

M2 Digital

Terms & Conditions for supply of goods and services – 8 December 2009

1.0 DEFINITIONS

“Agreement” means these Terms and Conditions and, where applicable, include Quotations and/or the Managed Services Agreement;

“Customer” means the customer to whom M2 Digital shall supply or contract to supply Goods and Services;

“Fees” means the charge or fees as described in the relevant Quotation and/or Managed Services Agreement and in accordance with Clause 10 below;

“Goods and Services” means information technology goods, IT support services and managed IT services as described in the Quotation and/or Managed Services Agreement;

“M2 Digital” means M2 Technology Pty Ltd (ABN: 24 061 357 373) trading as M2 Digital;

“Managed Services” means the supply of IT support services to the Customer in accordance with the Managed Services Agreement and these Terms and Conditions;

“Managed Services Agreement” means the Agreement between the Customer and M2 Digital for the supply of Managed Services to the Customer by M2 Digital;

“Quotation” means those terms for the supply of Goods and Services to the Customer which once signed by the Customer shall form part of this Agreement;

“Service Hours” means Monday to Friday between 8.30am and 5.00pm WST except public holidays.

2.0 INTERPRETATION

M2 Digital agrees to provide Goods and Services to the Customer as per the Quotation and/or Agreement in return for Fees.

M2 Digital reserves the right to change these terms and conditions at any time.

3.0 APPLICATION

These Terms and Conditions shall form the basis of all goods and services supplied by M2 Digital. For the avoidance of doubt in the case of conflict, where applicable, firstly the Quotation and secondly the Managed Services Agreement shall have precedence over the provisions herein.

4.0 PROVISION OF MANAGED SERVICES

M2 Digital will provide information technology maintenance, remedial services and monitoring services to the Customer during Service Hours.

M2 Digital will monitor Customer’s equipment that have our monitoring software installed during Service Hours and provide monthly reports to the Customer.

M2 Digital will use its best efforts to respond to Customers request for remedial services.

M2 Digital is able to provide remedial services outside normal Service Hours if requested by the Customer. Such service will incur additional charges above the normal Fees payable by the Customer.

Any job that is started prior to the end of the Service Hours each day and continues for an hour after the end of the Service Hours will be regarded as provided during Service Hours. Additional hours beyond this time will be considered to be outside Service Hours and will incur additional Fees.

Any job that is started before the start of the Service Hours each day may, at the discretion of M2 Digital, incur additional Fees until the start of the Service Hours where thereafter it will be included as part of the Managed Services Agreement.

The Agreement does not include the supply of spare parts, hardware and software as per Clause 5.0 below. However, during the course of the supply of services, M2 Digital technicians may recommend the purchase of additional hardware and software.

Within two (2) months of the commencement of the Agreement, the Customer may request the lowering of their support service level without penalty. Such requests must be provided by the Customer to M2 Digital in writing with at least 14 days notice prior to the next billing cycle. Any fees already paid by the customer will be provided as a credit note against future invoices.

During the term of the Agreement, the Customer may increase the level of support provided and pay the difference in fees for the remainder of the term.

5.0 EXCLUSIONS FROM MANAGED SERVICES

In addition to the exclusions in Clause 4.0, the Agreement also specifically excludes the following:

- Software training for users
- Electrical work external hardware equipment
- Supply of hardware and software

M2 Digital may at the request of the Customer supply to the Customer the above excluded items in return for Fees. M2 Digital will provide the Customer with a Quotation for such supply.

6.0 TERM OF THE MANAGED SERVICES AGREEMENT

The initial term of the Agreement is twelve (12) months from the date of the Agreement. At the end of the initial term, the Customer has the option to:

- Sign a new Agreement for another twelve (12) months at preferential rates
- Continue on a month-by-month basis at rates relevant at that time
- Terminate the Agreement by giving M2 Digital written notice thirty (30) days prior to the end of the term

At the end of any subsequent terms, the Customer will have available to them the same options as above.

The Agreement cannot be cancelled or terminated during the initial or subsequent terms. Cancellation of this Agreement by the Customer for any reason will incur full payment of the contracted charges to the end of the term unless a suitable negotiated payout figure is agreed to by M2 Digital.

The Managed Services Agreement cannot be assigned by the Customer, in part or in whole, to a third party without the prior consent of M2 Digital.

7.0 AD-HOC AND PREPAID SUPPORT SERVICES

M2 Digital is able to provide ad-hoc and pre-paid IT support services during Service Hours.

Ad-hoc and pre-paid support services are charged on an hourly basis per technician as follows:

- Telephone and remote support – 15 minute blocks
- On-site support – Minimum 1 hour and 15 minutes thereafter

Any job that is started prior to the end of the Service Hours each day and continues for an hour after the end of the Service Hours will be regarded as provided during Service Hours. Additional hours beyond this time will be considered to be outside Service Hours and will incur premium Fees as per Clause 10 below.

Any job that is started before the start of the Service Hours each day will incur premium Fees as per Clause 10 below until the start of Service Hours.

The Customer may request support services outside Service Hours. Support services provided outside Service Hours will incur premium Fees as per Clause 10.

In the case of prepaid support services, the Customer is entitled to receive the defined number of support service hours as per the Agreement. Any hours not used in a month can be carried forward and used in any month before the end of the term. At the end of the term, any unused hours will be forfeited.

M2 Digital will provide a report at the start of the month showing hours used and balance available.

8.0 SUPPLY OF GOODS

The supply of goods is subject to these Terms and Conditions.

M2 Digital is able to supply IT goods to the Customer in return for Fees.

M2 Digital will provide the Customer with a Quotation for the requested goods. Quotations are valid for 30 days from the date of the Quotation.

M2 Digital will endeavour to advise on the suitability of goods for the Customer but will not be held responsible in the event that these goods are not suitable for any reason.

Orders for goods will only be supplied where a written confirmation is received from the Customer.

Availability of goods are indicative only and M2 Digital will not be held responsible for any delays in delivery however caused.

Goods sold are generally not returnable. If returnable, the Customer will incur a restocking fee of 10% of the invoice value of the goods or if different will be advised accordingly. The Customer will be provided with a credit note for returned goods. No refund will be provided for credit notes.

The supply of goods excludes the cost of installation and/or freight. Should the customer wish M2 Digital to arrange for installation and/or freight, additional Fees will apply. The Customer should also arrange for adequate insurance to cover for loss or damage caused during freight. M2 Digital will not be held responsible for any loss or damage during freight however caused.

9.0 RESERVATION OF RIGHTS FOR GOODS SOLD

M2 Digital reserves the following rights in relation to the goods until all accounts owed by the Customer to M2 Digital are fully paid:

- (a) ownership of the goods;
- (b) to enter the Customer's premises (or the premises of any associated company or agent where the goods are located) without liability for trespass or any resulting damage and retake possession of the goods; and
- (c) to keep or resell any goods repossessed pursuant to (b) above.

10.0 FEES & PAYMENT TERMS

All prices quoted in the Quotation and/or Agreement is inclusive of Goods & Services Tax, unless otherwise specified.

The Customer can elect to have the Managed Services Fees invoiced monthly, quarterly or annually. Such fees are payable in advance.

Pre-paid Support Fees are invoiced and payable in advance.

All other Fees including premium Fees are invoiced in arrears and are payable within 28 days from the date of the invoice.

Fees are charged on an hourly basis per technician.

Support services requested by the Customer outside normal Service Hours will incur premium Fees as per below:

- Up to one hour before or after Service Hours – additional 25% above normal hourly fees;
- More than one hour and less three hours before or after Service Hours – additional 50% above normal hourly fees;
- More than three hours before or after Service Hours – double normal hourly fees;
- Weekends and Public Holidays – double normal hourly fees.

11.0 M2 Digital's Responsibilities

M2 Digital's liability for goods supplied, fitted or repaired is limited to making good any defects by repairing the defects or at M2 Digital's option replacement, within a period not exceeding 28 days after the goods have been dispatched as long as:

- defaults arise solely from M2 Digital's workmanship;
- the goods have not received any maltreatment, inattention or interference;
- accessories of any kind used by the Customer are manufactured by or approved by M2 Digital;
- the seals of any kind on the goods remain unbroken; and
- the defective parts are returned free of cost to M2 Digital.

If the goods are not manufactured by M2 Digital the guarantee of the manufacturer of those goods is accepted by the Customer and is the only guarantee given to the Customer in respect of the goods. M2 Digital agrees to assign to the Customer on request made by the Customer the benefit of any warranty or entitlement to the goods that the manufacturer has granted to M2 Digital under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.

M2 Digital is not liable for and the Customer releases M2 Digital from any claims in respect of faulty or defective design of any goods supplied unless such design has been wholly prepared by M2 Digital and the responsibility for any claim has been specifically accepted by M2 Digital in writing. In any event M2 Digital's liability under this paragraph is limited strictly to the replacement of defective parts.

12.0 Customer's Responsibilities

The Customer agrees to provide to M2 Digital:

- Full and free access to IT equipment including but not limited to logins and passwords
- Adequate working space and normally acceptable working conditions
- Right to install workstation monitoring software on all workstations and servers unless specifically excluded in the Agreement
- Customer shall provide and maintain a safe workplace and ensure that the Business employees, other workers and others are protected from health and safety risks;

13.0 CONFIDENTIALITY AND PRIVACY

All information acquired by M2 Digital in the course of services provided under this Agreement relating to the Customer and its customers, suppliers, employees, directors and shareholders shall be treated by M2 Digital as private and confidential and shall not make any use or disclose such information to a third party unless compelled by law.

Such information will be kept private and confidential during and after the expiration of the Agreement.

M2 Digital shall take such reasonable steps as to protect the confidentiality of such information and require its employees to adhere to the same.

M2 Digital's privacy policy is available on our website: http://www.m2technology.com.au/pdfs/M2_privacy-policy.pdf

14.0 SUSPENSION AND TERMINATION

The provision of Services and monitoring services by M2 Digital to the Customer may be suspended if:

- Accounts are in arrears by 60 days from the date of the oldest unpaid invoice.
- The Customer commits any material breach under the Agreement
- The Customer becomes insolvent, bankrupt or receivers/administrators appointed

Services will resume upon rectification of the breached conditions.

Under such circumstances, M2 Digital at its absolute discretion and without prejudice to any other rights may terminate the Agreement without liability upon its part.

15.0 FORCE MAJEURE

M2 Digital shall not be liable to the Customer for any loss or damage arising either directly or indirectly as a result of the inability for M2 Digital to perform its part of the Agreement by reason of any Force Majeure circumstances.

Conditions of Force Majeure is to include, but not limited to, natural disasters or other "Acts of God", war, riots, strikes, industrial action, accident, or the failure of third parties.

16.0 LIABILITY AND INDEMNITY

M2 Digital shall be under no liability to the Customer for any indirect loss and/or expense (including loss of profits) suffered by the Customer resulting out of a breach by M2 Digital of the Agreement.

The Customer shall indemnify M2 Digital in full for all costs incurred in respect of any claims by third parties arising from M2 Digital's performance under instructions by the Customer.

Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. M2 Digital is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the goods or arising out of M2 Digital's negligence or in any way whatsoever and the Customer releases and discharges M2 Digital from any claim arising out of or in connection with the installation and/or supply of the Goods and Services and indemnifies and holds harmless M2 Digital in respect of any such claim.

M2 Digital is not responsible to the Customer or any person claiming through the Customer for any loss or damage to goods in transit caused by any event of any kind by any person (whether or not M2 Digital is legally responsible for the person who caused or contributed to that loss or damage).

The Customer agrees to indemnify and hold harmless M2 Digital, its affiliates, and its customers and their officers, directors, employees, successors, and assigns (all hereinafter referred to in this clause as "Business") from and against any losses, damages, claims, demands, suits, liabilities, and expenses (including reasonable solicitor's fees) that arise out of or result from:

- the Goods and Services completed under the contract;
- failure on the part of the Customer to perform the Customer's obligations under this Agreement;
- injuries or death to persons or damage to property, including theft, in any way arising out of or occasioned by, caused or alleged to have been caused by or on account of an unsafe work environment; a negligent act or omission or willful misconduct on the part of Customer or by equipment furnished by the Customer. The Customer agrees to defend Business, at Business' request, against any such claim, demand or suit. Business agrees to notify the Customer within a reasonable time of any written claims or demands against Business for which the Customer is responsible under this clause.

17.0 NOTICES

M2 Digital must be advised of any changes to your details shown on the Agreement or any information that would be deemed reasonable for advisement including your inability to fulfil the terms of the Agreement. Notices must be issued in writing to M2 Digital within 7 days.

18.0 NON-SOLICITATION OF STAFF

During the term, or 12 months after the end of the term, the Customer shall not, directly or indirectly, offer or provide employment to, offer contract with or entice to leave any employee or contractor of M2 Digital without our written consent.

19.0 INVALIDITY OF PART OF THE AGREEMENT

If any part of the Agreement is held to be in violation of any applicable laws or regulations, the part that is in violation is deemed to be deleted from the Agreement and the deletion or violation does not affect the rest of the Agreement and the rest of the Agreement shall remain in full force.

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