

BIZTOPIA - Standard Terms and Conditions of Supply

These Terms and any document(s) referred to in them constitute the entire agreement about BIZTOPIA's supply of the Products and Services to Customer and supersede all prior understandings, arrangements and agreements.

Certain legislation in Australia may provide consumer guarantees or impose obligations on BIZTOPIA which cannot be excluded, restricted or modified, or only to a limited extent. These Terms and Conditions are subject to such legislation, including without limitation the Australian Consumer Law.

1. DEFINITIONS

Australian Consumer Law means the law as set out in Schedule 2 of the *Competition and Consumer Act 2010*.

BIZTOPIA means Black Pegasus Pty Ltd Trading as BIZTOPIA (ABN 48 065 354 458)

Contract means a contract for sale by BIZTOPIA to the Customer of the Products and/or services incorporating these Terms and Conditions.

Consumer Contract means a contract for the acquisition of goods or services as a 'consumer' as that term is defined in section 3 of the Australian Consumer Law.

Critical Component means any component of a system used in High Risk Circumstances.

Customer means the person or legal entity identified in BIZTOPIA's Quotation or Invoice.

Extended Warranty means additional warranty protection, purchased by the Customer and from the manufacturer or other third party, that is in addition to the Standard Warranty as granted by the manufacturer or other third party.

High Risk Activities means use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, medical life support, mass and air traffic control, weapons systems, life-support machines or any other application in which the failure of the Products could lead directly to death, personal injury or severe physical or property damage.

Order Confirmation means formal acknowledgement of Product ordered by Customer, sent by BIZTOPIA.

Place of Delivery means the place designated by the Customer and agreed to by BIZTOPIA for delivery of Product.

Price means the price as per BIZTOPIA Quotation and Order Confirmation and the latter will have precedence.

Products means the products and/or services supplied to the customer directly by BIZTOPIA and as described in BIZTOPIA's Order Confirmation and Invoice and may include third party products and Service Offerings.

Service Offerings means the different service options offered by BIZTOPIA for the Products (or any part of the Products), as described in BIZTOPIA's published literature, including but not limited to BIZTOPIA's Invoice and/or BIZTOPIA's Service Description.

Standard Warranty means the warranty protection that comes standard with purchases from the manufacturer or other third party and passed on to the customer by BIZTOPIA, as set out in clause 8 of these Terms and Conditions.

Third Party Products means all products other than those physically manufactured by BIZTOPIA. BIZTOPIA do not currently create or manufacture any of their own hardware or software products or components.

2. FORMATION OF CONTRACT

- a) No Contract comes into existence until the Customer's order has been accepted by BIZTOPIA and such acceptance has been received by the Customer. The Contract is deemed to be concluded at the time and place where such acceptance is received by the Customer. The Customer warrants that it is buying for its own internal use only and not for re-sale purposes.
- b) The products sold and/or services rendered are subject to these Terms and Conditions to the exclusion of any other terms and conditions stipulated or referred to by the Customer. The Customer acknowledges that it is aware of the contents of and agrees to be bound by these Terms and Conditions. Neither BIZTOPIA's acknowledgement of a purchase order nor its failure to object to conflicting, different, or additional terms and conditions in a purchase order will be deemed an acceptance of such terms and conditions or a waiver of the provisions.

3. ORDERS, PRICE AND PAYMENT

- a) All orders for Products placed by Customer are subject to acceptance by BIZTOPIA and no order will be deemed to have been accepted by BIZTOPIA unless such acceptance has been confirmed in writing by an authorised representative of BIZTOPIA to customer.
- b) BIZTOPIA may reject any order placed by Customer if there is insufficient supply of Products which prevents BIZTOPIA from being able to fulfil such order.
- c) BIZTOPIA will not be bound by any terms attached to the Customer's order and unless those terms are expressly agreed to by an authorised representative of BIZTOPIA, Customer agrees that those terms are excluded.
- d) Unless credit terms have been expressly agreed by BIZTOPIA, payment for the Products and/or services must be made in full before physical delivery of Products and/or services. If Customer fails to make payment in accordance with this clause 3(d) after demand of payment by BIZTOPIA, all amounts owing by Customer will immediately become due and payable and all services will cease until such time as payment is made in full by the customer to BIZTOPIA.
- e) BIZTOPIA may, in its sole discretion:
 - i) Suspend the provision of credit to Customer until all amounts owing are paid in full; and
 - ii) From time to time and at any time, vary or cancel any credit facility it makes available to the customer.

