon the projected costs We would incur to identify, recruit, hire and train suitable replacements for such personnel. in the event You violate this provision.
- 31.3 In the event, therefore, of Your breach of this clause 31.1, You shall pay Us 100% of the employee's total annual salary as liquidated damages.
- 31.4 In the event of Your breach of this clause 31.1, We may, at our sole discretion, terminate any Agreement without further notice or liability to You.

## 32. SOFTWARE

- 32.1 All Software licenses are Your responsibility and not Ours. It is Your duty to maintain on file any licenses for all Software used so that they can be reproduced if and when required. This includes all Software installed by Us.
- 32.2 You indemnify and hold Us harmless against any claim, loss, damage or expense arising directly or indirectly from:
  - 32.2.1 any unauthorized Software use by You;
  - 32.2.2 any breach of any Software license in respect of Software provided to Us by You to be installed on one of Your computers;
  - 32.2.3 otherwise as a result of Us installing Software at Your where You are not authorized to use the Software; and
  - 32.2.4 any problem, defect or malfunction associated with any Software (or related services) supplied by third parties.

## 33. COPYRIGHT AND CONFIDENTIALITY

- 33.1 You warrant that any confidential or copyright information or intellectual property (of any kind and in any form held) or 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 for all claims, loss, costs or expenses in connection with such breach of warranty by You.
- 33.2 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 the exclusive property of Ours unless otherwise agreed in writing by Us and You.
- 33.3 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.
- 33.4 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.
- 33.5 For these reasons, both parties agree to undertake 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.

# APPENDIX A

## SERVICE REQUEST LODGEMENT PROCESS

When you contact us to lodge a service request only the methods below must be used:

**Phone:** 201-884-1407

**Email:** [support@bitsconsulting.net](mailto:support@bitsconsulting.net)

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.