

Meanings

1 In these terms:

Order means any Contract or Order for the supply of service and/or goods from us to you;

Notice means written Notice by post, facsimile or email;

Quote means any written Quote, Quote clarification letter or written offer from us to you;

we or **us** means LogiCamms (Central) Pty Ltd (ABN 39 008 190 207);

you means the Client; and

Work means our provision of the services including the installing, manufacturing and assembly of goods.

Application

2 These terms

2.1 apply to each Order;

2.2 together with a Quote (if any) are the sole terms of each Order;

2.3 do not apply to an Order to the extent they are inconsistent with an applicable Quote; and

2.4 prevail over any terms put out by you, unless we agree in writing.

3 We may change these terms and conditions without Notice to you.

4 Except as required by the mandatory operation of law, all implied terms and conditions are excluded

Orders

5 An Order you give us is subject to our acceptance and we may decline an Order;

6 You may not cancel an Order, or delay delivery, once we accept your Order unless we agree in writing.

Prices and Invoicing

7 Total prices quoted are exclusive of GST unless otherwise stated.

8 Unless a Quote otherwise specifies:

8.1 we will, for the duration of the Work, supply you with monthly invoices; and

8.2 Work will be done during our normal Working hours which are 8am to 5pm from Monday to Friday excluding days which are public holidays in either South Australia or the place the Work is being performed.

9 If we have provided a Quote, our invoices will be calculated in accordance with the Quote. For Work performed or goods supplied without a Quote, invoices will be calculated by applying our then current market Rates unless otherwise agreed in writing. Where you request that we delay the performance of any Work (without giving what we consider to be reasonable written Notice) you must pay us an amount equal to that which we determine (acting reasonably) we suffer because we have committed our resources (including employees) to such Work.

10 Invoices calculated on our Rates Schedule will include:

10.1 higher rates for Work we agree to do outside of our normal Working hours and for urgent same day call outs;

10.2 fees for our vehicle costs, travel time and other costs (including air travel and accommodation and related expenses).

11 An invoice is payable by you alone and under no circumstances may you withhold payment on the basis that you are awaiting payment from any third party or request we seek payment directly from any third party.

Payment

12 Unless a Quote otherwise specifies, you must pay us a deposit equal to 25% of the price Quoted plus GST prior to us commencing the Work.

13 Unless a Quote otherwise specifies, you must pay each invoice within the time stated in the invoice. If payment is overdue, we may charge you interest at Westpac's indicator rate plus 2% from the date of the default until we receive payment in full. We may apportion any part payments you make against any outstanding principal or interest as we may decide. We may also apportion any payments you make under one Order to amounts due under another Order.

- 14 If payment is overdue under any Order, we may in respect of any Order, cancel or suspend the delivery of goods yet to be delivered to you or withhold the provision of our services under any Order. You must still pay us for goods or services already delivered under any such Contracts.
- 15 You may not deduct from the price any set off, counterclaim or other sum unless we agree in writing.

Performance and Delivery

- 16 Unless a Quote otherwise specifies, we will make goods available to you from our premises at 346 Torrens Road, Croydon Park, South Australia 5008 or, at your request and expense, we will cause the goods to be delivered to your premises. If you do not specify a method of delivery, then we may decide the method but all carriers will be your agents only.
- 17 Where goods are:
 - 18.1 consigned by us to you, the goods are deemed to be delivered to you when placed on the transport vehicle; or
 - 18.2 transported by us to a site designated by you, the goods are deemed to be delivered to you when they are unloaded from our vehicle
- 18 A claim for shortages in delivery must be in writing and received by us within 14 days of delivery.

Acceptance and Returns

- 19 You are deemed to have accepted the goods 48 hours after they are delivered to you unless you give us Notice that you do not accept the goods and you have the right to do so. Where you properly refuse to accept goods, you must, at your cost, return the goods to us.
- 20 If the goods are defective, you may return them to us within the warranty period applicable to those goods. We will have repaired or replaced defective goods returned within the applicable warranty period.
- 21 We may accept the return of non-defective goods only at our complete discretion and provided that you provide us with a prior written request and pay the cost of delivery and return of the goods to us in original condition within 5 days of initial receipt. We reserve the right to impose a handling charge in such cases.

