

## **ORDER TERMS**

These Terms apply to the order of goods or services ("Supplies"), placed by the Australian Computer Society Incorporated ABN 53 156 305 487 ("ACS") as described in the attached purchase order or (b) other correspondence with respect to the Supplies with the supplier of those Supplies named in the Order ("Supplier").

Together, these Terms, the Order, and any document incorporated in the Order, constitute the "Agreement".

### **1. Acceptance of Order**

- (a) The Supplier will be deemed to have accepted an Order on the earlier of (i) the Supplier notifying ACS that it accepts the Order or (ii) the date on which the Supplier supplies the Supplies, or any part of the Supplies, in accordance with the Order.
- (b) The Supplier is not obliged to provide, and must not charge ACS for, any Supplies until ACS has issued an Order for those Supplies.
- (c) The Supplier is not an exclusive provider of the Supplies to ACS. ACS is under no obligation to meet any minimum volume or fee commitments.

### **2. Term**

The Agreement:

- (a) commences on the earlier of (i) the date the Supplier accepts the first Order or (ii) the date that the Supplier commences providing the Supplies; and
  - (b) continues until the later of (i) the expiry date specified in the last Order, (ii) the date that all Supplies have been provided under all Orders, or (iii) termination by a party in accordance with clause 14 of these Terms,
- ("Term").

### **3. Title, risk, and delivery**

- (a) Legal and equitable title to, and risk in, all or any part of the Supplies, passes to ACS upon delivery of the Supplies.
- (b) The Supplier must deliver the Supplies to ACS at the location and by the date specified in the Order or, if no date is specified in the Order, within 30 days of the Order acceptance date in clause 1(a) of these Terms.

### **4. Warranties and Rectification of defects**

- (a) The Supplier warrants that the Supplies will:
  - (i) be fit for purpose;
  - (ii) be of merchantable quality;

- (iii) conform with the specifications in the Order and any other documentation notified by the Supplier;
  - (iv) be free from defects in materials and workmanship; and
  - (v) be created or performed using an appropriate degree of diligence and care.
- (b) The Supplier must rectify any non-compliance with clause 4(a) in the Supplies during the warranty period set out in the Order, or if no warranty period is specified, then during the period of 12 months following delivery of the Supplies to ACS.
  - (c) If ACS rejects any Supplies for not complying with clause 4(a), then the Supplier must, at the Supplier's expense, rectify the non-compliance and resupply the Supplies ("Re-Supplied Supplies").
  - (d) If ACS rejects the Re-Supplied Supplies, the Supplier must reimburse any fees paid for such Supplies and ACS may terminate the Agreement.
  - (e) Without limiting the foregoing, the Supplier warrants that:
    - (i) the Supplies will not infringe the rights of any person; and
    - (ii) it is lawfully able to grant the licenses and assignments provided by it under the Agreement.

## **5. Payment**

- (a) ACS will pay for any Supplies within thirty (30) days from the end of month from when a valid, undisputed tax invoice is received by the ACS Finance Department (via e-mail address - [acsaccountspayable@acs.org.au](mailto:acsaccountspayable@acs.org.au)).
- (b) The relevant Order number (if any) must be quoted on the tax invoice.
- (c) ACS may withhold any disputed portion of the fees until the relevant dispute is resolved.

## **6. Taxes**

- (a) Subject to clause 6(b), ACS will not be liable for any tax relating to the provision of the Supplies unless otherwise stated.
- (b) If goods and services tax ("GST") is payable in connection with the Supplies, then the Supplier warrants that the fees payable under the Agreement include that GST amount, and indemnifies ACS against the obligation to pay any separate GST amount.

## **7. Intellectual property and moral rights**

- (a) Unless otherwise agreed in the Order, nothing in the Agreement transfers ownership in, or otherwise grants any rights in or to, any pre-existing intellectual property rights of a party.
- (b) Unless otherwise agreed in the Order, the Supplier agrees that all intellectual property rights in any Supplies created for ACS pursuant to the Agreement including any modifications or enhancements ("Developed Materials") will exclusively vest in ACS upon creation.
- (c) ACS grants the Supplier during the Term a non-exclusive, non-transferable, royalty-free licence to use the Developed Materials and any material provided by ACS to the Supplier

under the Agreement, solely for the purpose of the Supplier performing its obligations under the Agreement.

