

BRENNAN HARDWARE-SOFTWARE SERVICE TERMS

- 1. These Terms apply to our supply of the hardware and software products ordered by you, the Customer and procured and supplied by us, Brennan IT Pty Limited ACN 082 699 367 set out in the attached Quotation/ Brennan Order Form ('Products'). Our agreement with you**
- 1.1 A binding legal contract (this agreement) comprised of the Quotation/Brennan Order Form ('Quote') and these Terms, is formed between us when you place an order with us by signing and accepting the Quote and returning it to us, or otherwise indicating your acceptance of the Quote.
 - 1.2 This agreement will remain in effect until both parties have performed all their obligations under it, including in respect of all years for any multi-year subscriptions or arrangements referenced in the Quote.
 - 1.3 Pricing and availability of Product, as set out in the Quote, is subject to change depending on our supply chain. If any change is required, it will be communicated to you before any action is taken by our supply chain to build or customise Product, so that you will have an opportunity to vary, cancel or confirm your order.
- 2. To the extent of any inconsistency between the Quote and these Terms, clause 12 of these Terms (Contract Chain – Prevailing Terms) prevail but otherwise the Quote takes precedence over these Terms.**
- 2.1 If the Products include any Microsoft NCE Product, the NCE Product Terms also form part of this agreement, taking precedence over these Terms, but subject to the Quote.
 - 2.2 If you make a Credit Application and we accept your application, this agreement will also be subject to the terms in our Credit Application, which prevail in matters of billing and payment. We reserve the right to refuse credit to any customer.
 - 2.3 Any agreement with us of which 'Brennan Master Terms' form part is separate to this agreement. To the extent of any ambiguity as to which agreement applies to the Products in any context or of any inconsistency as to how they apply, this agreement is subject to the other.
 - 2.4 Except as set out above or contemplated by clause 8.4, no other contractual terms, whether express or implied, oral or written, apply and all other contractual terms purporting to apply (including any attached to a Purchase Order you send to accept the Quote) are excluded unless they are specifically negotiated and agreed by us in writing.
- 3. Cancellations and change orders**
- 3.1 You acknowledge that when you place an order with us:
 - (a) we then order the Products from our suppliers, who may build or customise Products in response to our orders to them; and
 - (b) our suppliers may not allow us to cancel or change our orders with them if you seek to cancel or change your order with us or may charge us for any cancellation or change.
 - 3.2 You accept full liability for quantities of Products ordered by you and acknowledge and agree that if you seek to change the Product ordered after this agreement has been entered into:
 - (a) any request by you for the cancellation of or change to an order for Products is at our sole discretion; and
 - (b) if we do agree to the request, you indemnify us for any costs we incur from the cancellation or change, including what we are required to pay our supplier/s and our internal costs of processing your order and its cancellation or change.
- 4. Storage**
- 4.1 If you request, and we agree, to store the Products on your behalf until you are ready to take delivery, we will store them for the period agreed, exercising reasonable care in safe-guarding and maintaining them.
 - 4.2 Before agreeing to provide storage or ongoing storage, we may provide a quote specifying the applicable storage fee. If you do not accept the quote by the time specified in it (or do not make payments in accordance with the quote), we are not obliged to provide storage or ongoing storage. Instead we may arrange delivery of the Products to the Delivery Location at your cost on a business day selected by us, and otherwise in accordance with clause 4. We will not be liable for any loss you incur as a result of any such delivery.
 - 4.3 We are not liable for any loss, damage, or deterioration of the Products while stored on your behalf, unless it is a direct result of our negligence or wilful misconduct. Specifically, we are not responsible for any loss, damage or deterioration caused by circumstances beyond our reasonable control, including but not limited to acts of nature, fire, theft, vandalism, or acts of third parties.
 - 4.4 Risk in the Products passes to you on our receipt of the Products for storage. You must arrange and maintain comprehensive insurance for the Products for the full replacement cost for the duration in which the Products are stored.
 - 4.5 Upon our receipt of full payment for the Products, we will transfer to you title in Products held in storage.
- 5. Delivery**
- 5.1 Unless agreed otherwise, we will arrange for a service provider to deliver the Products to you ('Delivery Partner').
 - 5.2 The Delivery Partner will deliver the Products to you:
 - (a) at the address nominated by you in the Quote as the place for delivery ('Delivery Location'); and
 - (b) at a date on or around the estimated delivery date set out in the order confirmation, subject to any delays outside of our reasonable control ('Delivery Date').
 - 5.3 Our responsibility for safe delivery ceases at the receiving dock, office or street frontage. If you request delivery to any point beyond the street frontage of the Delivery Location:
 - (a) it is your responsibility to provide adequate and safe access to that point;
 - (b) the Delivery Partner may in their discretion refuse to proceed beyond the street frontage; and

