



Terms and Conditions

1 Definitions and interpretation

1.1 Definitions

ABnote means ABnote Australasia Pty Ltd ABN 25 072 977 292, an Australian business, trading as ABnote of 1144 Nepean Highway, Highett Vic 3190.

ABnote Material means any Material, including any of ABnote's methodologies, processes, tools, tool-kits, routines, designs, templates, formats, source code, software, strategies, content management tools or procedures:

- (a) the Intellectual Property Rights of which are owned by ABnote prior to the Commencement Date; or
- (b) which is created or acquired by ABnote on or after the Commencement Date other than specifically and entirely for the purposes of providing the Services to the Customer,

and which is incorporated in, or necessarily used in providing, any Deliverables to the Customer under these terms and conditions;

Business Day means a day on which trading banks are open and which is not a Saturday, Sunday, or a public holiday, in Victoria, Australia;

Commencement Date means the date the Customer places an order for Deliverables;

Confidential Information in relation to a party means information that:

- (c) is by its nature confidential;
- (d) is divulged in circumstances which imply that it is confidential;
- (e) the party receiving the information knows or ought to know is confidential; or
- (f) is designated by a party as confidential,

and includes:

- (g) information which has any actual or potential commercial value or is comprised in or relating to any Intellectual Property Rights of a party;
- (h) information relating to the financial position of a party, including information relating to the assets or liabilities of the party and any other matter that does or may affect the financial position or reputation of the party;
- (i) information relating to the internal management and structure, policies and strategies of a party; and
- (j) personal information or any other information relating to a party's employees, subcontractors, agents, clients or suppliers;

Contract Material means any Material created or required to be created by ABnote specifically as part of or for the purposes of performing the Services, but for the avoidance of doubt does not include any ABnote Material;

Corporations Law means the *Corporations Act 2001* (Cth);

Customer means the person, firm or corporation by or on whose behalf the order has been placed and which is indicated on the tax invoice;

Customer Material means any Material the Intellectual Property Rights of which the Customer prior to the Commencement Date owns and which is provided by the Customer to ABnote to assist or enable ABnote to provide the Services;

Deliverables means any matter or thing done or provided, or to be done or provided, by ABnote for the Customer under this arrangement, including the Services and any Contract Material which may be created;

Fees means the fees or charges payable by the Customer for the performance by ABnote of the Services;

Infringement Claim means any dispute, claim or action alleging infringement of any third party Intellectual Property Rights on grounds directly related to a Deliverable;

Insolvency Event in the context of a party means:

- (a) **receivership**: a receiver, receiver and manager, official manager, trustee, administrator, other controller (as defined in the Corporations Law) or similar official is appointed, or steps are taken for such appointment, over any of the equipment or undertaking of the party;
- (b) **insolvency**: the party is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Law or is presumed to be insolvent under the Corporations Law;
- (c) **ceasing business**: the party ceases or threatens to cease to carry on business; or
- (d) **liquidation**: an application or order is made for the liquidation of the party or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the party otherwise than for the purpose of an amalgamation or reconstruction;

Intellectual Property Rights means:

- (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methods or techniques;
- (b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software, and any other works or subject matter in which copyright subsists and may in the future subsist;
- (c) know how and trade secrets;

(d) trade and service marks (whether registered or unregistered); and

(e) proprietary rights under the Circuit Layouts Act 1989 (Cth);

Loss means any loss, damage, claim, action, liability, cost, charge, expense, outgoing or payment, howsoever arising out of or referable to the Services, and whether in contract, tort (including negligence), under indemnities herein given, under statute or otherwise;

Material means any material, information or knowledge, regardless of form, including without limitation any data, text, chart, graphics, reports, calculations, statistics, software, designs, templates, formats, tools, methodologies, strategies, processes, procedures and routines;

Services means the services that are to be provided to the Customer by ABnote under these terms and conditions; and

Term means the term between the time an order for Deliverables has been placed by the Customer and delivered by ABnote .