- f) Without prejudice to any of BIZTOPIA's other rights under these terms, if Customer fails to make any payment due to BIZTOPIA under these terms, BIZTOPIA may, in its sole discretion and without further liability to Customer:
 - i) Suspend all provision of product and services, including those under other agreements until all amounts owing are paid in full; and
 - ii) Terminate the Sales contract in question as well as all other existing arrangements and agreements between BIZTOPIA and the Customer, effective immediately; and
 - iii) Refuse to make any further supplies to Customer.
- g) The price of the products will be BIZTOPIA's invoiced price.
- h) The Customer will pay for all applicable shipping and handling charges.
- i) The Customer will bear all country, provincial, government, state and local sales, use, goods and services, value added, excise, privilege and similar levies/taxes.
- j) Time for payment is of the essence. BIZTOPIA reserves the right to charge interest at the rate of 2% above the base commercial floating rate for National Australia Bank in Sydney. Interest will accrue daily from the date payment became overdue until BIZTOPIA has received payment for the overdue amount, together with any interest accrued.

4. SOFTWARE

- a) All software provided is subject to the terms and conditions of the license agreement relating to that software. The Customer acknowledges its obligations to abide by such license agreements. The Customer acknowledges that BIZTOPIA does not make any express warranty in relation to any software under these Terms and Conditions of Sale. In addition to any rights the Customer may have under statute, all software is warranted in accordance with the license agreement that governs its use.
- b) All rights, title or interest in respect of the intellectual property rights in the software remain with BIZTOPIA or the licensor of the software at all times.

5. TITLE AND RISK

- a) Risk in the Products passes to the Customer immediately upon delivery of the Products to the Customer.
- b) Title in the Products passes to the Customer immediately upon BIZTOPIA receiving and clearing the payment for the Products in full.
- c) Title to those products which are software, shall remain with the applicable licensors at all times.

6. DELIVERY

- a) BIZTOPIA will deliver the Products to the Place of Delivery.
- b) For the efficiency of BIZTOPIA's production and fulfilment procedures, it may be necessary for BIZTOPIA to deliver the Products by instalments in any sequence. Except as provided in clause 6.4, the Customer may not cancel the Contract where Products are delivered by instalments.
- c) Any dates provided by BIZTOPIA for the delivery of the Products are estimates only and will not form part of the Contract. Actual delivery date will be affected by factors such as clearance of payment, Customer's location and availability of parts for the Products.

BIZTOPIA will not be liable for any delay in delivery of the products and/or services, howsoever caused.

- d) Customer may cancel an order for Products purchased under a Consumer Contract if BIZTOPIA is unable to deliver the Products within a reasonable period from the estimated delivery date.
- e) BIZTOPIA has a policy of on-going Product update and revision. As a result, BIZTOPIA may revise and/or discontinue Products at any time without notice.
- f) BIZTOPIA will not be liable for failing to supply a product and/or service due to any revision and/or discontinuation of a third-party product by the third-party, howsoever caused.
- g) Where Products ordered under a Consumer Contract have been revised and/or discontinued, BIZTOPIA will supply revised or updated Products with the same or better functionality and performance of the Products ordered. The Customer accepts that BIZTOPIA's policy may result in differences between the specification of Products delivered to the Customer and the specification of Products ordered.
- h) BIZTOPIA is not liable for any loss or damage to Products in transit.

7. ACCEPTANCE & RETURN OF PRODUCTS

- a) Unless the Customer notifies BIZTOPIA to the contrary on the day of delivery and such notification is confirmed in writing within two days, the Products will be deemed to have been accepted by the Customer.
- b) The Customer will not be entitled to withhold payment of all or any of the price of the Products whilst any claim is being investigated by BIZTOPIA.
- c) BIZTOPIA will not be liable for any damage or defects in the Products that have been caused by improper storage, warehousing or transport, or by any neglect, abuse or improper use, installation, maintenance or unauthorised repair.
- d) The provisions of this clause do not extend to any product which have been added to, or varied by, any person other than BIZTOPIA.
- e) Unless otherwise agreed in writing, Customer may not cancel an order which has been accepted by BIZTOPIA.
- f) If Customer's rights of cancellation is agreed to by BIZTOPIA in writing, the right must be exercised by notice in writing from Customer to BIZTOPIA not later than 7 days before the estimated date of shipment by the manufacturer or BIZTOPIA (as the case may be).
- g) Unless otherwise agreed between the Customer and BIZTOPIA, upon cancellation prior to shipment, any deposit paid by Customer will be forfeited to BIZTOPIA.