- (c) you bear all risk of loss, damage (including damage to the delivery vehicle) or injury to persons or property including the Products, private or public property premises and vehicles if they proceed beyond the street frontage.

- 5.4 You or an agent nominated by you must be ready to receive the delivery of the Products at the Delivery Location on the Delivery Date. If there is no one to accept the Products, or if you request delivery of the Products to any other delivery location, an additional fee may be charged to re-deliver or divert.
- 5.5 To the extent permitted by law, we will not be liable for any delays in delivery outside our control, including but not limited to, manufacturing delays, acts of nature, unforeseen circumstances, transportation delays, or any other events or circumstances beyond our reasonable control.
- 5.6 If you arrange an alternative third-party contractor to collect/deliver the Products or if you collect the Products yourself, we will not be liable to you for any Products damaged in this collection and/or delivery or for the safe delivery of the Products. You are solely responsible and liable for this collection and delivery.
- 5.7 Except as set out in clause 3.4 or 4.3, risk in the Products passes to you upon delivery of the Products to, or collection of the Products by, you or a third party authorised by you.
- 5.8 Except as set out in clause 3.5, clear title in the Products will be transferred to you at the time that is the later of full payment for the Products or their delivery to, or collection by, you or a third party authorised by you.

6. Post-receipt inspection and claims

- 6.1 On delivery or collection, you must ensure that the quantity of goods received aligns with the consignment note. It is your responsibility to ensure the Delivery Partner or person releasing the goods to you or to your agent, records any incorrect shipments or shortages on the consignment note at the time of delivery or collection.
- 6.2 Within 2 business days of delivery or collection and before opening the packaging of goods or using them, you must visually check the goods received (including the number and specification of them) against your Quote and notify us in writing of any discrepancies between the goods received and Products ordered (including incorrect shipments or shortages noted at time of delivery or collection). Failure to notify us in writing within this time will constitute your acceptance of the delivered goods as consistent with your order for the Products and free from visual defect or damage.
- 6.3 If you notify us under clause 5.2, to make a claim, you must also:
- (a) keep the goods in original condition and packaging (including not opening or using them or);
 - (b) retain all documentation and evidence (such as clear, time-stamped photographs) to support your claim and comply with the manufacturer's return conditions;
 - (c) provide all reasonable assistance to our review of your claim; and
 - (d) follow our directions for the return of the goods in original condition and packaging.
- 6.4 If you have accepted Products, but upon first use you consider them to be subject to defect or damage, or otherwise believe they do not comply with the specifications in your Quote, without limiting your rights under any applicable law, to make a claim you must:
- (a) promptly notify us product-orders@brennanit.com.au (unless otherwise notified), providing details and evidence of the defect or damage or non-compliance in support of your claim; and
 - (b) comply with clause 5.3, except its requirements not to open the goods and to keep the packaging in original condition.
- 6.5 We reserve the right to review any claims you make by notifying us under clause 5.2 or 5.4, including testing any Product that is the subject of the claim. We will resolve the claim in accordance with any applicable laws, including as set out in clause 5.6, 5.7 and 11.
- 6.6 To the fullest extent permitted by law, our sole liability in respect of any defects, damages, incorrect shipments, or shortages, is to repair, replace or provide you with a refund or credit (at our option) for any such defects, damages, incorrect shipments or shortages reported to us.
- 6.7 To the extent permitted by law, a refund for returned goods/Product under this clause 5 will not be recognised to the extent:
- (a) your acts and/or omissions (or those of a third party engaged by you) have caused or contributed to any defect or damage in the Product(s); or
 - (b) an incorrect shipment or shortage in any Product is a result of your error and/or negligence.

7. Other Returns

- 7.1 Without limiting any rights to return Products that you may have under any applicable laws or under clause 5, if you wish to return a Product on any other basis:
- (a) you must contact us at product-orders@brennanit.com.au (unless otherwise notified) within 7 days of receiving or collecting the Product to initiate the return and provide us with your order number, the condition of the Product, and reasoning for the return, including any supporting information such as evidentiary photographs;
 - (b) we may decline to accept the return and will decline if our supplier of the Product declines our request to return it to them;
 - (c) the Product must be in its original condition including in its unopened original packaging; and
 - (d) returns and refunds are not permitted on Products that have been customised for you.
- 7.2 If we approve any return we will communicate this to you, and notify you of the address that the Products approved for return must be returned to. You will be responsible for returning these Products in their original condition, including the original packaging.
- 7.3 On receipt of the returned Products and once we have received any refund for the return from any of relevant supplier to us, we will refund you the amount you paid for the returned Products less any fees and/or charges imposed on us or any withholdings by our supplier and a handling charge / restocking fee.

8. Payment

- 8.1 Unless we have accepted a Credit Application, we will invoice and you must pay for the Products (and any agreed freight charges, and storage fees) in full before delivery or storage of the Products. If we have accepted your Credit Application we will invoice you in accordance with the credit terms applying to it.
- 8.2 We may deliver Products by instalments and reserve the right to invoice you separately for each instalment.
- 8.3 Unless otherwise agreed in your Credit Application terms, you must pay each invoice in full within 14 days of the invoice date.
- 8.4 If your payment is overdue, in addition to our other rights we may charge interest on the overdue amount calculated daily at 2% above the overdraft reference rate quoted by our principal banker on the first day of each applicable month, compounded monthly. You indemnify us against all costs and expenses (including legal expenses on a solicitor / client basis) incurred by us in attempting to recover the overdue amount.
- 8.5 If your payment is overdue by 14 days, in addition to our other rights we may suspend any Product or service after providing 7 days written notice to you. Brennan will not be liable for any disruption to your operations arising from this suspension.
- 8.6 All amounts stated in or in connection with a Quote or in respect of storage or freight are exclusive of goods and services tax ('GST') and any other taxes or government charges incurred directly by the supply of the Products. If GST is payable in relation to any Product or service, the amount payable for that Product or service is the amount for specified in the Quote plus GST and invoices will be issued accordingly.

8.7

9. Acceptable use and end-user agreements

- 9.1 You agree that you will not, and your personnel will not:
- (a) use the Products for any purpose other than their intended purpose;
 - (b) access, use, alter or interfere with any areas of the Products that you are not authorised to access;
 - (c) attempt to exploit any security vulnerability of the Products or breach or circumvent any security or authentication mechanism;
 - (d) copy, cache, disassemble, decompile, reverse-engineer or modify any component of the Products, or use any automated means to collect information from the Products; nor
 - (e) introduce or transmit any malware, virus, trap door, Trojan Horse, worm, self-destruction, disabling, lock out, metering device or any other malicious or harmful software or code as such terms are understood in the computer industry, onto or through the Products.
- 9.2 For any Product that is a software subscription, you acknowledge and agree that your access to, and any support for, that Product may cease and/or be restricted at the expiry of the subscription period. Upon the expiration of the initial term of subscription period, software subscription may automatically renew for successive periods, unless either party provides written notice of non-renewal in accordance with the Quote .
- 9.3 In supplying a Product, we may provide you with materials (including hardware and/or software) licensed or otherwise provided by a third-party, such as a manufacturer or software developer ('Vendor').
- 9.4 To the extent that any Product includes materials provided by any Vendor, your use of, and access to, that Product may be subject to separate end user licence terms issued by the Vendor from time to time ('End User Terms'). These End User Terms form a separate agreement between you and the relevant Vendor. Any such End User Terms may be made available to you by us or by the Vendor (including on the Vendor's website).
- 9.5 To the extent that any Product includes materials provided by any Vendor, you acknowledge and agree that:
- (a) acceptance and use of a Product constitutes acceptance of any End User Terms in respect of that Product; and
 - (b) to the extent of any inconsistency between this agreement and any such End User Terms, the End User Terms take precedence in respect of those materials.
- 9.6 You indemnify us against any loss, damage, claim, liability or demand we incur due to your breach of any End User Terms in respect of any Product.
- 9.7 We may suspend your use of, or access to Vendor materials on request from the relevant Vendor.
- 9.8 We or the vendor may conduct a true-up review of licensed software usage at intervals we determine to ensure compliance with the terms of this agreement for the number of licenses being used. If our review, or the information provided to us by the vendor, shows that the number of licenses consumed exceeds the number of licenses purchased, we:
- (a) will notify you and invoice for the additional licenses at the then current rates as specified in the Quote; and
 - (b) we reserve the right suspend access by the excess users if payment of the invoice is not received within 14 days of issue.

10. Early termination or cancellation

- 10.1 To the extent any Product is a subscription or is otherwise subject to payments over time our suppliers may not allow us to cancel or terminate early, or cancel, if you seek to do so; and any cancellation or early termination before the end of a committed term is at our sole discretion.
- 10.2 For month to month subscriptions and other arrangements subject to regular, short term payments (including holding over arrangements) you must give us minimum notice of cancellation equal to that specified in the Quote or, if no period is specified, a minimum of 30 days' notice or, in either case, payment in lieu of that notice.

11. PPS Law

- 11.1 This clause 10 applies to the extent that this agreement provides for or contains a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) ('PPS Law') or part of it. You acknowledge that the security interest granted to us is a 'purchase money security interest' or 'PMSI' under the PPS Law.
- 11.2 We may register our security interest. You must do anything (such as obtaining consents, signing or producing documents, and/or providing any further information) we require

- (a) to render our security interest enforceable, perfected and otherwise effective;
- (b) to gain the priority we require for our security interest; and
- (c) to exercise rights in connection with the security interest.

- 11.3 You must not create, purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Products other than with our express written consent.
- 11.4 You must not lease, hire, bail or give possession of the Products to anyone else without our written consent. Any such dealing must be in writing in a form acceptable to us and must be expressed to be subject to our rights under this agreement.
- 11.5 We may contract out of the following sections of PPS Law and agree that they do not apply to this agreement: sections 95, 96, 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Law. You also waive your rights to receive notices or statements under sections 118, 121(4) and 157 of the PPS Law.
- 11.6 In order to protect the confidentiality of our transaction, each party agrees not to disclose information of the kind that can be requested under section 275(1) of the PPS Law, and you will not authorize, and will ensure that no other party authorizes, the disclosure of such information. You must do everything necessary on your part to ensure that section 275(6)(a) of the PPS Law continues to apply. This clause 10.6 is solely for the purpose of allowing us the benefit of section 275(6)(a) and we are not liable for damages or other compensation nor subject to injunction if we breach this clause 10.6.
- 11.7 If you default under this agreement we have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any Products, under the relevant provisions of PPS Law that we have not contracted out of and also, as additional and independent rights, under this agreement with you and you agree that we may do so in any manner we consider appropriate including (in respect of dealing and disposal) by private or public sale, lease or licence.