- (d) The Supplier grants ACS a non-exclusive, perpetual, irrevocable, royalty-free and worldwide licence to install, use, reproduce, or communicate to the public any material developed independently of the Agreement by Supplier or its licensors and provided to ACS in connection with the Agreement ("Supplier Material") for:
  - (i) the business purposes of ACS; and
  - (ii) to receive the full benefit of the Supplies.
- (e) The Supplier must ensure that it obtains all necessary consents from all authors of all materials (including Supplier Material and Developed Material) for ACS' use, modification or adaptation of such materials to enable ACS to fully exercise its intellectual property rights under the Agreement, including:
  - (i) the use, modification or adaptation of the materials; or
  - (ii) any other dealing which might otherwise constitute an infringement of a person's moral rights (which has the meaning defined in the *Copyright Act 1968* (Cth)) and any other similar rights existing under any other laws.

## **8. Confidential Information**

- (a) The parties agree that Confidential Information (as defined on clause 8(c) below) includes the provisions of the Agreement (but not its existence) and the Developed Materials.
- (b) The recipient of Confidential Information ("Recipient") agrees that all Confidential Information is the sole and valuable property of the discloser of the Confidential Information ("Discloser") and must:
  - (i) keep the Confidential Information confidential and take all steps required to safeguard its confidentiality;
  - (ii) not use the Confidential Information except to perform the Recipient's obligations or exercise its rights under the Agreement;
  - (iii) not disclose the Confidential Information to any third party except (A) to the extent required by law, (B) to its professional advisors, employees and sub-contractors for the sole purpose of performing or exercising its rights under the Agreement, or (C) with the Discloser's prior consent, and
  - (iv) on the Discloser's request, destroy or deliver (at the Discloser's option) all Confidential Information of the Discloser that is in the Recipient's possession or control.
- (c) "Confidential Information" means all confidential, non-public or proprietary information, exchanged between the parties before, during or after the Term, relating to the business, technology or other affairs of the Discloser, but does not include information (i) that is part of the public domain other than through breach of the Agreement, (ii) was already known to the Recipient, (iii) was independently developed by the Recipient without reference to the Confidential Information, or (iv) was acquired from a source entitled to disclose it on a non-confidential basis.

## 9. Privacy

The Supplier must, if it is able to or if it does access any personal information held by or on behalf of ACS:

- (a) solely use and disclose such personal information for the purpose of the Agreement, and comply with any applicable privacy and data protection laws including the *Privacy Act 1988* (Cth) ("Privacy Act");
- (b) comply with ACS' privacy policy (available at <https://www.acs.org.au/privacy-policy.html>) and any reasonable ACS requests pertaining to the collection, use, disclosure or security of personal information, or regarding the resolution of any individual's complaint;
- (c) promptly notify ACS in writing and give complete details regarding any:
  - (i) unauthorized access to, or disclosure or loss of, any personal information; or
  - (ii) alleged breach of the Privacy Act;
- (d) destroy or otherwise deal with such personal information in accordance with ACS' reasonable directions on expiration or termination of the Agreement; and
- (e) only disclose or give access to such personal information to Supplier personnel who require such access to fulfil the Supplier's obligations under the Agreement.

## 10. Data protection

- (a) The parties agree that ACS Data (as defined in clause 10(c) below) is ACS' Confidential Information.
- (b) The Supplier must:
  - (i) implement technical and organizational measures to protect ACS Data from any actual or suspected data breach;
  - (ii) comply with reasonable data security requirements notified by ACS to the Supplier from time to time;
  - (iii) not disclose or make accessible any ACS Data to any person (including itself) outside Australia without ACS' prior written consent;
  - (iv) ensure that any Supplier personnel with access to ACS Data complies with the obligations in this clause 0; and
  - (v) immediately notify ACS if the Supplier becomes aware of an actual or suspected data breach, and cooperate with ACS in investigating that data breach.
- (c) "ACS Data" means any data of ACS', or of any customer of or supplier to ACS, that the Supplier is provided, or that the Supplier accesses, in performing or exercising any of its rights under the Agreement.

## 11. Liability

- (a) Subject to clause 11(c), the aggregate liability of ACS for damages, losses, costs, expenses, liability, demands, injury or harm ("Loss") suffered or incurred by the Supplier in connection with the Agreement, whether under statute, in contract, tort (including negligence) or

otherwise, is limited to the total amounts paid and payable by ACS to the Supplier under the Agreement.

- (b) ACS is not liable for any Consequential Loss (as defined in clause 11(d) below) suffered or incurred by the Supplier in connection with the Agreement.
- (c) The limitation set out in clause 11(a) does not apply to a party's liability for an indemnified Loss under clause 12.
- (d) "Consequential Loss" means any loss or damage which, although in the contemplation of the parties at the time they entered into the Agreement, is not a loss or damage which may fairly and reasonably be considered to arise naturally.

## **12. Indemnity**

Each party ("Indemnifying Party") indemnifies the other party ("Indemnified Party") and the Indemnified Party's personnel against any Loss resulting directly or indirectly from:

- (a) any negligent, fraudulent, or unlawful act or omission of the Indemnifying Party;
- (b) death, personal injury or property damage caused or contributed to by the Indemnifying Party;
- (c) any breach of confidentiality obligations by the Indemnifying Party;
- (d) if the Indemnifying Party is the Supplier:
  - (i) any claim that the Supplier infringes any intellectual property or other rights of a third party, except to the extent attributable to the wrongful act of ACS; and
  - (ii) any breach of the intellectual property, privacy and data protection obligations in the Agreement, except to the extent attributable to the wrongful act of ACS.

## **13. Insurance**

- (a) Unless otherwise stated in the Order or otherwise agreed in writing by the parties, the Supplier must hold and maintain each of the following types of insurances, for the periods and in the amounts specified below:
  - (i) public liability insurance with a limit of cover of at least \$5 million in respect of each occurrence, to be held for the Term;
  - (ii) product liability insurance with a limit of cover of at least \$5 million in respect of each occurrence and in the aggregate, to be held for the Term and for at least seven years after the Term;
  - (iii) workers' compensation insurance as required by law;
  - (iv) professional indemnity insurance with a limit of cover of at least \$5 million in respect of each occurrence and in the aggregate, to be held for the duration of the Term and for at least seven years after the Term;
  - (v) cyber security insurance with a limit of cover of at least \$5 million in respect of each claim, to be held for the duration of the Term; and
  - (vi) insurance that covers losses that may be suffered as a result of a data security breach or the wrongful disclosure and use of personal information by the Supplier or its personnel.

- (b) The Supplier must, when requested by ACS, provide a certificate of currency for the insurances specified in clause 13(a) from its insurer or insurance broker (or other form of evidence acceptable to ACS) confirming that all insurance policies required by the Agreement are current and that the insurance has the required limits of cover.

#### 14. Termination

- (a) ACS may terminate the Agreement at any time by giving the Supplier 10 business days' (or any other notice period set out in the Order) written notice.
- (b) Either party may terminate the Agreement on written notice to the other party with immediate effect if:
  - (i) the other party breaches a material term of the Agreement and fails to remedy the breach within 14 days of receiving notice to do so;
  - (ii) the other party breaches a material term of the Agreement that is incapable of remedy; or
  - (iii) the other party is insolvent or bankrupt or becomes subject to insolvency or bankruptcy proceedings.
- (c) On expiration or termination of the Agreement:
  - (i) ACS will only be liable to pay the Supplier for Supplies accepted in accordance with the Agreement, and the Supplier must reimburse ACS for any fees paid for Supplies not accepted;
  - (ii) the Supplier must promptly remove any equipment or personnel at ACS' premises; and
  - (iii) the Supplier must promptly delete any personal information or Confidential Information of ACS, and any ACS Data, and certify that it has done so.

#### 15. General

- (a) **Governing law and jurisdiction.** The Agreement is governed by, and will be construed in accordance with, the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
- (b) **Assignment and subcontracting**
  - (i) ACS may, upon written notice to the Supplier, assign any of its benefits or obligations under the Agreement to any person.
  - (ii) The Supplier must not, without ACS' prior written consent, assign any benefits or obligations under the Agreement or sub-contract any of its obligations.
  - (iii) In the event ACS provides its written consent to a subcontractor pursuant to clause 15(b)(ii):
    - (A) Supplier will not be relieved of any of its liabilities or obligations under the Agreement and is liable to ACS for the acts and omissions of the approved subcontractors (including a subcontractor's employees or agents) as if they were the acts or omissions of Supplier; and

(B) Supplier must ensure that the approved subcontractor complies with all of the terms of the Agreement including, but not limited to, provisions with respect to privacy, data protection, confidentiality, and intellectual property.

(c) **Order of precedence.**

In the event of any inconsistency between one or more documents which constitute the Agreement, the order of precedence will be:

- (i) these Terms,
- (ii) the Order, and
- (iii) any document expressly incorporated by reference in the Order.

(d) **Variation.** This Agreement may only be varied by the parties upon agreement in writing.

(e) **Entire agreement.** This Agreement represents the entire agreement between the parties in relation to the Supplies and supersedes all prior discussions, negotiations, understandings and agreements in relation to those Supplies.