

## Terms and Conditions for Supply of Goods and Services

### 1. DEFINITIONS

#### 1.1 Defined Meanings

In this Agreement, unless the context otherwise requires:

- (a) **“Agreement”** means the quotation and/or the proposal (as the case may be) relevant to the goods and/or services to be provided by teQwise, the associated sales order issued by teQwise, the associated EULA (if any) and these terms and conditions;
- (b) **“Business Day”** means a day that is not a Saturday, Sunday or public holiday in Brisbane;
- (c) **“Business Hours”** means 8.30am to 5.00pm on a Business Day;
- (d) **“Client”** means the person set out in Item 2 of the Reference Schedule or the recipient named in the quotation or proposal (as the case may be);
- (e) **“Confidential Information”** means information that is not publicly available;
- (f) **“Delivery”** is defined in clause 4.1(c);
- (g) **“EULA”** means the licence agreement governing the use of the Software directly between the Client and the owner of that Software;
- (h) **“goods”** means either Hardware or Software (or both) procured or supplied pursuant to the terms and conditions of this Agreement;
- (i) **“Hardware”** means any physical product manufactured by a third party, including any associated third-party maintenance services contracts as specified in the quotation;
- (j) **“Intellectual Property”** means copyright and related rights, industrial property (such as inventions, discoveries, patents, industrial designs, trademarks, service marks, commercial names and designations, semi-conductor and circuit layouts) and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
- (k) **“teQwise”** and **“teQcloud”** means the person set out in Item 1 of the Reference Schedule or the supplier of goods and/or services stated in the quotation or proposal, being teQwise Pty Ltd A.B.N. 86 618 367 187 trading as teQwise (as the case may be); and
- (l) **“Software”** means any licensed, packaged software that is manufactured, licensed or owned by a third party to this Agreement and procured on behalf of teQwise for the Client, the use of which is governed by the EULA and, where applicable, includes its associated third-party support and maintenance contract.

#### 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) reference to a person includes any other entity recognised by law and vice versa;
- (b) words importing the singular number include the plural number and vice versa;
- (c) an agreement, representation or warranty by two or more persons binds them jointly and severally;
- (d) an agreement, representation, or warranty in favour of two or more persons is for the benefit of them jointly and

severally;

- (e) reference to a party includes that party's executors, administrators or permitted assigns, or being a company, its successors or permitted assigns;
- (f) reference to an item is a reference to the corresponding item in the Reference Schedule;
- (g) reference to the Reference Schedule means the Reference Schedule attached to, and which forms part of these terms and conditions;
- (h) reference to a statute, ordinance, code or other law includes regulation and other instruments under it and consolidations, amendments, re-enactments, or replacements of it; and
- (i) clause headings are for reference purposes only.

### 2. APPLICATION OF TERMS AND CONDITIONS

#### 2.1 Application

The Client agrees that the terms and conditions of this Agreement govern and apply to the sale and/or provision of all goods and services provided by teQwise to the Client (including any quotations and/or proposals submitted and all sales orders processed, where goods and/or services are to be supplied, provided and/or delivered by teQwise).

#### 2.2 Offer and Acceptance

Any order placed by the Client pursuant to a quotation and/or proposal is not binding on teQwise until it is accepted by teQwise, which occurs on the earlier of:

- (a) teQwise informing the Client in writing that the order has been accepted; or
- (b) teQwise giving the Client a sales order relating to the goods and/or services to be provided to the Client.

#### 2.3 Quotation or Proposal

- (a) A quotation or proposal may, at any time prior to acceptance by teQwise under clause 2.2, be varied or withdrawn by teQwise. Clerical, typing or other errors made, in or in respect of, any proposal or quotation must be subject to correction by teQwise and the correct proposal or quotation will apply.
- (b) Subject to clause 2.3(a), a quotation or proposal submitted by teQwise for goods and/or services to be provided to the Client, will remain valid for the following period from the date of such quotation and/or proposal:
  - (i) 5 Business Days for a quotation; and
  - (ii) 10 Business Days for a proposal.

