

**IT Now Group Pty Ltd**  
**ABN 22 123 631 336**  
**TERMS AND CONDITIONS**

**All transactions between ITNow Group (“we” or “us” or “our”) and the Customer (“you” or “your”) shall be on the following terms and conditions .**

**This is not a Software Services Support Agreement. Should you require Software Support following the purchase of Products a separate Software Support Agreement must be entered into.**

**1. Orders**

1.1. Orders for Hardware & Software or any other service (“Products” ) shall :

- 1.1.1. Be in writing and forwarded to us by delivery, post, facsimile or electronic transmission;
- 1.1.2. Specify the name and address of the place to which delivery is to be made. If no address is specified delivery will be made to your address above;
- 1.1.3. Be subject to acceptance by us. Acceptance may be notified verbally or in writing.

1.2. We assume any order received pursuant to clause 1.1 from anyone in your employ has your authority to place an order which is binding on you.

**2. Delivery**

2.1. Subject to subclause 2, we shall use our reasonable endeavours to deliver the Products to you within the timeframe we advise;

2.2. We do not accept responsibility for late delivery of any Products and in particular accept no responsibility for any loss or damage incurred as a result of late delivery.

2.3. We shall not be liable for any delay or failure to deliver any Products and/or services if such delay is due to a force majeure, including but not limited to:

- 2.3.1. acts of God, lightning strike, earthquakes, floods, storms, explosions, fires or other natural disasters;
- 2.3.2. acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and
- 2.3.3. strikes.

**3. Risk**

3.1. Risk of loss or damage to Products shall pass to you on delivery of the Products to you;

3.2. Delivery is deemed to take place at the time the Product passes into you or your agent’s exclusive physical control and/or when ownership of our Products has passed to you.

**4. Payment**

Some Product purchases will be Cash on Delivery whether or not such Products have been installed. All other charges are under our terms of strictly 14 days from the date of the invoice unless agreed otherwise in writing.

**5. Overdue Accounts**

5.1. If you fail to pay any account by the due date you agree that:

- any discounts, rebates or other concessions on Products or services supplied are lost;
- interest may be charged by us for all outstanding amounts at the rate of 4% higher than the rate charged from time to time (for sums not exceeding \$100,000) by the National Australia Bank Ltd .

5.2. You also agree to pay us for all of our reasonable expenses in recovering any outstanding accounts including but not limited to our legal costs on a solicitor client basis and any commission or other expense incurred by any debt collection agency we retain to recover the monies you owe us.

**6. Retention of Title**

6.1. It is expressly agreed and declared that title in the any Products sold to you shall not pass to you until payment in full of the purchase price. You shall in the meantime take custody in the Products and retain them as our fiduciary agent and bailee;

6.2. You may resell the Products but only as our fiduciary agent. Any right to bind us to any liability to any third party by contract or otherwise is expressly negated. Any such resale is to be at arms length and on market terms and pending resale or utilisation in any manufacturing or construction process, is to be kept separate from its own, properly stored, protected and insured;

6.3. You will receive all proceeds whether tangible or intangible, direct or indirect of any dealing with the Products in trust for us and you will keep the proceeds in a separate account until you have discharged your liability to us;

6.4. You agree that we have the power to:

- 6.4.1. enter the premises where the Products are located and seize the Products and sell them to recover the outstanding accounts;

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6.4.2. appropriate payments to the Products and accounts as we see fit notwithstanding any appropriation by you to the contrary;

6.5. In the event you use the Products in some manufacturing or construction process then you shall hold such part of the proceeds of such manufacturing or construction process as relates to the Products in trust for us. Such part shall be deemed equal in dollar terms to the amount owing by you to us at the time of receipt of such proceeds.

**7. Guarantee**

7.1. Each Director agrees to sign a Personal Guarantee in the form attached to these terms and conditions;

7.2. Failure by a Director to sign the attached guarantee does not exclude their liability and each Director guarantees payment in full of all amounts payable by the Customer under these terms and conditions, as and when those amounts become payable, whether at their scheduled due dates or otherwise;

**8. Estimates of Labour Time**

8.1. Installation, Implementation, specific tasks, project management and training costs as set out in the formal quotation document are optimistic estimates and are provided as a guide only. For the purposes of the agreement the meaning of the following terms are:

- a) **Installation:** Deliver and Install the computers as indicated by the site plan. Install and terminate Network Cables and Hubs as indicated. Load the operating systems on the file server and workstations.
- b) **Implementation:** Setup the parameters on each workstation and file server to bring the network to a state of general functionality. This includes setting up Workstation Names, Login names and Printers. This does not include installation of application programs.
- c) **Specific Tasks:** Attend to Specific Tasks as agreed upon and noted in the Quotation. Such Specific Tasks may include setting up internal email and external email configurations, Registering domain names, working with the selected ISP to provide an operating email communication system.
- d) **Project Management:** Attend to meetings with clients and provide advice during the implementation process. This includes writing and modifying implementation schedules as required.
- e) **Training:** instruct users in the use of the windows operation system and application software either individually or in groups as agreed upon in the training schedule.

8.2. The hourly rate for each of the above mentioned functions are subject to change without notice.

**9. Hourly Rates for Customer Support**

The hourly rate for ongoing customer support includes both travel time and on-site attendance. Support is charged in blocks of 15 minutes. Customer Support is not included as part of installation, implementation, specific tasks or training.

**10. Implied Terms**

10.1. Subject to subclause 2, any statutory condition or warranty and common industry practices which would otherwise be implied in these terms and conditions is hereby excluded.

10.2. Where legislation implies in these terms and conditions any condition or warranty and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included. However our liability shall be limited at our option to one or more of the following:

- (a) If the breach relates to hardware or software;
  - The replacement of the Products or the supply of equivalent Products;
  - The repair of such Products;
  - The payment of the cost of replacing the Products or of acquiring equivalent Products; or
  - The payment of the cost of having the Products repaired; and
- (b) If the breach relates to services:
  - The supplying of the services again;
  - The payment of the cost of having the services supplied again.

**11. Product Operation and Warranty**

11.1. You agree to immediately inspect all Products delivered and report any damage, incorrect supply or dispute within 36 hours of delivery of the Products to our credit department, otherwise we may refuse any claim you make.

11.2. If Products are returned to us as "dead on arrival" but they are found to be in working order when checked by our engineers, you agree to pay us a 10% restocking fee or \$50.00 which ever is the greater;

11.3. In all circumstances the Products must be in their original packaging and proof of purchase must be supplied. ITNow Group does not warrant that the operation of supplied Products will be uninterrupted or error free;

11.4. You should read and follow all set-up instructions in the provided manuals and Instruction manuals for Safety & Comfort. If you fail to do so then the supplied Products may not function properly and you may lose data or suffer other damage;

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11.5. If on-site Warranty is provided with the Products it is subject to availability of replacement parts from the original manufacturers. Repair to faulty Products under warranty is subject to the manufactures obligations under the laws of the respective state;

11.6. You will ensure that all of our personnel and/or agents are provided with all information, facilities, assistance and accessories reasonably required by us to enable us to comply with our obligations pursuant to these terms and conditions and/or any order for Products.

**12. Liability**

12.1. Except in relation to liability for personal injury (including sickness and death) we shall not be under any liability to you in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of Products or services supplied pursuant to these terms and conditions or in respect of any failure or omission on our part to comply with these terms and conditions;

12.2. Subject to subclause 3 you agree that you have purchased and determined the suitability of all Products and/or services from us for use within your business as a result of your own investigations and knowledge and that the only representations or warranties on which you have relied in entering into these terms and conditions and/or purchasing the Products or services are those stated in writing in these terms and conditions or on any order form for Products and services signed by the parties;

12.3. You acknowledge that to the extent we have made any representation which is not otherwise expressly stated in these terms and conditions, that you have been provided with an opportunity to independently verify the accuracy of the representation;

12.4. You also agree that we shall not be held responsible or liable in any way whatsoever for any breaches of confidentiality by any subcontractors and/or agents engaged by us on your behalf to perform any services. It is your responsibility to ensure that separate confidentiality agreements are entered into with any subcontractors and/or agents engaged by us on your behalf;

12.5. You shall at all times indemnify and hold us and our officers, employees and agents ("those indemnified") harmless from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:

- (a) a breach by you of your obligations under these terms and conditions; or
- (b) any wilful unlawful or negligent act or omission by you.

