



## **Terms of Trade**

*PlanNet32 Solutions Pty Ltd*

*03/05/2019*

*Rev. 1.1*

# Contents

1 Terms of Trade .....2

## 1 Terms of Trade

These terms and conditions will apply to all Goods and Services sold, supplied or performed by PlanNet32 Solutions to you and your use of such Goods and Services where PlanNet32 Solutions accepts an offer from you to supply such Goods and Services based on a written (i) PlanNet32 Solutions quotation document; or (ii) PlanNet32 Solutions proposal document, except where:

- PlanNet32 Solutions and you have entered into an Individual Contract formed pursuant to an agreed PlanNet32 Solutions Head Agreement;
- PlanNet32 Solutions has expressly agreed in writing to provide such Goods and Services pursuant to a separate written agreement.

You acknowledge that, unless expressly agreed to by PlanNet32 Solutions in writing, the terms and conditions included on a document issued by you (such as a purchase order, confirmation, receipt (including the terms on any pre-printed purchase order form, or your standard retainer document) will not apply to the sale or supply of Goods and Services by PlanNet32 Solutions to you or otherwise vary these terms and conditions.

### General Obligations

You agree to perform your own specific obligations and responsibilities in accordance with this Contract. Without derogating from this, you agree to cooperate fully and act reasonably and in good faith to assist in the timely progress and fulfilment of our obligations under this Contract including, but not limited to, not unreasonably withholding or delaying the provision of any agreement, acceptance, information, assistance or other resource required by us and providing us with all necessary access to your premises and equipment. You agree to be responsible for all site preparation as required to enable efficient delivery and implementation of the Goods and Services. You agree to ensure that all our personnel, agents or sub-contractors are sufficiently trained in and aware of your policies and procedures.

We agree to cooperate fully and act reasonably and in good faith to ensure the timely progress and fulfilment of our obligations under this Contract.

### Your Requirements and Specification Information

You warrant that all information pertaining to your hardware, software or service requirements and specifications is complete, accurate and has been provided to us prior to formal agreement on a CED.

### Procurement of Hardware and Software

We agree to procure for and supply to you the Hardware and Software in accordance with the terms of this Contract.

### Delivery

Estimated Delivery Dates are based on information available to us from suppliers and are subject to change

at any time, without prior notice. We are not responsible for delays in delivery caused by a supplier or for other reasons beyond our reasonable control. We are not liable for any delays.

### **Risk and Title**

Risk of loss or damage to Goods will pass to you upon delivery of the Goods to you or your authorised representative.

Notwithstanding the passing of risk:

- All Goods delivered remain our property until all monies owing have been paid in full. You acknowledge that the sale of Goods constitutes a registered security interest under the Personal Property Securities Act (2009) (Cth) ("PPSA"). We reserve the right to register our interest in the Goods under the PPSA. We may not provide notification of registration of its interest in the Goods.
- Prior to any sale, you shall hold the Goods as bailee for us and shall return the Goods to us on demand.
- Until payment has been received in full, we will be entitled to enter your premises at any reasonable time to inspect all records in relation to all Goods supplied by us and all records in respect of the sale of those Goods by you.
- We will be entitled to enter your premises at any reasonable time to recover possession of those Goods for which payment in full has not been made.
- It is agreed that where we enter your premises to take possession of the Goods and it is not possible to otherwise identify the ownership of the Goods in your possession, the Goods will be treated as though they were sold by you in the same sequence as you had taken delivery.

### **Performance of Services**

Unless otherwise agreed, the Services will be performed by us during Business Hours of each Business Day. We agree to perform the Services in accordance with the terms of a CED. We will perform the Services utilising such resources, employees and subcontractors as we deem appropriate.

### **Prices and Payment**

The Price payable for the Goods and Services is set out in a CED and does not include any Incidental Costs (including any GST).

The default agreed payment terms are fourteen (14) days from the date of our tax invoice. Interest may become payable at the rate of 2% per annum above the prime lending rate of our principal banker on any overdue amounts.

### **Confidentiality**

We both agree to maintain in confidence and respect the Confidential Information of the other and to abide by the restrictions on use and disclosure of another's Confidential Information.

On occasion, PlanNet32 will update our website and social media to include recently completed projects. No confidential information will be published, however a brief overview of the client, project and outcomes may be published. We include a discount to all of our proposals of to acknowledge this.

If you require that we don't add your projects to our portfolio, the discount will be withdrawn and additional fees may be payable.

### **Hardware and Third Party Software Warranty**

You accept the Hardware manufacturer's warranty in relation to the Hardware. We cannot provide any additional warranty in relation to the Hardware. We will pass on to you any warranty provided to us by the relevant manufacturer of the Hardware. We will provide information to You relating to the applicable Hardware manufacturer's warranty.

