

These are the Terms and Conditions applicable to any person, company, entity, or party placing a purchase order, quote, or other request for the supply of services by Bitmatrix IT Solutions. Unless otherwise as expressly agreed, these Terms and Conditions will apply notwithstanding any provisions to the contrary that appears on any purchase order, quote, request, or other document issued by Bitmatrix IT Solutions.

1. Definitions and Interpretations

1.1. In these Terms and Conditions, the following terms have the following meaning:

- (a) **Agreement** means these Terms and Conditions and any Quotation issued in connection to the Services to be supplied to the Customer.
- (b) **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Commonwealth).
- (c) **Bitmatrix** means Martin Anthony Barber trading as Bitmatrix IT Solutions ABN 92 305 290 178.
- (d) **Business Day** means the day on which banks are open for general banking business in New South Wales (not being Saturday, Sunday or public holiday in New South Wales).
- (e) **Consumer** has the same meaning as in the Australian Consumer Law.
- (f) **Customer** means the party (or parties) named on any quote, purchase order, order form, instruction, or request received by Bitmatrix with respect to the provision of the Services from Bitmatrix. The Customer includes their employees, agents, contractors, and successors in title.
- (g) **Customer IP** means all intellectual property, data, documents, and other materials on the Customer Network that is owned or otherwise licensed by the Customer.
- (h) **Customer Confidential Information** means any of the Customer IP that is confidential in nature.
- (i) **Customer Network** means the Customer's ICT systems, devices and environments, including software, hardware and other infrastructure that the Customer utilises.
- (j) **Delivery Date**, if applicable, means the date that the Project is to be delivered to the Customer and is set out in the Quotation.
- (k) **Force Majeure** means anything beyond the control of a party or in consequence of which prevents a party from performing its obligations and includes but is not limited to strike, lockdowns, government orders, trade disputes, fire, accidents, supply, import and adverse weather conditions.
- (l) **GST** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth).
- (m) **ICT** means information and communications technology.
- (n) **Price** means the cost of the Services as invoiced by Bitmatrix to the Customer subject to any variations, additional costs, or amendments made pursuant to these Terms and Conditions.

(o) **Project** means the project as described in the Quotation.

(p) **Quotation** means any document issued by Bitmatrix outlining its estimate of the costs to provide the Services.

(q) **Services** means any services supplied by Bitmatrix to the Customer as set out in the Quotation.

1.2. In these Terms and Conditions:

- (a) Any headings used are for convenience only and do not form part of the terms and conditions.
- (b) Where the context admits or requires words importing, the singular number includes the plural number, those denoting a given gender includes all other genders and those denoting natural persons includes corporations.
- (c) The word 'including' is not a term of limitation.
- (d) All monetary amounts are in Australian dollars, unless otherwise stated.
- (e) A party being a trustee is bound both personally and in its capacity as a trustee.
- (f) Unless otherwise stated, all monetary amounts are exclusive of GST.

2. Quotation and Acceptance of these terms

2.1. The customer is deemed to have accepted these Terms and Conditions on any of the following occurring:

- (a) the execution of a Quotation provided by Bitmatrix to the Customer for the supply of the Services; or
- (b) any instructions received by Bitmatrix from the Customer for the supply of the Services; or
- (c) the Customer's acceptance of Services supplied by Bitmatrix.

2.2. A Quotation provided by Bitmatrix to the Customer will be open for acceptance for a period of thirty (30) days from the date of the Quotation unless the quotation has been withdrawn or extended by Bitmatrix in writing to the Customer.

2.3. A Quotation, sales order, or purchase order is deemed to be accepted by the Customer on the signing of the quotation, sales order, or purchase order by the Customer.

2.4. Any person who signs a Quotation, sales order, or purchase order warrants that they are the duly authorised agent of the Customer.



3. Obligations by Bitmatrix

- 3.1. Bitmatrix will exercise reasonable skill, care and diligence in the performance of the Services.
- 3.2. Bitmatrix will use all reasonable efforts to be informed of the Customer's requirements for the Project and in that regard will from time to time consult with the Customer throughout the performance of the Services.
- 3.3. Bitmatrix will notify the Customer promptly if an instruction from the Customer or any other requirement changes the scope of the Services or requires services that are not delivered under this agreement.
- 3.4. Bitmatrix will to the best of its ability perform and deliver the Services in a timely manner.
- 3.5. Despite anything expressed or implied elsewhere, Bitmatrix gives no express or implied warranty that the Project is fit for the Customer's purposes.

