
TERMS AND CONDITIONS

1TB Pty Ltd trading as 1TB Computing and VoiP-iT



1. DEFINITIONS

In these conditions:

"1TB" refers to 1TB Pty Ltd (A.C.N 126 153 044) and its officers, employees, sub-contractors, suppliers and agents, whether individually or collectively.

"Conditions" refers to these terms and conditions;

"Customer" refers to a person, firm or corporation jointly and severally if there is more than one, acquiring goods or services from 1TB;

"Goods" refers to merchandise supplied by 1TB to the customer and includes any/all hardware, software and management tools

"Party" (or **"Parties"**) refers to both 1TB and the Customer

"Services" refers to services supplied by 1TB to the Customer

2. BASIS OF CONTRACT

2.1. Unless otherwise agreed by 1TB in writing, these Conditions apply exclusively to every contract for the sale of goods and services by 1TB to the customer and cannot be varied or substituted by any other conditions without the prior written consent of 1TB

2.2. Any written quotation written by 1TB to the customer concerning the proposed supply of goods or services is valid for 14 days and is an invitation only to the Customer to place an order based on the quotation. The conditions may include the additional terms in 1TB's quotation which are not inconsistent with the Conditions.

3. CHARGES AND PAYMENT

3.1. Payment of Goods and Services must be made by cash, cheque or EFT on or prior to the completion of the provision of goods and services.

3.2. The charges for service are at our standard hourly rate unless otherwise agreed, with a minimum charge of 30 minutes.

3.3. After the minimum charge, service is charged in half hour units. Any part thereof is chargeable at the same rate as a full half hour.

3.4. All charges are exclusive of G.S.T (10%)

- 3.5. If the Customer chooses to cancel a 1TB fixed service agreement before the fixed period is finished, then the cancellation fee will be one month's charge per the agreement.
- 3.6. All goods supplied by 1TB are charged separately from the service.
- 3.7. The price of goods is supply only unless otherwise specified by 1TB
- 3.8. Where there is any change in the costs incurred by 1TB in relation to the goods or services, 1TB may vary its price for goods or services in order to take account of any such change.
- 3.9. Where 1TB are required to travel within 15km of the Launceston GPO, the normal standard service charge applies.
 - 3.9.1. Where 1TB is required to travel outside this area, the normal standard service charge applies together with an additional charge of \$0.75 per kilometre travelled. Any other cost incurred relating to travel expenses will be charged to the Customer.

4. PAYMENT DEFAULT

- 4.1. If the customer defaults on payment by the due date of any amount payable to 1TB, or if any cheque drawn by the Customer is dishonoured, then all money that would become payable by the Customer to 1TB at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and 1TB may, without prejudice of any other remedy available to it: -
 - 4.1.1. Charge the Customer interest on any sum due at the prevailing rate pursuant to the Supreme Court Civil Procedure Act 1932 for the period from the due date until the date of payment in full;
 - 4.1.2. Charge the Customer for all expenses and costs (including legal costs on a solicitor/own customer basis and dishonoured cheque fees) incurred by 1TB resulting in the default and in taking whatever action 1TB deems appropriate to recover any sum due;
 - 4.1.3. Cease or suspend for such period as 1TB sees fit, supply of any further goods and/or services to the Customer;
 - 4.1.4. By notice in writing to the customer, terminate any contract with the customer so far as unperformed by 1TB without effect on the accrued rights of 1TB under any contract.

4.2. Clauses 4.1.3 and 4.1.4 may also be relied upon, at the discretion of 1TB:

- 4.2.1. Where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment of composition with or for the benefit of his or her creditors or any class of his or her creditors generally;
- 4.2.2. Where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment of composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

5. PASSING OF PROPERTY

5.1. Until full payment in cleared funds is received by 1TB for all goods supplied by 1TB to the Customer, as well as other amounts owing to 1TB by the customer:

- 5.1.1. Title and property in all goods remain vested in 1TB and do not pass to the Customer;
- 5.1.2. The Customer must hold the goods as fiduciary bailee and agent for 1TB;
- 5.1.3. The Customer must keep the goods separate from their goods and maintain the labelling and packaging of the goods;
- 5.1.4. The Customer is required to hold the proceeds of any sale of the goods on trust for 1TB in a separate account however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee;
- 5.1.5. 1TB may without notice, enter any premises where it suspects goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of 1TB, and for this purpose the Customer irrevocably licenses 1TB to enter such premises and also indemnifies 1TB from and against all costs, claims, demands or actions by any party arising from such action.

5.2. If the services of 1TB have been terminated by either party goods hired from 1TB will be removed per clause 5.1.5

5.3. If goods are not collected within 30 days of completion of services, the customer gives permission for 1TB to dispose of the goods as 1TB sees fit unless otherwise stated

6. CONSULTANCY SERVICES

6.1. 1TB warrants and undertakes to the customer that:

- 6.1.1. 1TB will have the necessary skill and expertise to provide the Consultancy Services agreed upon
- 6.1.2. 1TB will provide independent and unbiased advice and will exercise reasonable skill and care in the provision of the Consultancy Services.
- 6.1.3. the Consultancy Services will be provided in a timely and professional manner.

7. RESPONSIBILITIES

7.1. The customer must:

- 7.1.1. comply promptly with 1TB's reasonable directions in relation to the provision of the Services;
- 7.1.2. provide promptly all information, decisions, facilities and assistance 1TB reasonably require to supply their services;
- 7.1.3. comply with all laws and guidelines concerning the use of services and/or the goods;
- 7.1.4. provide 1TB safe access to and from the premises to which the services are supplied and obtain the consent of the owner (where required) for 1TB to install, inspect, repair, maintain or remove equipment connected with the provision of services.