#### 2.4 Orders

The Client may place an order for goods and/or services in accordance with the quotation and/or proposal submitted by teQwise within the timeframe provided in clause 2.3(b) by:

- (a) providing teQwise with a purchase order or written confirmation of its agreement with the quotation and/or proposal; or
- (b) signing and returning the quotation or proposal to teQwise.

#### 2.5 Availability of Stock

Despite anything else, any quotation (for the supply of goods) that is accepted by teQwise will remain at all relevant

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Brisbane QLD, 4000 Australia

Telephone +61 7 3218 3300  
Facsimile +61 7 3218 3399  
Email info@teqwise.com  
Website teqwise.com

times subject to availability of stock. teQwise shall keep the Client informed and updated as to stock availability from time to time.

### 3. PAYMENT

#### 3.1 Time of Invoice

The Client will be invoiced:

- (a) for the supply of goods – at the time of Delivery of goods; and
- (b) for the supply of services – in accordance with the billing periods specified in the proposal.

#### 3.2 Invoice Period

Unless otherwise agreed in writing, all invoices must be paid within 14 days of the date of invoice.

#### 3.3 Overdue Interest

- (a) Without affecting teQwise' other rights, if any money payable by the Client is not paid when due, the Client must pay teQwise interest on the amount from the due date for payment until the date it is fully paid. Interest is calculated on daily balances at a rate of 16% per annum.
- (b) teQwise may recover that interest from the Client as liquidated damages.
- (c) Payments received by teQwise will be credited first against any interest accrued.

#### 3.4 Set-off Prohibited

The Client must not at any time set-off or deduct from any amount payable to teQwise for the supply of goods and/or services, any amounts claimed by the Client from teQwise.

#### 3.5 Dishonoured Cheques

teQwise may charge the Client a reasonable fee to recover the costs associated with any dishonoured cheques.

#### 3.6 Disputed Invoices

- (a) If the Client disputes a tax invoice, it must notify teQwise in writing within five (5) Business Days of receiving the tax invoice. The Client and teQwise must negotiate in good faith to settle the dispute promptly.
- (b) Nothing in clause 3.6(a) relieves the Client from paying teQwise the undisputed portion of a tax invoice issued under clauses 3.1 and 3.2.

### 4. DELIVERY, RISK AND TITLE OF GOODS

#### 4.1 Delivery

- (a) teQwise will arrange for the goods to be delivered to the Client as soon as practicable, in accordance with the quotation or sales order.
- (b) Unless otherwise agreed, where the Client has nominated in writing an address to teQwise ("**Nominated Address**"), teQwise will deliver the goods to that Nominated Address.
- (c) Delivery is deemed to take place at the time the goods leave teQwise premises ("**Delivery**").
- (d) The Client acknowledges that any date given by teQwise for delivery of an order is an estimate only, and teQwise is not liable in any way for any delay or late delivery of goods (including any consequential losses).

#### 4.2 Risk

- (a) Risk in the goods pass to the Client upon Delivery. teQwise is not liable in any way for any loss or damage to the goods after Delivery (including any consequential losses).

- (b) The Client acknowledges that it is the Client's responsibility to insure the goods on and from the time of Delivery, for their full insurable value with a reputable insurer licensed or authorised to conduct the business of insurance in the place where the Client carries on business.
- (c) If the Client's premises are not attended during normal business hours, teQwise may impose a charge for attempted delivery.

#### 4.3 Title

Despite clause 4.2(a), until the Client pays teQwise in full for the goods:

- (a) title to the goods remain with teQwise and does not pass to the Client;
- (b) the Client is a bailee of the goods (once it is in possession of the goods);
- (c) the Client must not purport to sell the goods or allow any person to have or acquire an interest in the goods (including any type of security interest); and
- (d) the Client must store the goods which have not been paid for separately from any other goods.

#### 4.4 Client's Default

Despite any other provision, teQwise reserves the right to refuse the supply of goods and/or services to the Client if the Client is in default of any of its obligations under this Agreement.

