

Technica Group - Terms and Conditions of Business

Effective as of 1/7/2016

1. Definitions

Agreement means the terms and conditions contained herein this agreement and the Quote;

Authorised Representative means the person nominated on the Application and/or Credit Application and any other person as nominated by the Customer from time to time;

Credit Application means the Credit Application Form, Privacy Notice and Personal Guarantee Deed provided by the Supplier;

Credit Application Form means the credit application form as part of the Credit Application;

Customer means the applicant named on this Agreement or the Credit Application;

Goods means any and all goods supplied by the Supplier to the Customer from time to time pursuant to the Engagement, Quote, Tax Invoice, Support Package or any variation thereof;

Engagement means the request provided by the Customer to the Supplier by e-mail, online booking, phone call or means acceptable to the Supplier for the supply of Goods or Services.

Google means either Google the company or Google the Technica office dog (pug)

Pricing means the prices for the Supplier's Goods and Services as recorded in the Consultation, Deployment & Service Pricing or otherwise and as varied from time to time by the Supplier;

Privacy Notice means the privacy notice annexed to the Credit Application Form as part of the Credit Application;

Purchase Price means the costs of the Goods or Services as at the date stated on the Quote or where no Quote is provided in accordance with the Supplier's Pricing as varied from time to time by the Supplier;

Supplier means Technica Group – ABN: 11 062 300 155 – Address PO BOX 350, Northgate QLD 4013;

Quote means the Supplier's quote provided to the Customer for the Services and/or Goods related to the work/supply noted on the Engagement;

Services means any goods or services supplied by the Supplier to the Customer that relate to any work or service contemplated by this Agreement and the Quote;

Substantial Change means any variation to Quote that may in any way effect the scope of Services and/or Goods to be provided as determined by the Supplier; and

Tax Invoice means the tax invoice supplied by the Supplier to the Customer.

2. Acceptance of Terms and Conditions

1. These terms and conditions and/or the Quote are deemed to be accepted by the Customer upon either of the following events occurring:

- (a) the Customer signs this agreement on paper or digitally at the Technica website;
- (b) the Credit Application is signed by the Customer or their Authorised Representative on paper or digitally;
- (c) the Customer accepts the Quote online by clicking the acceptance link on the emailed Quote issued by the Supplier; or
- (d) the Customer instructs the Supplier to supply the Services and/or Goods.

2. Upon acceptance pursuant to this clause the Supplier may require the Customer to complete and return the Credit Application prior to the Supplier providing the Services and/or Goods.

3. Authority

The Customer acknowledges that the Supplier or any representative thereof has not made any representation or agreement whereby the Customer has relied upon.

If any representation or agreements have been made by the Supplier or any representative thereof, the Customer agrees that they have not relied upon them and this Agreement forms the entire agreement between the parties.

4. Price

1. The price payable for the Services and/or Goods is:

- (a) the Purchase Price contained in the Quote; or
- (b) where the Supplier does not issue the Customer with a Quote, the amount of the Tax Invoice.

2. Prices are subject to change from time to time by the Supplier with no notice being required to be given to the Customer.

3. Prices are current as at the date that the Agreement and/or Credit Application is signed by the Customer.

4. The Purchase Price contained in the Quote remains valid for a period of 14 days from the date that it is provided to the Customer.

5. The Supplier, at its sole discretion, may issue a Tax Invoice in addition to the Quote if the Customer requires or requests the Supplier to supply additional goods and/or services to complete or add to the Engagement;

6. The Customer agrees that where an appointment is requested with the Supplier:

- (a) and that appointment is requested and/or Services are required between 5:30PM and 10:00PM or between 6:30AM and 8:30AM, Monday to Friday, or between 8:30AM and 5:30PM on a Saturday, any Services will be calculated at the 'Out of Office Hours' rate in the Pricing.

(b) and that appointment is requested and/or Services are required between 10:00PM and 6:30AM, Monday to Friday, or between 12:00AM and 8:30AM or between 5:30PM and 11:59PM on Saturdays, or all day on Sunday or a Public Holiday, any Services will be calculated at the 'Emergency Support' rate in the Pricing.