8. WARRANTY

- a) Nothing in this clause 8 affects a Customer's rights under the Australian Consumer Law.
- b) Products supplied by BIZTOPIA to customer and which are supplied to BIZTOPIA by third parties for resale to customer may be covered by a warranty from the third party. BIZTOPIA will notify Customer of any applicable manufacturer's warranty in relation to the Products. To the extent permitted by law, BIZTOPIA's entire responsibility with respect to warranties for the Products is to pass on to Customer the benefit of such warranties. Subject to clause 14(e), software Products are warranted in accordance with the relevant licence agreements that govern their use.
- c) Unless otherwise explicitly stated in writing in a warranty agreement from BIZTOPIA or the manufacturer, all warranty work (whether "return-to-base" or "on-site") covers parts only.

Any time and materials related to warranty work as supplied by BIZTOPIA or an authorised BIZTOPIA representative, including an agent, employee or sub-contractor will be at the customer's expense on a time and materials basis. This includes travel, freight, additional parts, additional time and materials and any other "out-of-pocket" expenses.

- d) This warranty does not cover damage, fault, failure or malfunction due to external causes, including accident, abuse, misuse, problems with electrical power, servicing not authorised by BIZTOPIA, usage and/or storage and/or installation not in accordance with Product instructions, failure to perform required preventive maintenance, normal wear and tear, act of God, fire, flood, war, act of violence or any similar occurrence; Products with missing or altered Service Tags or serial numbers; any attempt by any person other than BIZTOPIA personnel or any person authorised by BIZTOPIA, to adjust, repair or support the Products and problems caused by use of parts and components not supplied by BIZTOPIA.
- e) BIZTOPIA does not give any warranty that Products purchased under a Contract are fit for any particular purpose.
- f) The Warranty is given in place of all excludable warranties, conditions, terms, undertakings and obligations implied by statute, common law, trade usage, course of dealing or otherwise including warranties or conditions of merchantability, fitness for purpose, satisfactory quality and/or compliance with description, all of which are excluded to the fullest extent permitted by law.
- g) Third Party products may be accompanied by their manufacturer's standard warranties. The Customer acknowledges that where support is required in relation to third party products it will always be more efficient and expedient to seek support under the manufacturer's standard warranties, at least at first instance. The Customer acknowledges that the reasonable time for BIZTOPIA to repair third party is longer than the reasonable time for the manufacturer to repair the same product. BIZTOPIA does not promise that repair facilities or parts will be available in respect to the third party products and will always recommend the client uses the manufacturer's or other third party's own warranties.

9. SERVICE AND TECHNICAL SUPPORT

- a) BIZTOPIA will provide general service and technical support to the Customer in accordance with the then-current service and technical support policies in effect. Service and support offerings may vary from product to product. If Customer purchases optional services and support as listed on Customer's invoice, BIZTOPIA will provide the optional service and support to Customer in accordance with the then-current terms and conditions in the optional service contract between BIZTOPIA and Customer. BIZTOPIA may, at its discretion, revise its general and optional service and support programs and the terms and conditions that govern them. BIZTOPIA has no obligation to provide service or support until BIZTOPIA has received full payment for the Product or service/support contract for which service or support is requested.
- b) Any maintenance or support services supplied by BIZTOPIA shall be specified by BIZTOPIA in writing.
- c) Maintenance or support services do not include the maintenance or support of:
 - i) Products which have been altered, modified or adapted by or on behalf of Customer other than by BIZTOPIA or without the express written agreement of BIZTOPIA
 - ii) Products not operated in accordance with the manufacturer's specifications and the directions and recommendations of the manufacturer and BIZTOPIA