4. Obligations by Customer

- 4.1. The Customer must cooperate fully with Bitmatrix to ensure efficient and satisfactory progress of the Project and the provision of Services with respect to the Project. In this regard (and without limiting scope of such cooperation):
 - (a) The Customer must provide all information required by Bitmatrix to provide the Services.
 - (b) If necessary for Bitmatrix to provide the Services, the Customer must grant or otherwise allow Bitmatrix access to the Customer Network, the Customer IP, and the Customer Confidential Information.
- 4.2. The Customer must pay the Price and other money that becomes payable under this agreement and at times stated in this agreement.
- 4.3. On completion of the Project, the Customer will be responsible for ongoing and regular maintenance of the Project, including maintaining any system, equipment, or processes established by the Project.

5. Data Access and Security Obligations

- 5.1. Without limiting Bitmatrix's obligations set out in clause 3 above, Bitmatrix must:
 - (a) Only access the Customer Network or use Customer IP and Customer Confidential Information for the purpose of complying with its obligations under this agreement;
 - (b) Do all things that a reasonable and prudent person would do to protect the Customer IP and Customer Confidential Information from loss, misuse of, or unauthorised access, modification, disclosure, or destruction.
 - (c) Not take, transfer, transmit, or disclose Customer IP or Customer Confidential Information or allow Customer IP or Customer Confidential Information to be taken, transferred, transmitted, accessed or disclosed outside the customer's business premises;
 - (d) Comply with all security policies, procedures, or directions that may be notified by the Customer to Bitmatrix from time to time regarding any aspect of

the security of or access to the Customer IP or Customer Confidential Information; and

- (e) Immediately return or permanently destroy Customer IP or Customer Information if provided with a written direction from the Customer to do so.

- 5.2. Bitmatrix must immediately notify the Customer in writing of any actual or suspected loss, misuse of, or unauthorised access, modification, disclosure, or destruction of the Customer IP or Customer Confidential Information when it comes to Bitmatrix's attention.

6. Fees Payable

- 6.1. In exchange for the provision of the Services, the Customer must pay to Bitmatrix the Price plus all disbursements and/or additional fees (including software license fees, if applicable) payable or otherwise incurred by Bitmatrix with respect to the provision of the Services.
- 6.2. Unless otherwise stated, the time for payment of the Services is of the essence and will be stated on Bitmatrix's invoice or account rendered on the Customer. If no time is stated, then payment must be made a "Cash on Delivery" basis (**COD**) and must be paid immediately.
- 6.3. Where the Services provided is ongoing Services, Bitmatrix may each fortnight submit to the Customer a claim for payment.
- 6.4. Where the Services are provided on an hourly rate basis the Customer may request from Bitmatrix and Bitmatrix must provide to the Customer a breakdown of the time spent showing the actual hours spent on the Services.
- 6.5. The Price will be increased by the amount of any GST and other taxes and duties which may be applicable except to the extent that such taxes are expressly included in any invoice given by Bitmatrix.
- 6.6. Payments must be made by one of the following methods:
 - (a) electronic funds transfer; or
 - (b) any other method as agreed to between the Customer and Bitmatrix.
- 6.7. Payments received without remittance advice will be applied first to the oldest balance owing by the Customer or at Bitmatrix's absolute discretion.

7. Variation of the Services

- 7.1. Variations to the Services provided may be requested by either Bitmatrix or the Customer. Any variation must be in writing and signed by both Bitmatrix and the Customer.
- 7.2. If the Customer requests a variation, Bitmatrix must respond by either:
 - (a) Providing a notice of variation, which must specify:
 - (i) The additional Services to be provided, or if the scope of the Services is to be reduced, what is to be reduced;
 - (ii) The change in price as a result of the variation; and
 - (iii) Any change in the time in relation to the delivery of the Project.



- (b) Refusing the variation, and in this regard Bitmatrix does not have to give any reasons for refusing to carry out a variation.

8. Delays and extensions of time

8.1. Where a Project is subject to a Delivery Date, Bitmatrix is entitled to a reasonable extension of the Delivery Date if the Services are delayed as a result of any of the following:

- (a) a suspension of the Services in accordance with this Agreement;
- (b) a variation of the Services in accordance with this Agreement;
- (c) anything done or not done by the Customer;
- (d) delays caused by third party suppliers engaged by the Customer; or
- (e) acts of God.