(c) and the Customer does not cancel that appointment no less than 2 hours prior to the scheduled time of the appointment, the Supplier may issue a Tax Invoice for 1 hour of labour pursuant to the Pricing.

7. The Customer agrees that where an onsite appointment or Services are requested with the Supplier and travel is required over 10KM's from Brisbane CBD, service callout/travel expenses will be incurred and charged for every KM over 10KM's from Brisbane CBD at the advertised rate.

8. Subject to the Pricing, the Customer agrees that where the Supplier's employees or any other authorised person incurs additional travelling or parking costs, the Customer will make payment of those costs.

9. The Customer agrees that additional hourly travelling expenses may be incurred by the Customer for extended travel.

10. The Customer agrees that the cost of purchasing, leasing, renting or otherwise obtaining software or hardware shall be charged to the Customer and does not form part of the costs for the Services.

5. Terms of Payment

1. All payments to the Supplier:

(a) must be made by either direct deposit into the Supplier's nominated bank account or credit card portal listed on the Tax Invoice;

(b) must be made within 7 days of the date as noted on the Tax Invoice or as otherwise directed by the Supplier; and

(c) must be made in the manner as stated on the Tax Invoice.

2. The Supplier reserves the right at any time to withhold or cancel the supply of the Services and/or Goods, without notice, if the Customer fails to comply with the terms of this Agreement.

3. The Customer must, within 3 business days of the date of issue of a Tax Invoice, provide the Supplier with written notice of any dispute of any amount noted in the Tax Invoice and should no such written notice be provided the Customer will be deemed to have accepted the amount stated in that Tax Invoice as being due and owing to the Supplier.

4. The Supplier may withhold access to and delivery of any Goods or performance of any Services until clear payment is received.

5. Where the Customer has purchased a Support agreement, the Supplier may deduct the value of the Goods or Services supplied from the Value of the Support Package immediately upon providing those Goods or Services or as otherwise agreed with the Customer.

6. Delivery of Services & Goods and Variation

1. The Customer must sign the Agreement or provide the Credit Application if requested by the Supplier prior to any Services being undertaken or Goods being supplied.
2. At the Supplier's sole discretion, it may elect to waive the requirement for the Customer to sign the Agreement or provide the Credit Application, whether before or after the Services are undertaken or the Goods are supplied.
3. Where an Agreement is provided the Services and/or Goods that the Supplier is to supply are limited to the Services and/or Goods as noted on the Engagement.
4. The Supplier will contact the Customer to arrange for a date for the Services and/or Goods to be provided, which shall be no more than 5 business days from clause 2 being satisfied, unless otherwise agreed.
5. The Supplier may refuse to supply Services and/or Goods to the Customer in the event that monies owed to the Supplier by the Customer are outstanding.
6. At the Suppliers' sole discretion, the costs of delivery of any Goods are in addition to the Purchase Price for the Customer's account.
7. The delivery times made known to the Customer are estimates only and the Supplier will not be liable for later delivery or non-delivery of the Goods or Services.
8. The Customer must make all arrangements necessary to take delivery of the Goods or Services whenever they are expected for delivery.
9. In the event that the Customer is unable to take delivery of the Goods or Services as arranged then the Supplier shall be entitled to charge a reasonable fee for re-delivery.
10. The Supplier may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in this Agreement.
11. The Customer must examine the Goods delivered at the time of delivery and sign the delivery docket to accept the Goods delivered.
12. The Supplier is not liable to the Customer for Goods that have been examined and accepted by the Customer or for shortages of Goods.
13. The Customer agrees that once the Goods have been delivered then the Customer is deemed to have examined the Goods and is satisfied.
14. Despite any negligence on the part of the Supplier, or its agents, the Supplier will not be liable for any loss, damage, delay, cost or expense occasioned to the Customer or any third parties arising from late or non-delivery or late installation of the Goods or Services caused by the delivery carrier, or its agents.
16. The Services and/or Goods that the Supplier will provide to the Customer are limited to those Services and/or Goods as contained in the Quote where a Quote is provided and any additional Services and/or Goods or variations thereof that may be required may incur an additional fee which shall be determined by the Supplier upon assessment.

