

TERMS OF TRADE

I/We hereby request that MAC AID PTY LTD ("Mac Aid") supply goods and/or services ("the Supply") to me/us and in consideration of Mac Aid agreeing to do so, I/we hereby jointly and severally warrant to and covenant with Mac Aid according to the following Terms of Trade ("the Agreement"):

1. Project Outline and Prices

- 1.1. Mac Aid offers the Supply outlined in this invoice ("Invoice") to You at the price stated on the Invoice ("Price").
- 1.2. Mac Aid has the sole discretion to vary the Price if the scope of Supply is, has or will become different from the Supply originally agreed upon.

2. Payment

- 2.1. All amounts referred to in this Agreement are in Australian Dollars and are exclusive of GST.
- 2.2. You shall pay the Price to Mac Aid, in full, in accordance with the payment terms advised by Mac Aid.
- 2.3. If the Invoice is posted to You, You are taken to have received the Invoice 2 clear days after the date of posting unless proved otherwise.
- 2.4. If You make payment by cheque, Mac Aid shall be deemed not to have received payment until the cheque has cleared in its account.
- 2.5. Mac Aid may charge interest on any outstanding amounts at the rate of 12% per annum, calculated monthly.
- 2.6. Mac Aid may charge You storage costs in respect of any of Your items which remain in Mac Aid's possession for more than 7 days from the date on which Mac Aid notifies You that those items are available for collection. If Mac Aid is unable to contact You to collect the items after making reasonable attempts to do so or if You abandon the items, Mac Aid is entitled to dispose of the items after 3 months from the date the items are available for collection, at its sole discretion.

3. Service

- 3.1. You acknowledge that:
 - a) Mac Aid may, without Your consent, engage contractors to perform or partly perform the Supply pursuant to this Agreement; and
 - b) Any time frame stipulated on the Invoice for the provision of the Supply is an estimate only.
- 3.2. Mac Aid may suspend provision of the Supply, without liability to You if:
 - a) You are in default of any payment or obligation under this Agreement;
 - b) Mac Aid is required to perform maintenance or other service work in connection with the Supply or its network or systems;
 - c) Mac Aid is required to comply with a request from a government agency, emergency service organisation, law enforcement agency or by order of an Australian Court or Tribunal; or
 - d) One of the events listed at clause 7.1 or 7.3 occurs.

4. Ownership and risk

You agree and acknowledge that where the Supply is the provision of goods:

- 4.1. Title to the Supply (including all intellectual property attached to the Supply) ordered shall vest in You only when Mac Aid receives full payment of the Price for the Supply and until it receives such payment, the Supply shall be returnable to Mac Aid upon demand;
- 4.2. Where any goods belonging to You are held by Mac Aid for repair or restoration or otherwise, Mac Aid is not liable for loss or damage to those goods unless it has wilfully or recklessly damaged or lost those goods.

5. Confidential Information and Intellectual Property

Mac Aid acknowledges and agrees to use any confidential information provided to it by You only in accordance with the terms of this Agreement.

6. Intellectual Property

You agree that:

- 6.1. You have obtained all relevant intellectual property rights, clearances and/or other consents and authorisations over any information such as, but not limited to: images, written text, video, software or other content ("Content") which You post, display, transmit, provide or otherwise make available to Mac Aid;
- 6.2. The Content is your sole responsibility and Mac Aid has no ownership, control or responsibility to You or to any third party for any Content which may infringe any intellectual property rights of a third party;
- 6.3. Subject to clause 4:
 - a) Mac Aid is the sole proprietor of all intellectual property embodied in or connected to the Supply and any related documents, parts or software;
 - b) Mac Aid's intellectual property is used by You with Mac Aid's consent pursuant to this Agreement. Upon termination of this Agreement, unless You have Mac Aid's written consent, You must immediately cease using Mac Aid's intellectual property; and
 - c) You must not reproduce, adapt, alter or reverse engineer the intellectual property of Mac Aid without its consent. You acknowledge that this clause continues to have effect after the term of this Agreement.
- 6.4. You agree Mac Aid may use the Content for advertising, marketing and promoting Mac Aid's business endeavours.

7. Termination

- 7.1. Mac Aid may immediately terminate this Agreement if:
 - a) You breach this Agreement or fail to pay any charges payable under this Agreement and fail to rectify that breach within 14 days of written notice from Mac Aid; or
 - b) Mac Aid reasonably suspects fraud or misuse of the Supply.
- 7.2. You may immediately terminate this Agreement if Mac Aid:
 - a) fails to comply with any licence, permit or authorisation relating to the provision of the Supply; or
 - b) commits a material breach of this Agreement and fails to rectify that breach within 14 days of receiving written notice from You.
- 7.3. Either party may immediately terminate this Agreement if the other is declared bankrupt or a receiver, administrator, liquidator or provisional liquidator is appointed to them or they enter into an arrangement with their creditors.

- 7.4. You remain liable for all charges payable under this Agreement up to the time of termination.
- 7.5. Mac Aid reserves the right to retain any and all monies paid to it by You in the event that You terminate this Agreement.
- 7.6. Termination of this Agreement is without prejudice to the rights of each party against the other accrued up until the date of termination.
- 7.7. If You wish to terminate this Agreement at any time before completion and there has been no breach of this Agreement by Mac Aid, You are liable to pay Mac Aid, by way of liquidated damages, the full Price and Mac Aid is not liable to provide the Supply partially completed.

8. Liability

- 8.1. Subject to the Trade Practices Act 1974 (Cth) as amended ("TPA"), Mac Aid's total liability for breach of a condition or warranty implied by the TPA or for any loss, damage or reliance shall be limited to:
 - a) In the case of goods, either replacement of goods, repair of goods, or a refund of the price paid for the goods (as determined by Mac Aid);
 - b) In the case of services, either supply of the services again or a refund of the price paid for the services (as determined by Mac Aid)
- 8.2. Mac Aid is not liable or in default or failure in performance under this Agreement for any interruption resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, wars, accidents, fires, explosions, earthquakes, floods, strikes, labour disputes, Government action, shortage of suitable parts or other cause beyond the reasonable control of Mac Aid.
- 8.3. All warranties, conditions and representations, whether express or implied (other than express warranties stated by Mac Aid in writing), are excluded except where Mac Aid is by law unable to exclude or limit liability. To the fullest extent permitted by law, Mac Aid is not liable to You for loss of profit or other economic loss, indirect, special, consequential, general or similar damages arising under any order, or for negligence by Mac Aid, or for any claim made against You by any other party even if Mac Aid has been advised of the possibility of such claim.
- 8.4. You expressly acknowledge and agree that Mac Aid, its affiliates, employees, agents, contractors, contributors, third party content providers and licensors are not be liable to You for any direct, indirect, incidental, special consequential or exemplary damages incurred by You, however caused and under any theory of liability.
- 8.5. Under clause 3.1(b), Mac Aid is not liable for exceeding the estimated time for delivery of the Supply if it has reasonable reasons for doing so.
- 8.6. In the event of any default in payment, You are liable to Mac Aid for all costs of collection incurred by Mac Aid including, but not limited to, costs incurred prior to any legal action, collection agency costs, Court costs, legal costs and search costs and will immediately on demand pay all such amounts to Mac Aid.
- 8.7. You are liable for any and all third party costs that arise in relation to the provision of Services.

9. Indemnity

You will indemnify Mac Aid in respect of any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment suffered or incurred by Mac Aid (including, but not limited to, economic loss and all legal costs and disbursements on a full indemnity basis) caused by You and/or any wilful, illegal or negligent act or omission by You.

10. Disclaimer

In so far as Mac Aid is requested to perform repair or restoration work on a computer or other machine that stores information, You acknowledge and accept that Mac Aid is not responsible or liable for any loss or interference with any information stored in or by the machine unless the loss or interference was caused by wilful or intentional act on the part of Mac Aid.

11. Dispute Resolution

- 11.1. If a dispute arises out of or relates to this Agreement, except where urgent interlocutory relief is sought, neither party may commence legal proceedings unless:
 - a) The party claiming a dispute has given written notice of the dispute to the other; and
 - b) Both parties endeavour, in good faith, to resolve the dispute expeditiously by any means upon which they mutually agree.
- 11.2. If the dispute remains unresolved within 30 days after notice has been given under 11.1(a), a mediator will be appointed by the President of the Law Institute of Victoria or his/her nominee and the parties will bear the costs associated with the mediation equally.
- 11.3. If the dispute is not resolved via mediation, either party may institute legal proceedings concerning the subject matter of the dispute.

12. General

- 12.1. Nothing in this Agreement is to be interpreted as constituting either party an agent, partner or employee of the other and neither party may pledge the credit of the other, nor represent that it is the other party or an agent, partner or employee of the other party, or it has any power or authority to incur any obligation of any nature on behalf of the other party;
- 12.2. Headings in this Agreement are for convenience only and do not affect the construction of this Agreement. Words in the singular also include the plural and vice versa.
- 12.3. In the event that a provision of this Agreement is held to be invalid or unenforceable, that provision will be read down and the remaining provisions of this Agreement will remain in full force and effect.
- 12.4. This Agreement is governed by the laws in force in the State of Victoria and both parties hereby submit to the exclusive jurisdiction of the Courts of that State.