

1800 IT HELP – General Terms and Conditions

Purchase of goods and services from 1800 IT HELP Pty Limited are subject to the following terms and conditions. By purchasing and/or receiving goods and/or services from 1800 IT HELP, you accept the following terms and conditions, without limitation or qualification.

1.0 Definitions

In these terms and conditions (where not inconsistent with the context):

"Conditions" means these Terms and Conditions;

"Customer" means a person, firm or corporation, jointly and severally if there is more than one, acquiring goods or services from 1800 IT HELP;

"goods" means goods supplied by 1800 IT HELP to the Customer;

"services" means services supplied by 1800 IT HELP to the Customer; and

"1800 IT HELP" means 1800 IT HELP Pty Limited (ABN 88 124 732 476).

"Party" and "Parties" means severally and not jointly 1800 IT HELP and/or the Customer as the context requires,

2.0 Basis of Contract

2.1 Unless otherwise agreed by 1800 IT HELP in writing, these Conditions apply exclusively to every contract for the sale of goods or services by 1800 IT HELP to the Customer and cannot be varied, rescinded, supplemented or replaced by any other conditions without the prior written consent of 1800 IT HELP.

2.2 Any written quotation provided by 1800 IT HELP to the Customer concerning the proposed supply of goods or services is valid for 30 days and is an invitation only to the Customer to place an order based upon that quotation. The Conditions may include additional terms in 1800 IT HELP's quotation which are not inconsistent with the Conditions.

3.0 Charges and Payment

3.1 Payment for goods and services must be made by cash, cheque, credit card or electronic bank transfer on or prior to the completion of the provision of goods or services unless the Customer has a credit account with 1800 IT HELP.

3.2 All 1800 IT HELP visits, telephone and remote access support are chargeable and are charged in fifteen minute units after the first hour. Any part thereof is chargeable at the same rate as a full fifteen minutes.

3.3 All goods supplied by 1800 IT HELP are charged separately from the services.

3.4 Where there is any change in the costs incurred by 1800 IT HELP in relation to the goods or services, 1800 IT HELP may vary its price for goods or services on order to take account of any such change, without giving notice to the Customer.

3.5 Call-out fees may be applied at rates dependent on the Customer's location.

4.0 Payment Default

4.1 If the Customer defaults in payment by the due date of any amount payable to 1800 IT HELP in part or whole, or if any cheque drawn by the Customer is dishonoured, then all money which would become payable by the Customer to 1800 IT HELP at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and 1800 IT HELP may, without prejudice to any other remedy available to it:-

1800 IT HELP Pty Ltd
ABN: 88 124 732 476

795 Botany Road
Rosebery NSW 2018

Fax. 02 9669 9799

Tel. **1800 IT HELP** (1800 48 4357)

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- (a) charge the Customer interest on any sum due at the prevailing statutory rate;
- (b) charge the Customer for all expenses and costs (including legal costs on a solicitor/own client basis and dishonoured cheque fees) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due;
- (c) cease or suspend for such period as 1800 IT HELP thinks fit, supply of any further goods or services to the Customer;
- (d) by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by 1800 IT HELP; without effect on the accrued rights of 1800 IT HELP under any contract.

4.2 Clauses 4.1(c) and 4.1(d) may also be relied upon, at the option of 1800 IT HELP:

- (a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

5.0 Passing of Property

5.1 Until full payment in cleared funds is received by 1800 IT HELP for all goods supplied by it to the Customer, as well as all other amounts owing to 1800 IT HELP by the Customer:-

- (a) title and property in all goods remain vested in 1800 IT HELP and do not pass to the Customer;
- (b) the Customer must hold the goods as fiduciary bailee and agent for 1800 IT HELP;
- (c) the Customer must keep the goods separate from its goods and maintain the labelling and packaging of the goods; the Customer is required to hold the proceeds of any sale of the goods on trust for 1800 IT HELP in a separate account however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee;
- (d) 1800 IT HELP may without notice, enter any premises where it suspects the goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of 1800 IT HELP, and for this purpose the Customer irrevocably licences 1800 IT HELP to enter such premises and also indemnifies 1800 IT HELP from and against all costs, claims, demands or actions by any party arising from such action.

6.0 Risk and Insurance

The risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods will pass to the Customer immediately upon delivery of the goods to the premises nominated by the Customer.

7.0 Performance of contract

Any period or date for delivery of goods or provision of services stated by 1800 IT HELP is intended as an estimate only and is not a contractual commitment. 1800 IT HELP will use its best reasonable endeavours to meet any estimated dates for delivery of the goods or completion of the services.

8.0 1800 IT HELP Warranties

8.1 If 1800 IT HELP is not able to diagnose the cause of any hardware or software problem, then no charge will apply to the Customer. 1800 IT HELP does not warrant that it will be able to fix all problems, which it diagnoses.

8.2 All goods and services supplied shall be free from defects in materials and workmanship for a period of 10 days from the date of delivery.

8.3 Nothing in this clause 8 will be construed as a warranty or condition that the operation of the software will be uninterrupted or error free. Customer understands and accepts that software (and information technology and communications products generally), including the Customer's software, may have errors and may encounter unexpected problems, and accordingly Customer may experience downtime and errors in the use of the software. Without limiting the obligations set out in clause 9, Customer will put in place reasonable internal procedures and processes to enable it to minimise any inconvenience and any adverse financial impact of any such downtime or error.

9.0 Customer's Responsibilities

9.1 It is a term of this Contract that the Customer shall regularly back up all software and data that is stored on its computer's hard disk drive(s) and/or on any other storage devices it may have prior to the arrival of the 1800 IT HELP technician and following departure of the 1800 IT HELP technician from the Customer's premises. 1800 IT HELP and/or its third party service provider shall not be responsible at any time for any loss, alteration or corruption of any such software, data or files.

10.0 Liability

10.1 All conditions, warranties, representations, indemnities and guarantees with respect to the software and/or the services, or other goods or services that may be provided by 1800 IT HELP under these Conditions, that may otherwise be implied by statute, law, equity, trade custom, prior dealings between the Parties or otherwise (including, but not limited to, any implied warranty of merchantability, fitness for particular purpose, quiet enjoyment or non-infringement) are hereby expressly excluded to the extent permitted at law.

10.2 Except to the extent specifically provided in these Conditions, 1800 IT HELP's sole liability to Customer for any and all breaches of any term or terms of these Conditions, whether express or implied, shall be limited to:

10.2.1 subject to sub-clauses 10.2.2 and 10.2.3, the aggregate amount of the fees and charges paid by the Customer under these Conditions as at the date of the breach;

10.2.2 in relation to software if supplied to Customer as a consumer (as defined in the Trade Practices Act 1974):

- (a) the replacement of the software or the supply of equivalent software; or
 - (b) payment of the cost of replacing the software or acquiring equivalent software;
- or
- (c) the repair of the software or payment of the cost of having the software repaired;
- and

10.2.3 in relation to services if supplied to Customer as a consumer (as defined in the Trade Practices Act 1974):

- (a) the supplying of the services again; or
- (b) the payment of the cost of having the services supplied again, as in each case 1800 IT HELP may elect.

10.3 In no event will 1800 IT HELP be liable to Customer or to any third party under or in connection with these Conditions or in respect of the use of (or failure or performance of) the software or the supply of the services for:

10.3.1 malfunctions or failures caused directly or indirectly by:

- (a) any third party;
- (b) actions of 1800 IT HELP that were expressly or impliedly authorised by Customer, or by Customer's employees or agents;
- (c) accident, misuse or abuse by anyone other than the 1800 IT HELP;
- (d) alteration or modification of the software by anyone other than the 1800 IT HELP;
- (e) products (including any hardware or software) not licensed or supplied by 1800 IT HELP that are attached to or used with the software;
- (f) Customer's failure to provide a proper operating and working environment for the software;
- (g) damage during any movement, relocation or re-installation of the software;
- (h) power surge or failure,
- (i) acts of God or any other action or omission outside the reasonable control of 1800 IT HELP;
- (j) any other condition not arising under normal operating conditions; or
- (k) normal wear and tear; or

10.3.2 any loss or damage of any nature arising or caused directly or indirectly by any breach of the Customer's obligations or responsibilities set out in these Conditions.

10.4 Any replacement of parts under warranty will be carried out at the premises nominated by 1800 IT HELP. The cost and risk of transport of any defective part to the nominated premises is the responsibility of the Customer.

10.5 In no event will 1800 IT HELP be liable to Customer or to any third party under or in connection with these conditions or in respect of the use of (or failure or performance of) the software or the supply of the services for:

10.5.1 any loss of profit, business interruption, loss of or damage to goodwill, and/or any expectation benefit;

10.5.2 Customer's liability to any third party; or

10.5.3 incidental, consequential, special, exemplary or punitive damages of any nature, howsoever arising or caused, including without limitation the breach of these Conditions or any expiration or termination of these Conditions, whether such liability is asserted on the basis of statute, contract, tort (including negligence or strict liability), equity or otherwise, even if 1800 IT HELP has been advised of the possibility of such loss or damage.

10.6 1800 IT HELP will not be liable for any loss or damage suffered by the Customer where 1800 IT HELP has failed to meet any delivery date or cancels or suspends the supply of goods or services.

10.7 Nothing contained in these Conditions excludes, restricts or modifies any:

10.7.1 implied condition, warranty or other implied obligation in relation to these Conditions or the software and services where pursuant to applicable law to do so is unlawful or void; or

10.7.2 liability for fraud or deceit; or

10.7.3 liability for death or personal injury caused by the negligence of either Party.

11.0 Copyright in Software

11.1 1800 IT HELP will not be responsible to the Customer or any third party for any breach of any software licence in respect of software provided to 1800 IT HELP by the Customer to be installed on a Customer's computer.

11.2 The Customer hereby warrants that it has a valid licence in respect of such software and shall indemnify 1800 IT HELP against any loss, damage, costs, harm or other expense whatsoever arising either directly or indirectly as a result of 1800 IT HELP installing software at the request of the Customer.

12.0 Cancellation

12.1 If, through circumstances beyond the control of 1800 IT HELP, 1800 IT HELP is unable to effect delivery or provision of goods or services, then 1800 IT HELP may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.

12.2 If the Customer gives less than 4 business hours notice to 1800 IT HELP to cancel any request for on-site service, then 1800 IT HELP may at its sole discretion charge a cancellation fee of \$98 for the loss and damage caused, and the Customer agrees to pay any such cancellation fee within 28 days.

12.3 If the Customer gives less than 24 hours notice to 1800 IT HELP to cancel any full-day booking, then 1800 IT HELP may charge a cancellation fee equal to the quote for that full-day booking for the loss and damage caused, and the Customer agrees to pay any such cancellation fee within 28 days.

14.0 No representation or reliance

14.1 The Customer acknowledges that neither 1800 IT HELP nor any person acting on behalf of 1800 IT HELP has made any representation or other inducement to it to enter into these Conditions, except for representations or inducements expressly set out in these Conditions.

14.2 The Customer acknowledges and confirms that it does not enter into these Conditions in reliance on any representation or other inducement by or on behalf of 1800 IT HELP, except for representations or inducements expressly set out in these Conditions.

15.0 Entire Agreement

To the extent permitted by law, in relation to its subject matter, these Conditions embody and constitute the entire legal and contractual relationship of the Parties, including the entire terms agreed by the Parties; and supersede, replace and terminate by mutual consent any prior written or oral representations, negotiations, understandings, agreements or contracts between the Parties.

16.0 Governing law

16.1 This Agreement is governed by and must be construed according to the law applying in New South Wales. The Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of New South Wales.