

## 1. Operative Provision

- 1.1. This agreement establishes the terms and conditions under which BIZ-LYNX Technology Pty Ltd (Australian Company Number 128 174 407, Australian Business Number 55 128 174 407), located at Unit 10, 14 Merino Entrance, Cockburn Central, Western Australia, 6164, referred to herein as "We", "we", "us", and "Us", will supply goods and services to the purchaser, who is addressed in this agreement as "you", "You", "buyer" and "customer".

## 2. Definitions & Interpretation

### 2.1. In this agreement:

- 2.1.1. buyer includes the person to whom we supply goods and or services under this agreement and if a Quote is provided to a buyer, the buyer so identified in the Quote;
- 2.1.2. goods include personal property, computer and network hardware, associated equipment, peripheral devices, software and any component part of or accessory to such goods; and
- 2.1.3. services include the supply of services relating to or associated with computer hardware, networks, internet connections, software and associated set up, design, manufacture, configuration, installation, repair, technical support, managed services, and other labour related services.

### 2.2. In the interpretation of this agreement:

- 2.2.1. the singular includes the plural and the plural includes the singular;
- 2.2.2. a gender includes all genders;
- 2.2.3. if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- 2.2.4. a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- 2.2.5. a reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or annexure to, the Agreement;
- 2.2.6. a reference to any law or to a provision of legislation includes a modification or reenactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- 2.2.7. a reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing unless expressly required to be in writing.
- 2.2.8. headings are for convenience only and do not affect interpretation.
- 2.2.9. a reference to a right or obligation of any 2 or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.

- 2.2.10. where the Agreement provides that you agree to perform an act, do something or refrain from doing or carrying out some act or thing that agreement shall be read as including an agreement on your behalf that you will procure any of your associates, contractors and agents used, to perform such act, do such thing and refrain from doing or carrying out such act or thing.
- 2.2.11. the interpretive provisions of the Interpretation Act 1984 shall apply to interpretation of any provision of the Agreement including as if the Agreement were a written law to which the Act applied.
- 2.2.12. in the context of this agreement, the following documents we have provided shall be considered integral and applicable: any Order, Service Schedules, General Conditions, Hosting Agreement, or any other Agreement provided by us. These documents are to be read in conjunction with and form part of this agreement. The terms and provisions contained within these documents will be given full effect in interpreting and enforcing the obligations and rights of the parties under this agreement; and
- 2.2.13. if there is an inconsistency between parts of the Agreement, the document(s) here first listed prevail over the document(s) subsequently listed:
  - 2.2.13.1. an Order;
  - 2.2.13.2. a Service Schedule and any attachment thereto;
  - 2.2.13.3. the General Conditions; and
  - 2.2.13.4. Hosting Conditions.
- 2.3. These stipulations apply to services supplied in conjunction with, and are in addition to, the terms and conditions of this agreement.

### 3. Order, Payment and Delivery

- 3.1. The buyer is required to carefully consider and preview any Quotes or orders before proceeding with any order or accepting any Quote. The buyer is required to choose carefully as refunds are not normally provided where the buyer has simply changed its mind, made a wrong selection or simply found the goods cheaper elsewhere.
- 3.2. The buyer shall pay for the goods and or services within 7 days of acceptance of Our Quote, offer, acceptance by conduct or otherwise on the formation of a contract and if none on delivery of goods or services or within such other time period agreed in writing. Time shall be of the essence in respect of the buyer's obligation to pay for the goods and or services.
- 3.3. We are not obliged to dispatch or deliver goods until payment has been received in cleared funds available to us, whereupon, subject to clause 9, we shall dispatch and deliver the goods. We may on the buyer's failure to pay by the time period referred to in clause 6 or other the buyer's breach of this agreement:
  - 3.3.1. refuse to deliver goods and or services to the buyer;
  - 3.3.2. suspend delivery of goods and or services;
  - 3.3.3. terminate this agreement;