- iii) Products requiring support or maintenance due to the negligence, wilful misconduct or misuse by Customer, its agents or sub-contractors of the products
 - iv) Products which the manufacturer has ceased to maintain or support
 - v) Consumables and accessories or the provision of them
 - vi) Modifications necessitated by changes in the law, standards, regulations or corporate policies
 - vii) Products where it is not economical to do so or;
 - viii) monitor or display screen tubes which need to be replaced due to "image burn" or due to tubes being faulty.
- d) Where BIZTOPIA supplies a "carry-in repair service", Customer shall be responsible for the delivery to and collection from the specified BIZTOPIA service centre of the Products and shall pay all associated delivery and collection costs.
- e) Where BIZTOPIA supplies "on-site maintenance services" it shall exercise reasonable efforts to respond during its hours of operation within an agreed time-frame from when the call is logged with an authorised BIZTOPIA representative, provided that the relevant site is located within an area within a sixty kilometre radius (or such other radius as agreed in writing by BIZTOPIA and Customer) of BIZTOPIA.

10. Credit Assessment

- a) If any Products are supplied to Customer on credit, BIZTOPIA may need to disclose to a credit reporting agency certain information referred to in clause 17(c) about Customer when assessing Customer's application for credit and managing Customer's account with BIZTOPIA. Customer authorises BIZTOPIA to disclose such information to a credit reporting agency for these purposes.
- b) Subject to BIZTOPIA's obligations under the Privacy Act 1988 (Cth) and other applicable laws, BIZTOPIA may give the information referred to in clause 17(c) to a credit reporting agency to obtain a consumer credit report about Customer or to allow the credit reporting agency to create or maintain a credit information file about Customer. Customer agrees that BIZTOPIA may disclose a credit report about it to any credit provider, debt collecting agency or BIZTOPIA's insurers for the purposes of assessing Customer's credit-worthiness or to collect any overdue payments (as the case may be).
- c) BIZTOPIA may disclose the following information relating to Customer in accordance with clauses 17(a) and (b):
- i) Customer's name and address;
 - ii) credit limits on Customer's accounts;
 - iii) the amount of any payments which are overdue for at least 60 days;
 - iv) where an overdue payment has been previously reported, advice that the payment is no longer overdue;
 - v) cheques or credit card payments which have been dishonoured;
 - vi) information that, in the opinion of BIZTOPIA, Customer has committed a serious credit infringement; and,
 - vii) information that BIZTOPIA has ceased to supply the Products and services to Customer.
- d) Customer agrees that BIZTOPIA may obtain information about Customer from any business which provides information about the commercial credit-worthiness of persons for the purposes of assessing Customer's application to purchase the Products on credit and collecting any overdue amounts.

- e) BIZTOPIA may refuse to supply the Products to Customer on the basis of BIZTOPIA's credit assessment of Customer.

11. Privacy

- a) Customer agrees to BIZTOPIA collecting, using and disclosing information about Customer of the kind referred to in clause 17(c) for various purposes, including to:
 - i) assess credit worthiness as outlined in clause 17;
 - ii) supply of Products and services to Customer and the management of Customer's account;
 - iii) communicate with Customer about the Products and services that BIZTOPIA or its partners and affiliates may provide to Customer.
 - iv) implement these Terms and any Sales Contract; and,
 - v) comply with relevant laws.
- b) BIZTOPIA, at the written request of Customer, will:
 - i) provide Customer with access to any personal information relating to Customer held by BIZTOPIA; and,
 - ii) correct or amend any personal information relating to Customer held by BIZTOPIA which is inaccurate or out of date.
- c) BIZTOPIA will handle Customer's personal information in accordance with relevant laws.

12. Intellectual Property

- a) Customer acknowledges that:
 - i) all trademarks, copyright and other intellectual property rights ("Intellectual Property") embodied in or in connection with the Products and any related documentation, parts or software are the sole property of BIZTOPIA or its suppliers; and
 - ii) all Intellectual Property of BIZTOPIA and its suppliers may only be used by Customer with the consent of BIZTOPIA or its suppliers, during the continuance of any relevant Sales Contract and such consent extends only to use essential for the purposes stated in it. Any licensing of Intellectual Property rights in any software Products supplied to Customer will immediately cease upon expiry or termination of the relevant licence agreement that governs their use.