Title and Risk

- 22 The legal and equitable title to the goods will only be transferred to you when we have received full payment for the goods and services provided under the Order.
- 23 Until you make full payment, you are to keep the goods in their original condition for us in your capacity as trustee. If required, you must store the goods in such a way that they can be identified as our goods.
- 24 If we take possession of the goods and re-sell the goods we must pay you such amount (if any) received by us exceeding the amount owed by you under the Order plus our costs in relation to the sale.
- 25 Despite the above, you may sell the goods to a third party in the normal course of your business provided that:
 - 25.1 where you are paid by that third party, you hold the whole of the proceeds of sale on trust for us;
 - 25.2 where you are not paid by that third party, you will, at our option, assign your claim against that third party to use on Notice from us. You will pay the stamp duty on any such assignment. For the purpose of perfecting any such assignment, irrevocably appoint us as your agent.
- 26 For the purpose of Clause 28, you hold the book debt arising on the sale of goods, or on payment, the proceeds of sale upon trust for us (but only to the extent of the monies and any outstanding interest owing to us in respect the Order). We will have first right to payment of our claim from the book debt in priority to any other creditors. The balance of the book debt or proceeds belongs to you. If you make new goods from our goods using other goods or materials, or if our goods in any way become part of any other goods, we own these new goods until you pay us in full. The ownership of such new goods (whether finished or not) are transferred to us when our goods are converted into new goods, or become part of other goods.
- 27 Risk in the goods passes from us to you on delivery.

Software License and Intellectual Property

- 28 We own all intellectual property rights, including but not limited to copyright, in our designs, software and all our documents (including plans, illustrations, drawings and specifications) provided to you for the purposes of the Order. Such materials may not be used without our written consent for any purpose other than that for which they are expressly provided. You may not use, reproduce or communicate the contents of such material to any third party without our prior written consent.
- 29 Subject to Clause 42 and to receipt of payment in full of all amounts due under an Order within the time required, we grant you a non-exclusive and non-transferable license to use the designs, software and documents in accordance with the scope of Work. Software provided may have an activation or time out code, which such code we will provide to you on receipt of payment in full of any amounts due under an Order within the time required. At any time prior to such time, we may add an activation or time out function to the software and you must assist us in doing the same.
- 30 Subject to Clause 25 and to any rights you have under the Copyright Act, which we cannot exclude, you must not copy, edit, adapt, decompile or reverse engineer the software.
- 31 You may not sell, sub-license, let, hire or charge the software nor provide it to a third party.
- 32 If you breach any of the above conditions, the license to use the software will automatically terminate and you must return the software and all related materials to us within 7 days.

Instructions and Communications

- 33 Unless you give us Notice to the contrary, we will assume that:
- 33.1 all of your employees, directors and officers who give us instructions are authorised to do so and that we may not act on oral instructions;
 - 33.2 we may communicate with you by e-mail. We cannot guarantee such electronic communications will be secure or free from infection and we will have no liability for any loss or damage caused by electronic communications.
- 34 We are not liable to you for any damage or loss suffered by you which results from us following your directions or specifications in making, manufacturing, designing or installing goods or in performing the Work.

Publicity

- 35 We may publicise that you are our client (including on our Website).

Your Obligations

- 36 At no cost to us you must:
- 36.1 allow our employees, agents and Contractors access to any relevant Work site (including the use of amenities, power, water and gas) at all reasonable times to perform the Work.
 - 36.2 provide us with all necessary information, plans and drawings to perform the Work including access to your employees.
- 37 You warrant that any relevant Work site is safe and complies with all applicable Work and safety laws.

Warranties

- 38 Unless a Quote otherwise specifies, we warrant that:
- 38.1 our Work will be free of defects for a period of 12 months; and
 - 38.2 goods manufactured by us will be free from defects in materials or Workmanship for a period of 12 months when used for their intended purpose and in accordance with our specifications or recommendations (if any).
- 39 We warrant that in performing the Work we will use due care and skill and use suitably qualified people.

