

**1. Definitions**

- 1.1 “**Client**” shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any Quotation and includes the Client’s officers, employees, contractors and agents.
- 1.2 “**Contract**” means these Terms and Conditions of Trade and includes any quotation, work authorisation or any other documentation provided by Newtrend to the Client and any plans, specifications or drawings associated and agreed to with respect to the Goods or Services.
- 1.3 “**Delay Event**” means any event beyond Newtrend’s control, including but not limited to, delays caused or requested by the Client or other third party, inclement weather or conditions resulting from inclement weather, unavailability of Goods or materials or restriction of access to any site required to enable Newtrend to provide the Services.
- 1.4 “**Excluded Event**” means:
  - (a) a breach of this Contract by the Client;
  - (b) a negligent or fraudulent act or omission of the Client (or the Client’s employees, agents, officers or contractors);
  - (c) a failure of the Client’s equipment.
- 1.5 “**Goods**” shall mean all Goods supplied by Newtrend to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) pursuant to a Quotation or as otherwise ordered and agreed to be provided by Newtrend.
- 1.6 “**Newtrend**” means Newtrend I.T. Specialists Pty Ltd (ACN 124502656) trading as Newtrend I.T. Specialists and includes its successors and assigns or any person acting on behalf of and with the express authority of Newtrend.
- 1.7 “**Quotation**” means any agreed quotation, written acceptance, purchase order or other work authorisation.
- 1.8 “**Services**” shall mean all IT services specified in a Quotation or otherwise supplied by Newtrend to the Client and includes any advice or recommendations and where the context so permits shall include any supply of Goods as defined above).
- 1.9 “**Price**” shall mean the price payable for the Services as agreed between Newtrend and the Client in accordance with clause 3 of this Contract.

**2. Acceptance**

- 2.1 The terms of this Contract shall be deemed to have been accepted by the Client on the earlier of
  - (a) commencing of the supply of the Goods or performance of the Services;
  - (b) the acceptance of a Quotation by the Client;
  - (c) the acceptance of a purchase order by Newtrend.
- 2.2 Where more than one Client has entered into this Contract, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of this Contract by the Client the Contract and the Quotation shall be binding and can only be amended with the written consent of Newtrend.
- 2.4 Goods and Services are supplied by Newtrend only on the terms and conditions of this Contract to the exclusion of any other agreement or understanding, whether subsisting or entered into after the date of this Contract.

**3. Provision of Services and Term**

Subject to the Client’s compliance with this Contract, Newtrend will use its best endeavours to provide the Services to the Client in accordance with any agreed timeframes or, if no timeframes are so agreed, in a reasonable timely manner subject to availability of any required Goods.

**4. Price And Payment**

- 4.1 At the sole discretion of Newtrend the Price shall be the Price as either:
  - (a) indicated on invoices provided by Newtrend to the Client in respect of Goods or Services supplied; or
  - (b) Newtrend’s quoted Price (subject to clause 0) as outlined in a Quotation; or
  - (c) as otherwise agreed in writing between the parties, whichever is applicable, and if stated in more than one document in the descending order of precedence as set out in this clause.
- 4.2 Unless otherwise specified in a Quote, All charges for helpdesk support shall be charged at the rate of \$132.00 per hour (exclusive of GST). In calculating the time spent, Newtrend’s minimum charge is for 1 unit representing 6 minutes. This minimum unit is applied irrespective of the actual time spent on an individual task.
- 4.3 Newtrend reserves the right to vary the Price in the event any variation to the Goods or Services is required in accordance with clause 4.5 or as otherwise reasonably determined by Newtrend (including, but not limited to, additional works required due to hidden or unidentifiable difficulties beyond the control of Newtrend or as a result of increases to Newtrend in the cost of materials and labour). Where such variation is required, Newtrend may suspend providing Goods and Services until such time as Newtrend and the Client agree (in writing) to all changes required with respect to the Price, the scope of the Goods and/or Services, the plans and/or specifications as outlined in a Quotation and any extension of time required.
- 4.4 At Newtrend’s sole discretion a non-refundable deposit may be required and where applicable, Newtrend reserves the right not to commence the delivery of any Goods or provide any Services until such deposit has been paid in full.
- 4.5 Unless otherwise agreed in writing, payment of the Price shall be payable within 14 days of the date of an invoice issued to the Client by Newtrend.
- 4.6 Additional fees, costs and charges may be payable by the Client including but not limited to the following:
  - (a) if Newtrend is requested to provide Services at a different site to the site other than the site initially requested by the Client for Newtrend to attend, the Client must pay Newtrend’s reasonable costs and fees arising from the change of site;

- (b) if the information the Client provides to Newtrend to determine the infrastructure and installation required was incomplete or inaccurate;
- (c) if an excluded event occurs, Newtrend may also charge the Client the costs incurred to service, modify, repair or replace the Service or any equipment, as a result of an Excluded Event.
- (d) Where Newtrend reasonably determines that any fault (being any circumstance physically related to the Service which renders the Service unusable or significantly impaired) arises out of or in connection with any of the Client’s equipment, facilities, networks and systems, Newtrend’s reasonable costs and expenses in dealing with or remedying that fault.
- 4.7 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method acceptable to Newtrend.
- 4.8 The Client shall pay interest at the rate of 12% on outstanding monies owing to Newtrend calculated on a daily basis from the due date for actual payment until the actual date of payment.
- 4.9 Unless expressly included, the Price excludes all GST payable in respect of the supply.
- 4.10 If the Client defaults in payment of any invoice when due, the Client shall indemnify Newtrend from and against all costs and disbursements incurred by Newtrend in pursuing the debt including legal costs on a solicitor and own client basis and Newtrend’s collection agency costs.

**5. Client’s Obligations**

- The Client must:
- (a) cooperate with Newtrend and comply with its reasonable requests to allow Newtrend to install equipment and establish and supply the Services safely and efficiently;
  - (b) provide or procure the safe and prompt access to the Client’s premises for the purposes of providing the Services or other inspection, repair or maintenance as required;
  - (c) provide all necessary space and utility services (such as electricity) as reasonably required to allow Newtrend to provide the Services;
  - (d) not tamper or interfere with any of Newtrend’s equipment.

**6. Suspension**

- 6.1 Without prejudice to any other remedies Newtrend may have, if at any time:
  - (a) the Client is in breach of any obligation (including those relating to payment);
  - (b) it becomes unsafe for Newtrend to provide the Services; or
  - (c) a Delay Event occurs,
 Newtrend may suspend the supply of Goods and Services to the Client for any amount of time reasonably necessary or, in Newtrend’s discretion, terminate this Contract.
- 6.2 The Client shall pay applicable standby rates as provided on the Quotation or other reasonable standby rates with respect to any period of suspension applicable in accordance with clause 7.1.
- 6.3 Newtrend will not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client for the suspension of the supply of Goods or Services in accordance with clause 7.1.

**7. Risk**

- 7.1 Title in the Goods passes to the Client on payment of the Goods.
- 7.2 Risk in the Goods passes to the Client when the Client takes delivery of the Goods.

**8. Liability and Warranties**

- 8.1 Except as expressly provided in this Contract, any terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the subject matter of this Contract are excluded to the maximum extent permitted by the law..
- 8.2 Where Newtrend is not permitted to exclude any liability for any loss or damage in connection with Newtrend’s breach of a consumer guarantee (as defined in the Australian Consumer Law), but are permitted to limit its liability for such a breach, then, unless the Client is able to establish that is it not fair and reasonable for Newtrend to do so, Newtrend’s liability to the Client is limited to:
  - (a) in the case of Goods:
    - (i) replacement of the Goods;
    - (ii) supply of equivalent Goods;
    - (iii) repair of the Goods;
    - (iv) payment of the cost of replacing the Goods;
    - (v) payment of the cost of acquiring equivalent goods; or
    - (vi) payment of the cost of having the Goods repaired; and
  - (b) in the case of Services:
    - (i) resupply of the Services;
    - (ii) payment of the cost of the resupply of the Services, whichever is the lesser.
- 8.3 The Client acknowledges that it has not relied on any representation or warranty made by Newtrend which has not been stated expressly in the Contract or upon any descriptions or specifications contained in any document published or provided by Newtrend.
- 8.4 Except as required by law or regulations or as set out in this Contract, Newtrend expressly excludes all liability for all warranties, conditions, non-fraudulent representations, express or implied concerning the Services, including but not limited to those relating to the availability, performance, quality or fitness for purpose of the Services.
- 8.5 Under no circumstances will Newtrend be liable to the Client for loss of profits, loss of contracts, loss of use of the Services or any interruption or for any indirect economic or consequential loss whatsoever, whether arising from negligence, breach of contract, failure of the Services or otherwise.
- 8.6 The provisions of this clause 9 survive the expiry or termination of this Contract.

## 9. Indemnity

The Client shall indemnify (and keep indemnified) Newtrend from and against any liability or loss (including all legal costs on a full indemnity basis) which may be incurred or suffered by Newtrend arising from any one or more of the following:

- (a) the breach by the Client of a material term or any of the Client's obligations under this Contract;
- (b) any negligent act or omission or wilful misconduct by the Client arising from the use of the Goods or Newtrend's equipment;
- (c) the termination of this Contract;
- (d) any claims or demands made by Newtrend by reason of any loss, injury or damage which may be suffered by any person from the provisions or use of the Services or Newtrend's equipment.

## 10. Termination & Consequences of Termination

10.1 Without prejudice to any other remedies Newtrend may have, Newtrend may terminate this Contract where:

- (a) at any time the Client is in breach of any obligation (including those relating to payment). Newtrend will not be liable to the Client for any loss or damage the Client suffers because Newtrend has exercised its rights under this clause;
- (b) the Client does not obtain the consent of the owner of any premises required to allow Newtrend to provide the Services;
- (c) the Client 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; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

10.2 Upon termination of this Contract:

- (a) Newtrend and its employees or agents shall have reasonable access to the Client's premises to collect any equipment or property belonging to Newtrend or disconnecting any service that has been installed on such premises which Newtrend has agreed to continue to provide and the Client shall provide such reasonable access;
- (b) the Client must return all property belonging to Newtrend to Newtrend immediately including all confidential information in its possession;
- (c) Newtrend shall cease providing the Services to the Client.

## 11. Charge

Despite anything to the contrary contained herein or any other rights which Newtrend may have howsoever, the Client charges their interest in any property in the name of the Client with the due payment of the any monies and interest owing to Newtrend, and consents to Newtrend registering an absolute caveat against the Client's interest in such property or properties to further secure the repayment of those monies and interest payable to Newtrend pursuant to this Contract.

## 12. Compliance with Laws

- 12.1 The Client and Newtrend shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 12.2 The Client shall obtain (at the expense of the Client) all licenses and shire approvals that may be required for the Services.
- 12.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

## 13. General

- 13.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 13.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
- 13.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the courts of Western Australia.
- 13.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Newtrend nor to withhold payment of any invoice because part of that invoice is in dispute.
- 13.5 Newtrend may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 13.6 The Client agrees that Newtrend may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Newtrend notifies the Client of such change.
- 13.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 13.8 The failure by Newtrend to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Newtrend's right to subsequently enforce that provision.
- 13.9 Any special conditions stated in the Quotation shall apply to this Contract and in the event of any inconsistency with the terms of this Contract, the special conditions shall prevail.