



1 Scope of these terms & conditions & definitions

Unless otherwise expressly agreed by us in writing, these terms and conditions apply to our supply of any services, software, hardware or other items including the items identified in the Proposal.

In these terms and conditions:

“Fees” means the fees set out in the Proposal;

“Hardware” means the hardware (if any) identified in the Proposal and any other hardware which we agree to provide or procure on your behalf;

“Payment Schedule” means the schedule of Fee payments set out in the Proposal;

“Proposal” means (a) our quotation, proposal or any other document provided by us which references these terms and conditions (b) any attachments and referenced documents and (c) any written variations agreed to by us;

“Services” means the services (if any) identified in the Proposal and any other services which we agree to provide or procure on your behalf;

“Software” means the software (if any) identified in the Proposal and any other software which we agree to provide or procure on your behalf. Where relevant, a reference to “Software” includes any licence to use software including any rights to access and use software as a service;

“Third Party Components” means Software, Hardware or Services which is or are to be provided by or procured by us from a third party;

“You” or **“your”** means any party whose relationship with us is to be governed by these terms and conditions and includes a prospective customer identified in a Proposal;

“Your Responsibilities” means your responsibilities as specified in the Proposal;

“We”, “us” or **“our”** refers to Lettscom Pty Ltd (ABN 23 096 839 020) of 124 Main Street Beverley SA 5009;

“Work” means any combination of Services, Software and Hardware which we agree to provide.

2 Performance of Work

2.1 We will perform Work in accordance with the Proposal.

2.2 The Work will be performed in accordance with sound and accepted professional practice existing at the date of your acceptance of the Proposal.

2.3 Where a Proposal includes Third Party Components, you will normally be required to enter into a direct contractual arrangement with the relevant third parties for the supply or licensing of the Third Party Components. If we agree to procure Third Party Components on your behalf, then the Third Party Components will be provided without any warranty from us and will only be subject to the terms and conditions of any warranty, licence, maintenance and other terms and conditions stipulated by the third party.

2.4 If the Work is based on information or recommendations provided by third parties (e.g. sizing, network design or configuration), then we will not be responsible for any deficiencies in the performance of deliverables or other failures or defects if they are a consequence of reliance upon the third party information or recommendations.

2.5 The Work may be performed by us or by a suitable contractor appointed by us. We will determine the location at which any Work will be performed. If we identify that any Work should be performed remotely, you will ensure that we are granted any access to your systems required to perform the Work. If we determine that Work should be performed on your site, you will ensure that we are granted reasonable physical and logical access to your site and systems.

- 2.6 We will comply with your reasonable site safety and security policies and any other policies or procedures which have been notified to us prior to our issue of the Proposal. If new or varied policies or procedures are notified to us after issue of the Proposal, we will comply with the new or varied policies or procedures providing you agree to pay any additional costs we incur in order to comply.
- 2.7 We will endeavour to perform the Work without unreasonable delay but we will not be liable for any failure or delay in the performance of Work which is caused or contributed to by you or your contractors or by the suppliers of Third Party Components or any other circumstances outside our direct reasonable control. To the extent that we are delayed in the performance of the Work by any event (except an event which is directly within our control) and we incur any additional costs as a result, we will be entitled to adjust the Fees payable to include an amount to cover these additional costs.
- 2.8 Our performance of the Work is subject to you:
- 2.8.1 complying with Your Responsibilities and providing any approvals or information as and when required by us; and
- 2.8.2 paying Fees to us in accordance with the Payment Schedule.
- 2.9 If the Work includes our supply of a specified model or version of Hardware or Software and that model or version becomes unavailable or difficult to source, we may substitute an alternative model or version which generally matches the functionality and other characteristics of the model or version which is being replaced.