13. Confidentiality

- a) Customer acknowledges that BIZTOPIA has disclosed and may from time to time disclose to Customer certain confidential information and documentation of BIZTOPIA relating to the Products, their marketing, use, maintenance and software, including technical specifications ("Confidential Information").
- b) Subject to clause 20(e), Customer must:
 - i) only use Confidential Information solely for the purposes contemplated under any relevant Sales Contract; and,
 - ii) not, during the course of such Sales Contract or thereafter, disclose (whether directly or indirectly) to any third party the Confidential Information, other than is required to carry out such purposes.

- c) If disclosure of Confidential Information to third parties is necessary, Customer will obtain from such third parties bidding agreements to maintain in confidence the Confidential Information disclosed at least to the same extent as Customer is bound to protect BIZTOPIA's Confidential Information under this clause 20.
- d) Upon the expiry or termination of any relevant Sales Contract, Customer must cease to use and must return or destroy (as BIZTOPIA may instruct) BIZTOPIA's Confidential Information in its possession or control.
- e) The provisions of this clause 20 do not extend to information which is:
 - i) at the time of disclosure, rightfully known to or in the possession and control of Customer and which is not subject to an obligation of confidentiality;
 - ii) public knowledge (otherwise than as a result of a breach of this clause 20 or any other obligation of confidentiality);
 - iii) approved to be disclosed by BIZTOPIA; or,
 - iv) required to be disclosed by a government authority or by relevant laws.

14. LIABILITY

- a) BIZTOPIA will not be liable in contract or in tort for any loss or damage suffered and the Customer's rights are limited to those set out in these Terms and Conditions and under statute.
- b) For goods and services which are not supplied under a Consumer Contract, BIZTOPIA's total liability in respect of each event or series of connected events will not exceed the total price paid for the purchase of products and/or services under these Terms and Conditions.
- c) The Customer will indemnify BIZTOPIA and keep BIZTOPIA fully and effectively indemnified against any loss of or damage to any property or injury to or death of any persons caused by any negligent act or omission or wilful misconduct of the Customer, its employees, agents or sub-contractors or by any breach of its contractual obligations arising out of these Terms and Conditions.
- d) BIZTOPIA and the Customer agree that BIZTOPIA's liability: (a) for Products supplied under a Consumer Contract, is governed solely by the Australian Consumer Law; (b) for Products not supplied under a Consumer Contract does not extend to any incidental, indirect, special or consequential damages arising out of or in connection with the purchase, use or performance of products or services, even if BIZTOPIA has been advised of their possibility.
- e) In the case of Products not supplied under a Consumer Contract, any service response times stated by BIZTOPIA in the service contracts are approximate only and BIZTOPIA will not be liable for any direct or indirect loss or damage arising from its failure to meet such response times.
- f) To the extent permitted by law, any typographical, clerical or other error or omission in sales literature, quotation, price list, acceptance of offer, invoice or other documents or information issued by BIZTOPIA will be subject to correction without any liability on the part of BIZTOPIA.
- g) In relation to goods or services supplied under a Consumer Contract that are not of a kind ordinarily acquired for personal, domestic or household use or consumption, BIZTOPIA's liability for breach of a guarantee implied into a Contract which cannot lawfully be excluded is limited, at BIZTOPIA's option, to: (a) in the case of Products, the replacement of the Products or the supply of equivalent Products; the repair of such Products; the payment of the cost of replacing the Products or of acquiring equivalent products; or the payment of the

cost of having the Products repaired; OR (b) in the case of services, the supplying of services again; or the payment of the cost of having services supplied again.

- h) Where any BIZTOPIA employee or contractor is required to work under the guidance, direction, supervision, control or project management of Customer, then, to the extent permitted by Law, BIZTOPIA shall have no liability whatsoever in respect of, or in connection with, any act or omission of such employee or contractor.

15. BACKUP OF DATA

- a) Products are complex items of equipment that may occasionally fail, due to external causes or internal faults. This failure can result in the loss, corruption, deletion or alteration of software or data (including user-generated data).
- b) Unless the Customer regularly and continually backs up all data, software and programs, these may be lost or corrupted in the event of failure.
- c) Customer agrees to regularly and continually back up all data and software stored on the Product, and to complete a backup prior to seeking any general service and technical support from BIZTOPIA.
- d) Customer agrees that they have sole responsibility to back-up Customer's data and software and BIZTOPIA shall have no liability whatsoever in respect of, or in connection with, any act or omission of such by any party whatsoever for any loss of data or associated business operations.

