

STANDARD CONDITIONS FOR SUPPLY OF GOODS AND SERVICES

These conditions set out the terms on which **EA Technology Pty Ltd trading as EA Technology Australia** ("we" or "us") have agreed to supply our services to the Customer ("you"). They also set out the terms on which any goods supplied by us in connection with such services are supplied:-

1. DEFINITIONS

For ease of reference certain terms used elsewhere in these conditions are defined as follows:-

"Goods" means any products, apparatus, materials, goods and articles of any kind (including, without limitation, the Software) supplied by us to you in connection with the provision of the Services;

"Intellectual Property Rights" means any patent, copyright, design right, trade mark, confidential information, know how and all similar rights whether or not registered or capable of registration subsisting (now or in the future) in or arising from the performance of the Services or the supply of the Goods.

"Price" means the price specified in the quotation together with value added tax and any other applicable taxes or duties.

"Services" means the work, training, consultancy, advice and services which we have agreed to carry out for you (including where appropriate the supply of any Goods). The Services are more fully described in the accompanying quotation.

"Software" means any software supplied by us to you, which form part of the Goods.

"writing" includes electronic communication and comparable means of communication and "written" shall be construed accordingly.

2. APPLICATION OF CONDITIONS

2.1 We agree to carry out the Services and to supply Goods on the terms of these conditions only. We will not be bound by any contrary, different or additional terms or conditions, irrespective of their date, contained or referred to in your order form or other documents or correspondence and any such terms or conditions shall have no effect.

2.2 Each order or acceptance of a quotation for Goods and/or Services by you shall be deemed to be an offer by you to buy Goods and/or Services subject to these conditions.

2.3 No order placed by you will be deemed to be accepted by us until a written acknowledgement of order is issued by us, or when the Goods and/or Services are supplied by us to you (if earlier). Once accepted by us an order cannot be cancelled by you other than with our written consent.

2.4 We reserve the right without notice to amend the specification of our goods from time to time without notice. Any descriptions of our goods as set out in our catalogues, advertising literature or quotations may be subject to change and you are advised to check the specification before placing your order. To enable us to pursue our policy of continuous improvement of our goods and services, we shall be entitled to make any alterations which we consider to be reasonable to the specification or scope of such goods and/or services whether before or after the placing of an order or the making of the contract.

3. OUR OBLIGATIONS

3.1 The scope of the Services is set out in the proposal or quotation. We will perform those Services with reasonable skill care and diligence. We will use reasonable endeavours to

provide the Services within any time scale indicated in the quotation, however, any time scales provided are only an estimate and accordingly we can accept no responsibility or liability, financial or otherwise, in the event that we are unable for any reason to keep to the timetable. For the avoidance of doubt, time for performance of the Services shall not be of the essence.

3.2 We may perform the Services ourselves or, where in our sole discretion we consider it necessary or desirable, we may instruct third parties to carry out the whole or any part of the Services.

3.3 Where we have agreed to supply Goods, the description of those Goods is set out in the quotation. Unless the quotation provides otherwise, no other descriptive material or specification whether written or oral contained in any correspondence or statement, or in promotional or sales literature shall form any part of our agreement.

3.4 We may suspend or cease performance of the Services or delivery of Goods at our discretion if at any time you are in breach of your obligations under these conditions or we have reason to believe that you may not be able to pay your debts as they fall due or you cease, threaten to cease or we have reason to believe that you may cease trading or there is any change in your ownership or control which for whatever reason we consider makes it unsuitable or undesirable for us to continue to work for you and in any such case we shall notify you in writing and on such notification we shall have no further liability or obligation to you.

4. PRICE AND PAYMENT TERMS

4.1 You shall pay the Price in accordance with the quotation or, if the quotation is silent as to payment terms, in full in cleared funds not later than thirty days after the date of our invoice to you. Time for payment by you shall be of the essence.

4.2 If payment is not made by the due date as set out in clause 4.1 above, we may at our option:

4.2.1 charge interest on the amount outstanding at the rate 8% above the RBA Official Cash Rate applicable from time to time until payment, whether before or after judgment and you shall pay the interest on demand. We may also

4.2.2 suspend the provision or supply of all Services, or any of our other obligations under this agreement, until payment has been made in full.

4.3 We are not obliged to provide any Services to you unless and until you have paid to us such sums by way of deposit as may be specified in our quotation or otherwise agreed between us.

4.4 All prices quoted to you are based on information available to us at the time of quotation. Our Price includes the cost of carriage, packing, and, insurance but excludes the cost of customs duties or any other similar item, which shall be payable by you. We reserve the right to pass on any increase in (or imposition of) supply chain costs, cost of Goods, tax, or other levies to you in addition to the Price and you shall pay any such costs in accordance with the payment terms set out in these conditions.

4.5 Subject to clause 4.4, you agree that we may review and increase our charges, provided that such charges shall not be increased more than once in any 12 month period. We will give you written notice of any such increase at least 2 months

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before the proposed date of the increase. If such increase is unacceptable to you, you may, within 3 months of such notice being received, terminate our agreement giving not less than 3 months written notice to us. For the avoidance of doubt, if you do not serve such notice within 3 months of the date of receipt, you will be deemed to have accepted the increase.

4.6 In the event that performance of the Services requires us to travel, the cost of all travel, accommodation and subsistence incurred by us, our employees or any third party contractor in the performance of the Services shall be included in the Price unless expressly stated otherwise.

4.7 We reserve the right to raise an additional charge on you in the event that the assumptions specified in the quotations prove to be incorrect for whatever reason and in particular we reserve the right to increase the Price if work has to be performed outside normal working hours or if the nature, extent or scope of the Services is altered in any way during the course of our providing the Services. We also reserve the right to increase the Price if delays are caused or if we have to carry out extra work as a result of anything which you may do or fail to do. Any increases in Price shall be payable by you in accordance with the payment terms set out in these conditions,

4.8 You shall make all payments due under the Agreement in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless you have a valid court order requiring an amount equal to such deduction to be paid by us to you.

5. YOUR OBLIGATIONS TO US

5.1 You must promptly provide us with all information and assistance that we may reasonably require in connection with the performance of the Services.

5.2 Where the Services are to be provided at your premises or elsewhere than at our premises you shall make available free of charge all basic amenities for the use of our employees and any third-party contractors as shall be required in order to enable us to comply with relevant legislation concerning their health, safety and well-being and to perform the Services.

5.3 You shall carry out any agreed preparatory works specified in our quotation in good time to enable the Services to be supplied promptly and effectively.

5.4 You shall disclose to us the presence of any hazardous machinery or substance in any place where we are to provide the Services and shall give us full information as to the nature of any such hazard. Failure to do may result in us being unable to perform or the Services without any further obligation to you and may result in termination of this agreement pursuant to clause 14.1.3.

5.5 You shall obtain any necessary consents or permits required from any local or governmental authority to enable the Services to be carried out.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 The Intellectual Property Rights shall remain our property. Provided that you comply with all your obligations under these conditions we grant to you a personal non-exclusive, revocable, non-transferable licence to use the Intellectual Property Rights in the normal course of your business but not further or otherwise. You may not grant any sub-licence nor transfer the benefit of the licence without our

prior written consent. Upon termination or expiry of this agreement, the licence shall automatically terminate.

6.2 All rights to and title in any copyright in all drawings, reports, calculations and other documents provided by us in connection with the Services belong to us. You may not make copies of the same or any part of them without our agreement which must be in writing to be valid.

6.3 Where any Software (including without limitation any bespoke software) is provided by us, all intellectual property rights in such Software shall remain our property. Prior to providing you with any Software you shall enter into a software licence agreement with us in respect of your use of the Software.

6.4 If the quotation expressly states that Intellectual Property Rights in connection with the Services or any part thereof are to become your property you will on request grant to us a non-exclusive royalty free licence to use the same for all purposes connected with our business without limit of time and in particular to use the Intellectual Property Rights and any development thereof which we may undertake in connection with Goods and Services supplied by us to our other customers.

6.5 Unless we have told you otherwise, to the best of our knowledge and belief neither the supply of the Goods nor the supply of the Services to you will result in the infringement of any third party's Intellectual Property Rights. You shall promptly give notice to us in the event that you become aware of any claim that the Goods or Services infringe the rights of any third party, and we reserve the right to take any action as we consider appropriate, including at our own expense to conduct any ensuing litigation and all negotiations for a settlement of a claim. We will bear the cost of any payments (either by way of a lump sum or a continuing royalty payment) made in settlement or as a result of an award in a judgement against us in the event of litigation.

6.6 We will grant you the benefit of condition 6.5 only if you: (i) comply with the provisions of clause 6.5; (ii) make no admission of liability and take no other action in connection with any third party claim; (iii) permit us to have the conduct of the claim; and (iv) give us all reasonable information, cooperation and assistance in relation to the conduct of the claim (including lending your name to proceedings). In addition, if it is made a condition of any settlement made by us or judgement awarded against us or you, you will return or destroy as applicable all infringing Goods or documents still under your control subject to a refund by us of any payment for such goods already made (less a reasonable allowance for depreciation).

6.7 The provisions of Condition 6.5. shall not apply to any infringement caused: (i) by us in following a design or instruction furnished or given by you; (ii) arising out of any use of the Goods or Services in a manner or for a purpose which shall have been specifically prohibited in writing by us; (iii) arising out of the use of such Goods or Services in association or combination with any other product; or (iv) arising out of any alterations, tampering or changes to the Goods carried out by or on behalf of you.

6.8 You warrant that any design or instruction furnished or given by you shall not cause us to infringe any intellectual property rights of any third party and you shall indemnify and keep us indemnified in full against any loss, damages or

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expenses whatsoever (including costs and legal fees) which we may incur in or arising from the performance of the contract by reason of any infringement of any such rights.

6.9 The provisions set out in condition 6.5 above state our entire liability to you and your sole and exclusive remedies against us in connection with claims based on or resulting from the infringement of intellectual property rights of any kind whatsoever of any third party.

7. CONFIDENTIALITY

Both of us are to keep confidential and shall not without the prior consent in writing of the other disclose to any third party any technical or commercial information which may have been acquired from the other as a result of discussions, negotiations and other communications between us relating to the Services or the Goods. These obligations continue after termination of our agreement however caused.

8. COMPLIANCE

We will not tolerate bribery. Offering bribes to our employees or representatives will be treated seriously and may be reported to the appropriate authorities. If you believe that any employee or representative of ours has offered a bribe on behalf of us, please contact us without delay.

9. DATA PROTECTION

9.1 We may request certain information from you which may constitute personal data under relevant legislation in order to be able to fulfil our contractual obligations to you as set out in these Conditions or to be able to provide you with a quotation, and for no other purpose.

9.2 We will retain personal data for as long as is needed in order to provide the Services and to comply with these Conditions.

9.3 We will always endeavor to protect your data and we implement security safeguards designed to do so. However, we cannot warrant the security of any information that you provide to us.

9.4 If you have any queries in relation to this Condition 9 please get in touch.

10. RELIANCE ON SKILL AND JUDGEMENT

You acknowledge that you rely on your own skill and judgement in determining the suitability of the Goods and the Services for any particular purpose. You alone are responsible for ensuring that any performance requirement indicated in the quotation is sufficient and suitable for your purpose save in so far as we have expressly agreed in writing that you may rely on our advice.

11. LIABILITIES

11.1 We do not accept liability in any circumstances and whether in contract, tort or on any other basis whatsoever and however caused for:

11.1.1 any loss of profit, business, contracts, revenues or anticipated savings;

11.1.2 any special, indirect or consequential loss or damage of any nature whatsoever;

11.1.3 any expenses; or

11.1.4 any other liabilities or claims for consequential compensation arising out of or in connection with the agreement or these conditions.

11.2 Subject to Condition 11.1, Condition 11.3, Condition 11.5 and Condition 13.2 we will accept liability to you for any loss and/or damage arising by reason of negligence on the part of our employees or any breach on our part of our contractual obligations to you.

11.3 Subject to Condition 13.2, our total liability to you whether in contract, tort (including negligence or breach of statutory duty), breach of third party rights or otherwise for all aggregate claims relating to this agreement howsoever arising shall not in any event exceed whichever shall be the lesser of: (i) one million dollars (AUD); (ii) or five times the Price.

11.4 We exclude all conditions and warranties (express and implied, statutory or otherwise) to the fullest extent permitted by law. In so far as we are able to do so and at your expense we will assign to you the benefit of any warranties and conditions relating to quality, suitability, fitness for purpose or quiet possession contained in any contract which we may have with any third party for the supply of any component included within the Goods.

11.5 You accept responsibility for any inaccuracies, errors or omissions on your part in relation to instructions given by you or in any data, drawings, calculations, specifications, information or material supplied to us for the purpose of enabling us to make the Goods or perform the Services.

11.6 We will not accept any liability for any loss arising as a result of delay howsoever caused.

11.7 Termination of our agreement for whatever reason shall not affect any rights or liabilities which have already accrued at the time of termination.

11.8 Nothing in these conditions excludes or limits liability:

11.8.1 for death or personal injury caused by our negligence; or

11.8.2 for any matter which it is illegal for us to exclude or attempt to exclude our liability; or

11.8.3 for fraudulent misrepresentation.

12. DEFECTS

In the event that defects appear in the Goods and/or the Services within a period of twelve months from the completion of the provision of the Services, or from the date of delivery in respect of Goods (excluding Software), and a period of three months from the date of delivery in respect of Software supplied by us, we will make such resources available as we deem necessary to investigate such defects. Provided that in the case of Goods and Software the Goods and Software have been properly used, cared for and maintained by you and the defect arises solely as a result of faulty design materials or workmanship on our part, we shall endeavour to rectify the defect free of charge to you.

13. YOUR INDEMNITY TO US

13.1 You shall indemnify us from and against all claims, actions, demands, proceedings, damages, costs, charges and expenses arising out of or in connection with the supply of the Goods and Services to you:

13.1.1 to the extent that any such claim etc shall exceed the limit of liability specified in condition 11.3 above; and

13.1.2 where any such claim or loss arises as a result of any breach on your part of any of your obligations under these conditions; and

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13.1.3 where any claims or actions are brought or threatened against us by a third party as a result of your use of the Goods or the Services in the manufacture, supply or distribution of any other goods or in the provision of a service to a third party.

13.2 Notwithstanding any other Condition in these Conditions, neither we nor you shall be liable for any loss or damage arising from any occurrence unless a claim is formally notified in writing before the expiry of two years from the date of our quotation.

14. TERMINATION

14.1 We may terminate our agreement immediately on giving notice to you if:

14.1.1 you commit any material or persistent breach of any of these Conditions;

14.1.2 an order is made or a resolution is passed for your winding-up, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order, or an order is made for the appointment of an administrator to manage your affairs, business and property, or such an administrator is appointed, or documents are filed with the Court for the appointment of an administrator, or a notice of intention to appoint an administrator is given by you or by a qualifying charge holder, or a receiver is appointed over any of your assets or undertakings, or circumstances arise which entitle the Court or a creditor to appoint a receiver or manager, and for the avoidance of doubt, upon terminating the agreement in accordance with this Condition, we may without liability or prejudice to any of our other rights and remedies under these Conditions, cease the provision of any Goods or Services;

14.1.3 you commit a breach of clause 5.4 of this agreement.

14.2 On termination of this agreement pursuant to clause 5.4 or clause 14.1 above, you shall immediately pay all of our outstanding unpaid invoices (together with any interest owed in respect of such invoices) and we shall be entitled to submit invoice(s) in respect of Goods and/or Services supplied but for which no invoice has been submitted, which invoice(s) shall be payable by you immediately on receipt.

15. FORCE MAJEURE

We will not be responsible for any delay in or failure to perform the Services or to supply the Goods which is caused by factors beyond our reasonable control which shall include but not be limited to acts of God, acts of governmental or any other lawful authority, strike, war, riot, civil commotion, flood, fire, explosion, epidemic, trade embargo or any other acts or omissions on the part of any third party or sub-contractor or any failure of electricity or other fuel or equipment. If the event in question continues for a continuous period in excess of 3 months, either party shall be entitled to give written notice to the other to terminate our agreement.

16. ASSIGNMENT AND AGREEMENT

16.1 We may assign our agreement or any part of it to any person, firm or Supplier.

16.2 You may not assign our agreement in whole or in part without our prior written consent (not to be unreasonably withheld or delayed).

16.3 The quotation and these conditions sets out the entire agreement and understanding of both of us relating to the

subject matter thereof and supersedes all prior discussions between us and all prior memoranda of intent or understanding and all previous documentation. You acknowledge that you have not relied on any statement, promise or representation made by us or given on our behalf, which is not set out in these conditions. Nothing in this Condition shall limit or exclude any liability for fraud.

17. RETENTION OF TITLE AND RISK

17.1 Where Goods are to be supplied to you they will remain our property until you have paid for both Goods and Services in full.

17.2 Whilst the Goods remain in our ownership you may not sell or permit any lien to be created over them and you shall take proper care of the Goods and keep them separate from your own goods and clearly identified as belonging to us.

17.3 Unless otherwise agreed, the Goods shall be at your risk as from the time they leave our premises and whether or not delivered to you or to any agent on your behalf.

18. VARIATION

No variation, alteration or substitution of, or addition to, our agreement or these conditions shall be valid unless it is in writing and signed by or on behalf of each of the parties.

19. WAIVER

If either of us shall positively waive or delay or not insist in any instance on full compliance by the other with any of these terms that shall not prevent him from subsequently requiring such compliance in respect of that instance by the other party (subject always to reasonable notice in the case of a positive waiver).

20. GOVERNING LAW AND DISPUTES

These terms and conditions shall be construed in accordance with the laws of the State of Queensland and the parties submit to the courts of that jurisdiction.

21. NOTICES

Any notice required or permitted to be given by either party to the other under these conditions shall be in writing addressed to that other party at its registered or principal places of business or such other address as may at the relevant time have been notified pursuant to this condition 20 to the party giving notice.

22. GENERAL

22.1 Nothing contained in these conditions shall or shall be deemed to constitute a partnership or a contract of employment between the parties.

22.2 The parties to this Agreement do not intend that any term of these conditions shall be enforceable by any person that is not a party to it.

October 2019