1.2 Interpretation

In these terms and conditions:

(a) headings and bolding are for convenience only and do not affect the interpretation;

(b) the singular includes the plural and vice versa;

(c) words importing a gender include any gender;

(d) other parts of speech and grammatical forms of a word or phrase defined in these terms and conditions have a corresponding meaning;

(e) an expression importing a natural person includes any body corporate and any other legally recognised entity;

(f) a reference to any thing (including any right) includes a part of that thing but nothing in this clause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;

(g) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, these terms and conditions;

(h) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, whether passed or laid down by the same or another body or person with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;

(i) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;

(j) a reference to a party to a document includes that party's successors and permitted assigns;

(k) no provision of these terms and conditions will be construed adversely to a party solely on the ground that the party was responsible for the preparation of these terms and conditions or that provision;

(l) the word "including" does not imply any limitations;

(m) a reference to A\$ and \$, means the lawful currency of Australia; and

(n) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

1.3 Precedence

In the event of, and to the extent of any inconsistency between a document and a later version or revised version of the same document, the later version will prevail.

2 Scope of Services

2.1 Services

The Customer engages ABnote, and ABnote accepts the engagement, as an independent contractor to provide the Services to the Customer, subject to and in accordance with these terms and conditions.

2.2 Obligations of ABnote

In performing its obligations under these terms and conditions, ABnote must at all times:

(a) ensure that the Services are provided properly and carefully;

(b) act lawfully; and

(c) ensure that it assigns and maintains appropriate resources, including suitably qualified human resources, equipment and facilities to enable it to fulfil its obligations.

2.3 Obligations of Customer

The Customer must at all times:

(a) observe all legal requirements relating to its use or sale of the Services; and

(b) provide ABnote with such assistance in relation to ABnote's provision of the Services as may be reasonably requested from time to time.

The Customer must not:

(c) make any representation, or give any warranty in relation to the Services not expressly authorised in writing by ABnote; or

(d) do anything which might adversely affect the reputation of any of the Services or of ABnote

3 Fees and orders

3.1 Placing and accepting orders

All orders for Services must be in writing and specify the volume and type of Service required.

- (a) Each order and/or request for goods and services is subject to acceptance by ABnote. All goods supplied or services performed by ABnote for a Customer shall be deemed to have been supplied or services performed pursuant to an order or request accepted by ABnote. In the event an order or request for goods or services is not rejected orally or in writing by ABnote within 7 (seven) days of the date of receipt of the order or request, that order or request shall be deemed to have been accepted by ABnote at the expiration of that period.
- (b) An order cannot be altered or cancelled once ABnote has approved the order. Any variation requested by the Customer will be considered at ABnote's discretion.
- (c) Subject to clause 3.1 (d) hereof no order for the sales of goods or request for ABnote to perform work shall be cancelled without the written consent of ABnote. In the event the Customer purports to cancel any order or request, such attempt may at ABnote's election be construed as a repudiation of the contact between the parties and the Customer shall pay to ABnote all losses, damages, costs, interest, fees, charges (including handling charges payable to both ABnote and its suppliers, if any) and all expenses incurred or suffered by ABnote as a result of the repudiation of the contract.
- (d) In the event the Customer is in default of any term or condition of any order or request and the Customer has been in default thereof for a period of seven days ABnote at its election at any time thereafter shall be at liberty to cancel any or all orders or requests yet to be completed or fulfilled and to recover from the Customer any or all losses, damages, costs, interest, fees, charges (including handling charges payable to ABnote and its suppliers) and all expenses incurred and suffered by ABnote as a result of the Customer's default and the subsequent cancellation. The Customer shall have no recourse whatsoever against ABnote as a result of any such cancellation.

3.2 Payment of Fees

In consideration for ABnote providing the Services, the Customer must pay ABnote the Fees in accordance with the timing and other requirements of the order.

3.3 Invoices

- (a) If the Customer is an existing ABnote Customer, payment can be made on their existing account with account terms and conditions applying.
- (b) A Customer without an ABnote charge account is to pay at the time of the order.
- (c) All Customers have the option of paying by charge account/direct debit/EFT/cash/ cheque or credit card. A credit card fee may apply.
- (d) The parties agree to co-operate in good faith to resolve any disputed amounts within 10 Business Days of the date of the invoice.
- (e) Payment of the undisputed amounts of an invoice remain payable in accordance with clause 3.3(a) notwithstanding that part of the invoice may be in dispute.

