

STANDARD TERMS AND CONDITIONS OF CONTRACT

1. Defined terms & interpretation

1.1. In this agreement:

Client means the customer or any person acting on behalf of and with the authority of the customer.

Confidential Information of a party (**Disclosing Party**) means all information:

- (a) treated by the Disclosing Party as confidential; and
- (b) disclosed by the Disclosing Party to the other party or of which the other party becomes aware, whether before or after the date of this agreement,

except information:

- (c) the other party creates (whether alone or jointly with any third person) independently of the Disclosing Party; or
- (d) that is public knowledge (otherwise than as a result of a breach of confidentiality by the other party or any of its permitted disclosees).

Fees means the fees specified in in the Offer and includes both goods and labour if applicable.

Goods means the Goods supplied by the Supplier to the Client in accordance with the Offer.

Manufacturer's Warranty Period means the period of the manufacturer's warranty (if any) specified by the manufacturer.

Nominated Premises means the property or properties specified by the Client.

Offer means the offer made by the client to purchase the Goods and/or Services.

Payment Terms means the payment terms specified in the Offer.

Services means the service/s supplied by the Supplier to the Client in accordance with the Offer and **Service** means any one of the Services.

Supplier means Telefonix Technology Group Pty Ltd ACN 064 656 711 trading as Azentro of 3/42 Cavendish Road, Coorparoo QLD 4151.

Supplier Personnel means any officer, employee, contractor/sub-contractor/ consultant (including their employees and contractors), agent or other personnel used by the Supplier in relation to the performance of the Supplier's obligations under this agreement.

1.2. In this agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (d) a reference to time is to Queensland, Australia time;
- (e) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (f) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (i) any agreement, representation, warranty or indemnity by or in favour of two or more parties (including where two or more persons are included in the same defined term) binds them or is for the benefit of them jointly and severally;
- (j) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it;
- (k) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (l) Headings are for ease of reference only and do not affect interpretation.

2. Engagement

The Client engages the Supplier to supply the Goods and/or provide the Services to the Nominated Premises on the terms and conditions of this agreement and the Supplier accepts such an engagement.

3. Performance

- 3.1. The Supplier shall not be bound to supply to the Client any order for Goods or Services unless and until the Supplier has accepted the order.
- 3.2. The Client accepts and acknowledges that once an order has been made and accepted by the Supplier, it cannot be cancelled by the Client without the prior written consent of the Supplier.
- 3.3. The Client may specify a date for delivery or commissioning (**Delivery Date**) in the Offer and the Supplier will use all commercially reasonable endeavours to meet the requested Delivery Date but shall not, in any circumstance be liable to the Client for any loss or damage suffered by the Client for any failure to meet the Delivery Date from any cause.
- 3.4. The Client must, where required, provide the Supplier with details of the power requirements for any Goods or Services. The Supplier will not, in any circumstances, be liable for any costs or losses associated with providing power or the reliability of the power facilities.
- 3.5. The Supplier must fulfil its obligations under this agreement:
 - (a) efficiently, with due care and skill and to the best of its ability, knowledge and expertise;
 - (b) in accordance with all reasonable requests the Client may give from time to time;
 - (c) in compliance with all applicable laws and regulations; and
 - (d) in compliance with any applicable licences, authorities or permits.

4. Price and payment

- 4.1. The Fees will be due and payable by the Client to the Supplier in accordance with the Payment Terms specified in the Offer.
- 4.2. The Fees may be charged in instalments including an initial payment, final payment and/or progress payments as specified in the Offer.
- 4.3. If no Payment Terms are specified in the Offer, the Client must pay the Fees within 7 days after receipt of an invoice from the Supplier.
- 4.4. Where the Client has failed to pay an invoice by the due date the Supplier may charge interest on any money overdue during the period of until full payment is received at a rate of 11% per annum.
- 4.5. If the Supplier is required to deliver Goods to the Client and the delivery is delayed by the acts or omissions of the Client, the balance of the Fees outstanding at the date that delivery is attempted (if any) will become payable on that date.
- 4.6. The Client accepts and acknowledges that if it wishes to purchase Goods, the Fees for the Goods may vary from the Fees specified in the Offer if the Delivery Date is longer than 30 days after the Offer is made.
- 4.7. Unless otherwise specified in the Offer, the Fees are in Australian dollars, inclusive of all taxes, duties and charged by exclusive of GST.
- 4.8. The Client accepts and acknowledges that if it fails to make payment of the Fees by the due date, the Supplier may, where possible, render all or part of the Goods or Services inoperative and will not be liable for any loss or damage suffered by the Client, directly or indirectly, as a result or in any way in connection with or associated to the Goods and/or Service being rendered inoperative pursuant to this clause.

