

Logic Plus Pty Ltd – Terms & Conditions

1. Background

These Terms and Conditions apply to each contract for the supply of Goods or Services by or on behalf of the Company to any Customer.

2. Definitions

- 2.1 'Business Hours' means 9:00am to 5:00pm Monday to Friday not including public holidays.
- 2.2 'Company' means Logic Plus Pty Ltd ACN 096 527 605.
- 2.3 'Content' means any information or data uploaded, downloaded, posted, transmitted, or otherwise backed-up or stored via the Services by the Customer to the servers provided by the Company to the Customer for the purposes of storing that information or data.
- 2.4 'Contract' means the contract for the supply of Goods or Services referred to in paragraph 3 of these Terms and Conditions.
- 2.5 'Contract Particulars' means an applicable document describing the Goods and/or Services forming part of this Contract.
- 2.6 'Customer' means the party set out in the Contract Particulars.
- 2.7 'Goods' means all products including any hardware or software supplied by the Company to the Customer.
- 2.8 'Services' means any sales, networking, data storage, installation and support services for computers, or other similar services supplied by the Company to the Customer.

3. Terms and Conditions

- 3.1 The Contract will be formed, incorporating these Terms and Conditions, immediately upon the Company receiving acceptance (written, verbal or by conduct of the parties) of the Contract Particulars from the Customer.
- 3.2 No subsequent terms and conditions will apply in substitution of these Terms and Conditions or in any way override or amend these Terms and Conditions.
- 3.3 These Terms and Conditions together with the Contract Particulars and any retainer agreements, or invoices constitute the entire agreement between the Company and the Customer.
- 3.4 The Customer may not cancel any Contract without the prior written consent of the Company which will not be withheld unreasonably.

4. Company's obligations

Subject to this Contract, the Company:

- 4.1 must use all reasonable due care and skill;
- 4.2 must provide the Goods or Services as set out in the Contract Particulars; and
- 4.3 may use any competent and qualified employee, representative, associate, officer, agent or subcontractor to provide the Goods or Services.

5. Customers obligations

Without limiting its other obligations under the Contract, the Customer must:

- 5.1 give the Company in writing timely directions, instructions, decisions and information sufficient to facilitate the provision of the Goods or Services by the Company;

- 5.2 promptly provide the Company with access to any equipment and all information necessary to enable the Company to carry out its obligations under the Contract;
- 5.3 comply with all reasonable directions given to it by the Company; and
- 5.4 comply with all of its obligations as set out in the Contract.

6. Charges and payment

6.1 Payment for Goods

Payment for Goods must be made on or prior to the completion of the provision of Goods unless otherwise agreed in writing.

6.2 Payment for Services

- 6.2.1 Payment for Services must be paid within 14 days unless otherwise agreed in writing.
- 6.2.2 All Company call-outs are chargeable and are charged in hourly units.
- 6.2.3 Remote support is charged in 15-minute units.
- 6.2.4 Call-out fees may be applied at rates depending on dates and the Customer's location.

6.3 Late payment

If the Customer fails to make any payment by the due date the Company may, without prejudice to any other right or remedy available to it:

- 6.3.1 charge the Customer interest on any sum due at the rate of 2% above the rate of the Company's principal banker compounded daily;
 - 6.3.2 charge the Customer for all expenses and costs incurred by the Company resulting from the Customer's failure to pay;
 - 6.3.3 take any reasonable action it deems appropriate to recover any amount due;
 - 6.3.4 cease or suspend for any such period as the Company thinks fit, supply of any further Goods or Services to the Customer;
 - 6.3.5 by notice to the Customer, terminate any Contract with the Customer so far as unperformed by the Company.
- 6.4 All Goods supplied by the Company are charged separately from the Services.
 - 6.5 Where there is any change in the costs incurred by the Company in relation to the Goods or Services, the Company may vary its price for those Goods or Services in order to take account of any such change.
 - 6.6 Surcharges may be applied on emergency and/or outside Business Hours visits.