### 5. CLAIM, CREDIT AND REFUND

#### 5.1 Claim

- (a) The Client has a period of 5 Business Days after Delivery in which to inspect the goods, which the Client acknowledges is a reasonable time.
- (b) The Client must notify teQwise in writing within 5 Business Days after Delivery of any:
  - (i) incorrect stock or quantity;
  - (ii) alleged defect in the goods;
  - (iii) application for a credit or refund of goods;
- (c) teQwise' only liability for any loss or damage under clause 5.1(b) will be, in its sole discretion, to replace or repair the goods lost or damaged or to pay for such goods to be replaced or repaired in accordance with clause 5.3.
- (d) If the Client does not notify teQwise within the time specified in clause 5.1 (time being of the essence), the Client warrants that it accepts that the goods:
  - (i) are of merchantable quality; and
  - (ii) are fit for the purposes the Client intends to use them for.
- (e) The repair or replacement of any goods is subject to the Australian Consumer Law, the terms of any manufacturer's warranty and EULA.
- (f) The Client accepts
  - (i) the manufacturer's warranty in relation to any Hardware; and
  - (ii) the Software owner's warranty in relation to any Software,
 supplied pursuant to this Agreement

#### 5.2 Cancelled Orders and Variations

The Client acknowledges that:

- (a) it will be charged, and it will be liable for, all costs for processing any cancelled orders which have been delivered, and teQwise may accept return of the goods

- at its sole discretion; and
- (b) teQwise is not liable for normal variations in tolerance, dimensions, weight or quality of the goods.

### 5.3 Credit or Refund Policy

- (a) Subject to clauses 5.1 and 5.2, teQwise may (in its sole discretion) refund and credit the Client if the goods:
- (i) are returned in the original packaging;
  - (ii) are not damaged; and
  - (iii) have not been used or exhibited (in the opinion of teQwise).
- (b) In the case where the claim relates to incorrect invoicing, the claim must be accompanied by the original teQwise invoice which evidences the incorrect pricing.
- (c) In all cases:
- (i) the final judgement as to, whether a claim for a refund should be allowed, rests solely with teQwise;
  - (ii) return freight must be prepaid by the Client;
  - (iii) goods specifically ordered for the Client will not be accepted for credit or refund;
  - (iv) teQwise reserves the right to charge a restocking fee on goods accepted for credit, to cover the cost of teQwise placing the returned goods back into warehouse; and
  - (v) goods accepted for return for credit must be in their original packaging and in resalable condition.

## 6. Services

### 6.1 Performance of Services

- (a) Unless otherwise agreed to in writing:
- (i) services to be provided by teQwise shall be performed during Business Hours;
  - (ii) teQwise shall use all reasonable efforts to perform the services in accordance with the requirements and specifications in the proposal and sales order; and
  - (iii) utilising such resources (including employees and subcontractors) as it considers appropriate in its sole discretion;
- (b) The Client's rights and obligations concerning its use of the Software are governed by the terms of the EULA.
- (c) teQwise retains all rights, title and interest in all intellectual property and other materials created before or during the period of performance of the services the subject matter of this Agreement. The Client is granted a non-exclusive licence to use such intellectual property/materials during this Agreement.
- (d) Without limiting clause 6.1(c), any idea, concept, know-how or technique associated with the services and that is developed or provided by a party, or jointly by both parties, in the performance of the services the subject matter of this Agreement may (subject to any patents or copyright) be freely used by either party.

## 7. Confidential Information and Intellectual Property

### 7.1 Confidential Information

- (a) The Client acknowledges and agrees that all of teQwise' quotations, proposals, sales order, these terms and conditions and any subsequent agreement or contract may contain Confidential Information based on teQwise' own design and development work, for the Client's secret and confidential use.

- (b) The Client warrants that:
- (i) it will not disclose any Confidential Information to any third party without teQwise' prior written consent; and
  - (ii) it will not make or provide, nor have made or provided by any third party, any goods and/or services described in the quotation, proposal or sales order and in any drawings, designs, design proposals, photographs, plans, recommendations, reports, specifications or any other data accompanying or relating to the quotation, proposal, sales order and/or any subsequent agreement or contract.