8. RISK INSURANCE

8.1. The risk in the goods and all the insurance responsibility for theft, damage or otherwise in respect of the goods will pass to the Customer immediately upon delivery of the goods to the premises nominated by the Customer

9. PERFORMANCE OF CONTRACT

9.1. Any period or date for delivery of goods and provision of services stated by 1TB is intended as an estimate only and is not a contractual commitment.

9.2. 1TB will use its best reasonable endeavours to meet any estimated dates for delivery of the goods or completion of the services.

9.2.1. Nothing in clause 7.2 is to be taken to mean that a solution will be provided in any particular time and/or for any particular amount of money.

9.3. 1TB does not warrant that it will be able to fix all problems which it diagnoses.

9.4. 1TB may be required to make more than one visit to customer's premises to correctly diagnose any problem. If more than one visit is required, any visit after the initial visit will be chargeable.

9.5. The decision as to whether a solution has been diagnosed is in the reasonable discretion of 1TB.

10. WARRANTIES

10.1. All goods and services supplied shall be free from defects in materials and workmanship for a period of 30 days from the date of delivery.

10.1.1. This warranty does not apply in circumstances where:

10.1.1.1. The goods or services are not defective;

10.1.1.2. The goods were used or services required for a purpose other than which they were intended;

10.1.1.3. The goods were repaired, modified or altered by any person other than 1tb;

10.1.1.4. The defect has arisen due to misuse, neglect or accident;

10.1.1.5. The defect has arisen due to normal wear and tear on the goods;

10.1.1.6. The goods have not been stored or maintained as recommended by 1TB or the manufacturer;

10.1.1.7. The Customer is in breach of the Conditions;

10.1.1.8. The Customer has altered the hardware or software configuration of the Customer's computer after the completion of the services;

10.1.1.9. The Customer has terminated the services of 1TB before, in the reasonable opinion of 1TB, the services have been completed.

11. LIABILITY

- 11.1. Except as specifically set out herein, any term, condition or warranty in respect of the quality, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.
- 11.2. Replacement, repair of the goods or resupply of the services is the absolute limit of 1TB's liability howsoever arising under or in connection with the description, quality, condition, performance, assembly, manufacture, design, merchantability or fitness for the purpose of the goods or services or alternatively the sale, use of, storage or any other dealings with the goods or services by the Customer or any third party.
- 11.3. 1TB is not liable for any program, data loss and/or damage by any Customer arising directly or indirectly from the provision of goods and services.
- 11.4. Any replacement of parts under warranty will be carried out at the premises nominated by 1TB. The cost and risk of transport of any defective part to the nominated premises is the responsibility of the Customer.
- 11.5. 1TB is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.
- 11.6. 1TB will not be liable for any loss or damage suffered by the Customer where 1TB has failed to meet any delivery date, cancels or suspends the supply of goods or services.
- 11.7. 1TB will not be liable for any loss or damage or consequences suffered by the Customer, due to or arising from either physical or network access by third parties, whether that access is directly or indirectly undertaken with or without the knowledge of 1TB.
- 11.8. Nothing in the Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.
- 11.9. The limitation of liability will not apply to any liability arising as a result of, or in connection with:
 - 1.1.1. fraud or wilful misconduct;
 - 1.1.2. breach of confidentiality;

1.1.3. breach of privacy;

1.1.4. infringement of a third party's Intellectual Property Rights

2. CONFIDENTIALITY

- 2.1. Both parties must maintain strict confidentiality in relation to any and/or all confidential information and must not divulge all and/or any aspect of confidential information to any person not in its employ or engagement in relation to the provision of services
- 2.2. If either parties wishes to disclose any of the Confidential Information to its accountant, business, financial or legal adviser, it may do so upon advising the Customer and obtaining the prior written consent of the Customer that shall not be unreasonably withheld.
- 2.3. The obligations on the parties under clause 10 shall not be taken to have been breached to the extent that the confidential Information:
 - 2.3.1. Is disclosed by the party to its Professional Advisers, officers, employees, agents or subcontractors solely and to the extent necessary in order to comply with obligations or to exercise rights under the agreement;
 - 2.3.2. Is authorised or required by law or by order of any regulatory authority, stock exchange, judicial or parliamentary body or governmental agency to be disclosed.
- 2.4. The Customer is not entitled to restrict the use by 1TB of any Intellectual Property in material which vests in the customer by claiming that the Intellectual Property is Confidential Information which would restrict the delivery of the Managed Service or impinge or unduly impact upon the Service provided.
- 2.5. 1TB agrees that it will treat as confidential information and keep secret during the term of this Agreement and for one full year after the termination of it all information relating to the business practices or customers of 1TB that is disclosed to it in confidence unless the customer gives its prior written consent to such disclosure unless such disclosure is required by law or relevant regulatory body
- 2.6. Both parties' obligations of confidentiality shall not merge or be released upon the expiry or termination of the Agreement, and will continue thereafter.

3. COPYRIGHT IN SOFTWARE

- 3.1. 1TB will not be responsible to the customer or any third party for any breach of any software licence in respect to software provided to 1TB by the Customer to be installed on a Customer's computer.
- 3.2. The Customer hereby indemnifies 1TB against any loss, damage, costs, harm or other expense whatsoever arising either directly or indirectly as a result of 1TB installing software at the request of the Customer.

4. CANCELLATION

- 4.1. If, through circumstances beyond the control of 1TB, 1TB is unable to effect delivery or provision of goods and/or services, then 1TB may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.
- 4.2. If the Customer cancels any order for goods or services after it has been placed with 1TB, then the Customer may be liable for any costs associated with the cancellation including but not limited to freight, re-stocking, losses suffered by 1TB in connection with nonreturnable goods and any administrative fees or labour incurred by 1TB