- 3.3.4. claim interest, any associated loss suffered, damages and costs; and
- 3.3.5. following a further 30 days, notify a credit reference or reporting agency of the buyer failure to pay monies.
- 3.4. We may apply monies received from the buyer in satisfaction of such specific amounts owed by the buyer as we in our discretion sees fit including in priority of oldest outstanding amounts being satisfied first.
- 3.5. We may notify the buyer that delivery is not possible or that delivery is delayed because:
  - 3.5.1. our supplier or suppliers are unable to supply the goods;
  - 3.5.2. an event beyond Our control, such as storm, fire, flood, earthquake, terrorism, power failure, war, strike or failure of computer systems, means that we are unable to supply the goods within a reasonable time; or
  - 3.5.3. the goods to be supplied were the subject of an error including any error such as in relation to a description, functionality, price or image, which was not discovered prior to acceptance.
- 3.6. If delivery is not possible, we shall refund the associated monies paid by the buyer less any other monies owed by the buyer to us.
- 3.7. The buyer, on receipt of goods from us, shall immediately inspect such goods to ensure that the buyer is completely satisfied with the goods, including that the goods are of acceptable quality, and match the description we have provided to the buyer. The buyer shall immediately and promptly notify us of any perceived problem, dissatisfaction, damage or failure of acceptable quality or to match the description provided.
- 3.8. We shall have no liability for any damage to or defects in the goods and or packaging delivered to the buyer which arises or arise as a consequence of improper storage, warehousing, transport, neglect, abuse or improper use, installation, maintenance or unauthorised repairs by the buyer.

## 4. Retention of Title

- 4.1. All right, title and interest in goods supplied shall remain with us until we have received all monies owed or payable to us by the buyer and only upon such receipt of all monies owed or payable by the buyer, shall title to any goods vest in the buyer.
- 4.2. Until we receives payment in full for all goods supplied to the buyer, the buyer:
  - 4.2.1. shall hold all goods as agent and bailee for us;
  - 4.2.2. grants us the right to enter without notice the buyer's premises, or the premises at which goods are stored and without liability for trespass or any resulting damage, to retake possession of goods;
  - 4.2.3. shall ensure that goods are stored so they are clearly identifiable as the property of us; and
  - 4.2.4. shall not alter or change goods so as to conceal the identity markings or change their quality or nature.

- 4.3. Until we receive payment in full for goods, we shall be entitled to repossess goods including if the buyer commits an act of bankruptcy or is declared bankrupt or becomes insolvent or enters into an agreement with creditors or if a liquidator, administrator, receiver or manager is appointed to the buyer or any of the assets of the buyer.
- 4.4. All risk associated with the goods, including for loss and damage shall pass to the buyer on delivery or collection, as the case may be.

## 5. Warranties and Consumer Guarantees

- 5.1. Save for the guarantees, warranties, terms and conditions implied by the Australian Consumer Law as adopted in the Australian Consumer Law (WA) which may not be excluded by us, we make no guarantee, warranty or representation to the buyer in respect of the goods. Such guarantees, warranties, terms and conditions implied by the Australian Consumer Law and the Australian Consumer Law (WA) which may be excluded from this agreement are excluded from this agreement.
- 5.2. Under the Australian Consumer Law (WA), the buyer may have guaranteed legal rights for goods the buyer purchases and which are called and known as consumer guarantees. Some goods sold in Australia come with consumer guarantees that cannot be excluded under the Australian Consumer Law. If the Australian Consumer Law (WA) applies, the buyer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The buyer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 5.3. If the Australian Consumer Law (WA) applies, there are nine consumer guarantees that apply to goods the buyer may purchase, described briefly and relating as follows to:
  - 5.3.1. acceptable quality;
  - 5.3.2. matching description;
  - 5.3.3. fit for a particular purpose;
  - 5.3.4. express warranties will be honoured;
  - 5.3.5. title to the goods;
  - 5.3.6. match the sample or demonstration model;
  - 5.3.7. undisturbed possession of the goods;
  - 5.3.8. no undisclosed securities on the goods; and
  - 5.3.9. spare parts and repair facilities will be available for a reasonable time after purchase;
- 5.4. There may be circumstances where the buyer is not entitled to a remedy.

## 6. Goods Damaged in Transit & other buyer concerns

- 6.1. If any goods arrive damaged or the buyer has any other concerns about the goods, the buyer must contact and inform us with relevant details as soon as possible. We will arrange to have the damaged goods returned to us and either arrange for a replacement of the goods or refund the price to the buyer if the buyer is not responsible for the damage. Damaged goods must be returned in the condition received by the buyer with all original packaging, accessories and/or manuals.