12. Limitations on liability

- 12.1 To the maximum extent permitted by law:
- (a) we make no representations or warranties in relation to, and do not accept liability for, any Vendor materials referenced in clause 8.3;
 - (b) except as expressly set out in this agreement (or any separate agreement we may have with you based on Brennan Master Service Terms), we exclude all representations, warranties, terms and conditions whether express or implied (and including without limitation, those implied by statute, custom, law or otherwise), that the Products are fit for your intended purposes;
 - (c) each party's aggregate liability in connection with this agreement whether in contract, tort (including negligence), statute or otherwise, (but excluding the matters set out in clause 11.2) will not exceed an amount equal to the amounts payable by you to us under this agreement;
 - (d) except as set out in clause 11.2, neither party is liable, whether such liability is based on breach of contract, tort (including negligence), statute or otherwise, for any consequential loss (including any loss of goodwill, loss of profits, loss of revenue or anticipated business or anticipated savings, data loss, or loss arising from operational disruptions or a security breach); and.
 - (e) our sole liability in respect of software defects or damages or errors for which we are liable, is to repair, replace or provide you with a refund or credit (at our option) for any such defects or errors reported to us.
- 12.2 The limitations on liability under clause 11.1(c) and (d) do not apply:
- (a) to the Customer's obligations to pay an invoice for a Product under this agreement; nor
 - (b) to the extent that liability arises from fraud or wilful misconduct of a party, personal injury or death.
- 12.3 Neither party is liable to the other party for any amount to the extent that such amount:
- (a) would have been avoided or reduced by the other party taking reasonable steps to mitigate the loss; and/or
 - (b) would (if the amount had been claimed as damages) have been reduced by reason of the other party's contributory negligence.
- 12.4 It is your responsibility to satisfy yourself that the Products are of a description, quality and character suitable for the purpose for which they are purchased. Subject to any applicable law, we are not to be liable in any way whatsoever for any loss or damage (including direct, indirect, special, general or consequential) arising from the consequences of your failure to satisfy yourself.

13. Prevailing Terms - Contract Chain

- 13.1 You acknowledge that Brennan is entering into this agreement in reliance on this clause 12.
- 13.2 Each of you, the Customer and Brennan acknowledges and agrees that:
- (a) Brennan procures the supply of the Products under this agreement through one or more chains of supply from the manufacturer of each Product to you (via Brennan and potentially also via one or more other intermediaries) with each contract in each such chain collectively referred to as a Chain Contract; and
 - (b) it is our mutual intent that, except to effect procurement and delivery:
 - (i) Brennan's obligations are limited to passing on to you what is available, recoverable and actually recovered by Brennan from the manufacturer or any intermediary from whom Brennan procured the Products; and
 - (ii) your recourse to Brennan is strictly limited as set out above and Brennan has no other liability to you in respect of the Products.
- 13.3 You must pay us on demand an amount equal to any Loss we suffer or incur under or in respect of any Chain Contract arising from:
- (a) termination of this agreement before the expiration of the committed term, where that termination is:
 - (i) by you for any reason other than Brennan's material default;
 - (ii) due to your breach of any contractual obligation or failure to remedy a breach; or
 - (a) termination of any Chain Contract following any termination of this agreement as contemplated by clause 12.3(a); or

- (b) your breach of any term of or incorporated into this agreement and/ or the end user terms in respect of any Product that does not result in termination.

13.4 In this clause 12, “**Loss**” means any loss, fees, costs, expenses or damages arising directly or indirectly from the relevant event, including from any claim by a third party against us or our personnel and specifically including any liability that we may be exposed to under any Chain Contract following the relevant event, for any early termination fees or termination fees or any claim in relation to liquidated damages.

14. General

- 14.1 Nothing in this agreement will be taken as giving rise to a relationship of employment, agency, partnership or joint venture. Except as otherwise contemplated in this agreement, the parties acknowledge and agree that neither party has any authority to bind the other party or to enter into an agreement in the name of the other party.
- 14.2 We may sub-contract the performance of any part of our obligations to any third party.
- 14.3 If any provision of this agreement is held by a court to be illegal, invalid or unenforceable, it will be severed from this agreement and the remaining terms will be unaffected.
- 14.4 This agreement is governed by and construed in accordance with the laws of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales.