

- (1) These **Terms of Business** ('ToB') apply to all purchases from Area9 except where the parties have entered into a separate written agreement specifying the terms and conditions which are to apply to the provision of the goods and/or services.
- (2) In these ToB, a reference to the Client includes the employees, or agents of the Client whenever the context requires.
- (3) By purchasing goods and/or services from Area9 Pty Ltd ACN 128 148 372 ('Area9'), you the client ('Client') acknowledge and agree to be bound by these ToB.
- (4) The purchase of goods and/or services from Area9 will not be subject to the Client's own standard terms and conditions of purchase (unless otherwise expressly agreed in writing between the parties); regardless that Area9 may accept a purchase order from the Client, the parties agree that the terms and conditions (if any) contained in a Client purchase order will not amend, supplement or modify these ToB or be binding on Area9.
- (5) **Term.** These ToB shall commence on each date on which the Client first requests a supply of particular goods or services from Area9 and shall continue until such time as those goods and/or services for that transaction have been supplied and invoiced by Area9 and the Client has made payment in full in accordance with clause (8).
- (6) **Delivery and Reservation of Title**
 - (a) Area9 will perform its obligations in a diligent and competent manner and will use its reasonable endeavours to supply goods and/or services on the agreed delivery dates, however the Client acknowledges that delivery dates are estimates only. Area9 will not be liable for loss, damage or expense (consequential or otherwise) arising directly or indirectly out of any delay in supply or performance.
 - (b) All risk in goods shall pass to Client immediately upon delivery to Client.
 - (c) All goods provided to Client by Area9 remain the property of Area9, notwithstanding delivery to Client, until payment in full for those goods is received by Area9.
- (7) **Return of goods to Area9**
 - (a) No claim for return of goods will be recognised by Area9 unless received by Area9 within 5 days of Client receipt of goods.
 - (b) Unless expressly allowed otherwise by Area9, goods procured in accordance with Client instructions or specifications are non-returnable.
 - (c) Damaged packaging, used or soiled goods are non-returnable.
 - (d) Goods are returned at the Client's expense.
- (8) **Payment**
 - (a) The Client will:
 - (i) make payment to Area9 before the delivery of goods and/or the performance of the services, except where Client has a current credit facility with Area9. In the event Client has a current credit facility with Area9 Client agrees to pay Area9 the goods and/or services fees in accordance with Area9's invoice, without deduction or set off, within the time period specified on the invoice. Late payment will incur interest at 5% per annum above the interest rate charged by Area9's bank for overdrafts not exceeding \$100,000, calculated daily;
 - (ii) reimburse to Area9 travel, accommodation and incidental expenses (if any) incurred by Area9 in travelling to provide services at a location more than 40km from Area9's premises. Area9 shall first obtain the consent of Client to incur the cost; and
 - (iii) pay any goods and services tax payable in relation to goods and/or services provided by Area9. Unless stated otherwise taxes shall be included in the fees shown; however, Client acknowledges that should new taxes be introduced or existing taxes be amended Area9 reserves the right to adjust its pricing accordingly.
- (9) **Health and Safety.** Where Area9 employees or agents attend Client site Client must provide a safe and suitable workplace, which complies with all relevant workplace health and safety laws; and Client will notify Area9 and any relevant authorities immediately of any work-related incidents or injuries affecting Area9 employees or agents.
- (10) **Access.** The Client agrees to provide Area9 and its employees or agents access to Client's premises and such information and equipment as is reasonably necessary to enable Area9 to provide the goods and/or perform the services.
- (11) **Vendor Products**
 - (a) For the purposes of these ToB, Vendor means a developer or manufacturer of hardware or software. Vendor goods means any hardware, software or other third-party products sold by Area9.
 - (b) Vendor goods and/or services are provided 'as is' and the Client accepts the Vendor's warranty and acknowledges that Area9 makes no representations and cannot provide any warranty in relation to third-party Vendor goods and/or services. Area9 makes no warranty express or implied regarding the fitness of the goods and/or services for a particular purpose or that the goods and/or services will be suitable for the specific requirements of the Client. Area9 shall not be liable for any loss or damage direct or consequential arising out of or in connection with any defects.
 - (c) Vendor goods and/or services supplied under these ToB are provided subject to and governed by the **Vendor's warranty or other such Vendor agreement ('Vendor agreement')** and/or **end user license agreement ('EULA')** as modified from time to time. The Vendor agreement, and/or EULA is an agreement between the Client using the Vendor goods and/or services and the Vendor. The Vendor agreement, and/or EULA is made available by the relevant Vendor to the Client on the Vendor web site, or packaged with the goods and/or services, or may require on-screen acceptance. The Client agrees to use any Vendor goods and/or service supplied under these ToB in accordance with the terms and conditions of the relevant Vendor agreement and/or EULA and agrees that the Client's use of the Vendor goods and/or services constitutes acceptance of the Vendor agreement and/or EULA.
 - (d) The Client acknowledges and agrees that **any software** used or accessed by the Client in connection with these ToB:
 - (i) is licensed and not sold, and the Client may not make any copies of the software; and
 - (ii) the Client will not, or will not attempt to reverse engineer, decompile, or disassemble the software, or modify, adapt, create, or prepare derivative works of, or create a patent based on, the software or any part thereof; and will not resell or distribute the software; and
 - (iii) the Client agrees that use of the software by the Client, shall be lawful and the Client will not use the software in any manner or for any purpose other than as expressly permitted by the software Vendor.
 - (e) If the Client requests Area9 to install software on the Client's system then the Client warrants that it has or will forthwith obtain an appropriate licence from the software Vendor.
 - (f) In the event that third-party Vendor goods and/or services are no longer available or temporarily unavailable, or there is a reduction in quality of the goods and/or services (whether temporarily or permanently) and therefore Area9 can no longer provide all or part of the goods and/or services to the Client, Area9 will not assume any liability to the Client or to any party for any claims, damages, losses, liabilities, costs, and expenses, incurred by the Client or any party as a result of the unavailability or reduced quality of the third-party Vendor goods and/or services.
- (12) **Acceptable Use.** The Client will use the goods and/or services for the purpose intended and in accordance with Vendor specifications. The Client must not use or allow others to use any goods and/or services supplied by Area9 for any improper or unlawful purpose, in breach of any laws including privacy laws, intellectual property laws, telecommunications laws, or in any way which may damage property, or injure, or kill any person. Unless explicitly stated otherwise by the Vendor the goods and/or services are not designed or intended for high-risk use scenarios where failure or fault of any kind of the goods and/or services could reasonably be seen to lead to death or bodily injury, or to severe damage to tangible or intangible property or environment.

(13) Intellectual Property and Confidential Information

- (a) The intellectual property rights in all intellectual property owned by any of the parties (if any) at the commencement date of these ToB remains the property of that party. The intellectual property rights in all intellectual property developed by Area9, in providing the goods and/or performing the services to the Client shall become and remain the property of Area9.
- (b) Confidential Information means information that is by its nature confidential; is designated by either party as being confidential; or the receiving party ought to reasonably know is confidential; but does not include information which is or becomes public knowledge other than by breach of these ToB, is in the possession of either party without restriction in relation to disclosure before the date of receipt from the other party, or has been independently developed or acquired by the receiving party.
- (c) Neither party shall disclose Confidential Information of the other party and each party shall ensure that its employees, contractors or agents do not disclose Confidential Information of the other party to any person other than:
 - (i) a party's own legal advisers; or
 - (ii) as permitted in writing by the disclosing party; or
 - (iii) Area9 subcontractors; or
 - (iv) as required by law.
- (d) The Client consents to Area9's and Vendor's collection, use, storage and disclosure of personal and/or Confidential Information of the Client, its end users, employees or agents, for the purposes of providing the goods and/or services.

(14) Indemnity

- (a) The Client indemnifies and holds harmless Area9, its affiliates, directors, officers, employees, and agents:
 - (i) in respect of all claims arising from or in connection with the provision of the goods and/or services where those claims are caused by or contributed to by the Client's breach of any law, breach of any provision of these ToB, or by the negligent or unlawful act, neglect or default of the Client, its employees or agents.
 - (ii) from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or in connection with the Client's use of the goods and/or services, any software, hardware, or third-party Vendor service.

(15) Limitation of Liability

- (a) Area9's liability arising out of or in connection with the provision of goods or services to the Client and/or any warranty or condition of contract for the provision of goods and/or services, whether arising through the negligence of Area9, its affiliates, directors, officers, employees, or agents or otherwise, is limited to:
 - (i) In the case of provision of goods, one of the following:
 - a. replacement of the goods; or
 - b. repairing of the goods; or
 - c. supplying of equivalent goods; or
 - d. payment of the cost of replacing the goods.
 - (ii) In the case of performance of services, one of the following:
 - a. supplying of the services again; or
 - b. payment of the cost of supplying the services again.
- (b) Area9 excludes all liability for any kind of special, consequential, incidental, indirect loss and/or damage, including loss of revenue, loss of profits, loss of data, loss of production or business interruption, loss or denial of opportunity, loss of access to markets, loss of goodwill, loss of business reputation, indirect, remote, abnormal or unforeseeable loss or any similar loss whether in contract, tort, including negligence, statute in equity or otherwise incurred by or awarded against Client arising in any way out of or in relation to the supply of goods and/or services by Area9, its affiliates, directors, officers, employees, or agents.

(16) Force Majeure. A party will not be liable for any failure or delay in the performance of its obligations under these ToB if that failure or delay is due to force majeure; however, this clause (16) does not apply to any Client obligation to pay money for goods provisioned or services performed by Area9 prior to such force majeure event.

(17) No Waiver. No waiver of any obligation or right under these ToB shall be effective unless made in writing and signed by the party granting the waiver. No waiver of any breach of any obligation under these ToB shall constitute a waiver of any subsequent breach of the same or any other obligation. If a party delays in exercising or does not exercise a right under these ToB that delay in exercising or failure to exercise is not a waiver of that right or any other right, unless a waiver, in accordance with this clause (17) is granted.

(18) Contra Proferentem. No rule of construction will apply in the interpretation of these ToB to the disadvantage of one party on the basis that such party put forward or drafted these ToB or any provision of these ToB.

(19) Survival. The provisions of the following clauses shall survive the expiry of these ToB: (2),(3),(4), (7), (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23) and (24).

(20) Governing Law. These ToB shall be interpreted in accordance with the laws of the Northern Territory of Australia in the Commonwealth of Australia; and the parties agree to submit to the exclusive jurisdiction of the courts of the Northern Territory.

(21) Severability. Any provision of these ToB which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability without invalidating the remaining provisions of these ToB.

(22) Dispute Resolution. A party may not commence legal proceedings without first referring the dispute to the other party under this clause. Either party may give the other a notice in writing setting out the details of the dispute ('dispute notice'). Within 5 business days or such other period as may be agreed by the parties, representatives must meet and use reasonable endeavours to resolve the dispute.

(23) Construction. In these ToB, unless expressly stated otherwise:

- (a) a reference to:
 - (i) the singular includes the plural and vice versa; and other grammatical forms of defined words or expressions have corresponding meanings;
 - (ii) a clause number is a reference to a clause number in these ToB and all that clause's subclauses;
 - (iii) an agreement or document is to that agreement or document as amended, varied, supplemented, novated or replaced;
 - (iv) dollars or \$ is a reference to Australian currency;
- (b) words importing persons shall include corporations and other legal entities and vice versa; and the words "such as", "including", "for example" and similar expressions are not used as, nor are intended to be interpreted as, words of limitation;
- (c) the headings contained in these ToB are solely for convenience purposes and shall not affect the meaning or construction of these ToB.

(24) Miscellaneous. Unless expressly stated otherwise in Area9 supplied documentation (if any) should there be any inconsistency between the provisions of these ToB and the provisions of the Area9 supplied documentation, these ToB shall prevail to the extent of that inconsistency. Area9 documentation may not be copied, photocopied, reproduced, translated or reduced to any electronic medium or machine-readable form, in whole or part, without the written consent of Area9, except in the manner (if any) described in such documentation.

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