

1 DEFINITIONS

“Acts” means the Trade Practices Act 1974 (Cth) and any other State consumer protection legislation in force from time to time;

“Confidential Information” means the terms of this Agreement and of any other agreement between BizTech IT and the Customer, any software (including source code), all documentation, confidential information relating to the business or financial affairs of either party or the Customer's customers and any information, document or item which is designated by either party as confidential or relates to BizTech IT or the Customer and is not in the public domain;

“Customer Materials” means all documents, software, video, digital images or other works the subject of Intellectual Property Rights, provided by the Customer to BizTech IT for adaptation and inclusion in the Deliverables.

“Deliverables” means the goods services and software provided by BizTech IT whether or not incorporating Customer Material and provided to the Customer in accordance with the Services.

“GST Act” means A New Tax System (Goods and Services Tax) Act 1999 and related legislation and/or regulations;

“Intellectual Property Rights” means copyright, trade mark, design, patent, trade secret, Confidential Information, semiconductor or circuit layout rights;

“Order” means a quote accepted by the Customer;

“Quote” means a proposal for the provision of Deliverables or services provided by BizTech IT to the Customer;

“Services” means the services specified in an Order or otherwise provided by agreement between the parties.

“Service Fee” means the service fee specified in an Order and where no such fee is specified in an Order means a fee for the Services provided on a time and materials basis and calculated at the Standard Rates.

“Standard Rates” means rates charged by BizTech IT for the provisions of Services pursuant to this Agreement, as varied from time to time by notice to Customer.

2 BIZTECH IT'S OBLIGATIONS

BizTech IT agrees to supply the Deliverables or Services to the Customer from time to time on the terms and conditions of this Agreement.

3 CUSTOMER'S OBLIGATIONS

3.1 The Customer acknowledges that BizTech IT in providing Deliverables and Services is acting at the Customer's direction. Where specifications or a Quote are agreed by the parties the Customer must determine whether they will meet the Customer's business requirements, BizTech IT cannot advise in this regard.

3.2 Each Order constitutes a separate contract governed by the terms and conditions of this Agreement.

4 SERVICE FEE

4.1 Payment

(a) The Customer will promptly pay the Service Fee for Services to BizTech IT upon the dates set out in the Order and if not so specified then within 14 days after the date of any invoice rendered by BizTech IT.

(b) Interest will be charged on overdue accounts at the rate of 14% per annum.

4.2 Price

(a) Prices quoted are provided exclusive of GST as at the date of issue of the Quote by BizTech IT and are based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, cost of materials and goods supplied by third parties and other charges affecting the cost of production as at the date the Quote is made.

(b) Where there is any variance in the cost of materials or goods supplied by a third party or an aggregated increase of at least 10% of any one or more of the items contained in paragraph (a) BizTech IT reserve the right to make any alterations to the price of the Deliverables before acceptance of, or during the currency of, any contract formed under this Agreement and to pass these costs onto the Customer.

4.3 GST

If GST is imposed on any Services or Deliverables provided under or in accordance with this Agreement, the Customer must pay to BizTech IT an additional amount equal to the GST payable on or for the Services or Deliverables, subject to the Customer receiving a valid tax invoice in respect of the Services or Deliverables at or before the time of payment. Payment of the additional amount must be made at the same time as payment for the Services or Deliverables is required to be made in accordance with this Agreement.

4.4 Recovery

The Customer will pay all costs and expenses incurred by BizTech IT including all the costs of legal advisers, mercantile agents and others in respect of any process, action, or proceeding instituted or being considered against the Customer by BizTech IT, whether for debt, possession of any Deliverables or otherwise due to the Customer's failure to comply with this Agreement.

5 INTELLECTUAL PROPERTY

5.1 The Customer acknowledges and agrees that all Intellectual Property Rights arising as a result of the Services will vest solely and absolutely in BizTech IT.

5.2 The Customer non-exclusively licenses BizTech IT to use, copy, communicate, edit and adapt the Customer Materials for the purpose of the provision of the Services including without limitation adaptation and incorporation into Deliverables.

6 TITLE

6.1 Even if BizTech IT grants any credit facility or time to pay:

(a) Property and title in the Deliverables passes to the Customer only when the Deliverables have been paid for in full, until which time the Deliverables:

- (i) remain BizTech IT's property; and
- (ii) must be stored separately by the Customer to enable them to be readily:
 - (1) identified as the property of BizTech IT; and

(2) cross referenced to particular invoices.

(b) Risk in the Deliverables passes to the Customer on delivery.

(c) Until all liability to BizTech IT have been discharged, if the customer sells or otherwise disposes of the Deliverables before title to them has passed:

(i) that part of the proceeds of any sale or dealing as is equal to the amount payable by the Customer to BizTech IT for those Deliverables (BizTech IT Entitlement) must be held by the Customer in a separate identifiable account on trust for BizTech IT; and

(ii) the Customer, on demand by BizTech IT, must account to BizTech IT for the BizTech IT Entitlement.

7 RETURNS

The Customer acknowledges and agrees that:-

(a) BizTech IT may elect (subject to the Customer's mandatory rights under the Acts) to take back Deliverables in saleable condition, on terms agreed and a re-stocking fee of 15% of the value of that Deliverable (as stated in the Order) shall apply;

(b) any Deliverable which BizTech IT have elected to accept back, must be returned at the Customer's cost;

(c) BizTech IT are under no obligation to provide a refund for Deliverables returned; and

(d) any custom made, custom processed or custom acquired Deliverables will not be returnable at all.

8 CONFIDENTIALITY

Except as required by law, each party must keep confidential and not disclose without the prior written consent of the other party any and all Confidential Information to any person, except to its employees, contractors and agents necessary for the purposes of this Agreement and who have first undertaken to keep the Confidential Information confidential and not to use it except for the purposes of this Agreement.