7. Payment default

If the Customer becomes, or resolves to become, insolvent, bankrupt or have a receiver, administrator, liquidator, trustee or similar official appointed, then:

- 7.1 the Customer must notify the Company immediately;
- 7.2 all amounts outstanding by the Customer to the Company immediately become due and payable; and
- 7.3 the Customer's right to possession of any Goods which have not been paid for in full by the Customer ceases, and the Company will be entitled to recover possession of those Goods.

8. Risk, insurance and ownership of Goods

- 8.1 The risk in the Goods and all insurance responsibility for theft, damage or otherwise in respect of the Goods will pass to the Customer immediately upon:
 - 8.1.1 delivery or installation of the Goods to the place nominated by the Customer; or
 - 8.1.2 completion of the loading of the Goods onto the relevant transportation vehicle provided by the Customer.
- 8.2 If a claim in respect of a shortage of Goods has not been lodged with the Company within 14 days of the delivery of some or all of the Goods the subject of the Contract, the Company will be deemed to have delivered all of the Goods.
- 8.3 Ownership of, and title to, the Goods passes to the Customer only upon payment in full by the Customer for the Goods and any other amounts due by the Customer to the Company.
- 8.4 Until the Company has received payment (in full) for the Goods:
 - 8.4.1 the Company retains full legal title to the Goods;
 - 8.4.2 if the Goods are in the Customer's possession, the Customer will hold the Goods as trustee for the Company and must store the Goods so that they are clearly identifiable as the property of the Company; and
 - 8.4.3 the Company may call for, and recover possession of, the Goods (for which purposes the Company's employees or agents may enter the Customer's premises and take possession of the Goods without liability) and the Customer must at its own cost, deliver the Goods to the Company if requested to do so by the Company.

9. Performance of contract

Any period or date for delivery of Goods or provision of Services stated by the Company is intended as an estimate only and is not a contractual commitment. The Company will use its reasonable endeavours to meet any estimated dates for delivery of the Goods or completion of the Services.

10. Warranties

- 10.1 If the Goods are, or any component part of the Goods is, supplied to the Company by a third party, any warranty offered by the Company in relation to the Goods or component part of the Goods will be limited to the Company's right of redress (if any) against the third party vendor.
- 10.2 The Company does not warrant that it will be able to fix all problems that it diagnoses.
- 10.3 Nothing in this clause 10 is intended by the parties to be, and will not be construed or interpreted to be, a representation, term, warranty or condition that the operation, use or functionality of any Goods or Services supplied by the Company (including any software) will be uninterrupted or error free. The Customer understands and accepts that all such Goods and Services (and information technology and communications products generally), may have errors and may encounter unexpected problems, and accordingly the Customer may experience downtime and errors in the use of the Goods or Services. Without limiting the obligations set out in clause 10, the Customer will put in place reasonable internal procedures and processes to enable it to minimise any inconvenience and any adverse impact of any such downtime or error.

11. Customer's responsibilities

- 11.1 The Customer will be solely responsible for all data inputs, the manner of use of the Goods and Services by all those to whom it provides access.
- 11.2 The Customer will comply, at its own expense, with any reasonable recommendations and guidelines with respect to the use of the Goods or Services, including any adjustments or replacements required in respect of equipment and software that is incidental or collateral to the use of the Goods or Services.

- 11.3 The Customer will ensure that its operators are adequately trained and informed as to the use of the Goods or Services and will comply with guidelines and procedures supplied by the Company and/or any third party manufacturer from time to time.
- 11.4 The Customer will perform general "housekeeping", testing, adjustment and/or maintenance as recommended by the Company in respect of any Goods or Services supplied by the Company in order to maximise the availability of and performance of those Goods or Services or permit performance by the Company of any of its obligations under the Contract.
- 11.5 The Customer will back up all software, data and files that are stored on its computer and/or on any other storage devices it may have prior to the installation of the Goods or provision of the Services. The Company will not be responsible at any time for any loss, alteration or corruption of any such software, data or files.