Your use, rights and obligations in respect of Third Party Software is governed by its applicable End User License Agreement ("EULA"), unless it is varied by agreement between the parties to that EULA. You agree to execute and be bound by the terms of the Third Party Software owner's EULA. We are able to provide You with a copy of the relevant EULA for your review prior to submitting a purchase order to us. You accept the Third Party Software owner's warranty in relation to the Third Party Software. We cannot provide any warranty in relation to the Third Party Software.

For purchases of Hardware and Third Party Software under \$40,000:

Goods come with guarantees that cannot be excluded under Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Customer 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;

- a) to claim this warranty, the Customer must inform PlanNet32 Solutions (by providing notice to the address set out in these terms of trade; of a warranty issue within the warranty time period specified by the Hardware manufacturer/Third Party Software owner). PlanNet32 Solutions will assist the Customer with claiming the warranty from the Hardware Manufacturer or Third Party Software owner.
- b) The Hardware manufacturer's warranty or Third Party Software owner's warranty will provide details as to who will bear the expense of claiming the warranty and (if applicable) how the Customer can claim expenses incurred in making the claim.
- c) the benefits to the consumer given by the warranty are in addition to other rights and remedies of the consumer under a law in relation to the goods or services to which the warranty relates.

### **Integration Warranty**

You accept the relevant Hardware manufacturer's or Third Party Software owner's warranties in relation to the integration, compatibility or interoperability of those products with other Hardware and Software. We do not provide any warranty in relation to the integration, compatibility or interoperability of Hardware from different third parties, or the integration, compatibility or interoperability of Software from different owners with any such Hardware.

### **PlanNet32 Solutions Assistance with Hardware, Third Party Maintenance Contract and Third Party Software Functionality Issues**

Any issues or problems with any Hardware, Third Party Maintenance Contract or Third Party Software functionality including, but not limited to, warranty claims, may be resolved between you and the relevant owner or manufacturer directly, subject to the terms of the Hardware manufacturer's warranty, maintenance provider or Third Party Software manufacturer's warranty and its EULA, as the case may be, and we can where possible, provide incidental and reasonable assistance to you during this process. Where you request assistance of us outside of the warranty claims process, we reserve the right (and you agree to

accept this reservation) to charge you directly for such intervention, on a time and materials basis. A CED may contemplate us assuming a first-line warranty claims assistance support role.

### **Exclusion of all other warranties**

To the extent permitted by law, and except as set out in these Terms of Trade or otherwise specifically agreed in an Individual Contract, PlanNet32 Solutions:

- a) provides the Goods to you on an “AS IS” basis;
- b) excludes all warranties and conditions, express, implied or statutory (including all implied warranties of merchantability, fitness for a particular purpose, lack of viruses, uninterrupted or error free operation, accuracy or completeness of responses or results, lack of workmanlike effort or non-infringement) regarding the Goods provided to you; and
- c) limits the remedies available for a breach of any warranty given to you to the lesser of and to the extent that such breach of warranty is capable of remedy by employing commercially reasonable efforts (as determined by us acting reasonably and in good faith), the cost of repairing or replacing those Goods; or paying the cost of having those Goods repaired or replaced.

PlanNet32 Solutions accepts no liability whatsoever for any resultant loss or damage arising directly or indirectly from any connectivity or integration with any existing Customer process, product, materials, environment or System that is not adequately accounted for in a Commercial Engagement Document, or results from inaccurate or incomplete Customer information.

### **Returns**

Each claim by you for return of Goods shall be processed pursuant to our Customer Returns process.

### **Services Warranty**

We warrant that we will use commercially reasonable efforts to perform the Services (including the provision of any associated Materials) in accordance with a CED and any milestones set out therein and that all Services will be provided with due care and skill. The Services warranty is valid for a period of 30 days following delivery of the Services.

### **Materials Ownership and Licence**

We retain all right, title and interest in all Materials created before and during the Service performance period. We grant to you a non-exclusive, licence to use, copy and distribute, within your group of companies only, copies of these Materials. Each party agrees to reproduce the copyright notice on any copies made under the licence granted above. Any idea, concept, know-how or technique which relates to the subject matter of a Service and is developed or provided by a party, or jointly by both, in the performance of a Service may (subject to applicable patents and copyrights) be freely used by either party.