8.2. If Bitmatrix requests an extension of the Delivery Date, they must provide that request in writing detailing both:

- (a) the cause of the delay; and
- (b) the extension of time required as a result of the delay.

8.3. The Customer must not unreasonably refuse a reasonable request for an extension of time to the Delivery Date.

9. Intellectual Property

9.1. Bitmatrix retains copyright in all plans, designs, system printouts, concepts, drawings, or documents generated as a result of this Agreement (**the Documentation**).

9.2. Bitmatrix grants the Customer a license to use the Documentation for the purpose of completing the Project. Bitmatrix has the right to revoke this license if any invoice that is owing to Bitmatrix is overdue and unpaid.

9.3. The Customer warrants that it may not:

- (a) use the Documentation with respect to another project that it intends to implement or carry out; or
- (b) assign or transfer the Documentation without consent of Bitmatrix; or
- (c) provide or disclose the Documentation to a third party without consent of Bitmatrix.

9.4. On completion of the Project and the Services supplied under this project, the license becomes irrevocable.

10. Warranties and Limitation of Liability and Indemnities

10.1. If the Customer is a Consumer, the Services also come with guarantees that cannot be excluded under Australian Consumer Law and the rights that accompany such law. No other guarantees or warranties apply to the Services unless expressly provided to the Customer in writing.

10.2. Unless otherwise set out in the *Australian Consumer Law* or any other applicable legislation, without limitation, Bitmatrix will not be liable under any circumstances for:

- (a) any special, indirect or consequential loss or damage, that is, loss or damage beyond a normal measure of loss or damage;

- (b) any loss of profits, anticipated or otherwise;
- (c) any loss in revenue, gain or benefit;
- (d) any loss of business opportunity; and
- (e) any costs

arising from failure of the Services or the failure to provide the Services.

10.3. Unless otherwise set out in the *Australian Consumer Law* or any other applicable legislation, Bitmatrix's maximum liability for Services provided is limited to the value of the Services provided.

10.4. Unless otherwise set out in the *Australian Consumer Law*, the Customer will at all times indemnify Bitmatrix from any claims, loss, damage, liabilities, expenses, costs or demands, including any legal fees made by any third party due to or arising out of a breach of this Agreement by the Customer arising out of the Customer's negligent act or omission.

11. Default & Consequences of Default

11.1. Accounts not paid within thirty (30) days will be charged interest on the outstanding amount at a rate of 12% per annum.

11.2. The Customer agrees to pay all Bitmatrix's costs incurred in registering, pursuing, securing and collection of any outstanding monies or debts due and owing by the Customer including (but not limited to) administration charges, mercantile agent's fees, solicitor's fees and charges, legal fees, court costs or duties. Fees for dishonoured cheques will also be added to the Customer's account.

11.3. If the Customer's payment is dishonoured by their bank, then the Customer must pay any dishonour fee charged by Bitmatrix' bank.

11.4. Unless otherwise specified by the Customer, payments received by Bitmatrix will be applied at the discretion of Bitmatrix.

11.5. Bitmatrix is entitled to set off against any money owing to the Customer, amounts owed to Bitmatrix by the Customer on any account. The Customer is not entitled to set off and amount allegedly owing by Bitmatrix to it against any amount due by it to Bitmatrix.

11.6. In the event that:

- (a) any money payable to Bitmatrix becomes overdue, or in Bitmatrix's reasonable opinion the Customer will be unable to meet its payments as they fall due;
- (b) the Customer breaches any of these terms and conditions;
- (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors;
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer;
- (e) the Customer commits an act of bankruptcy;



- (f) the Customer ceases or threatens to cease conducting business in the normal manner or applies for deregistration or receives a deregistration notice;
- (g) the Customer is in default of any other agreement between Bitmatrix or any other Group Company and the Customer,

then without prejudice to Bitmatrix's other remedies at law Bitmatrix is entitled to:

- (a) suspend any credit facilities which may have been extended to the Customer;
- (b) withdraw any credit facilities which may have been extended to the Customer;
- (c) cancel all or any part of any order of the Customer which remains unperformed; or

in addition to and without prejudice to any other remedies and all amounts owing by the Customer to Bitmatrix, whether or not due for payment, will become immediately payable. Bitmatrix will not be liable to the Customer for any loss or damage the Customer suffers because Bitmatrix exercised its rights under this clause.

12. Suspension of Services

- 12.1. If the Customer is in breach of this Agreement, Bitmatrix may suspend the provision of the Services. If it does so, Bitmatrix must give to the Customer written notice of the suspension and details of the breach.
- 12.2. Bitmatrix must recommence the Services within a reasonable time after the Customer remedies the breach and gives Bitmatrix written notice of that fact.
- 12.3. Bitmatrix's exercise of this right does not prevent it from exercising any right to terminate this Agreement as per clause 13 in these Terms and Conditions.

13. Termination of Services

- 13.1. Bitmatrix may terminate this Agreement:

- (a) if the Customer is breach of its obligations under this Agreement and has failed to remedy the breach within 10 business days after receiving notice in writing of that breach; or
- (b) on 28 days notice in writing.

- 13.2. In the event that this Agreement is terminated pursuant to clause 13.1, and without prejudice to any other claims that Bitmatrix has against the Customer, the Customer must pay to Bitmatrix:

- (a) all amounts due to Bitmatrix for all Services completed up to the date that the Agreement is terminated; and
- (b) all other money payable to Bitmatrix with respect to the services which includes disbursements, fees, and expenses.

- 13.3. The Customer may terminate this Agreement:

- (a) If Bitmatrix is insolvent or bankrupt; or
- (b) If Bitmatrix is in breach of its obligations under this Agreement and has failed to remedy the breach within

10 business days after receiving notice in writing of that breach

14. Privacy Policy

- 14.1. The Customer agrees to be bound Bitmatrix's Privacy Policy and understands that this Privacy Policy forms part of these terms and conditions and invokes the provisions of the *Privacy Act 1988* (Cth). A copy of this Privacy Policy is available on request.

- 14.2. The Customer authorises Bitmatrix to obtain from a credit-reporting agency a credit report containing personal credit information about the Customer in order to enable Bitmatrix to assess the credit application or to review any existing credit provided by Bitmatrix.

- 14.3. The Customer authorises Bitmatrix to exchange information about the Customer with other Group Companies.

- 14.4. The Customer authorises Bitmatrix to exchange information about the Customer with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for any of the following purposes:

- (a) To assess an application by the Customer.
- (b) To notify other credit providers of a default by the Customer.
- (c) To exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers.
- (d) To assess the creditworthiness of Customer.

- 14.5. The Customer agrees that personal information provided may be used and retained by Bitmatrix for the following purposes and for other purposes as agreed between the Customer and Seller or required by law from time to time:

- (a) Marketing of further services by Bitmatrix, its agents or distributors;
- (b) Analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of the Services;
- (c) Processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (d) Enabling the daily operation of the Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services.

- 14.6. Bitmatrix may give information about the Customer to a credit reporting agency for the following purposes:

- (a) To obtain a consumer credit report about the Customer.
- (b) To allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

- 14.7. The Customer acknowledges that Bitmatrix's website may be hosted, or some data may be stored overseas for reasons of uniformity between Group Companies. All information derived from Australia will still be treated in accordance with Bitmatrix's Privacy Policy while being stored overseas.



15. Trust and Trustees

15.1. Where the Customer is a trustee:

- (a) the Customer agrees to provide Bitmatrix with a stamped copy of the trust deed (inclusive of all amendments) immediately upon demand by Bitmatrix; and
- (b) the Customer warrants to Bitmatrix that it has full power and authority to enter into this Agreement on behalf of the trust and that it will be bound by these terms and conditions both personally and in its capacity as trustee of the trust.

16. General

- 16.1. If any provision of these terms and conditions is found to be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
- 16.2. All services supplied by Bitmatrix are subject to the laws of New South Wales and the Court of New South Wales.

16.3. Bitmatrix will be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Bitmatrix of these terms and conditions.

16.4. In the event of any breach of these terms and conditions by Bitmatrix the remedies of the Customer will be limited to damages. Under no circumstances must the liability of Bitmatrix exceed the Price of the Services.

16.5. Bitmatrix may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

16.6. Bitmatrix reserves the right to review these terms and conditions at any time and from time to time. Any change in the terms and conditions will take effect from the date on which Bitmatrix notifies the Customer of such change.

16.7. Neither party will be liable for any default due to any event of Force Majeure including any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.