3.4 Refunds

Refunds, if any, will be paid by electronic funds transfer to the account nominated by the Customer.

4 GST

4.1 Interpretation

Terms defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause unless provided otherwise.

4.2 GST Pass On

If GST is or will be imposed on a supply made under or in connection with these terms and conditions, ABnote may, to the extent that the consideration otherwise provided for that supply under these terms and conditions is not stated to already include an amount in respect of GST on the supply:

- (a) increase the consideration otherwise provided for that supply under these terms and conditions by the amount of that GST; or
- (b) otherwise recover from the recipient the amount of that GST.

4.3 Tax Invoices and Adjustment Notes

The recovery of any amount in respect of GST by ABnote under these terms and conditions is subject to the issuing of the relevant Tax Invoice or Adjustment Note to the Customer.

4.4 Reimbursements

Costs required to be reimbursed or indemnified under these terms and conditions must exclude any amount in respect of GST included in the costs for which an entitlement arises to claim an input tax credit.

5 Intellectual Property Rights

5.1 Rights in Contract Material

- (a) Subject to clause 5.3, the Intellectual Property Rights in the Contract Material will, subject to payment by the Customer of the Fees in full, vest in the Customer.
- (b) The Customer grants ABnote a non-exclusive, royalty free, irrevocable, perpetual, license to use, modify, adapt, reproduce or further develop that portion of the Contract Material which is required to enable ABnote to provide the Services and perform its obligations.

5.2 ABnote Material and Customer Material

- (a) For the avoidance of doubt, nothing in these terms and conditions assigns any Intellectual Property Rights in any ABnote Material to the Customer.
- (b) The Customer owns all Intellectual Property Rights in the Customer Material and the Customer grants ABnote a limited, personal, non-exclusive, royalty free, perpetual license to use, reproduce, modify, or adapt that portion of the Customer Material which is required to enable ABnote to provide the Services and perform its obligations.

5.3 ABnote's general rights

For the avoidance of doubt, the Customer acknowledges that:

ABnote creates, acquires, develops, adapts and uses knowledge, skills, techniques, designs, templates, formats, tools, methodologies, source code, software, processes, procedures and routines (called the "ABnote Toolkit", some of which may be included in the ABnote Material) in providing services (including the Services) and carrying on its business generally.

- (a) the ABnote Toolkit is not created by ABnote for exclusive use of or services provided to any particular client or Customer; and
- (b) nothing in these terms and conditions assigns any Intellectual Property Rights in the ABnote Toolkit to the Customer or prevents ABnote from dealing with (and the Customer expressly acknowledges that ABnote may deal with) the ABnote Toolkit in any manner as ABnote sees fit.

6 Credit Accounts and payment

Any credit account approved by ABnote for the Customer relating to trading between ABnote and the Customer is granted by ABnote on the basis of information supplied by and representations made on behalf of the Customer and, in particular, on the information disclosed by the Customer in relation to the ownership of the Customer as set out in the application for that account. For that reason, the Customer shall inform ABnote of any changes in the ownership of the Customer – whether total or partial by forwarding to ABnote notice in writing of that change direct to its Credit Manager. Until such notice is received by ABnote the Customer and if it is a company or trustee, each of the Directors thereof shall hold ABnote indemnified, against all losses, unpaid accounts, interest, damages, costs, charges, fees and expenses of whatsoever nature incurred or suffered by ABnote in trading with any person, company (including the same company but with a different shareholder or shareholders) or other entity including a trust) which may have purchased the Customer's business or any interest therein or any of the shares in the Customer and used the Customer's previously approved credit account for trading.

7 Payment Methods

Unless otherwise agreed, the Customer shall pay all monies to ABnote by cash. (EFT, Direct Debit, Cheque or Credit Card) at time of order. In the event ABnote approves a credit account for the Customer, the Customer shall unless otherwise agreed in writing pay ABnote by the end of the calendar month following the month in which the Customer is invoiced. In the event payment is not made in accordance with these terms, ABnote shall be at liberty to charge the Customer and be paid interest on the outstanding balance from the date of the invoice until the date of payment at the rate charged by the National Australia Bank in respect of a standard overdraft facility in the sum of \$100,000. Payments received by ABnote may at its election be credited first against accrued interest, second against any costs or expenses payable by the Customer to ABnote and thereafter the debt. In the event of any default in payment by the Customer all monies owing by the Customer to ABnote on any account whatsoever shall at ABnote's opinion become immediately due and payable in full by the Customer.

8 Delivery of Goods

- (a) Should ABnote be prevented from delivering goods or commencing or completing work by reason of delay by its suppliers/Customers to ABnote, lockouts, strikes, riots, fire, inclement weather, delays, loss or damage in transit, war, civil commotion, government action, failure of utilities to supply gas, water or electricity or unexpected or exceptional circumstances beyond ABnote's control, the time for delivery of goods or completion of the work shall be extended until the operation of the cause or causes preventing delivery or completion of the work has ceased or the order or request may at ABnote's option be annulled without any penalty or expenses to or claims against ABnote.
- (b) Should ABnote be prevented from delivering part of an order for goods or from completing work requested by the Customer by reason of any of the causes referred to in clause 8(a) hereof ABnote shall be entitled to deliver such part of the goods or work as ABnote is able to deliver and the Customer shall accept those goods and the work and ABnote shall be entitled to charge the Customer for those goods or for the work performed pursuant to the request of the Customer.

- (c) The means of delivering goods shall be at ABnote's discretion as to whether such delivery is affected by road, air, rail or post and by whom. ABnote shall be permitted to deliver any of the goods in an order by part deliveries and shall be entitled to invoice each part delivery and be paid for same in accordance with these terms of trading.
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9 Liability

9.1 Limitation of liability

- (a) Subject always to clause 9.2 the aggregate liability of either party (**First Party**) under these terms and conditions for any Loss sustained by the other party in connection with these terms and conditions or the Services, regardless of the basis on which the other party is entitled to claim damages from the First Party (including fundamental breach, negligence or other contract or tort claim), is limited to an amount equal to the sum of all Fees paid or payable to ABnote by the Customer in the previous 12 months.
- (b) In no event will either party be liable to the other party for any special, indirect or consequential Loss, loss of profit or revenue (except in respect of ABnote's entitlement to Fees), lost business, or goodwill, arising in any way out of the Services or any Deliverable, or under these terms and conditions.
- (c) The liability of either party under these terms and conditions howsoever arising will be reduced proportionally to the extent that any act or omission of the other party or its officers, employees, contractors, agents or assignees, caused or contributed to the liability.
- (d) A party will not be liable to the other party for any Loss to the extent that the breach giving rise to the Loss was caused by the other party's failure to perform its obligations under these terms and conditions.

9.2 Limiting liability under the TPA

- (a) If the Trade Practices Act 1974 Cth (TPA) or any other legislation implies a condition or warranty into these terms and conditions in respect of goods or services supplied, and ABnote's liability for breach of that condition or warranty may not be excluded but may be limited, then ABnote's liability for any breach of that condition or warranty is limited to:
in the case of a supply of goods, ABnote doing any 1 or more of the following (at its election):
- (A) replacing the goods or supplying equivalent goods;
 - (B) repairing the goods;
 - (C) paying the cost of replacing the goods or of acquiring equivalent goods;
 - (D) paying the cost of having the goods repaired; or
- in the case of a supply of services, ABnote doing either or both of the following (at its election):
- (A) supplying the services again;
 - (B) paying the cost of having the services supplied again.
- (b) Nothing in these terms and conditions is intended to exclude, restrict or modify rights that the Customer may have under the TPA or any other legislation that may not be excluded, restricted or modified by agreement.

9.3 Time for bringing claims

Except as required by any law which law cannot be excluded, all claims or actions by the Customer arising out of or related to these terms and conditions or any Deliverable must be commenced within 3 months of the Customer either first becoming aware, or ought reasonably to have become aware, of the basis of the claim or action or the defaulting party commits a material breach of these terms and conditions which breach is not capable of remedy.

10 Termination of agreement

10.1 Termination by ABnote

ABnote may terminate this agreement immediately by written notice to the Customer if the Customer is more than 7 days late in paying any amount payable to ABnote under this agreement.

10.2 Termination by either party

Without limiting clause 10.1 either party may terminate this agreement by giving written notice to the other party (**defaulting party**), such termination to take effect from the date specified in the notice, if:

- (a) the defaulting party commits an Insolvency Event;
- (b) the defaulting party commits a material breach of this agreement and does not rectify that breach within 30 days (or another period agreed by the parties in writing) of receiving written notice of the breach from the first party; or
- (c) the defaulting party commits a material breach of this agreement which breach is not capable of remedy.

10.3 Events following termination

On termination or expiry of this agreement:

- (a) ABnote will immediately cease providing Services to the Customer;

- (b) each party must pay to the other party any outstanding amounts due under this agreement, including the Customer paying for any pre-purchased stock or other pre-manufactured raw materials where such stock is uniquely used for production of the Customer's services, but ABnote is under no obligation to refund to the Customer any portion or percentage of the Fees which might be unused at the date of termination; and
 - (c) each party must deliver up to the other party all documents and other materials, in any medium, in its possession, power or control (except internal company documents) which contain or refer to Confidential Information of the other party.
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11 Delivery requirements

11.1 Time of and place for Delivery

ABnote must use its commercially reasonable efforts to perform the Services such that any Deliverable to be delivered to the Customer is delivered to the Customer by the delivery date(s) and/or time periods and to the place of delivery as specified and in accordance with its obligations. If after 14 Business Days since the goods were advised to the Customer as despatched, the Customer has not received their goods, then the Customer must notify ABnote.

11.2 Shortages

- (a) The Customer must, as soon as possible after performance of the Services and delivery of the Deliverable by ABnote, check the quantity of the Services performed or Deliverables provided against the quantity due to be performed or provided.
- (b) ABnote is not responsible for making good any shortage unless the Customer gives ABnote notice of the shortage within 2 Business Days of performance or provision.
- (c) If ABnote does not receive a notice under clause 11.2 (b), the Services performed will be considered to accord with all requirements of the Customer and these terms and conditions and will be accepted by the Customer.

11.3 Defective Goods

- (a) The Customer must, as soon as possible after delivery, check whether the Deliverables were damaged or defective when delivered.
- (b) All Deliverables will be considered to have been delivered in good condition unless the Customer gives ABnote written notice of the damage or defect within 7 Business Days of delivery.
- (c) If the Customer gives ABnote notice under clause 11.3 (b), it must preserve the relevant Deliverables in the state in which they were delivered for 10 Business Days after it gives ABnote the notice.
- (d) ABnote will, at its option, provide a replacement or give a credit for the Deliverables or re-supply the Services or pay for the re-supply of the Services only where:
 - (i) the Customer has given notice under clause 11.3(b) and complied with clause 11.3(c), and ABnote is satisfied with the Customer's claim; and
 - (ii) if ABnote elects to have the Services returned, the Services are returned to ABnote in the same condition as when first delivered to the Customer.
- (e) So far as permitted by law, ABnote's liability to the Customer in respect of damaged or defective Services is limited to replacement or credit in respect of the Deliverables in accordance with this clause 10 or re-supply of the Services or payment for re-supply of the Services.
- (f) No goods corresponding with an order shall be returned to ABnote by the Customer without the written consent of ABnote. If ABnote consents to the return of goods, ABnote shall not be required to accept such goods by way of return unless:
 - (i) the delivery charge for the return to ABnote of the goods is first paid by the Customer; and
 - (ii) the goods are unused and undamaged and in their original packaging.