5. Risk, title and defective Goods

- 5.1. The Goods will be at the Client's risk as and from delivery to the Client or at the Client's direction, notwithstanding whether title has passed or otherwise.
- 5.2. The Client shall be liable for any loss or damage to the Goods from the date of delivery by the Supplier.
- 5.3. Property in the Goods will not pass to the Client until payment in full of all monies owed to Supplier (**ROT**) and the Supplier reserves the right to take possession and dispose of Goods as it sees fit at any time until full payment is received;
- 5.4. The Client grants permission to Supplier to enter any property to recover the Goods with such force as is necessary;
- 5.5. The Client agrees that a certificate purporting to be signed by an officer of Supplier identifying Goods as unpaid for will be conclusive evidence that Goods have not been paid for and of Supplier's title to those Goods;
- 5.6. The Client agrees that the ROT is a security interest within the meaning of the *Personal Property Securities Act 2009* (Cth) (PPSA);
- 5.7. The Client agrees that sections 95, 130, 132(3)(d), 132(4), 135 and 143 of the PPSA will have no application to the agreement between the Supplier and the Client in respect of these Terms and the Client waives its rights under section 157 of the PPSA to receive a notice under that section.

6. Warranty

- 6.1. The Client shall be entitled to the benefit of the manufacturer's warranty (if any) in respect of each item of the Goods for the duration of the Manufacturer's Warranty Period. This Manufacturer's Warranty Period shall begin on the date of delivery or commissioning of the Goods.
- 6.2. Goods which fail during the Manufacturer's Warranty Period for reasons due to wear and tear, negligence, neglect or default on the part of the Purchaser or third parties is excluded from Warranty.
- 6.3. All Goods included under Warranty and in need of repair or replacement will be repaired or replaced free of charge upon delivery to the Company. The Purchaser is required to pay the cost of delivery.
- 6.4. Any warranty given does not extend to any Goods other than that supplied by the Company, nor does it extend to Goods maintained otherwise than by properly trained personnel or interfaced other than in accordance with the conditions specified by the Company.
- 6.5. The Purchaser shall have no rights under warranty until payment in full has been made for the Goods.

7. Training and Support

- 7.1. The Supplier will use reasonable commercial efforts to train the Client in the use and operation of the Goods as the Supplier considers necessary, in its sole discretion.
- 7.2. The Supplier will provide manuals for the proper operation, use and upkeep of the Goods if applicable. The Client accepts and acknowledges that its rights to make any claims against the Supplier for the condition of the Goods are subject to the Client having complied and observed all directions and advice provided in the manuals.
- 7.3. The Client accepts and acknowledges that the maintenance of the Goods is the responsibility of the Client and that maintenance will often require properly skilled and trained personnel. The Supplier will not be obliged to provide any ongoing maintenance or support unless the Client and the Supplier enter into a service agreement to this effect.

8. Personnel

- 8.1. Subject to this clause 8 the Supplier may use Supplier Personnel to assist in the performance of its obligations under this agreement.
- 8.2. The Supplier will take full responsibility for the conduct of any Supplier Personnel which it uses to assist in the performance of its obligations under this agreement.

9. Liability and indemnity

- 9.1. To the fullest extent permitted by law, the Supplier makes no representation or warranty in respect of the provision of the Services except that it will carry out the Services competently, professionally and to the best of its ability within the scope of the terms of this Agreement.
- 9.2. The Supplier's warranties with respect to the state, quality or condition of the Services are limited to those imposed upon the Supplier by statute, including those contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth) and the Supplier expressly disclaims all other implied warranties and conditions except where the infringement is known by the Supplier beforehand.
- 9.3. The Client expressly accepts and acknowledges that the Supplier is not liable to the Client for any costs, expenses, loss, liability or damage of any kind, including but not limited to loss of profits, however arising from or in connection with:
 - (a) any delay in the Service Provider attending the Premises to repair any breakdown;
 - (b) any failure or inability to repair any breakdown;
 - (c) any inability of the Client to access the information technology;
 - (d) any disruption or interference with the Business in connection with the Services being carried out or provided;
 - (e) any information technology being properly in the possession of the Supplier;
 - (f) the information technology failing to operate at any time or times during the Term;
 - (g) any delay, failure or error in the provision of the Goods and Services due to any circumstance outside the Supplier's reasonable control, including without limitations, failure of any communications network or system, electronic power surges, overloads, failures or blackouts, including but not limited to any failure in internet, telephone or data connectivity,

except to the extent that such costs, expenses, loss, liability or damage is caused by the Supplier's wilful or negligent act or omission.

- 9.4. The Supplier will make reasonable endeavours to resolve internet or other communications network or system connectivity issues which may impact their ability to perform the Services or provide the Goods but will not in any circumstance be liable to the Client for any costs, expenses, loss, liability or damage of any kind, including but not limited to loss of profits, arising from or in connection with such issues.

- 9.5 The Supplier will not be liable for any costs, expenses, loss, liability or damage of any kind suffered by the Client in connection with any non-deliberate inaccuracy, error or omission on the part of the Supplier in carrying out the Services or providing the Goods notwithstanding any negligence on the part of the Supplier.
- 9.6 The Client acknowledges that:
- (a) it does not rely upon any prior statement, undertaking or representation made or given by or behalf of the Supplier which is not set out in this Agreement;
 - (b) it is fully aware of the contents of this Agreement and all documents referred to herein and has had the opportunity to obtain independent legal advice on its terms and the terms of all other related documents prior to entering into the Agreement; and
 - (c) where the Supplier is liable for any costs, expenses, loss, liability or damage suffered by the Client the Supplier liability is limited to either:
 - (i) re-supply of the Goods and/or Services by the Supplier;
 - (ii) payment of the cost of having another provider re-supply the Goods or Services.

10. Dispute resolution

- 10.1. If a dispute arises between the parties then the parties agree to use their best endeavours to resolve such dispute within a period of 7 days from the time either gives to the other written notice of the dispute.
- 10.2. If a dispute arises and has not been resolved in accordance with clause 10.1 then, provided that such dispute arises out of or relates to this agreement or the breach, termination, validity or subject-matter of this agreement, the parties agree to use their best endeavours to settle the dispute by mediation by a Mediator appointed by the President of the Queensland Law Society.
- 10.3. Other than to claim urgent injunctive relief, a party may not institute proceedings against the other party arising out of or related to this agreement unless that party has complied with clauses 10.1 and 10.2.

11. Entire agreement

This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

12. Severability

A term or part of a term of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining terms or parts of the terms of this agreement continue in force.

13. Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

14. Force Majeure

No party is liable for any failure to perform or delay in performing its obligations under this agreement if that failure or delay is due to anything beyond that party's reasonable control. If that failure or delay exceeds a period of 30 days, or such other period as agreed between the parties (acting reasonably), the other party may terminate this agreement with immediate effect by giving notice to the other party. This clause does not apply to any obligation to pay money.

15. Confidentiality

A party may only use Confidential Information of another party for the purposes of this agreement, and must keep the existence and the terms of this agreement and any Confidential Information of another party confidential except where:

- (a) the information is public knowledge (but not because of a breach of this agreement) or the party has independently created the information;
- (b) disclosure is required by law or a regulatory body (including a relevant stock exchange); or
- (c) disclosure is made to a person who must know for the purposes of this agreement on the basis that the person keeps the information confidential.

16. Governing law and jurisdiction

This agreement is governed by the law of Queensland and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland.