

SHAW I.T. SERVICES PTY LTD (ABN 80 669 087 325)

TERMS AND CONDITIONS FOR THE SUPPLY OF  
INFORMATION TECHNOLOGY RELATED GOODS AND SERVICES

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Ref: 15431

TERMS & CONDITIONS OF TRADE for SHAW I.T. SERVICES PTY LTD

BETWEEN:

SHAW I.T. SERVICES PTY LTD (ABN 80 669 087 325) ("Shaw IT") of the first part;

– and –

The Customer whose details are set out in Item 1 of the Schedule ("the Customer") of the second part.

WHEREAS:

A. Shaw IT is the owner and operator of an information technology business which provides the Goods and Services to customers from time to time as requested.

B. The Customer has requested Shaw IT to supply Goods and Services to the Customer.

C. Shaw IT has agreed to provide Goods and Services to the Customer on the following terms and conditions.

AND THE PARTIES NOW AGREE AS FOLLOWS:

Definitions

1. In these Terms, unless the context requires otherwise:

(a) "Business Customer" means a customer to whom Shaw IT has supplied, or which the Customer has requested Shaw IT to supply, the Goods or the Services (or both) in connection with a business of which the customer is the owner and operator;

(b) "Business Day" means a day other than a Saturday, a Sunday or a gazetted public holiday in Melbourne;

(c) "Call Out Fee Area" means each of the following:

(i) the Melbourne Central Business District;

(ii) Melbourne Airport;

(iii) Any location that is more than 1 kilometre of travelling distance from Shaw IT's business premises in Yallambie VIC 3085;

(d) "Customer Information" means any information about the Customer or, any of the Customer's officers,

employees, contractors, clients or customers includes but may not be limited to:

(i) Website account logins and passwords;

(ii) Computer logins and passwords;

(iii) Software licence and subscription information;

(iv) IP addresses;

(v) Email addresses and passwords;

(vi) Personal information including (without limitation) the name, address, date of birth and phone number of the Customer or any of the Customer's officers, employees, contractors, clients or customers;

(e) "GST" means goods and services tax within the meaning of A New Tax System (Goods and Services Tax) Act 1999 (Cth);

(f) "Goods" means any goods which Shaw IT has supplied to the Customer or which the Customer has requested Shaw IT to supply including, without limitation, computer hardware and software;

(g) "Major Issue" means a major problem experienced by the Customer with one or more of the Customer's computers or the Customer's computer system and reported to Shaw IT and includes (but may not be limited to) the problems that one or more of the Customer's computers or the Customer's computer system:

(i) freezes;

(ii) shuts down unexpectedly;

(iii) is not turning on or "powering on";

(h) "Melbourne Central Business District" means any address in the city of Melbourne for which the postcode is any one of 3000, 3004, 3006 and 3008.

(i) "Minor Issue" means a minor problem experienced by the Customer with one or more of the Customer's computers or the Customer's computer system and reported to Shaw IT but in circumstances where the Customer's computers or the Customer's computer system is still able to perform its major functions. A minor problem includes (but may not be limited to) the problems that one or more of the Customer's computers or the Customer's computer system:

(ii) is functioning otherwise than as expected;

(iii) has reduced speed or capacity;

(iv) has reduced functionality;

(j) "Residential Customer" means a customer to whom Shaw IT has supplied, or which the Customer has requested Shaw IT to supply, the Goods or the Services (or both) for domestic, personal or household use or consumption;

(k) "Services" means any information technology services which Shaw IT has supplied to the Customer or which the Customer has requested Shaw IT to supply including, without limitation, troubleshooting, research, preparation, communication and downloading, installing, configuring, developing, creating or transferring computer hardware, software, networks or systems;

(l) "Remote Access and Management Software" means any version of remote access software used by Shaw IT that allows Shaw IT to connect to a customer's computer at any time when the computer is switched on

and connected to the internet;

(m) "Terms" means these Terms and Conditions of Trade and including any amendments, variations or modifications made to these Terms from time to time.

## Interpretation

2. In these Terms, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa and a gender includes all other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a party to these Terms, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (d) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (e) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (f) the terms defined in the recital of the names of the parties to these Terms have the same meaning where those terms are used in the remainder of these Terms;
- (g) any obligation that binds more than one person binds all of them jointly and each of them severally;
- (h) any right that is for the benefit of more than one person is for the benefit of them jointly and each of them severally;
- (i) where a party referred to in these Terms consists of more than one person, a reference to that party is a reference to each person who makes up that party;
- (j) a reference to any legislation, regulation, ordinance or by-law includes any section or provision of that legislation, regulation, ordinance or by-law, and means that legislation, regulation, ordinance or by-law as amended, consolidated or re-enacted from time to time; and
- (k) a references to parties, clauses, sub-clauses, schedules, exhibits or annexures are references to parties, clauses, sub-clauses, schedules, exhibits and annexure to or of these Terms, and a reference to these Terms includes any schedule, exhibit and annexure.

## Application of these Terms

3. These Terms constitute the whole of the agreement between Shaw IT and the Customer. Any other contractual terms of the Customer which are in any way contrary to or inconsistent with these Terms will not apply and will not constitute a counter-offer. By receiving a supply of Goods and Services from Shaw IT, the Customer is deemed to have agreed that these Terms will apply to the supply of those Goods and Services to the exclusion of all other contractual terms, and whether or not the Customer has signed these Terms. These Terms commence on the earlier of:

- (a) the date on which the Customer signs these Terms and returns them to Shaw IT; and
- (b) the date on which Shaw IT begins supplying Goods and Services to the Customer.

## Supply of Goods and Services

4. Shaw IT agrees to supply the Goods and Services to the Customer as requested and otherwise in

accordance with these Terms.

5. Without limiting any other provision of these Terms in any way, the Customer must co-operate with Shaw IT and must as soon as reasonably practicable provide all information and do all things reasonably requested to assist Shaw IT in connection with the supply of Goods and Services.

#### Payment

6. Unless Shaw IT agrees in writing to other payments terms, if the Customer is a Residential Customer, the Customer must pay for the Goods and Services as follows:

(a) the Customer must pay in advance for any Goods which are to be supplied if the cost of the Goods is greater than \$500.00; and

(b) otherwise in full immediately after:

(i) Shaw IT has supplied the Goods and Services; and

(ii) Shaw IT has issued a tax invoice for the supply of the Goods and Services.

7. Unless Shaw IT agrees in writing to other payments terms, if the Customer is a Business Customer, the Customer must pay for the Goods and Services as follows:

(a) the Customer must pay in advance for any Goods which are to be supplied if the cost of the Goods is greater than \$500.00; and

(b) otherwise in full within seven (7) days after:

(i) Shaw IT has supplied the Goods and Services; and

(ii) Shaw IT has issued a tax invoice for the supply of the Goods and Services.

#### Charges

8. Shaw IT will charge the Customer for the Services supplied on a time basis as set out in Clauses 9 to 15 below.

9. Shaw IT will charge the Customer differently for the Services, depending on whether they are supplied remotely or on-site at the Customer's premises.

10. For Services supplied remotely, Shaw IT will charge the Customer as follows:

(a) in units of fifteen (15) minutes (or part thereof) at the rate stated in Item 2 of the Schedule; and

(b) for each occasion on which Services are supplied remotely, for a time of not less than 30 minutes (even if the actual time taken to supply the Services remotely is less than 30 minutes).

11. For Services supplied on-site at the Customer's premises, Shaw IT will charge the Customer as follows:

(a) a call out fee of \$70.00 plus GST for each occasion on which Shaw IT attends at the Customer's premises in the course of supplying the Services;

(b) in units of 30 minutes (or part thereof) at the rate stated in Item 3 of the Schedule; and

(c) for each occasion on which Services are supplied on-site at the Customer's premises, for a time of not less than one (1) hour (even if the actual time taken to supply the Services remotely is less than one (1) hour).

12. In addition to the charges in Clause 11, Shaw IT will pass on to the Customer any parking costs incurred by Shaw IT in the course of attending at the Customer's premises to supply the Services.

13. Shaw IT will not charge the Customer for any of the following in connection with the supply of the Services:

(a) internal administration;

(b) preparation of a Tax Invoice or quotation (but not including a detailed quotation that is requested by the Customer);

(c) any Services supplied pursuant to a warranty;

(d) any initial enquiry by the Customer.

14. Shaw IT will charge the Customer for Goods supplied at the price quoted to the Customer for the Goods.

15. Shaw IT may change the rates of charge for the supply of Services at any time. The Customer will be notified of any change to rates of charge, and new rates of charge will not take effect until 14 days after the Customer is notified of the change, or such later date that is specified by Shaw IT.

#### Ownership and Delivery of Goods

16. Shaw IT will retain ownership of all Goods to be supplied to the Customer until the Customer has paid for the Goods in full.

17. Any Goods supplied to the Customer will be at the risk of the Customer from the time that the Goods are delivered to the Customer (and notwithstanding that Shaw IT might retain ownership of the Goods pursuant to Clause 16 above).

18. If the Customer has requested Shaw IT to supply Goods, the Customer must make arrangements with Shaw IT to accept delivery of the Goods at the Customer's premises as soon as reasonably practicable and at all events not more than 28 days after Shaw IT has notified the Customer that the Goods are ready to be delivered.

19. If the Customer has not arranged for delivery of the Goods within 28 days after Shaw IT has notified the Customer that the Goods are ready to be delivered, the Customer must pay to Shaw IT any storage costs incurred to store the Goods after that date.

20. If the Customer has not arranged for delivery of the Goods within 90 days after Shaw IT has notified the Customer that the Goods are ready to be delivered, the Customer will be deemed to have abandoned the Goods, and Shaw IT may sell or dispose of the Goods or otherwise deal with them without further notice to the Customer. The Customer will remain liable to pay the full price of the Goods to Shaw IT.

#### Quotations

21. Before Shaw IT supplies Goods and Services to the Customer, Shaw IT may (but is not obligated) to give a quotation to the Customer for those Goods and Services. If requested by the Customer, Shaw IT will provide a quotation at no charge.

22. The Customer must provide to Shaw IT any information that is requested to enable Shaw IT to prepare a quotation.

23. Shaw IT will give a quotation to the Customer within a reasonable time of the Customer providing to Shaw IT the information that has been requested by Shaw IT.

24. Any quotation given by Shaw IT is an estimate only and is not binding on Shaw IT. To avoid doubt, a quoted price does not represent a limit or cap on the price which Shaw IT is able to charge for Goods and Services to be supplied to the Customer.

25. Shaw IT will give notice to the Customer as soon as reasonably practicable if, after a quotation is given, Shaw IT becomes aware that the final price to supply the Goods and Services will vary significantly from the estimated price given in the quotation.

26. Quotations are only current for a period of 14 days after the quotation is given to the Customer. The Customer will be liable to pay any additional price for Good and Services that are supplied to the Customer after the quotation has ceased to be valid.

27. The Customer acknowledges and agrees that quotations given by Shaw IT are basic quotations only. If requested by the Customer, Shaw IT will provide a detailed or customised quotation. Shaw IT will charge the Customer for the preparation of a detailed or customised quotation (including, without limitation, all site visits, research and systems design) in accordance with these Terms and Shaw IT's rates of charge for the time being PROVIDED THAT Shaw IT will not charge the Customer for the following aspects of the preparation of a detailed or customised quotation:

- (a) drafting of the detailed or customised quotation itself;
- (b) calculation of the estimate of the Goods and Services to be supplied.

#### Supply of Customer Information

28. The Customer acknowledges and agrees that, in the course of supplying Goods and Services to the Customer:

- (a) Shaw IT will receive Customer Information;
- (b) Shaw IT will store Customer Information; and
- (c) for the purpose of storing Customer Information, Shaw IT will use the services and systems of specialist third-party information storage providers.

29. Shaw IT will only use the Customer Information for the purpose of:

- (a) supplying Goods and Services to the Customer; and
- (b) billing or charging the Customer for the supply of Goods and Services.

30. Shaw IT may disclose Customer Information to a third party:

- (a) where Shaw IT is legally required to do so; or
- (b) where it is reasonably necessary or desirable for Shaw IT to do so in the course of any legal proceedings to which Shaw IT is a party;
- (c) where, in the reasonable opinion of Shaw IT, it is necessary, expedient or desirable to do so to supply the Goods and Services to the Customer or to store the Customer Information

PROVIDED THAT Shaw IT will use its best efforts to notify the Customer prior to disclosing any Customer Information pursuant to parts (a) and (b) of this Clause 30. In any event, Shaw IT will notify the Customer that Shaw IT has disclosed any Customer Information to a third party pursuant to parts (a) and (b) of this Clause 30 as soon as reasonably practicable after it has done so.

31. If the Customer Information includes any personal information about the Customer's officers, employees,

contractors, clients or customers, the Customer warrants to Shaw IT that the Customer has obtained the prior consent from those officers, employees, contractors, clients or customers to pass that information to Shaw IT and for Shaw IT to use that information in accordance with these Terms. The Customer must indemnify Shaw IT and hold Shaw IT harmless against any claims, demands, losses, damages, liabilities and costs (including any legal costs on an indemnity basis) whatsoever which Shaw IT might suffer or incur (and whether directly or indirectly) as a result of a breach by the Customer of the warranty given in this Clause 31. To avoid doubt, the warranty given in this Clause 31 applies to personal information about the Customer's officers, employees, contractors, clients or customers that is given to Shaw IT by the Customer at any time whether before or after the commencement of these Terms.

32. Within a reasonable time of a request by the Customer, Shaw IT will:

(a) give to the Customer a copy of the Customer Information held by Shaw IT (or such part of the Customer Information as requested); and

(b) destroy the Customer Information held by Shaw IT (or such part of the Customer Information as requested).

33. Shaw IT may charge the Customer for the time involved in meeting a request pursuant to Clause 32. The Customer will be charged in accordance with these Terms and Shaw IT's rates of charge for the time being.

34. Shaw IT may receive the Customer's credit card details to make payments directly to Shaw IT for Goods and Services, or to make a payment or set up a payment arrangement to a third party with the prior consent of the Customer. Shaw IT promises not to store the credit card details of the Customer for longer than is required in completing any credit card payments. Shaw IT will not be liable to the Customer for any loss or damage suffered by the Customer as a result of passing on the Customer's credit card details to a third party in accordance with this Clause 34.

#### Limitation of Liability

35. Subject to Clause 36 below, except where Shaw IT has been negligent, Shaw IT will have no liability whatsoever in connection with the supply of Goods and Services to the Customer pursuant to these Terms.

36. Nothing in these Terms is intended to exclude or modify, or has the effect of excluding or modifying, any terms, warranties or guarantees which, by operation of any statute (including, without limitation, the Australian Consumer Law):

(a) form part of or apply to these Terms; and

(b) cannot be modified or excluded from forming part of or applying to these Terms.

37. If in connection with the supply of Goods and Services to the Customer:

(a) Shaw IT has been negligent; or

(b) any terms, warranties or guarantees which, by operation of any statute (including, without limitation, the Australian Consumer Law):

(i) form part of or apply to these Terms; and

(ii) cannot be modified or excluded from forming part of or applying to these Terms

then the liability of Shaw IT is limited to the following:

(c) in respect of the supply of Goods to the Customer (at the option of Shaw IT):

(i) the replacement of the Goods or the supply of equivalent Goods;

- (ii) the repair of the Goods;
  - (iii) the payment of the cost of replacing the Goods or acquiring equivalent Goods;
  - (iv) the payment of the cost of having the Goods repaired; and
- (d) in respect of the supply of Services to the Customer (at the option of Shaw IT):
- (i) the supply of the Services again;
  - (ii) the payment of the cost of having the Services supplied again.

#### Indemnification

38. The Customer must indemnify Shaw IT for any claims, demands, losses, damages, liabilities and costs (including any legal costs on an indemnity basis) whatsoever which Shaw IT might suffer or incur (and whether directly or indirectly) as a result of:

- (a) any breach of these Terms by the Customer; and
- (b) any breach by the Customer of any terms of use of software or any infringement of the intellectual property of a software provider or manufacturer.

#### Warranty

39. Shaw IT warrants Goods and Services supplied to the Customer as set out in Clauses 40 to 52 below.

40. The Customer must report warranty claim or potential warranty claim to Shaw IT as soon as reasonably practicable.

41. Shaw IT warrants Goods supplied that consist of computer hardware built by Shaw IT for one (1) year from the date of supply. The warranty will cover labour onsite at the Customer's premises and parts as needed. The warranty will not include labour onsite at the Customer's premises if the Customer premises are located outside of (or are moved outside of) Shaw IT's service area for the time being.

42. Shaw IT warrants that, in respect of Goods supplied that consist of parts supplied to repair a system not originally supplied by Shaw IT:

- (a) Shaw IT will cover labour onsite at the Customer's premises and parts as needed for thirty (30) days from the date of supply; and
- (b) Shaw IT will cover parts as needed for one (1) year from the date of supply.

43. After the date that is one (1) year from the date of supply, Shaw IT may (in its sole and absolute discretion and without any legal obligation to do so) assign to the Customer the benefit of any manufacturer warranty which Shaw IT has received from the manufacturer of Goods supplied to the Customer.

44. Except where the Customer receives the benefit of a manufacturer warranty pursuant to Clause 43, all warranties given to the Customer are warranties from Shaw IT.

45. Shaw IT will respond to a warranty claim by the Customer as follows:

- (a) within one (1) clear Business Day, where the Customer reports a Major Issue; and
- (b) within five (5) clear Business Days, where the Customer reports a Minor Issue.

46. The Customer acknowledges and agrees that, for a Major Issue, Shaw IT may take up to three (3) days



after first responding to the Major Issue before the Major Issue is diagnosed and rectified.

47. The Customer acknowledges and agrees that, for a Minor Issue, Shaw IT may take:

- (a) up to three (3) Business Days after first responding to the Minor Issue to diagnose a Minor Issue; and
- (b) up to seven (7) Business Days to rectify a Minor Issue after it has been diagnosed.

48. In responding to a warranty claim by the Customer, Shaw IT may in its absolute discretion:

- (a) repair;
- (b) replace;
- (c) both repair and replace

any part or all of one or more of the Customer's computers or the Customer's computer system.

49. Subject always to Clauses 36 and 37, in response to any warranty claim by the Customer, Shaw IT will not refund the purchase price (or any part of the purchase price) for any Goods or Services supplied to the Customer.

50. The Customer acknowledges and agrees that modifications to one or more of the Customer's computers or the Customer's computer system may be caused by:

- (a) a particular software package, update or configuration; or
- (b) a particular item or configuration of computer hardware

in the normal course of using that software or hardware (as the case may be). In that event, Shaw IT's response to a warranty claim by the Customer may be limited to one or both of the following:

- (c) the removal of software or hardware from one or more of the Customer's computers or the Customer's computer system;
- (d) a re-installation or a new installation of software (including operating systems software).

51. Any warranty given by Shaw IT is voidable at the option of Shaw IT if any of the following occurs to one or more of the Customer's computers or the Customer's computer system or is undertaken by any other person without Shaw IT's prior written consent:

- (a) internal modifications are made to the hardware (including, without limitation, RAM, hard drives, SSD's, motherboard, power supply, CPU or any internal circuits, cables or connectors);
- (b) major modifications are made to software including:
  - (i) the re-installation of an operating system;
  - (ii) a major upgrade of an operating system;
  - (iii) the installation of third party software that operates or purports to operate as a server;
  - (iv) the installation of high-risk software including torrent downloaders, emoticon/custom mouse cursor or other ad-supported visual customisation software, browser toolbars and search helpers, registry cleaners, automated computer fix, clean up, speed up software, fake security software, and ad-supported non-productivity related software;

(v) activation of full-disk encryption; and

(vi) non-standard system configuration changes such as the installation of non-standard or beta hardware drivers, modification, deletion, hacking or changing to permissions of any system files, changes to paging file settings, manual changes, deletions from or additions to the Windows registry, deliberate bypassing in-built system security measures such as SmartScreen, Windows Defender, and UAC on Windows or Gatekeeper on Mac OS.

52. Any warranty given by Shaw IT is voidable at the option of Shaw IT if the Customer has not reported any issue with one or more of the Customer's computers or the Customer's computer system as soon as reasonably practicable after the Customer first became aware of the issue or ought reasonably have first become aware of the issue.

#### Remote Access and Management Software

53. Unless requested otherwise by the Customer, Shaw IT may install one or more Remote Access and Management Software programs on the Customer's computers, computer systems and network.

54. Shaw IT may remotely access any of the Customer's computers without the prior, express consent of the Customer on each occasion.

55. The Customer acknowledges and agrees that Shaw IT may remotely access the Customer's computers, computer systems and network without the prior, express consent of the Customer for the purpose of performing standard maintenance and troubleshooting.

56. If requested by the Customer, Shaw IT will remove the Remote Access and Management Software from the Customer's computers, computer systems (including the Customer's server computer) and network within a reasonable time after the request has been made. Shaw IT may (in its sole discretion) charge the Customer for removing the Remote Access and Management software. The Customer will be charged in accordance with these Terms and Shaw IT's rates of charge for the time being

#### General

57. Severability: If any provision of these Terms proves to be illegal or unenforceable pursuant to any statute, rule of law or for any other reason, then that provision is deemed to be omitted from these Terms without affecting the legality of the remaining provisions of these Terms, which will continue in full force and effect.

58. GST: All prices and monetary amounts stated in these Terms are exclusive of GST and if any GST is payable by the Customer in respect of the supply of Goods or Services to the Customer, then the price specified for that supply ('original price') is to be increased so that Shaw IT receives an amount ('increased price') which, after subtracting the GST liability of Shaw IT on that increased price, results in Shaw IT obtaining the original price after payment of that GST liability.

59. Entire Agreement: These Terms constitute the entire agreement between the parties with respect to the subject matter hereof. Any prior arrangements, agreements, representations or undertakings are hereby superseded.

60. Force Majeure: Neither party will be liable in damages for, nor will this Terms be terminable or cancelable by reason of, any delay or default in such party's performance if such default or delay is caused by events beyond such party's reasonable control including, but not limited to, acts of God regulation or law or other action of any Government or agency thereof, war or insurrection civil commotion destruction of production facilities or materials by earthquake fire flood storm labour disturbance or other accidental or other cause beyond the reasonable control of the party. Each party agrees to endeavour to resume its performance hereunder as soon as is reasonably practicable if such performance is delayed or interrupted by reason of force majeure.

61. Waiver: Any waiver in regard to the performance of these Terms operates only if in writing and applies only to the specified instance, and must not affect the existence and continued applicability of the terms of the Terms thereafter.

63. Amendments: These Terms may not be varied except in writing signed by both of the parties.

64. Governing Law and Jurisdiction: These Terms must be read and construed according to the laws of the State of Victoria and the Courts of the State of Victoria will have exclusive jurisdiction for the resolution of any dispute between the parties arising out of these Terms.

65. No Assignment: The Customer must not assign the benefit of these Terms without first obtaining the written consent of Shaw IT. Shaw IT may grant or withhold its consent in its absolute discretion, and may grant its consent subject to any conditions. Shaw IT may assign its rights and benefits under these Terms at any time and without first obtaining the consent of the Customer.

## SCHEDULE

### Item 1 (Customer):

- (a) Name of Customer:
- (b) Address:
- (c) Telephone:
- (d) Email:
- (e) Contact Person:

### Item 2 (Remote Charge Rates):

\$180 per hour plus GST between 9:00 a.m. and 6:00 p.m. on a Business Day.

\$275 per hour plus GST before 9:00 a.m. and after 6:00 p.m. on a Business Day.

\$275 per hour plus GST at any time on a day that is not a Business Day.

### Item 3 (On site Charge Rates):

\$180 per hour plus GST between 9:00 a.m. and 6:00 p.m. on a Business Day.

\$275 per hour plus GST before 9:00 a.m. and after 6:00 p.m. on a Business Day.

\$275 per hour plus GST at any time on a day that is not a Business Day.

### Item 4 (Emergency Upgrade Rates):

\$150 plus GST per incident

### Item 5 (Call Out Rates):

\$70 plus GST per call out

## SIGNED BY THE PARTIES:

For SHAW I.T. SERVICES PTY LTD

.....  
Mathew Shaw

Date: .....

For the Customer:

.....  
Signature

.....  
Full Name of Signatory

.....  
Position of Signatory/Authority to Sign

Date: .....