12. Liability

- 12.1 To the full extent permitted by applicable law, all conditions, warranties, representations, indemnities and guarantees with respect to the Goods or Services that may be provided by the Company under the Contract, that may otherwise be implied by statute, law, equity, trade custom, prior dealings between the Parties or otherwise (including, but not limited to, any implied warranty of merchantability, fitness for particular purpose, quiet enjoyment or non-infringement) are hereby expressly excluded.
- 12.2 Except to the extent specifically provided in the Contract, the Company's sole liability to the Customer for any and all breaches of the Contract, whether express or implied, will be limited to:
 - 12.2.1 subject to sub-clauses 12.2.2 and 12.2.3, the aggregate amount of the fees and charges paid by the Customer under the Contract as at the date of the breach;
 - 12.2.2 in relation to Goods if supplied to the Customer as a consumer (as defined in the Competition and Consumer Act 2010) as the Company may elect:
 - (a) the replacement of the Goods or the supply of equivalent Goods; or
 - (b) payment of the cost of replacing the Goods or acquiring equivalent Goods; or
 - (c) the repair of the Goods or payment of the cost of having the Goods repaired; and
 - 12.2.3 in relation to Services if supplied to the Customer as a consumer (as defined in the Competition and Consumer Act 2010) as the Company may elect:
 - (a) the supplying of the Services again; or
 - (b) the payment of the cost of having the Services supplied again.
- 12.3 In no event will the Company be liable to the Customer or to any third party under or in connection with the Contract or in respect of the use of (or failure or performance of) the Goods or the supply of the Services for malfunctions or failures caused directly or indirectly by:
 - 12.3.1 any third party;
 - 12.3.2 actions of the Company that were expressly or impliedly authorised by the Customer, or by the Customer's employees or agents;
 - 12.3.3 accident, misuse or abuse by anyone other than the Company;
 - 12.3.4 alteration or modification of the Goods or Services by anyone other than the Company;
 - 12.3.5 products (including any hardware or software) not licensed or supplied by the Company that are attached to or used with the Goods or Services;
 - 12.3.6 the Customer's failure to provide a proper operating and working environment for the Goods or Services;
 - 12.3.7 damage during any movement, relocation or re-installation of the Goods or Services;

- 12.3.8 power surge or failure;
 - 12.3.9 acts outside the Company's reasonable control;
 - 12.3.10 any other condition not arising under normal operating conditions;
 - 12.3.11 normal wear and tear; or
 - 12.3.12 any loss or damage of any nature arising or caused directly or indirectly by any breach of the Customer's obligations or responsibilities set out in the Contract.
- 12.4 Any replacement of parts under warranty will be carried out at the premises nominated by the Company. The cost and risk of transport of any defective part to the nominated premises is the responsibility of the Customer.
- 12.5 In no event will the Company be liable to the Customer or to any third party under or in connection with the Contract or in respect of the use of (or failure or performance of) the Goods or the supply of the Services for:
- 12.5.1 any loss of profit, business interruption, loss of or damage to goodwill, and/or any expectation benefit;
 - 12.5.2 the Customer's liability to any third party; or
 - 12.5.3 incidental, consequential, special, exemplary or punitive damages of any nature, howsoever arising or caused, including without limitation the breach of the Contract or any expiration or termination of the Contract, whether such liability is asserted on the basis of statute, contract, tort (including negligence or strict liability), equity or otherwise, even if the Company has been advised of the possibility of such loss or damage.
- 12.6 Nothing contained in the Contract excludes, restricts or modifies any:
- 12.6.1 implied condition, warranty or other implied obligation in relation to the Contract or the Goods or Services where pursuant to applicable law to do so is unlawful or void;
 - 12.6.2 liability for fraud or deceit; or
 - 12.6.3 liability for death or personal injury caused by the negligence of either party.

13. Data storage

This clause 13 applies here the Services include storing Content on the Company's storage servers.

13.1 Equipment and software

Other than any software or hardware provided by the Company for utilizing the Service, the Customer must provide all equipment, devices, and software necessary to utilize the Service.

13.2 Prohibited use of Services

The Customer must not:

- 13.2.1 upload any viruses or Content to the Company's storage servers which is illegal, harmful or infringes on others proprietary rights;
- 13.2.2 attempt to break security or to access an account that does not belong to it. Any such action will be considered a material breach of the Contract and may result in suspension Service, termination of the Contract and possibly referral to law enforcement authorities. The Customer agrees to take adequate security measures to prohibit others from unauthorized access or use of the Service;
- 13.2.3 copy or modify any software or other materials provided with the Service; and
- 13.2.4 transfer, share, resell, outsource, or distribut all or any portion of the Service to third parties.