9 LIABILITY

9.1 The liability of BizTech IT to the Customer for a breach of this Agreement or an

Order or for any statutory causes of action, common law or tort (including negligence) in any way arising from this Agreement or an Order will be limited to the following extent:

(a) BizTech IT will not be liable for any direct or indirect lost profit or revenue, exemplary damages, deletion or corruption of electronically or digitally stored information, or without limiting the foregoing, any indirect or consequential loss or damage howsoever described or claimed;

(b) otherwise in respect to all other claims not referred to above, BizTech IT's liability to the Customer for all other proven loss and damage is limited in aggregate of all claims to the amounts paid by the Customer to BizTech IT pursuant to the Order to which the Customer's claim relates;

9.2 The Customer will indemnify BizTech IT and keep BizTech IT indemnified against all and any demands, claims, actions and proceedings whatsoever and howsoever arising made by any third party in connection with or arising out of the Customer's use of the Deliverables or Services and all and any losses, costs, expenses and damages whatsoever and howsoever incurred by BizTech IT in connection with or arising out of a breach by the Customer of any provision of this Agreement.

9.3 Nothing in this Agreement excludes, restricts or modifies any condition, warranty, right or remedy which is conferred on the Customer by the Acts. Where BizTech IT breaches a condition or warranty which has been implied by the Acts, its liability for breach will be limited to (where permissible by the Acts):

(a) in the case of the supply of goods: the replacement of the goods or the supply of equivalent goods, or the repair of the goods, or the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; and

(b) in the case of the provision of services: the supplying of the services again, or the payment of the cost of having the services supplied again;

whichever BizTech IT sees fit to provide.

9.4 The rights and remedies which the Customer has under this Agreement are in addition to all the mandatory rights and remedies which it has under the Acts.

10 TERMINATION

10.1 Termination by BizTech IT

BizTech IT in its discretion may upon 30 days notice in writing terminate this Agreement and any Order to which this Agreement relates.

10.2 Consequences of Termination

(a) Upon termination or expiration of this Agreement for any reason, then without prejudice to any accrued rights or remedies, the Customer will remain liable to pay BizTech IT for Services rendered up to the date of termination.

(b) Upon the termination or expiry of this Agreement for any reason, the Customer must return to BizTech IT all the Confidential Information or, if it is not capable of return, destroy it.

10.3 Survival of Obligations

Clauses 8 and 9 will survive expiration or termination of this Agreement and will continue to the benefit of and be enforceable by BizTech IT. Nothing in these terms and condition shall limit a party's rights to obtain urgent, interlocutory or equitable relief including without limitation injunctive relief.

11 FORCE MAJEUR

BizTech IT will not be or deemed to be in default or breach of this Agreement as a result of the effects of Force Majeur. Force Majeur will include any cause beyond BizTech IT's reasonable control.

12 Privacy act

12.1 For the purposes of processing this Agreement, establishing the Customer's account and the ongoing credit management of the Customer's account, BizTech IT may need to disclose to financial institutions, credit reporting agencies or any personal credit or consumer credit information providers (**Sources**), personal information relating to the Customer which is in BizTech IT's possession, including but limited to, information referred to

in clause 12.2 and the Customer hereby consents to such disclosure or use.

12.2 Pursuant to clause 12.1 the following represents a list of Customer personal information which may be disclosed to a Source:

(a) Customer name and address, ACN, business names, partnership details;

(b) details of the Customer's application for BizTech IT Services;

(c) credit limits on the Customer's accounts;

(d) the amount of any payments which are overdue for at least 45 days;

(e) court judgments or bankruptcy orders made against the Customer;

(f) that, in the reasonable opinion of BizTech IT, the Customer has committed a serious credit infringement;

(g) that BizTech IT has ceased to provide Services to the Customer in accordance with this agreement as a result of a default by the Customer; and

(h) any additional and directly relevant information which BizTech IT reasonably believes should be disclosed.

12.3 The Customer agrees that BizTech IT may obtain from any Source, any information concerning the Customer that concerns the Customer's commercial activities or commercial creditworthiness for the purposes of assessing the Customer's application for any Services and the ongoing credit management (including collection of overdue amounts) of the Customer's account. BizTech IT may refuse to supply Services to the Customer on the basis of BizTech IT's credit assessment of the Customer, after consultation with the Customer to confirm the accuracy of the assessment.

12.4 The Customer agrees that BizTech IT may disclose a credit report to any Source for the purposes of assessment of the Customer's creditworthiness or the collection of payments that are overdue.

12.5 The Customer agrees to provide, within 10 business days of BizTech IT's request to provide to BizTech IT or any independent person nominated by BizTech IT, with any information (including the Customer's financial accounts) or any consent it is capable of giving, which is necessary for that person to comply with any request from BizTech IT to confirm the creditworthiness of the Customer.

13 GENERAL

13.1 The failure of either party to insist upon a strict performance of any of the terms of this Agreement will not be deemed a waiver of any subsequent breach or default in the terms of this Agreement.

13.2 Each party will promptly execute all documents and do all things that the other party reasonably requires of it to give effect to the provisions of this Agreement and the transactions contemplated by it.

13.3 Each provision of this Agreement is severable from the others and no severance of a provision will affect any other provision.

13.4 This Agreement is governed by and will be construed in accordance with the laws of Victoria. The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Victoria.

13.5 The Customer will not assign any of its rights, benefits or obligations under this Agreement.

13.6 This document embodies the entire understanding and agreement between the parties as to the subject matter of this Agreement. This Agreement will prevail over any Order to the extent of any inconsistency.