

## TERMS OF TRADE

These terms and conditions are between **ONTOTO PTY LTD (ABN 35 608 892 351)**, (**we, us or our**) and you, the party stated in the Quote (**you or your**), together the **Parties** and each a **Party**. These terms and conditions and the Quote form the entire agreement under which we will provide the Goods and Services to you.

**1. OUR DISCLOSURES**

1.1 Please read these Terms carefully prior to accepting these Terms. By accepting these Terms, you agree that:

- (a) you may be required to pay our costs arising from your (or your Personnel's) acts or omissions, your (or your Personnel's) breach of these Terms or any Law; and your provision of any documentation or information to us;
- (b) your failure to pay the Price in accordance with the Payment Terms may result in us recovering or repossessing the Goods;
- (c) your failure to pay the Price in accordance with the Payment Terms may result in us charging you interest, or suspending the provision of the Goods and Services until we receive payment;
- (d) subject to your Consumer Law Rights, you have not relied on any representations or warranties made by us prior to entering these Terms that are not included in these Terms;
- (e) subject to your Consumer Law Rights, we exclude our Liability for your (or your Personnel's) acts or omissions, any use of the Goods and Services by a person other than you, any works, services, goods, materials or items which do not form part of the Goods and Services set out in these Terms, events beyond our reasonable control (including Force Majeure Events), Consequential Loss and for a delay in the provision of the Goods and Services;
- (f) subject to your Consumer Law Rights, our Liability for the provision of the Goods and Services will be limited to, at our discretion, the resupply of the Goods and Services or the repayment of the Price paid by you to us;
- (g) a minimum period applies to these Terms, during which, you will not be able to terminate these Terms for convenience, and if you do, you are liable to pay us the relevant fee.

1.2 These Terms do not intend to limit your rights and remedies at law, including any of your Consumer Law Rights

**2. ACCEPTANCE**

2.1 You have requested the Goods and Services set out in the Quote, and you accept these Terms by the earlier of:

- (a) signing and returning the Quote to us (including electronically);

- (b) accepting the Quote online or sending an email accepting the Quote (expressly or impliedly);
- (c) instructing us (whether orally or in writing) to proceed with the Goods and Services; or
- (d) making part or full payment of the Price (including any deposit).

2.2 These Terms will operate from the date these Terms are accepted in accordance with clause 2.1 until both Title and Risk in the Goods has been transferred to you in accordance with the Quote Incoterms, or clause 6, whichever is applicable (**Term**).

**3. GOODS AND SERVICES**

3.1 In consideration of your payment of the Price, we agree to provide you the Goods and Services in accordance with these Terms, whether ourselves or through our Personnel.

3.2 We will not be responsible for any Goods and Services unless expressly set out in the inclusions in the Quote.

3.3 You acknowledge and agree that any dates for delivery or for completion notified by us are estimates only. We agree to use reasonable endeavours to provide the Goods and Services within a reasonable time.

3.4 All variations to these Terms must be agreed in writing between the Parties and will be priced in accordance with our Quote, any schedule of rates provided by us, or otherwise as reasonably agreed between the Parties. If we consider that any instruction or direction from you constitutes a variation to the scope of our obligations under these Terms, or would result in us suffering or incurring any additional cost or delay, then we will not be obliged to comply with such instruction or direction unless agreed in accordance with this clause 3.4.

**4. PRICE AND PAYMENT**

4.1 In consideration for us providing the Goods and Services, you agree to pay us the Price, and any other amount payable to us under these Terms, in accordance with the Payment Terms. All amounts are stated in Australian dollars and are exclusive of GST (unless otherwise stated).

4.2 If any payment has not been made in accordance with the Payment Terms, we may (at our absolute discretion):

- (a) charge interest at a rate equal to the Reserve Bank of Australia's cash rate from time to time plus 2% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the due date for payment in accordance with the Payment Terms; and
- (b) after a period of 5 Business Days, cease providing the Goods and Services, and recover, as a debt due and immediately payable from you, our additional costs of doing so (including legal fees, debt collector fees and mercantile agent fees).

4.3 If and when applicable, GST payable on the Price will be set out in our invoice. You agree to pay the GST amount at the same time as you pay the Price.

**5. OBLIGATIONS AND WARRANTIES**

- 5.1 Each Party represents, warrants and agrees that:
- (a) it has full legal capacity, right, authority and power to enter into these Terms, to perform its obligations under these Terms, and to carry on its business;
  - (b) these Terms constitute a legal, valid and binding agreement, enforceable in accordance with its terms;
  - (c) if applicable, it holds a valid ABN which has been advised to the other Party; and
  - (d) if applicable, it is registered for GST purposes.
- 5.2 You represent, warrant and agree:
- (a) to comply with these Terms and all applicable Laws;
  - (b) you have not relied on any representations or warranties made by us in relation to the Goods and Services (including as to whether the Goods and Services are or will be fit or suitable for your particular purposes), unless expressly stipulated in these Terms;
  - (c) that you (and to the extent applicable, your Personnel) will provide us with all documentation, information, instructions, cooperation and access reasonably necessary to enable us to provide the Goods and Services;
  - (d) that the information and documentation you provide to us is true, correct and complete; and
  - (e) you will not infringe any third party rights in working with us and receiving the Goods and Services.

**6. DELIVERY, TITLE AND RISK**

- 6.1 If the Parties agree that:
- (a) we are responsible for delivering the Goods to you, we will use reasonable endeavours to deliver the Goods to the delivery location as agreed between the Parties; or
  - (b) you are responsible for collecting the Goods from us, we will use reasonable endeavours to make available the Goods at the collection location by the collection time as agreed between the Parties, and you agree to:
    - (1) use reasonable endeavours to collect the Goods from the collection location and by the collection time; and
    - (2) comply with any policies and procedures which apply at the collection location from which you collect the Goods.
- 6.2 As between the Parties, you agree that the costs of delivery will be paid in accordance with EXW (Incoterms® rules 2020) (**Incoterm**) unless otherwise agreed in writing in the Quote.
- 6.3 Title in the Goods will remain with us until all amounts due and payable to us under these Terms are paid by you in full.

- 6.4 Risk in the Goods will be transferred in accordance with the Incoterm.
- 6.5 You agree that we hold a general lien over any Goods owned by us that are in your possession, for the satisfactory performance of your obligations under these Terms. You agree that these Terms and your obligations under these Terms create a registrable security interest in favour of us, and you consent to the security interest (and any other registrable interest created in connection with these Terms) being registered on any relevant securities register (and you must do all things to enable us to do so).

**7. TERMINATION**

- 7.1 Either Party may terminate these Terms, by providing the other Party with 7 Business Days' written notice, provided that the Goods have not been Manufactured.
- 7.2 These Terms will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if:
- (a) the other Party (**Defaulting Party**) breaches a material term of these Terms and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
  - (b) the Defaulting Party is unable to pay its debts as they fall due.
- 7.3 Upon termination or expiry of these Terms:
- (a) we will immediately cease providing the Goods and Services;
  - (b) you are to pay for all Goods and Services provided prior to termination, including Goods and Services which have been provided and have not yet been invoiced to you, and all other amounts due and payable under these Terms;
  - (c) by you pursuant to clause 7.1 or by us pursuant to clause 7.2, you also agree to pay us our additional costs, reasonably incurred, and which arise directly from such termination (including legal fees, debt collector fees and mercantile agent fees); and
  - (d) you agree to promptly return (where possible), or delete or destroy (where not possible to return), any information, documentation or material owned by us that is in your possession or control, subject to any rights you may have to any Intellectual Property in accordance with clause 10.
- 7.4 The accrued rights, obligations and remedies of the Parties are not affected by termination of these Terms.
- 7.5 This clause 7 will survive the termination or expiry of these Terms.

**8. YOUR CONSUMER LAW RIGHTS**

- 8.1 Certain legislation, including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth) and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the Goods and Services which cannot be excluded, restricted or modified (**Consumer Law**).

**Rights).** Nothing in these Terms excludes your Consumer Law Rights as a consumer under the ACL.

8.2 Our Goods and Services come with guarantees that cannot be excluded under the ACL. For major failures with the Service, you are entitled:

- (a) to cancel your service contract with us; and
- (b) to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or a Service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the Goods and to cancel the contract for the Service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods or Service.