**13. Software Support and Updates**

Conflicts and errors with application programs and operating systems cannot always be foreseen and may affect the integrity and performance of operating systems and hardware. Operating system patches are provided by the manufacturers from time to time and may be supplied by us as required. Some of these patches do incur charges which will be passed on to you. Should conflicts occur, any time taken to resolve such issues will be added to the implementation time or support time. We will not be held responsible for any costs incurred in overcoming issues arising out of implementation of these updates and patches.

**14. Software Licenses**

You acknowledge that you have read and agreed to all software license agreements and accept the terms stated. You also agree that you are responsible for maintaining the correct number of software licenses for your site.

**15. Exclusions**

We do not accept any responsibility, warranty or liability for any operational issues or problems which may arise that are not related directly or indirectly to the Products ordered by you including but not limited to:

**15.1. Internet Connections**

We are not responsible for any problems, errors or issues regarding internet connection. If we are required to communicate with your Internet Service Provider and/or Telstra on your behalf we will bear no responsibility for the outcome of that communication and we do not guarantee any satisfactory resolution to any problem regarding your Internet connection and /or any other problem. You will be charged for any communication we have with Telstra or any Internet Service Provider.

**15.2. Backup of Data**

We do not warrant that the backup of data to removable media will be error free. It is your responsibility to regularly monitor the backup of data and check that the data is being backup up correctly by checking the backup logs and performing regular test restorations. You should regularly confirm that you are backing up all of the data that is required to be protected against loss. You agree that we will not be held responsible for any loss of data regardless of the circumstances.

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**15.3. Virus Infections**

We will not be held responsible for any damages resulting from virus infection on your computer systems. It is your responsibility to maintain current licenses and regular updates of a commercial antivirus program of your choice. Although you may have an up to date antivirus program on your system this will not totally protect your system from all viruses that may get access from time to time.

**16. Email Notification**

From time to time we will notify you of any changes in the IT world which we believe will have an affect on your Installation. This may include virus and spam notifications, security patches from manufacturers, availability of service packs, any special promotions regarding hardware or software sales. These will be supplied either by email or postage. You agree to receive these communications and will advise us in writing if you wish them to stop as per requirements of Australian spam legislation.

**17. Assignment**

You must not assign any rights or benefits under these terms and conditions unless you have obtained our prior written consent. Any assignment by you without our consent shall entitle us to avoid any liability or obligation we may have to you under these terms and conditions.

**18. Legal Interpretation**

18.1. These terms and conditions constitute the entire agreement between the parties and supersede all prior representations, agreements, statements and understandings whether verbal or in writing.

18.2. The term "Product" includes all goods and services you purchase from us;

18.3. You shall make payment of all monies due and payable to us without set off or counterclaim and free of any deduction;

18.4. Each of the terms and conditions shall be construed as a separate and independent provision;

18.5. If any term or condition or the application of it to any party or circumstance shall be or become unenforceable at law the remaining terms and conditions shall not be affected and each term s and condition shall be valid and enforceable to the fullest extent permitted by law;

18.6. Any express statement or right we have under these terms and conditions is without prejudice to any other rights we may have at law;

18.7. Any future statute or law which may prejudice or adversely affect our rights powers or remedies shall not apply and be excluded from these terms and conditions;

18.8. Any variation to these terms and conditions must be in writing and signed by an authorised officer of ITNow Group Pty Limited.

18.9. We may alter these terms and conditions at any time upon one (1) months written notice. All transactions after the date specified in such notice will be subject to the altered terms and conditions. If you continue to trade with us after the date such alterations become effective you will be deemed to have agreed to the altered terms and conditions.

18.10. These terms and conditions shall be governed by the laws of the State of Victoria and the parties shall submit to the non exclusive jurisdiction of the Courts of the State of Victoria.