## 7. Returns and Repairs

- 7.1. Save for as required by law, we will not accept and shall not be liable in relation to the return of goods which have been used, modified, varied or changed by any person other than us. We may accept return of goods:
  - 7.1.1. if notification is received from the buyer within 14 days from the date of Quote;
  - 7.1.2. if goods were incorrectly ordered by the buyer as a consequence of a genuine and bona fide mistake; and
  - 7.1.3. provided that the goods have not been used, the buyer pays freight costs associated with the return and provides compensates us as follows. We may deduct costs in its discretion an amount up to the amount paid by us for the goods including any delivery, administrative fees or restocking fees, from any amount refunded.
- 7.2. Subject to the other terms of this agreement and if we elect not to collect the goods after the buyer has notified intention to return the goods, and the buyer has good, genuine and valid reason to return the goods, the buyer may return goods we have delivered to the buyer by any method it sees fit.
- 7.3. The buyer may also contact or attend Our office and one of Our staff members will assist the buyer with any return or repair. This may include inspecting the goods, arranging for the goods to be sent for repair, or providing the buyer with a replacement.
- 7.4. Where the buyer has good, genuine and valid reason to return goods, goods must be returned promptly within a reasonable time.
- 7.5. If any goods cannot be easily returned to us due to their size, the fault or because they have been affixed or installed in the buyer's premises, the buyer must contact us and we will arrange an inspection to assess the goods.
- 7.6. Goods returned for repair will be assessed and/or repaired within a reasonable time. The buyer may be provided with an indicative repair time, which time may vary due to reasons beyond ours or the repairer's reasonable control, such as part availability and incorrect fault description.
- 7.7. The buyer may be required to pay labour, assessment and/or freight fees, such as where goods are assessed to have been damaged by misuse or accident, or where the buyer's rights under the Australian Consumer Law WA or any manufacturer's warranty do not apply. We may provide the buyer with an indicative fee, which fee may vary due to reasons beyond Our control.

- 7.8. If any goods that the buyer returns are capable of retaining buyer or user generated data including files stored on a hard or solid-state drive or portable media player, the replacement or repair of the goods may result in loss of the data. In these circumstances, the buyer is required to back up data to prevent data loss, and remove sensitive or confidential data, as a party assessing and/or repairing the buyer's goods may be required to view data in the course of carrying out the assessment. We will not be responsible for any data loss, data breach or data compromise.
- 7.9. In some circumstances, goods presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the goods.

## 8. Delivery Charges on Returns

- 8.1. Where we consider the goods to have breached a consumer guarantee, any shipping costs to return the goods to us will be at Our cost, if we do not collect the goods.

## 9. Copyright, trademarks, patents and intellectual property rights

- 9.1. The buyer shall not use or infringe any trademark, trade name, patent, copyright or other intellectual property rights associated with the goods supplied. The buyer shall not, during or after the expiry or termination of this agreement, without the prior written consent of us, adopt any trademark, name, trade name, trade style or commercial designation or design used by us or the manufacturer of any goods, reproduce any art appearing on the package of any goods or copy, sell or hire or offer for sale or hire a copy of goods.
- 9.2. The buyer shall indemnify us against all liabilities, costs and expenses which we may incur, or become liable to incur, as a result of work done in accordance with the buyer's specifications or as a result of the combination or use of goods with other equipment parts or software not supplied by us involving infringement of any patent, copyright or other intellectual or proprietary right.
- 9.3. You are hereby granted a non-exclusive right to use the intellectual property ("IP") provided by us solely for the purposes of rendering Services under this Agreement. This grant of rights is conditional upon your compliance with the terms of this Agreement.
- 9.4. All IP provided by us, including but not limited to software, documentation, designs, codes, drawings, configurations, scripts and trademarks, remains the sole and exclusive property of us. You acknowledge that no title or ownership in the IP is transferred under this Agreement. All rights not expressly granted herein are reserved by us.
- 9.5. In the event that you create any modifications, enhancements, or derivative works of Our IP, such modifications shall become the sole property of us. You shall retain ownership of the original, unmodified IP. You agree to execute any documents and take all necessary steps as requested by us to effectuate, record, or perfect such ownership.
- 9.6. Upon termination or expiration of this Agreement or at our written direction, you shall immediately cease using Our IP and, at Our sole discretion, return, delete, remove, or destroy all copies of Our IP in your possession or control. Any continuation of the use of Our IP beyond the termination of this Agreement is prohibited unless specifically authorized in writing by us.
- 9.7. The obligations regarding IP ownership, confidentiality, and usage rights under this clause shall survive the termination or expiration of this Agreement

## 10. Costs and interest on default

- 10.1. The buyer shall pay us, all costs occasioned by any breach of this agreement by the buyer, as and when demanded by us. Such costs include legal costs on a solicitor client basis, court costs and fees, costs of and associated with a debt collection agency, skip tracing, correspondence, telephone and any other costs including administration costs occasioned us by or associated with any buyer breach of this agreement or by reason of us requiring any further security to be provided.
- 10.2. Without prejudice to our rights and remedies arising out of the Agreement, you agree that we may charge you an interest rate not exceeding the Cash Rate Target, as fixed by the Reserve Bank of Australia, plus 2 percent, at the date the invoice issued, on any amount that remains unpaid in breach of the Agreement and after 30 days from the date of invoice

## 11. GST

- 11.1. If we make any taxable supply under the GST Act (for example, where we supply a Service to you in Australia), you will be liable to pay GST in respect of the supply by the invoice due date.
- 11.2. Any reference to an amount payable under the Agreement unless otherwise stated (including but not limited to compensation, labour, Services, costs, expenses and indemnity payments) is a reference to that amount exclusive of GST.
- 11.3. Each amount payable under the Agreement must be increased by the GST applying to the amount or imposed on the taxable supply in respect of which the amount is paid. You must pay the GST payable in respect of an amount payable under the Agreement, at the time the amount in respect of which the GST applies is due under the Agreement.
- 11.4. If either party becomes subject to any penalties or interest for late payment of GST and that late payment arises from the failure of either party to comply with the terms, covenants and conditions of the Agreement, the defaulting party must pay to the other party on demand the amount of those penalties and interest.
- 11.5. For the purposes of this clause, an input tax credit and a tax invoice have the meanings given in the GST Act.

## 12. Waiver

- 12.1. If we fail or neglect to enforce any provision of this agreement, this shall not be construed as waiver of any of Our rights, nor shall such failure or neglect in any way affect the validity of the whole or any part of this agreement or prejudice Our right to take subsequent action.

## 13. Severability

- 13.1. In the event that any part of the provisions of this agreement is deemed to be invalid, unlawful or unenforceable to any extent, such part shall be severed from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

## 14. Entire Agreement

14.1. Subject to the terms of this agreement this document together with any associated Quote, any associated email exchange and other the expressly incorporated written terms and conditions embody the entire understanding and agreement between the parties to this agreement as to the subject matter of this document. Subject to the terms of this agreement all previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this document are merged in and superseded by this document and shall be of no force or effect whatever and no party to this agreement shall be liable to any other party to this agreement in respect of those matters. No oral explanation or information provided by any party to this agreement to another shall affect the meaning or interpretation of this document or constitute any collateral agreement, warranty or understanding between any of the parties to this agreement.

## 15. Law

15.1. This agreement shall be governed by and construed in accordance with the laws of Western Australia. Any dispute arising out of this agreement shall be resolved in a Western Australia and the parties submit to the jurisdiction of the courts of Western Australia.

## 16. Force Majeure

16.1. We shall not be responsible or liable, for failure to perform or observe, or for delay in performing or observing, any obligation under the Agreement where such failure or delay arises from any cause beyond our control, including but not limited to, any strike, lockout, industrial action, act of God, pandemic, insurrection, war, or civil commotion or any other cause which we could not reasonably be expected to avoid.

## 17. Intellectual Property

- 17.1. The rights to and proprietary interests in any device, processes, procedures, software, coding, program, programming and associated applications used or created by us for or during the course of an Agreement and all associated intellectual property ("IP") shall belong to us.
- 17.2. You are hereby granted a non-exclusive right to use the intellectual property ("IP") provided by us solely for the purposes of rendering Services under an Agreement. This grant of rights is conditional upon your compliance with the terms of this Agreement.
- 17.3. All IP provided by the us, including but not limited to software, documentation, designs, codes, drawings, configurations, scripts and trademarks, remains the sole and exclusive property of the us. You acknowledge that no title or ownership in the IP is transferred under any Agreement. All rights not expressly granted herein are reserved to us.
- 17.4. In the event that you create any modifications, enhancements, or derivative works of our IP, such modifications shall become the sole property of us. You agree to execute any documents and take all necessary steps as requested by the us to effectuate, record, or perfect such ownership and you appoint us your agent to do so.
- 17.5. Upon termination or expiration of an Agreement, you shall immediately cease using our IP and, in our sole discretion, return, delete, remove, or destroy all copies of our IP in your possession or control. Any continuation of the use of our IP beyond the termination of this Agreement is prohibited unless specifically authorized in writing by us.

- 17.6. You agree to hold confidential and not disclose to anyone our IP.
- 17.7. The obligations regarding IP ownership, confidentiality, and usage rights under this clause shall survive the termination or expiration of this Agreement.

## 18. Number Porting

- 18.1. If you request your phone number/s to be ported away from us, you will no longer be able to make or receive calls from any associated services we provide to you that used those number/s as their caller id or answer point.
- 18.2. If you port away or churn your phone numbers from us to another provider, you acknowledge and agree that we may shut down your services without further notice to you.
- 18.3. It will be your responsibility to ensure that you have planned and communicated with us and your new provider prior to requesting any churns or porting of numbers to avoid any disruptions to your services.
- 18.4. Once a churn or port has been requested you authorise us to disable and remove from service any phone system, pabx, software system or sip trunk that was linked to that number/s and prevent your access to this system/s.

## 19. Microsoft Licenses

- 19.1. If you remove, disconnect or arrange for a new billing provider for your Microsoft licences, you must still pay us for any remaining term on any and all Microsoft licences you have ordered through us until that term has been completed.

## 20. Backups

- 20.1. Where we provide a service to you that includes a backup of your data;
- 20.1.1. We will use commercially reasonable efforts to manage data backups, including maintaining any specified backup retention periods and storing backups securely. Our associated process involves validating and testing backups to ensure their restorability.
  - 20.1.2. You are responsible for informing us in writing of any specific minimum backup retention periods required, limited to during the Service Term and subject to the General Conditions.
  - 20.1.3. You are responsible for notifying us of any required changes to such requirements, which may incur additional charges we specify. In the event of a backup failure, we will endeavour to rectify the issue using reasonable efforts.
  - 20.1.4. You acknowledge and agree that the data contained in the backup will only be able to be restored by us to a location as determined by us.
  - 20.1.5. You acknowledge and agree that we may only be able to restore data from specific points in time using our agreed-upon methods. We will not be able to provide you with a complete copy of the backup data or data from numerous points in time.

- 20.1.6. You acknowledge and agree that using our backup service is for the purpose of data recovery and restoration of corrupted or missing data only and that a copy of this data will not be made available to you for any other purpose.
- 20.1.7. You acknowledge and agree that we can refuse to restore the same or large amounts of data from numerous points in time or where we deem is excessive use of the service.
- 20.1.8. You acknowledge and agree that we can refuse any third-party access including access by you to the backup data and/or systems and we do this to ensure the privacy and protection of the data, you and our other customers who use the service.
- 20.1.9. Upon cancellation or termination of the backup services;
  - 20.1.9.1. All backup data associated with the Client will be securely and permanently destroyed by us;
  - 20.1.9.2. You acknowledge and agree that, following the destruction of the backup data, no data recovery will be possible;
  - 20.1.9.3. You will ensure that you have had a data restore of any data necessary prior to the termination of the service;
  - 20.1.9.4. You acknowledge and agree that the backup service, the data contained in the backups and any ownership of the software or data is non transferrable to yourself or any third party.

## 21. Dictionary

### 21.1. **Agreement** means:

- 21.1.1. the agreement contained in this document, General Conditions and any accepted Order and Service Schedule, Hosting Agreement; and
- 21.1.2. any Order and Service Schedule, General Conditions, Hosting Agreement subsequently agreed, adding to, varying or supplementing the agreement in clause 18.1.1.

### 21.2. **General Conditions** means the General Conditions document attached or added to these Agreement Terms.

### 21.3. **Intellectual Property Rights** means all current and future registered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, domain names, database rights, know-how and confidential information and any other intellectual property rights as defined by Article 2 of the World Intellectual Property Organisation Convention of July 1967.

### 21.4. **Order** means an order for a Service including a request to vary, reconfigure, cancel an existing Service or add an additional Service, submitted by you to us in the form specified or accepted by us from time to time.

### 21.5. **Our and our** means and has reference as possessive adjective to we, We and us.

- 21.6. **Quote** means a price or fee for a product or service provided by us to you in the form specified or accepted by us from time to time not limited to an email communication, oral communication, electronic communication or form.
- 21.7. **Service** means the specific service or services set out and referred to in a Service Schedule and any associated Order.
- 21.8. **Service Schedule** means the Schedules attached or added to these Agreement Terms for the Services.
- 21.9. **your and Your** means and has reference as possessive adjective to you and You.