16. USE OF PRODUCTS

- a) Products are designed for specific applications and purposes to work under certain operating conditions and as outlined by the manufacturer. Customer's use of the Product other than in accordance with any manual, operating instructions, specified operating conditions or any other information on the BIZTOPIA website may damage the Product and data stored on it. Such use may adversely affect the Customer's rights.
- b) The Customer agrees to only use the Product in accordance with any manual and any specified operating conditions.

17. HIGH RISK APPLICATION DISCLAIMER

The Products are not fault-tolerant and are not designed or intended for use in High Risk Activities. BIZTOPIA expressly disclaims any express or implied warranty of fitness for High Risk Activities.

18. BUSINESS USAGE

- a) Where Products are bought for business usage the Customer warrants to implement appropriate means and procedures to ensure operational continuity of the business in the event that the Product experiences any performance failures. This may include disaster recovery plans, comprehensive data back up plans and the implementation of redundant networks. Implementation and management of these plans are the sole responsibility of Customer and BIZTOPIA shall have no liability whatsoever in respect of, or in connection with, any act or omission of such by any party whatsoever for any loss of data or associated

business operations, even where these plans have been developed in conjunction with BIZTOPIA.

19. FORCE MAJEURE

Neither party will be liable for any delay in performing any of its obligations under these Terms and Conditions if such delay is caused by circumstances beyond the reasonable control of the party so delaying, and such party will be entitled to a reasonable extension of time for the performance of such obligations.

20. EXPORT RESTRICTIONS

The Customer acknowledges that the Products licensed or sold hereunder, which may include technology and software, are not only subject to the export control laws and regulations of the United States (U.S.) but may also be subject to the export control laws and regulations of the country in which the Products are received. The Customer agrees to abide by all applicable export control laws and regulations. Under such laws and regulations, the Products purchased may not be sold, leased or otherwise transferred to restricted end-users or to restricted countries. In addition, the Products may not be sold, leased or otherwise transferred to, or utilized by, an end-user engaged in activities related to weapons of mass destruction, including but not necessarily limited to, activities related to the design, development, production or use of nuclear materials, nuclear facilities, or nuclear weapons, missiles or support of missile projects, or chemical or biological weapons. The Customer understands that applicable requirements or restrictions may vary depending on the Products delivered and may change over time and that, to determine the precise controls applicable to the Products acquired, it may be necessary to refer to relevant laws and regulations.

21. GOVERNING LAW

These Terms and Conditions are governed by and construed in accordance with the laws of Queensland and are subject to the non-exclusive jurisdiction of the courts of Queensland.

22. GENERAL

- a) The Customer must not assign or otherwise transfer any Contracts or any of its rights and obligations under these Terms and Conditions whether in whole or in part without the prior written consent of BIZTOPIA. Any such unauthorised assignment will be deemed null and void.
- b) If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and Conditions and the remainder of the provisions in question will not be affected.
- c) No failure or delay on BIZTOPIA's part in exercising any power or right under these Terms and Conditions operates as a waiver, nor does any single or partial exercise of any power or right preclude any other or further exercise, or the exercise of any other power or right.
- d) Customer shall not employ, sub-contract or engage any person employed, engaged or sub-contracted by BIZTOPIA and directly involved in the supply of products or services to the

- customer unless BIZTOPIA consents in writing or such person has not been directly involved in the supply of the products or services to the customer for a period of at least 6 months.
- e) BIZTOPIA may amend these Terms at any time, by giving the Customer notice by mail, e-mail or by posting a notice on BIZTOPIA's public website. By continuing to place orders for Products, Customer will be deemed to have accepted the revised Terms.
 - f) Any provision of these Terms which is invalid or unenforceable will be read down to the extent necessary and the remaining provisions will continue unaffected.
 - g) Customer may not assign or attempt to assign any of its rights and obligations under these Terms.
 - h) These Terms are governed by the Laws of the State of Queensland.

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