11.4 Risk and title

- (a) The risk in a Deliverable passes to the Customer on delivery of the Deliverable to the Customer or its courier, carrier or agent.
 - (b) Title to a Deliverable passes to the Customer on payment in full of the Fees for the Services in respect of the Deliverable.
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12 Upon Granting of Credit

- (a) Any credit facility granted by ABnote to the Customer shall continue until terminated by ABnote at its sole discretion. Termination by ABnote of any credit facility shall be by notice in writing to the Customer and shall take effect upon receipt of that notice by the Customer as referred to in these terms. The Customer shall forthwith give notice to ABnote of the change of address, telephone number, facsimile numbers or address for delivery to the Customer. Unless otherwise agreed, risk shall pass to the Customer upon delivery. Notwithstanding that risk may have passed to the Customer, property and title in any goods sold by ABnote shall remain with ABnote until receipt by ABnote of the purchase price of the goods as invoiced by ABnote. Until such time as property and title in the goods passes to the Customer, the Customer shall hold the goods as bailee for ABnote. If the Customer sells the goods to a third party prior to paying ABnote the purchase price thereof, ABnote shall be entitled to and be paid so much of the price paid by that third party as is necessary to satisfy the monies owing to ABnote. The Customer shall not otherwise in any way part with possession or dispose of the goods until payment has been received by ABnote for those goods. The Customer shall at all times keep the goods insured and maintain the goods in a safe and marketable condition and in a manner so that the goods are readily identifiable. In the event the Customer defaults in payment

of any monies owing to ABnote or any term hereof of any contract between the parties or any credit facility is terminated by ABnote, ABnote shall be entitled at its election to the immediate return of the goods and shall have the right to enter, and is hereby expressly authorised to enter, upon the premises of the Customer or any other premises at which the goods are stored to re-possess the goods. In the event the permission of any third party is required for access to repossess the goods the Customer shall obtain that permission at its own expense. Any damages suffered by ABnote as a result of the default by the Customer, such damages to include but not be limited to the legal costs and other expenses incurred in obtaining possession of the goods. The Customer shall have no claim against ABnote for any damages or other monies whatsoever if ABnote repossesses or attempts to repossess the goods. The rights of ABnote hereunder are in addition to any other claim or rights ABnote has under any other term hereof or under any other contract between the parties. The legal costs, stamp duty and other expenses incurred by ABnote in respect of any Application for a credit facility, any written agreement with ABnote of whatsoever nature, any guarantee, security documents or other documentation required for the trading between the parties or other costs incidental thereto shall be paid by the Customer upon invoicing by ABnote or on such other terms as are agreed to by the parties. Notwithstanding that the Customer may conduct a credit facility with ABnote, ABnote shall not be obliged to deliver goods or perform work until all monies owing and overdue to ABnote by the Customer for prior orders and/or requests are paid to ABnote. In the event ABnote elects as a result of the Customer's prior indebtedness to ABnote to retain possession of goods or equipment the delivery or completion date referred to in any request or order shall be replaced by a date being thirty days from the date of satisfaction by the Customer of the Customer's prior indebtedness of ABnote.

- (b) In the event the Customer is in default of any term or condition of any order or request and the Customer has been in default thereof for a period of seven days ABnote at its election at any time thereafter shall be at liberty to cancel any or all orders or requests yet to be completed or fulfilled and to recover from the Customer any or all losses, damages, costs, interest, fees, charges (including handling charges payable to ABnote and its suppliers) and all expenses incurred and suffered by ABnote as a result of the Customer's default and the subsequent cancellation. The Customer shall have no recourse whatsoever against ABnote as a result of any such cancellation.
- (c) The Customer irrevocably authorises ABnote, its servants and agents to make such enquiries as they deem necessary and as may be allowed by law or incidental to the Customer's or its directors' credit history. The Customer's directors by the execution of the Credit Account Application guarantee and Indemnify ABnote jointly and/or severally in respect of any failure by the Customer to pay any amount due and payable to ABnote. The Customer agrees at the request of ABnote to procure such of its directors to sign a further guarantee and indemnity in favour of ABnote as and when required. Any notice given by ABnote to the Customer shall be deemed to have been properly given if such notice is either posted or emailed to the last known business address of the Customer to ABnote (whereupon receipt of the notice shall be deemed to have been received by the Customer two(2) business days after posting by ABnote) or by transmitting such notice by facsimile transmission to the last known facsimile number of the Customer to ABnote or by personal delivery to the last known business address of the Customer to ABnote (in which cases receipt of the notice shall be deemed to be the date of such transmission or delivery). Any notice given by the Customer to ABnote shall be deemed to have been properly given if such notice is posted, emailed or it's equivalent to the Credit Manager of ABnote, and shall be deemed to have been received by ABnote upon delivery of that notice to ABnote.