8.3 You agree that our Liability for the Goods and Services is governed solely by the ACL and these Terms.

8.4 Subject to your Consumer Law Rights, we exclude all implied warranties, representations and guarantees of any kind (whether statutory or otherwise), unless expressly stipulated in these Terms.

8.5 Subject to your Consumer Law Rights, all amounts paid by you for the Goods and Services are non-refundable.

8.6 This clause 8 will survive the termination or expiry of these Terms.

## 9. LIABILITY AND EXCLUSIONS

9.1 **Exclusions:** Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by (whether directly or indirectly):

- (a) acts or omissions of you or your Personnel (including any works, goods or services provided by you or your Personnel);
- (b) breach of these Terms, any law or third party rights by you or your Personnel;
- (c) any information, documentation, specifications or directions given by you or your Personnel; and
- (d) loss or damage which is the inevitable and unavoidable part of proving the Goods and Services.

9.2 **Limitation of Liability:** Despite anything to the contrary, to the maximum extent permitted by law, and subject to your Consumer Law Rights:

- (a) neither Party will be liable for any Consequential Loss;
- (b) a Party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure by that other Party to mitigate its loss; and

- (c) our maximum aggregate liability for any Liability arising from or in connection with these Terms will be limited to us resupplying the Goods and Services to you or, in our sole discretion, to us repaying you the amount of the Price paid by you to us in respect of the supply of the relevant Goods and Services to which the Liability relates.

9.3 This clause 9 will survive the termination or expiry of these Terms.

## 10. INTELLECTUAL PROPERTY

10.1 As between the Parties, each Party retains all Intellectual Property Rights in its Intellectual Property developed prior to or independently of these Terms. Nothing in these Terms constitutes an assignment or transfer of such rights.

10.2 As between the Parties, ownership of all Intellectual Property Rights in any Intellectual Property developed, adapted, modified or created in connection with these Terms or the provision of the Goods and Services will at all times vest, or remain vested, in us.

10.3 You grant us a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, for the duration of these Terms, to use your and your Personnel's Intellectual Property solely for the performance of our obligations under these Terms.

10.4 In the use of any Intellectual Property Rights in connection with these Terms, you agree that you must not (and you must ensure that your Personnel do not) commit any Intellectual Property Breach. Where you reasonably suspect that such a breach may have occurred, you must notify us immediately.

10.5 This clause 10 will survive the termination or expiry of these Terms.

## 11. CONFIDENTIALITY

11.1 Each Receiving Party agrees:

- (a) not to disclose the Confidential Information of the Disclosing Party to any third party;
- (b) to use all reasonable endeavours to protect the Confidential Information of the Disclosing Party from any unauthorised disclosure; and
- (c) to only use the Confidential Information of the Disclosing Party for the purposes for which it was disclosed or provided by the Disclosing Party, and not for any other purpose.

11.2 The obligations in clause 11.1 do not apply to Confidential Information that:

- (a) is required to be disclosed in order for the Parties to comply with their obligations under these Terms;
- (b) is authorised to be disclosed by the Disclosing Party;
- (c) is in the public domain and/or is no longer confidential, except as a result of a breach of these Terms; or
- (d) must be disclosed by Law or by a regulatory authority, including under subpoena.

11.3 Each Party agrees that monetary damages may not be an adequate remedy for a breach of this clause 11. A Party is entitled to seek an injunction, or any other remedy available at law or in equity, at its discretion, to protect itself from a breach (or continuing breach) of this clause 11.

11.4 This clause 11 will survive the termination of these Terms

## 12. GENERAL

12.1 **Amendment:** These Terms may only be amended in writing and as agreed by the Parties.

12.2 **Assignment:** Subject to clause 12.3, a Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent is not to be unreasonably withheld).

12.3 **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with these Terms, to a debt collector, debt collection agency, or other third party.

12.4 **Disputes:** A Party may not commence court proceedings relating to any dispute arising from these Terms (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction, or will operate to prevent a Party from taking steps to recover any debt.

12.5 **Entire agreement:** Subject to your Consumer Law Rights, these Terms contains the entire understanding between the Parties, and the Parties agree that no representation or statement has been made to, or relied upon by, either of the Parties, except as expressly stipulated in these Terms, and these Terms supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.

12.6 **Force majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under these Terms if such delay or failure is caused or contributed to by a Force Majeure Event. This clause will not apply to a Party's obligation to pay any amount that is due and payable to the other Party under these Terms.

12.7 **Further assurance:** Each Party must promptly do all things and execute all further instruments necessary to give full force and effect to these Terms and their obligations under it.

12.8 **Governing law:** These Terms are governed by the laws of New South Wales. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

12.9 **Joint and several Liability:** Where you constitute two or more individuals or entities, you will each be jointly and severally liable under these Terms.

12.10 **Notices:** Any notice given under these Terms must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.

12.11 **Online execution:** These Terms may be executed by means of such third party online document execution service as we nominate, subject to such execution being in accordance with the applicable terms and conditions of that document execution service.

12.12 **Precedence:** To the extent there is any ambiguity, discrepancy or inconsistency in or between these Terms and the Quote, the Quote will prevail.

12.13 **Relationship of Parties:** These Terms is not intended to create a partnership, joint venture, employment or agency relationship between the Parties.

12.14 **Severance:** If a provision of these Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions in these Terms.

## 13. INTERPRETATION & DEFINITIONS

13.1 Any reference to "Goods and Services" may mean "Goods and/or Services", as the case may be.

13.2 Words like including and for example are not words of limitation.

13.3 In these Terms, unless the context otherwise requires, capitalised terms have the meanings given to them in the Quote, and:

**Business Days** means a day on which banks are open for general banking business in New South Wales, excluding Saturdays, Sundays and public holidays.

**Confidential Information** includes information which:

- (a) is disclosed to the Receiving Party in connection with these Terms at any time;
- (b) is prepared or produced under or in connection with these Terms at any time;
- (c) relates to the Disclosing Party's business, assets or affairs; or
- (d) relates to the subject matter of, the terms of and/or any transactions contemplated by these Terms,

whether or not such information or documentation is reduced to a tangible form or marked in writing as

“confidential”, and howsoever the Receiving Party receives that information.

**Consequential Loss** includes any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. The Parties acknowledge and agree that your obligation to pay us the Price under these Terms will not constitute “Consequential Loss” for the purposes of this definition.

**Disclosing Party** means the party disclosing Confidential Information to the Receiving Party.

**Force Majeure Event** means any event or circumstance which is beyond a Party’s reasonable control including but not limited to, acts of God including fire, hurricane, typhoon, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster, civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities, ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic.

**Goods** means the goods we agree to provide under these Terms, as further particularised in the Quote.

**GST** has the meaning which it is given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Intellectual Property** means any copyright, registered or unregistered designs, patents or trade marks, domain names, know-how, inventions, processes, trade secrets or Confidential Information, circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

**Intellectual Property Rights** means for the duration of the rights in any part of the world, any industrial or

intellectual property rights, whether registrable or not, including in respect of Intellectual Property.

**Intellectual Property Breach** means any breach by you (or any of your Personnel) of any of our Intellectual Property Rights (or any breaches of third-party rights, including any Intellectual Property Rights of third parties), including using or exploiting our Intellectual Property for purposes other than as expressly stated in these Terms (including, without limitation, using our Intellectual Property for commercial purposes or on-selling our Intellectual Property to third parties).

**Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to these Terms or otherwise.

**Manufacture** means the creation, production, manufacture and supply of the Goods by you to us, in accordance with these Terms, and **Manufactured** has a corresponding meaning.

**Payment Terms** means the Price, method and timing of payment, as set out in the Quote.

**Personnel** means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us.

**Price** means the price set out in the Quote for the provision of the Goods and Services.

**Quote** means a quote, invoice or purchase order (including any online version of the same) to which these Terms are attached by reference.

**Receiving Party** means the party receiving Confidential Information from the Disclosing Party.

**Services** means the services we agree to perform under these Terms, as further particularised in the Quote.

**Terms** means these terms and conditions, which includes the Quote, and any documents attached to, or referred to in, each of them.