3 Payment for Work

- 3.1 We will invoice Fees in accordance with the provisions of the Proposal including any Payment Schedule. You must pay us within 14 days after the date of your receipt of our invoice. If there is no Payment Schedule, then we may invoice you for Work on a periodic basis. If no specific Fee is specified for Work we perform at your request, we will charge for that Work in accordance with our then applicable time and materials rates.
- 3.2 If you suspend the performance of Work (where you are expressly entitled to do so) or if we are delayed in the progress of Work by any matter outside our direct control, then we may issue an invoice to you for the Work we have performed even if we are then entitled to issue an invoice under the Payment Plan.
- 3.3 Subject to clause 3.4, payment of Fees must not be refused or delayed, notwithstanding any dispute between you and us.
- 3.4 If a genuine dispute arises regarding the amount of a Fee, you may suspend payment of the disputed amount pending resolution of the dispute but you must pay all other amounts in accordance with clause 3.1.
- 3.5 If you fail to pay any amount to us by the due date, you must pay interest on the amount due calculated from the due date until the date of payment at a rate which is two per cent higher than the rate which is or would be charged by our bank on an overdraft facility of \$100,000.
- 3.6 In addition to the Fees, you will pay any reasonable travel (including any tolls and parking expenses), accommodation and sustenance expenses we incur in connection with our performance of any Work at your site(s).
- 3.7 We may adjust our Fees annually, with the adjustment to take effect from 1st July in the relevant year. We will provide you with written notice of any adjustment of Fees before it takes effect.
- 3.8 If the Work includes the supply of any goods, then the risk with respect to those goods passes to you on delivery but property in those goods will not pass to you until you have paid us in full. We will remain the owner of the goods until you pay for them and you will hold the goods on our behalf. You must safely and securely store the goods and must effect and maintain insurance against all insurable risks to the goods until you have paid us in full for the goods. If you fail to pay us for goods in accordance with our terms, then (without limiting our other rights) you must deliver the goods back to us (at your expense) if we demand this. If goods are not returned following our demand for return, you authorise us to enter your premises and to do all things reasonably required to remove the goods from your premises.

4 Variation of Work

- 4.1 If we suggest or if you request a variation of the Work including (without limitation) the provision by us of additional services, software and/or hardware, we will provide you with a written proposal specifying the cost and other terms upon which we would be prepared to agree to that variation.
- 4.2 Neither you nor we are obliged to agree to any variation, but you and we agree to review and discuss any variation proposal in good faith.

5 Intellectual Property Rights & Confidentiality

- 5.1 We retain all copyright and other intellectual property rights in our know how and the materials we apply or produce in performing the Work including any deliverables and we retain or obtain all intellectual property rights with respect to any copies, reproductions, adaptations, additions to, enhancements, alterations, modifications or translations made of that know how or those materials. The relevant third parties will retain all intellectual property rights with respect to Third Party Components.
- 5.2 We warrant that our performance of the Work will not infringe the intellectual property rights of any third party and we agree to indemnify you against any liability you may reasonably sustain if our Work infringes the intellectual property rights of any third party. If any aspect of the Work infringes a third party's intellectual property rights, we will either arrange a non-infringing work-around or obtain a licence at our cost permitting your use of the relevant deliverables. This clause does not apply to Third Party Components which are subject only to the warranties and indemnities provided by the relevant third party.
- 5.3 You will give us notice of any infringement of our copyright or any other right of ours that comes to your attention.
- 5.4 You must treat as confidential all information (other than information in the public domain) which we provide to you including (without limitation) information relating to our software and systems, our pricing and our business operations. You agree not to disclose such information to any other party without our prior written permission. You may only use such information and may only disclose this information to your employees to the extent necessary to give effect to the objectives identified in the Proposal.
- 5.5 We must treat as confidential all information (other than information in the public domain) which you provide to us including (without limitation) information relating to your business operations. We agree not to disclose such information to any other party without your prior written permission. We may only use such information and may only disclose this information to the extent necessary to enable us to perform our obligations in accordance with the Proposal.
- 5.6 Upon termination, each of us must return to the other party all copies of confidential information received from that party.
- 5.7 The confidentiality obligations shall survive and continue to binding upon you and us, notwithstanding termination.

6 Warranties & liability

- 6.1 If any warranty or condition is implied by law which may not be excluded or restricted (a "non-excludable term") our liability for any breach of a non-excludable term is limited solely to the resupply of the relevant product or service or payment to you of the cost of having the relevant product or service provided again (at our option).
- 6.2 Apart from the express warranties contained in these terms and conditions and subject to any non-excludable terms, all warranties with respect to the Work are hereby expressly excluded. We accept no liability for the Work, whether arising by reference to the provisions of the Proposal, implied terms, tort or otherwise howsoever. If circumstances arise where you are entitled to claim damages from us notwithstanding the provisions of these terms and conditions, our liability to you for the aggregate of all such claims (regardless of the basis on which you are entitled to claim from us including, without limitation, negligence) is limited to the lesser of:
- 6.2.1 the amount of any actual loss or damage which you sustain;
- 6.2.2 the amount of the Fees received by us from you in the last three months.

- 6.3 You acknowledge that you have relied upon your own skill and judgement in determining the appropriateness of the Work for your own particular purposes and you have not relied on any statement or representation made by us or on our behalf.
- 6.4 In no event will we be liable for loss of or damage to data, loss of profits, loss of saving, loss of revenue, consequential damages or indirect losses even if we have been advised of the possibility of such damages.
- 6.5 You must indemnify us and keep us indemnified against all loss, liability, costs and expenses (including without limitation, legal expenses on a solicitor-client basis) which we may incur in connection with any claim, demand or proceedings of a third party arising as a direct or indirect result of our provision of any Services.

7 Default

- 7.1 If a party (the "Defaulting Party") commits any default with respect to the due observance or performance of any of its obligations under this agreement, then the other party (the "Innocent Party") may, without prejudice to any other rights the Innocent Party may have, give written notice to the Defaulting Party identifying the default and requiring that the default be remedied (a "Default Notice").
- 7.2 If the Defaulting Party fails to remedy a default within 14 days after receipt of a Default Notice or, where the default is not capable of being remedied within 14 days and the Defaulting Party fails within that period to commence to remedy the default or fails to diligently proceed to remedy the default, then the Innocent Party may terminate this agreement by written notice to the Defaulting Party.
- 7.3 A party may terminate this agreement by written notice if it reasonably considers that the other party is or is likely to become insolvent.

8 Additional terms

- 8.1 You agree not to assign or transfer or otherwise deal in any way with any rights we grant or obligations you undertake without our express written permission, which permission may be granted or granted subject to conditions or refused in our absolute discretion.
- 8.2 Neither party shall, without the prior written consent of the other party, employ or enter into contractual arrangements with, offer employment or contractual arrangements to, or solicit requests for employment or contracts from, any current or former employee or contractor of the other party for a period commencing on the acceptance of the Proposal and ending 12 months after termination of all contractual arrangements between you and us.
- 8.3 No right will be waived by a party except by express written notice signed by that party.
- 8.4 If any provision of these terms and conditions is found to be invalid, unenforceable or illegal, then that provision will be deemed to be deleted to the extent necessary to remove the invalid, unenforceable or illegal portion and the balance of these terms and conditions will remain binding.
- 8.5 If any dispute arises between you and us which cannot be resolved by negotiation, you and we will confer and seek to agree the most appropriate mechanism for resolution of the dispute before commencing any proceedings, provided that this provision will not apply where you or we reasonably conclude that injunctive or other urgent proceedings are necessary to protect its position.
- 8.6 Notices or other formal communications may be given by hand delivery, by mail or by email or facsimile transmission and will be deemed to be received:
- 8.6.1 in the case of hand delivery, upon delivery;
- 8.6.2 in the case of mail, three (3) business days after the date of posting the article; or
- 8.6.3 in the case of email or facsimile, upon completion of transmission (except where transmission is completed after 5:00 pm on a business day, in which case receipt is deemed to occur at 9:00 am on the next business day).
- 8.7 The Proposal (and any amendments to the Proposal agreed to by us in writing) is the complete and exclusive statement of the agreement between you and us and it supersedes all proposals or prior agreements, oral or written, and all other communications relating to the subject matter of the Proposal.

- 8.8 Neither you nor we may purport to act on behalf of the other party unless expressly authorised to do so in writing.
- 8.9 If any provision of these terms is unlawful, void or for any reason unenforceable, then that provision shall be deemed severed from these terms and shall not affect the validity and enforceability of any remaining provisions.
- 8.10 The arrangements between you and us are made in accordance with, and are subject to, the laws of South Australia. You and we irrevocably agree that all legal proceedings arising in connection with these arrangements must be prosecuted in the Courts of South Australia.
- 8.11 Any person accepting the Proposal on your behalf warrants that they are authorised to do so.