Liability

- 40 For goods or services we supply our liability for breach of a condition or warranty of supply is limited to:
- 40.1 in the case of goods:
 - 40.1.1 the replacement of the goods or the supply of equivalent goods or the repair of the goods;
 - 40.1.2 the payment of the cost of replacing the goods or of acquiring equivalent goods or of the cost of having the goods repaired;
 - 40.2 in the case of services, the supply of the services again or the payment of the cost of having the services supplied again as we may decide.
- 41 Unless otherwise agreed in writing, we will only perform any warranty Work under Clause 35 during our normal business hours.
- 42 We will not be liable to you for any amount for any consequential, contingent, special or indirect or consequential loss or damage whatsoever resulting from the loss of business, revenue or profit or anticipated profit with respect to claims arising in connection to the Order including any act or omission by us in performing an Order or for a breach of Order or for negligence.
- 43 The total liability in relation to this Order is limited to the value of the Work provided in connection with this Order.

Indemnity

- 44 You indemnify us against any claim, action, damage, loss, liability or cost which we may incur arising out of any breach by you of the Order or any negligence or wrongful act or omission by you.

Termination

- 41 We may terminate all or any Contracts by Notice to you if:
- 44.1 you fail to pay any amount in full within 30 days of the due date under an Order;
 - 44.2 you breach any term or condition in an Order and fail to remedy that breach within 14 days of Notice from us or the breach cannot be remedied;
 - 44.3 you commit an act of bankruptcy under the Bankruptcy Act;
 - 44.4 you become an externally-administered body corporate (within the meaning of the Corporations Act) or a party takes action to make you an externally-administered body corporate;
 - 44.5 a party seeks to enforce a security against the whole or substantial part of your assets; or
 - 44.6 there is, in our opinion, a material adverse change in your financial position that gives us reasonable grounds for believing that you may be unable to fully and promptly perform your obligations under an Order.
- 45 Termination does not affect any of our rights or remedies existing before termination or arising from termination.
- 46 On termination, any license granted under Clauses 23 and 25 terminates and you must immediately cease using the software and return the software and all related materials to us within 7 days.

Force Majeure

- 47 We will not be liable for delay or failure to perform any of our obligations under an Order to the extent that such delay or failure is caused by a force majeure event.
- 48 A force majeure event means any circumstance not within our direct or reasonable control including labour disputes, obtaining labour, materials or goods, destruction or damage to our premises or a relevant work site, malfunction, breakdown or damage to our plant or equipment, breach of Order, default or insolvency of any third party, an act of government or governmental authority, terrorism, disruption to the supply of power, gas, water, electronic or telecommunication services, civil disorder, the weather or other natural events.
- 49 We may terminate an Order thirty business days after the occurrence of a force majeure event, if in our opinion, we are unable to perform the Order or can only perform the Order at a loss due to the effect of the force majeure event.

Assignments and Amendments

- 50 You must not assign your rights under an Order with us without our prior written consent.
- 51 We may use sub-contractors to perform any part of the Work without notifying you or obtaining your consent.
- 52 An Order can only be amended by agreement in writing.
- 53 We can only waive any of our rights under an Order by Notice to you.

Costs

- 54 You must pay us all our costs (on a solicitor/client basis) incurred in the recovery of monies owing by you or in otherwise enforcing our rights against you under an Order.

General

- 55 We reserve the right to increase the hourly rates if required by mutual agreement.
- 56 Nothing in this contract/agreement is intended or deemed to imply any employment relationship between the client and us.
- 57 Unless the contract/agreement specifies otherwise, the client or any of their affiliated companies will not recruit or employ the named LogiCamms(Central) personnel in this contract/agreement directly or indirectly through any other agency or company for a period of 6 months from the completion of this assignment. If they do so a minimum of a \$50,000 placement fee payable to LogiCamms(Central) will apply.
- 58 Should any of the named LogiCamms(Central) personnel become unavailable during the term of this contract/agreement, LogiCamms(Central) reserves the right to propose a replacement.
- 59 Either party may terminate the contract at any time by providing the other party with one months notice in writing.

Law and Jurisdiction

- 60 An Order is governed by South Australian law and any dispute arising in connection with an Order is subject to the exclusive jurisdiction of the courts of South Australia.

LOGICAMMS (CENTRAL)PTY LTD
A.B.N. 39 008 190 207