### **Limitation of Liability**

EXCEPT IN RESPECT OF A BREACH OF CONFIDENTIALITY, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES WHETHER SUCH DAMAGES ARE ALLEGED AS A RESULT OF TORTIOUS CONDUCT (INCLUDING NEGLIGENCE) OR BREACH OF CONTRACT OR OTHERWISE. Our maximum liability to you in aggregate for all claims made against us in contract, tort or for any other common law or statutory cause of action in connection with the subject matter of this Contract shall be limited to:

- In respect of Goods, the component of the Price paid by you for such Goods under this Contract;
- In respect of Services, the component of the Price paid by you for such Services under this Contract;

Where a claim(s) relates to both Goods and Services, the limits on our liability shall operate separately and independently of each other in respect of such Goods and Services. A party's liability for a claim of another party will be reduced proportionately to the extent that any act or omission of the first mentioned party or any of its officers, agents, employees or contractors causes or contributed to those liabilities, losses, damages, cost or expenses.

### **Term and Termination**

This Contract will continue in force for the term set out in a CED or until we have fulfilled our obligations under this Contract. Either of us may terminate this Contract, on 30 days prior written notice, where the other is in material default. We may terminate this Contract with immediate effect if you become unable to pay your debts as and when they become due and payable.

### **Force Majeure**

We are excused from performing our obligations to the extent we are prevented by circumstances beyond our reasonable control including, but not limited to, acts of God, natural disasters, acts of war, riots and strikes.

### **General Provisions**

**Assignment:** PlanNet32 Solutions may at any time transfer or assign any or all of its rights, obligations, benefit or interest under this Contract.

**Severability:** The provisions in this Contract are enforceable independently of each of the others and if a provision of this Contract is, or becomes, illegal, invalid, void or deemed unenforceable by any court of competent jurisdiction, it shall not affect the legality, validity or enforceability of any other provisions of this Contract. If any of these provisions is so held to be illegal, void, invalid or unenforceable but would be legal, valid or enforceable if some part of the provision were deleted, the provision in question will apply with such modification as may be necessary to make it legal, valid or enforceable.

### **Variations**

This Contract may be varied from time to time providing that both parties agree to the variations in writing.

### **Waiver**

Failure or delay by either party to enforce any provision of this Contract shall not be deemed a waiver of future enforcement of that or any other provision, unless agreed in writing by the relevant party.

### **Entire Contract**

Where this Contract applies, it constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces any prior condition, warranty, representation, statement, agreement, undertaking, indemnity (whether negligently or innocently) imposed, given or made by a party, whether written, oral or implied and may only be amended in writing and signed by both parties.

Governing Law and Jurisdiction This Contract shall be governed by the laws of Western Australia and each party submits to the non-exclusive jurisdiction of the courts of Western Australia.

### Definitions

- 'Business Day' means a day that is not a Saturday, Sunday or any other day that is a gazetted public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made, as the context admits.
- 'Business Hours' means 8:30 am to 5:00 pm of each Business Day.
- 'CED' or 'Commercial Engagement Document' means a PlanNet32 Solutions quotation document or PlanNet32 Solutions proposal document, that may reference other specifications applicable to the sale or supply of certain Goods and Services by PlanNet32 Solutions.
- 'Contract' means a legally binding contract between PlanNet32 Solutions and you consisting of the relevant CED and these PlanNet32 Solutions Terms of Trade.
- 'Confidential Information' means any trade secrets embodied in any information relating to, but not limited to, the commercial activities, product pricing, technologies, business processes, client relationships, strategic information and any other information related to the conduct of each parties businesses.
- 'PlanNet32 Solutions', 'PlanNet32', 'us', 'our' or 'we' means either the entity PlanNet32 Solutions Pty Ltd or any of its Related Bodies Corporate as specified in a CED as the seller or supplier.
- 'Goods' means either Hardware or Software procured or supplied pursuant to these terms and conditions, as the context admits.
- 'EULA' means the licence agreement governing the use of Software directly between you and the owner of that software.
- 'Hardware' means any physical product manufactured by a third party, including any associated third party maintenance service contracts, as specified in a CED.
- 'Head Agreement' or 'HA' means PlanNet32 Solutions's umbrella agreement for the supply of Goods and Services to its customers.
- 'Incidental Costs' means delivery costs, tax, installation, support or maintenance costs, preparation of the site, audit of your physical environments, overtime rates, and any miscellaneous expenses, like travel & accommodation.
- 'Individual Contract' means a separate individual contract between PlanNet32 Solutions and a customer formed pursuant to the terms of a Head Agreement.
- 'Material' means literary works or other works of authorship that PlanNet32 Solutions may deliver to the Customer as part of a Service. The term "Material" does not include licensed software products which are provided in accordance with their EULA.
- 'Price' in relation to Goods and Services means the price payable for those Goods and Services as detailed in a CED.
- 'Software' means any licensed, packaged software that is manufactured, licensed or owned by a third party (other than PlanNet32 Solutions or you) ("Third Party") and procured on behalf of

## TERMS OF TRADE

PlanNet32 Solutions for you, the use of which is subject to that Third Party's EULA, and where applicable, includes its associated third party support and maintenance contract.

- 'You' means the customer entity specified in a CED.