13 Entire Contract

These terms and conditions and any terms and conditions implied by statute constitute the contract between the parties. Any terms and conditions endorsed on any other document pertaining to and or contract or any order request and, in particular on any order form or request form produced by the Customer are expressly negated and do not form part of the contract between the parties unless ABnote has specifically adopted in writing those terms and conditions. These terms may be amended, replaced or deleted from time to time by ABnote and those terms as so altered shall form the contract between the parties in relation to orders and requests made or placed after notice of the altered terms has been forwarded to the Customer in accordance with these terms.

14 Confidential Information

14.1 Non-disclosure

Neither party may disclose any of the other party's Confidential Information to a third party without the prior written consent of the other party, which consent may be given subject to any conditions at the discretion of the party giving consent.

14.2 Exceptions

Despite clause 14.1, either party may:

- (a) disclose Confidential Information which it is legally required to disclose;
- (b) use or disclose the Confidential Information to the extent it is necessary to perform or enforce its obligations under these terms and conditions;
- (c) use or disclose the Confidential Information if the information is publicly available other than by a breach of these terms and conditions;
- (d) use or disclose the Confidential Information if the information is already in the possession of the disclosing party or comes into its possession other than by a breach of these terms and conditions; and
- (e) disclose these terms to its related companies, solicitors, auditors, insurers or accountants, however the discloser must ensure that every person to whom disclosure is made under this clause 14.2(e) uses the information disclosed solely for the purposes of advising or reporting to the disclosing party.

14.3 Actions to prevent disclosure

Each party must take all reasonable steps to ensure that any person who has access to Confidential Information of the other party through it or on its behalf does not disclose the other party's Confidential Information other than in accordance with these terms and conditions.

14.4 Return of Confidential Information

Except for Confidential Information of the requesting party which the other party reasonably requires to properly give effect to these terms and conditions in favour of the requesting party, each party must, on request by the other party, return to the requesting party any Confidential Information supplied by the requesting party to the other party.

14.5 Personal information from Customer

In performing its obligations, ABnote must

- (a) use personal information only for the purposes of fulfilling its obligations;
 - (b) not use, modify or disclose personal information except with the prior written consent of the other party;
 - (c) take all reasonable measures to ensure that personal information in its possession or control, or to which it has access in connection with these terms and conditions, is protected against loss and unauthorised access, use, modification or disclosure;
 - (d) comply with any reasonable direction, policy or guidelines of the other party which concern the security, use and disclosure of personal information; and
 - (e) ensure that any person who is authorised to have access to any personal information, is made aware of, and undertakes in writing, to observe the obligations of this clause 14.5.
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15 Warranties

15.1 Mutual warranties

Each party represents and warrants to the other that:

- (a) it has the power and authority to enter into these terms and conditions and perform its obligations under these terms and conditions;
- (b) it has all licences, authorisations, consents, approvals and permits required by applicable laws in order to perform its obligations under these terms and conditions; and
- (c) it will at all times comply with any laws relevant to it in the performance of its obligations under these terms and conditions.

15.2 Particular warranty exclusions

To the extent permitted by law:

- (a) ABnote makes no representation or warranty regarding the quality, accuracy, availability, merchantability or fitness for purpose of the Deliverables;
 - (b) ABnote does not represent or warrant that anything in or derived from any Deliverable or any Deliverable is free of errors; and
 - (c) ABnote is not liable for the corruption, degradation, loss or erasure of any data (including the Customer's data), which occurs in the course of ABnote's performance of the Services.
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16 Intellectual Property Indemnity

16.1 Infringement Claims against ABnote

The Customer will indemnify ABnote against any Loss (including reasonable legal costs and defence or settlement costs) incurred by ABnote arising out of or referable to any Infringement Claim against ABnote, including in relation to:

- (a) the actions or omissions of the Customer or the Customer's officers, employees, contractors, representatives or agents;
 - (b) any Customer Material;
 - (c) any Contract Material created or provided to ABnote by the Customer; or
 - (d) any other Material provided to ABnote by or on behalf of the Customer.
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17 Sub-contracting and delegating by ABnote

ABnote may sub-contract or delegate the performance of all or some of its duties, obligations and powers under these terms and conditions (including the provision of any Service and any agency from the Customer) without the Customer's prior approval but ABnote will remain liable for the acts or omissions of a sub-contractor or delegate in performance of any sub-contract or delegation as if they were the acts or omissions of ABnote itself.

18 Insurance

ABnote must take out and maintain for the Term the following insurance policies:

- (a) public and products liability insurance for an amount of not less than \$10 million;
 - (b) appropriate workers' compensation insurance for those employees that provide the Deliverables and the Services;
 - (c) directors and officers liability;
 - (d) fidelity; and
 - (e) industrial special risks.
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19 Disputes

- (a) Except for urgent interlocutory relief, if a party (Complaining Party) has a dispute with the other party in relation to these terms and conditions or any Deliverable, the parties must attempt to settle that dispute before resorting to external dispute resolution mechanisms, and for this purpose:
 - the Complaining Party must provide the other party with a written notice of dispute together with all information, documentation and other materials and assistance reasonably necessary in order to understand the basis of and reasons for the dispute and any claims the Complaining Party may have against the other party; and
 - the appropriate senior management from both parties with authority to resolve the dispute must meet and make a bona fide attempt to settle any issues arising out of clause 0.
 - (b) If a dispute is not settled by the parties within ten Business Days of one party sending to the other written notice of the dispute, the parties may pursue other dispute resolution avenues.
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20 General

20.1 Relationship between parties

Nothing in the relationship between the parties:

- (a) may be deemed to constitute a partnership, joint venture or other legal relationship between the parties other than that of supplier and purchaser or service provider and recipient; or
- (b) authorises either party to incur any liability for or on behalf of the other party.

20.2 Amendment of agreement

A provision of, or a right under, these terms and conditions may not be varied, supplemented or replaced except in writing executed by the Customer and ABnote.

20.3 Severance

- (a) If a provision of these terms and conditions is void, unenforceable or illegal in a jurisdiction, it is severed from the remainder of these terms and conditions for the purposes of enforcement in that jurisdiction.
- (b) The remainder of these terms and conditions has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.
- (c) This clause 20.3 has no effect if the severance:
 - alters the basic nature of these terms and conditions; or
 - is contrary to public policy.

20.4 Waivers

- (a) A provision of, or a right created under, these terms and conditions may not be waived except in writing executed by the party granting the waiver.
- (b) A failure by a party to insist on strict performance of any of the terms is not to be deemed a waiver of any subsequent breach or default of the terms.

20.5 Exercise of rights

- (a) Except as expressly provided to the contrary in these terms and conditions, a party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy.
- (b) A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that, or of any other, right, power or remedy.
- (c) Failure by a party to exercise or a delay in exercising, a right, power or remedy does not prevent its exercise.

20.6 All contracts between ABnote and the Customer for the sale of goods or for work to be performed shall be continued according to the laws of the State of Victoria. The jurisdiction of the hearing of any dispute arising out of any contract between ABnote and the Customer for the sales of goods or for work to be performed shall be the State of Victoria.

20.7 Assignment

Neither party may assign its rights or novate its rights and obligations under these terms and conditions without the other party's prior written consent, such consent not to be unreasonably withheld.

20.8 Survival

The following terms impose continuing rights and obligations on the relevant parties and survive termination or expiry of this relationship: 3, 9, 14, 15 and 16.