17. The Customer must notify the Supplier of any Substantial Change and acknowledges that any Substantial Change may affect the scope of Services and/or Goods to be provided and may incur an additional fee.

18. The Supplier will attempt, in all possible circumstances, to limit the Supplier's downtime in the performance of Services and supply of the Goods.

19. The Supplier will, on becoming aware of any actual or potential delay in providing any Services and/or Goods, provide the Customer with notice as to the nature and cause of the delay and provide an amended timeframe for the Services and/or Goods to be supplied.

20. The Supplier is not liable to the Customer for any failure to perform or supply the Services and/or Goods, or delay for performing of supplying the Services and/or Goods.

21. The Customer further agrees to indemnify the Supplier for any additional cost incurred by the Supplier in the event that the Services and/or Goods to be provided fall outside the scope of work to be performed or supplied pursuant to the Quote.

7. Defective Goods

1. The Customer will, within seven (7) days of delivery of the Goods, notify the Supplier, in writing, of any defects.

2. Upon notifying the Supplier of such defect, the Customer, within a reasonable time, will afford the Supplier an opportunity to inquire in regards to the defect.

3. Subsequent to the Supplier's inspection of the alleged defective Goods/Services, the Supplier will notify the Customer in writing whether the Customer is entitled to reject the Goods as delivered. This does not constitute cancellation of the Agreement.

4. In the event that the Customer fails to comply with this clause, the Goods shall be deemed free from any defect or damage.

5. In the event that the Supplier agrees, in writing, that the Customer is entitled to reject the Goods provided, the Supplier's liability is limited to either replacing or rectifying the Goods or Services provided that the Customer has complied with this clause.

6. For the purposes of clarity, the Supplier:

(a) will not accept the return of Goods by the Customer and the Customer acknowledges that the Supplier is not required to accept the return of Goods; and

(b) has the sole discretion to accept return of defective Goods.

8. Warranties and Indemnities

1. The Customer warrants:

(a) that all information provided to the Supplier is accurate and acknowledges that the Supplier has placed reliance on the information provided and is not required to make any enquires to determine the validity of the information provided;

(b) the Authorised Person has the authority to perform and authorise any action that the Customer may undertake; and

(c) that all times throughout the term of this Agreement the Customer will notify the Supplier if there is a change to the Customers Authorised Person.

The Customer authorises the Supplier to:

(a) the extent permitted by law, to collect, retain and use any information about the Customer; and

(b) disclose any information obtained by any person for the purposes of delivering the Services and/or Goods.

2. The Customer indemnifies the Supplier against:

(a) any penalty or liability incurred by the Supplier for any breach by the Customer of this Agreement; and

(b) all actions, claims, demands, losses, damages, costs and expenses which the Supplier may sustain or incur or for which the Supplier may become liable whether during or after the term of this Agreement, by reason of any act or omission or negligence by the Supplier and its respective employees or any other authorised person.

3. The Supplier is not liable for any defect or damage caused by the Supplier providing or supplying the Services and/or Goods.

4. The Supplier is not liable to compensate the Customer for any losses incurred for failure or delay if such is due to fire, cyclone, earthquake, flood, tsunami, inclement weather, strike, labour dispute, war, government order, riot, revolution, pandemic, civil commotion or any other cause beyond its reasonable control.

9. Risk

1. All risk shall pass to the Customer upon receipt of the Goods or Services

2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods.

3. The production of these terms and conditions by the Supplier is sufficient evidence of the Suppliers' rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.

10. Title

1. Ownership of the Goods does not pass from the Supplier to the Customer until:

(a) full and complete payment of the Purchase Price or the amount of the Tax Invoice as appropriate has been received by the Supplier; and

(b) any other obligations under this Agreement have been fulfilled by the Customer

2. Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Supplier's ownership or rights in respect of the Goods shall continue.

3. It is further agreed that:

(a) where practicable the Goods must be kept separate and identifiable until the Supplier has received full payment of the Purchase Price and all other obligations of the Customer are met;

(b) until such time as ownership of the Goods shall pass from the Supplier to the Customer the Supplier may give notice in writing to the Customer to return the Goods or any of them to the Supplier. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease;

(c) the Supplier shall have the right of stopping the Goods in transit whether or not delivery has been made;

(d) if the Customer fails to return the Goods to the Supplier then the Supplier or the Suppliers' agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods;

(e) the Customer is only a bailee of the Goods and until such time as the Supplier has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to the Supplier for the Goods, on trust for the Supplier;

(f) the Customer must not deal with the money of the Supplier in any way which may be averse to the Supplier;

(g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest, including but not limited to a security interest, in the Goods while they remain the property of the Supplier;

(h) the Supplier can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and

(i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Supplier will be the owner of the end products.

4. The Customer hereby irrevocably grants to the Supplier the right, at its sole discretion, to remove or repossess any Goods from the Customer and sell or dispose of them, and the Supplier is not be liable to the Customer or any person claiming through the Customer and the Supplier is entitled to retain the proceeds of any Goods sold and apply same towards the Customer's indebtedness to the Supplier. If the Customer commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this agreement, then the Supplier may without prejudice to any other remedies it may have, repossess any Goods delivered to the Customer on any account which has not been paid in accordance with the terms and conditions herein and commence proceedings to recover the balance of any monies owing the Supplier by the Customer.

11. Liability

1. The parties acknowledge that, under applicable State and Commonwealth law, certain conditions and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the Customer in relation to the provision of the Services and/or Goods which cannot be excluded, restricted or modified by the Agreement ("Non-excludable Rights").
2. The Supplier disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Customer, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-Excludable Rights. To the extent permitted by law, the liability of the Supplier for a breach of a Non-Excludable Right is limited, at the Supplier's option, to the supplying of the Services and/or Goods again or payment of the cost of having the Services and/or Goods supplied again.
3. The Supplier's liability for any claim in relation to this Agreement or the supply or performance of the Services and/or Goods (whether under statute, contract, tort, negligence or otherwise) will be limited to the amount of the fee paid by the Customer to the Supplier.
4. The Supplier is not be liable to the Customer for any claim of any kind arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any direct or consequential loss (including but not limited to any loss of actual or anticipated profits, revenue, savings, production, business, opportunity, access to markets, goodwill, reputation, publicity, or use) of any remote abnormal or unforeseeable loss or any similar loss whether or not in the reasonable contemplation of the parties, as a result of or in connection with the provision of the supply or performance of the Services and/or Goods.
5. The Customer agrees that they waive any claim, future or present, that they may have or may arise against the Supplier that is in any way connected directly or indirectly with the supply of the Services and/or Goods.
6. Notwithstanding any other provision of this Agreement, the Supplier is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Customer for:
 - (a) any increased costs or expenses;
 - (b) any loss of profit, revenue, business, contracts or anticipated savings;
 - (c) any loss or expense resulting from a claim by a third party; or
 - (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by the Supplier's failure to complete or delay in supply of the Services and/or Goods.
7. The Customer agrees that where they provide the Supplier with goods in relation to the Services, the Supplier will not be liable whatsoever for any loss or damage whether direct or indirect and whether economic or otherwise that may result from any loss of data contained on those goods.
8. The Customer further indemnifies the Supplier from any costs or charges that in anyway either directly or indirectly relate to the supply of the Services and/or Goods and further for any services or goods that the Supplier performs or supplies.

12. Default

1. If the Customer:

- (a) makes default in any payment;
- (b) breaches any terms contained herein this Agreement;
- (c) commits any act of bankruptcy or goes into bankruptcy;
- (d) is insolvent, or is likely to become insolvent, within the meaning of the Corporations Act 2001 (Cth);
- (e) has an administrator, liquidator or provisional liquidator, receiver and manager, or controller appointed over the Customer;
- (f) is subject to a winding up application under the Corporations Act 2001 (Cth); or
- (g) has a judgment awarded against it by any court or tribunal; then Supplier may terminate this Agreement and all Tax Invoices and other monies owing to the Supplier become immediately due and payable.