### 7.2 Intellectual Property

- (a) The Client acknowledges and agrees that the supply of goods or the provision of services to the Client does not constitute a transfer of any Intellectual Property in the goods and/or services (or any part thereof).
- (b) The Client warrants that:
- (i) it will not do anything inconsistent with or in infringement of such Intellectual Property including, but not limited to, the decompilation, disassembly and re-engineering thereof;
  - (ii) it will not use any of the Intellectual Property owned by teQwise without teQwise' prior written consent;
  - (iii) all information pertaining to its hardware, software or service requirements and specifications is complete, accurate and has been provided to teQwise prior to the formation of this Agreement.
- (c) teQwise does not warrant that the supply by it and the use by the Client of the goods or services does not, and will not infringe the Intellectual Property of any third party, whether such rights take the form of letters, patent, registered designs, copyright, trade mark rights, or any other similar rights.
- (d) Where teQwise or its contractor manufactures the goods (or any part thereof) or provides the services to the Client's design and specifications, the Client agrees to indemnify and keep indemnified teQwise (and its related bodies corporate) against all actions, claims, loss, damages, costs and fines that teQwise and/or its related bodies corporate may incur or suffer as a result of a claim by a third party that the manufacture and sale by teQwise of the goods (or any part thereof) or the provision of the services infringes any intellectual property rights of that third party.

### 7.3 Packaging and Trade Marks

The Client warrants that it will not:

- (a) remove, deface, obliterate or cover up any packaging, or trademarks applied to the packaging or to the goods; and
- (b) use the trademarks of teQwise in any advertising or promotional material without teQwise' prior written consent, and then only in such manner and form as may be authorised by teQwise in writing from time to time.

## 8. Limitation of Liability

### 8.1 Limitation of Liability

Subject to clause 8.4 but despite any other provision, if any liability on the part of teQwise arises to, or in favour of, the Client (whether in contract, tort or otherwise) for any loss, damage, harm or injury arising out of or in any way connected with the use, supply of, or failure in the provision of, or the purported supply of goods or services by teQwise,

teQwise' liability for all such loss, damage, harm or injury in all and any circumstances must be limited in aggregate to the payment by teQwise of a sum not exceeding 5% of the monies payable to teQwise pursuant to the relevant order by the Client.

## 8.2 Indemnity

The Client agrees to release, hold harmless and indemnify teQwise from and against all liabilities, claims, damages, losses, costs and expenses of whatsoever nature and howsoever occurring including, without limitation, loss of market, loss of profit, loss of use, loss of production, or for any financial or economic loss, including indirect or consequential loss or damage which may be suffered by the Client or by any third party arising out of or in any way connected with the use or supply of the goods or services by teQwise, by reason of breach of the terms and conditions of this Agreement, or of statutory duty or by reason of tort (including but not limited to negligence).

## 8.3 Representations

Except as otherwise expressly provided in this Agreement and subject to clause 8.4, all statements, representations, provisions, conditions, promises, undertakings, covenants, and other provisions, express or implied (and whether implied by law or otherwise) relating to any quotations or proposals submitted by teQwise, sales orders accepted by teQwise, goods and services (whether as to their quality or merchantability, fitness for any purpose, correspondence with any description or sample or otherwise) which might otherwise form part of the terms and conditions of this Agreement or any agreement or be collateral to form part of any agreement that is collateral to this Agreement or any other agreement, are hereby excluded in their entirety and are of no effect whatsoever.

## 8.4 Australian Consumer Law

These terms and conditions are to be read subject to the statutory guarantees under the Australian Consumer Law to the extent they apply to the delivery or provision of goods and/or services from teQwise to the Client in accordance with this Agreement. Where teQwise is permitted under the Australian Consumer Law to limit its liability for breach of a condition or warranty that is implied by the Australian Consumer Law (to the extent that they are applicable), teQwise' liability will be limited at teQwise' sole discretion to:

- (a) in the case of goods:
  - (i) the replacement of the goods or the supply of equivalent goods; or
  - (ii) the repair of the goods (including to procure repair by the manufacturer of the goods);
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the goods repaired; and
- (b) in the case of services:
  - (i) the supply of the services again by teQwise; or
  - (ii) the payment of the cost of having the services supplied again.

## 8.5 Client's Acknowledgement

To the full extent permitted by law, the Client acknowledges that:

- (a) it relies on its own skill and judgment in relation to goods and services supplied by teQwise;
- (b) teQwise will not be liable for any unsuitability for any purpose of the goods or services irrespective of any knowledge which it may possess as to the purpose for which the goods or services were required by the Client,

unless that purpose has been specifically notified to teQwise in writing prior to the formation of this Agreement.

## 9. Termination

### 9.1 Remedies

If the Client does not make payment strictly as required, or breaches any other term of this Agreement, then, in addition to any other remedies teQwise has at law:

- (a) teQwise may elect either to terminate or affirm this Agreement, and in each case, claim and recover from the Client compensation for loss or damage suffered as a result of that breach;
- (b) teQwise may charge interest on any overdue amounts in accordance with clause 3.3;
- (c) teQwise may cease supplying goods or providing services to the Client;
- (d) teQwise may attend the business premises of the Client, and recover possession of any goods not paid for in full and the Client irrevocably grants to teQwise and its employees and agents a licence to that extent; and
- (e) if teQwise terminates this Agreement, then in addition to any other rights, it may sell the goods to any other party.

### 9.2 Termination

In addition to the remedies available under clause 9.1, teQwise may terminate this Agreement immediately if the Client:

- (a) is in breach of any term of this Agreement and fails to remedy the breach within 14 days of notice in writing by teQwise specifying the breach and requiring the Client to remedy it;
- (b) has failed or refused to take Delivery of goods and/or services the subject of a sales order, and such failure or refusal continues for a period of 14 days after teQwise has notified the Client in writing that the goods and/or services are ready for Delivery or are ready to be provided; or
- (c) is declared bankrupt, resolves to go into liquidation or has a petition for bankruptcy or winding up presented against it or enters into a scheme of arrangement with its creditors or if any liquidator, provisional liquidator, administrator, receiver, receiver and manager or official manager is appointed in respect of the Client or if anything analogous occurs in respect of the Client.

### 9.3 Additional Costs upon Termination

If this Agreement is terminated under clauses 9.1 or 9.2, the Client is liable for all goods ordered from, or services provided or to be provided by teQwise up to and including the date of termination and any direct and indirect loss suffered by teQwise including, without limitation:

- (a) teQwise' loss of profit on the Agreement; and
- (b) the legal costs incurred by teQwise (on a full indemnity basis) in relation to the termination and any prior breach and in exercising any rights and remedies as a consequence of the termination and any prior breach.

### 9.4 Accrued Rights

Termination of this Agreement in accordance with clause 9 will be without prejudice to the rights of teQwise accruing up to the date of termination.



## 10. Insolvency

### 10.1 Notification to teQwise

The Client must immediately inform teQwise if:

- (a) the Client ceases to (or is unable to) pay its creditors (or any class of them) in the ordinary course of business, or announces its intention to do so;
- (b) a receiver, receiver and manager, administrator, liquidator or similar officer is appointed to the Client or any of its assets;
- (c) the Client enters into, or resolves to enter into, a scheme or arrangement, compromise or composition with any class of creditors; or
- (d) a resolution is passed or an application to a court is taken for the winding-up, dissolution, official management or administration of the Client.

## 11. GST

### 11.1 Goods and Services Tax

- (a) Unless expressly stated, the cost of any supply under this Agreement does not include GST. If a party ("**supplier**") is or will become liable to pay GST in respect of any supply made under this Agreement, the cost of the supply will be increased so that after payment of the GST by the supplier, the net amount retained by the supplier is the same as if the supplier was not liable to pay any GST in respect of that supply.
- (b) The GST amount must be paid by the party liable to pay for the supply under this Agreement ("**payer**") to the supplier in the same manner and at the same time as the rest of the cost of the supply.
- (c) The supplier must give the payer a tax invoice in accordance with the GST Act.
- (d) If the payer is required to reimburse the supplier for an amount paid or payable by the supplier for a supply to the supplier by a third party and the supplier is entitled to claim an input tax credit, the amount required to be reimbursed will be reduced by the amount of the input tax credit.
- (e) In this clause 11:

"**GST**" has the meaning set out in the *GST Act*;

"**GST Act**" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the *GST Act*.

## 12. Export and Resale

- 12.1 The Client acknowledges that the goods sold or services provided by teQwise may be the subject of a restricted distribution licence on the condition that such goods or services may not be re-exported or resupplied to certain destinations, or at all, without the prior approval of the manufacturers or original suppliers.
- 12.2 The Client warrants that it will not export or resale the goods or services, the subject of any such restriction, without first having obtained all necessary consents and approvals, including those of such manufacturer and original supplier.

## 13. General

### 13.1 Force Majeure and teQwise' obligations

- (a) Despite anything else, teQwise is excused from

performing its obligations under this Agreement to the extent it is prevented by circumstances beyond its reasonable control including (but not limited to) acts of God, war, riots and industrial action and strikes.

- (b) Despite any other provision, if the Client breaches this Agreement, teQwise will not be bound to perform any of its obligations under this agreement until the breach is fully remedied by the Client.

### 13.2 Non-Solicitation

The Client must not solicit any officer or employee of teQwise, or procure or offer any form of employment to any officer or employee of teQwise during this Agreement or within 12 months of this Agreement coming to an end.

### 13.3 Governing Law

This Agreement is governed by, and construed in accordance with the laws of Queensland. The parties irrevocably submit themselves to the jurisdiction of the courts of Queensland.

### 13.4 Inconsistency

To the extent of any inconsistency, these terms and conditions prevail over all terms and conditions of the quotation, proposal and/or sales order.

### 13.5 Variation and No Waiver

- (a) These terms and conditions may not be varied except in writing signed by each of the parties.
- (b) Any failure by teQwise to enforce the provisions of this Agreement or to exercise any of its rights is not a waiver of such provisions or rights, and does not affect the enforcement of this Agreement.

### 13.6 Rights Reserved

All rights and remedies of teQwise under this agreement are in addition to teQwise' other rights and remedies and are cumulative.

### 13.7 Severance

If any provision (or part of any provision) of this Agreement is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision of this Agreement.

### 13.8 Assignment

- (a) The Client must not transfer, assign or novate, or purport to transfer, assign or novate this Agreement.
- (b) teQwise may at any time transfer, assign or novate any or all of its rights, privileges, interest and obligations under this Agreement to a third party.

### 13.9 Entire agreement

This Agreement is the entire agreement between the parties. No further or other terms are implied in this Agreement or arise between the parties by way of collateral or other agreement because of any promise, representation, warranty or undertaking given or made by any party to this Agreement to another prior to the formation of this Agreement.

## Reference Schedule

### ITEM 1: teQwise

**Address** Mezzanine Floor,  
110 Eagle Street  
Brisbane QLD 4000

**Phone:** +61 7 3218 3300

**Email:** [info@teqwise.com](mailto:info@teqwise.com)

**Website:** <http://www.teqwise.com>

### ITEM 2: Client

**A.B.N.** (if applicable) .....

**Trading / Company Name:** .....

**Website Address:** .....

**Phone:** .....

**Fax:** .....

**Primary Contact Person:** .....

**Primary Contact Email Address:** .....

**Accounts Contact Person:** .....

**Accounts email address:** .....

**Business Address:** .....

.....Postcode .....

**Postal Address:** .....

*(if different to Business Address)* .....Postcode:.....

**Delivery Address:** .....

*(if different to Business Address)* .....Postcode .....

**Directors (if applicable):** Names:.....

Phone/Mobile:.....

Email:.....

**EXECUTED** as an Agreement.

*[if Client is a Company]*

**EXECUTED BY** .....

ACN: ..... in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....  
Signature of Director

.....  
Name of Director

.....  
Date

*[If Client is an individual]*

**EXECUTED by** .....

.....  
Signature

.....  
Date

**EXECUTED by teQwise** in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....  
Signature

.....  
Name

.....  
Position

.....  
Date