13.3 Ownership of Content

- 13.3.1 The Customer is solely responsible for all Content and expressly agrees the Company does not guarantee the accuracy, integrity, quality, or completeness of such Content.
- 13.3.2 The Company may, at its sole discretion, refuse or move any Content that violates these Terms and Conditions or is otherwise objectionable. The Customer agrees that the Company may also disclose Content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to:
- (a) comply with any legal obligations;
 - (b) enforce these Terms and Conditions;
 - (c) respond to claims that any Content violates the rights of third-parties; or
 - (d) protect the rights, property, or personal safety of the Company or the public.

13.4 Operational limits (force majeure)

- 13.4.1 Provisioning of the Service is subject to the availability and the operational limitations of the requisite equipment and associated facilities.
- 13.4.2 The Company will make best endeavors to ensure continued operation of the Services. However, temporary interruptions of the Service may occur as normal events in the provision of the Service and that the Company is not liable for such interruptions.
- 13.4.3 The Company has no control over the Customer's equipment and third party networks used to access the Service. Any delays and disruptions from such equipment and networks are beyond the control of the Company.
- 13.4.4 The Company will not be responsible or liable in any way for any failure of performance of the Service if that failure is due to any cause beyond its reasonable control.

13.5 Grant of licence

- 13.5.1 The Company does not claim ownership of the Content. The Customer grants the Company a perpetual, irrevocable, and fully sub-licensable license to reproduce, modify, and/or adapt such Content as necessary for the Company to perform its obligations set out in these Terms and Conditions.

13.6 Indemnity

- 13.6.1 The Customer indemnifies the Company and its suppliers, licensors, and other related parties, and their respective officers, agents, representatives, and employees harmless from any claim or demand, including legal fees, made by any third party due to or arising out of the Content.
- 13.6.2 Under no circumstances will the Company be liable in any way for any Content, including but not limited to any errors or omissions in any Content or any loss or damage of any kind incurred as a result of the use of any Content.

14. Copyright in software

- 14.1 The Company will not be responsible to the Customer or any third party for any breach of any software licence in respect of software provided to the Company by the Customer to be installed on a Customer's computer.
- 14.2 The Customer hereby warrants that it has a valid licence in respect of any such software and will indemnify the Company against any loss, damage, costs, harm or other expense whatsoever arising either directly or indirectly as a result of the Company installing software at the request of the Customer.

15 Cancellation

- 15.1 If, through circumstances beyond the reasonable control of the Company, the Company is unable to effect delivery or provision of Goods or Services, then the Company may cancel the provision of those Goods or Services (even if it has already been accepted) by notice in writing to the Customer.
- 15.2 If the Customer gives less than 8 Business Hours notice to the Company to cancel any request for on-site service, then the Company may charge a cancellation fee for the loss and damage caused.

16 No representation or reliance

- 16.1 The Customer acknowledges that neither the Company nor any person acting on behalf of the Company has made any representation or other inducement to it to enter into the Contract, except for representations or inducements expressly set out in the Contract.
- 16.2 The Customer acknowledges and confirms that it does not enter into the Contract in reliance on any representation or other inducement by or on behalf of the Company, except for representations or inducements expressly set out in the Contract.
- 16.3 Without limiting the generality of clauses 14.1 and 14.2, the Customer understands and hereby confirms that:
- 16.3.1 its decision to enter into the Contract was, and is, not based on any promise, representation, statement, warranty or undertaking made or given by the Company or any person on its behalf in relation to the capacity, uses or benefits that might or would be derived or obtained from the Goods or Services, except as expressly set out in the Contract; and
- 16.3.2 the Customer has relied on its own skill and judgement in deciding to purchase and acquire the Goods or Services.

17 Governing law

Any Contracts are governed by and must be construed according to the law applying in South Australia. The Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of South Australia.