2. In the event of default under this clause, the Supplier may, at its discretion:

- (a) elect to apply an interest charge against the Customer's account at the rate of 5% of the outstanding monies per month or part thereof;
- (b) charge an administration fee each month, or portion thereof, that an amount owing by the Customer is overdue;
- (c) commence proceedings against the Customer or enforce any personal guarantee;
- (d) call and act upon any security interest that the Supplier is entitled to enforce;
- (e) recover against the Customer all monies that are owed to the Supplier including incidental costs that are incurred in relation to the Customer's default;
- (f) list the default in payment with the appropriate credit reporting agency; and
- (g) perform any other action that the Supplier deems appropriate to enforce this Agreement and recover monies owed.

13. Termination/Cancellation

1. If the Customer wishes to cancel the supply of Services and/or Goods, then they must give 7 days' notice in writing to the Supplier notifying them of termination.

2. In the event that the Customer wishes to terminate the agreement between the parties whereby the Supplier is providing Services and/or Goods for a fixed period of time, then the Customer must pay to the Supplier an amount equal to 75% of the remaining monetary obligation owed under the agreement to the Supplier in addition to payment for the Services and/or Goods already performed and/or supplied or part thereof.

3. The Supplier may terminate this Agreement at any time if the Customer breaches the terms and conditions contained herein without notice to the Customer.

14. Privacy

1. The Customer hereby authorises the Supplier to collect, retain, record, use and disclose personal information about the Customer, in accordance with the Privacy Act 1988, to persons and/or legal entities who are a Solicitor or any other professional consultant engaged by the Supplier, a debt collector, credit reference organisation and/or any other individual or organisation which maintains credit references and/or default listings.
2. The Customer also authorises the Supplier to make enquiries with respect to the Customer's credit worthiness; to exchange information with other credit providers in respect to previous defaults of the Customer and to notify other credit providers of a default by the Customer.

15. GST

1. All prices contemplated by this Agreement, Quote, Tax Invoice and any other document provided by the Supplier are subject to GST.
2. A reference in this clause to a term defined or used in A New Tax System (Goods and Services Tax) Act 1999 (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
3. The parties acknowledge that GST is imposed on a supply made under or in connection with this Agreement and that the consideration provided for that supply will be increased by the rate at which the GST is imposed and the additional consideration will be payable by the Customer to the Supplier at the same time as the consideration to which the additional consideration relates.
4. The Supplier will issue a Tax Invoice to the Customer for the supply of the Services and/or Goods at the time of payment of the GST inclusive consideration or at another time agreed by the parties.
5. If one of the parties is entitled to be reimbursed for an expense or outgoing incurred in connection with this Agreement, the amount of the reimbursement will be net of any input tax credit which may be claimed by the party being reimbursed in relation to that expense or outgoing.
6. The Customer must pay any taxes in relation to the receipt of the Services and/or Goods.

16. Intellectual Property

1. All intellectual property rights and copyright in:
 - (a) the Services and/or Goods (including but not limited all calculations and documents associated with the Services and/or Goods); and
 - (b) all designs, drawings, technical information and documents created, owned or held by the Supplier, remain the property of the Supplier.
 - (c) Faxed to the facsimile number of the party with acknowledgment of receipt received electronically by the sender, when it will be treated as received on the day of sending; or
 - (d) Sent by email to their email address, when it will be treated as received on that day.
2. If any provision, or the application of any provision, of this Agreement is prohibited, invalid, void, illegal or unenforceable in any jurisdiction:

- (a) this will not affect the validity and enforceability of the provision or part in other jurisdictions;
 - (b) the provision or part will only be ineffective to the extent of the prohibition, invalidity, voidness or illegality; and
 - (c) the provision or part will be severed and will not affect the validity or enforceability of the remaining provisions or parts of this Agreement.
3. Any waiver of a right under this Agreement must be in writing and signed by the party granting the waiver and will not operate as a waiver in relation to any subsequent matter.
 4. Any failure, delay, forbearance or indulgence by a party in an exercise, or partial exercise, of a right arising under this Agreement will not result in a waiver of that right or prejudice or restrict the rights of the party.
 5. Each party must do all things and execute all further documents necessary to give full effect to this Agreement.
 6. Each party acknowledges that the party has received legal advice or has had the opportunity of obtaining legal advice in relation to this Agreement.
 7. This Agreement will be governed by the laws of Queensland, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of Queensland.
 8. This Agreement may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the Agreement will be the date on which it is executed by the last party.