

C4 SYSTEMS PTY LIMITED
ABN 80 099 942 882 (C4)

STANDARD TERMS OF SUPPLY

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

The **Customer**, the **Fees**, the **Hardware**, the **Software** and the **Services** have the meaning given in the Proposal.

The following words have these meanings in the Agreement:

Acceptance Certificate means the acceptance certificate to be signed by C4 and the Customer in accordance with clause 6.3.

Agreement means the agreement formed by the C4 Proposal, these Standard Terms of Supply and, subject to clause 2.1, the Customer's purchase order.

GST Law means the A New Tax System (Goods and Services) Act 1999 and any other law dealing with the imposition or administration of a goods and services tax in Australia. Terms used in the Agreement which are defined in the GST Law have the meaning given in that law.

Intellectual Property Rights means intellectual property rights at any time protected by statute or common law including copyright, trade marks (whether or not registered), patents, registered designs and rights in circuit layouts.

Proposal means C4's Proposal issued to the Customer and signed by a C4 Sales Account Representative and attached to these Standard Terms of Supply.

Services means the services provided by C4 to the Customer under this agreement as detailed in the Proposal which may include training services, consultancy services, network, audit services but excludes maintenance services for hardware or software.

Supplies means the Software, Hardware and Services.

System Configuration means the C4 system as outlined in the Proposal supplied to the Customer and installed in accordance with the terms of the Agreement.

1.2 Interpretation

The following apply in the interpretation of the Agreement, unless the context requires otherwise.

- (a) A reference to any Act, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it. **3**
- (b) A reference to the singular includes the plural number and vice versa. **3.1**
- (c) A reference to a gender includes a reference to each gender. **3.2**
- (d) A reference to a party means a person who is named as a party to the Agreement. **3.3**
- (e) **Person** includes a firm, corporation, body corporate, unincorporated association and a governmental authority. **3.4**
- (f) A reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under the Agreement, their substitutes and assigns.
- (g) An agreement on the part of, or in favour of, two or more persons binds or is for the benefit of them both jointly and severally.
- (h) **Includes** means includes but without limitation.
- (i) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (j) A reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document.

- (k) A reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to the Agreement.
- (l) A reference to dollars or \$ is to Australian currency.
- (m) A heading is for reference only. It does not affect the meaning or interpretation of the Agreement.
- (n) Any schedule attached to this Agreement forms part of it. If there is any inconsistency between any clause of this Agreement and any provision in any schedule or attachment, the clause of this Agreement will prevail.

2 THE AGREEMENT

2.1 The Agreement is formed when the Customer's purchase order is accepted by C4, either by notice to the Customer or by commencement of preparation for supply of the Supplies (without the need to give notice to the Customer). Any additional terms in a Customer's purchase order do not form part of this Agreement unless expressly accepted by C4 in writing.

2.2 These Standard Terms of Supply may only be varied if approved in writing by C4's Chief Executive Officer or his delegate in writing.

2.3 The Agreement contains the entire understanding between the parties for the supply by C4 to the Customer of the Supplies and supersedes all prior agreements, arrangements and communications, whether oral or written, with respect to the Supplies. For the avoidance of doubt any quotation or other material provided by C4 does not form part of the Agreement.

2.4 In the event of any inconsistency between these Standard Terms of Supply and other terms in the Agreement, these Standard Terms of Supply prevail to the extent of such inconsistency.

2.5 The System Configuration may incorporate special terms and conditions applicable to the supply of all or part of the Supplies. In the event of any inconsistency between these Standard Terms of Supply and any terms and conditions specified in the System Configuration, then to the extent of such inconsistency the former prevails.

2.6 C4 and its suppliers reserve the right to carry out product improvement programmes, which could result in changes to the Supplies to be delivered under this Proposal, provided that these changes will not degrade the quality of the Supplies or their performance in comparison with the relevant manufacturer's written description and specifications current as at the date of the Proposal.

3 FEES AND PAYMENT

3.1 If the Proposal does not set out the Fees for all or part of the Supplies, then the Fees will be C4's standard list price for those Supplies at the time of the Proposal. If C4 does not have a standard list price for those Supplies, then the fees will be as reasonably determined by C4 having regard to the fees charged by C4 for similar goods and services provided by C4.

3.2 The Customer must immediately pay to C4 all Fees when due without deduction or deferment on account of any claim, counter-claim or setoff, on the following basis:

- (a) if the Fees are less than \$25,000 (excl. GST): 100% of the Fees on delivery of the Supplies;
- (b) if the Fees are more than \$25,000 but less than \$75,000 (excl. GST): 50% of the Fees on receipt of the Customer's purchase order by C4; and the remaining 50% of the Fees on delivery of the Supplies; and
- (c) if the Fees are more than \$75,000 (excl. GST): 30% of the Fees on receipt of the Customer Purchase Order by C4; 60% of the Fees when the Software or Hardware is first delivered; and 10% of the Fees on completion of the installation of the Supplies detailed in the Proposal.

3.3 The Customer must pay the Fees and any other amounts payable under the Agreement within 14 days of the date of C4's invoice.

3.4 If C4 has accepted the Customer's purchase order and the Customer subsequently requests a variation to the Supplies, any variation must be subject to agreement in writing between the parties (including the

- Customer's acceptance of any variation in Fees). Unless otherwise agreed in writing the Customer must pay the Fees for any additional Supplies on delivery of the Supplies.
- 3.5 Unless expressly stated in the Proposal, the Fees exclude all duties and taxes. The Customer must pay C4 all duties and taxes including any new or additional duties or taxes payable in relation to the Supplies or the Agreement, on demand by C4.
- 3.6 Where all or part of the Supplies are obtained from an overseas supplier, the Fees will be calculated by C4 using the National Australia Bank telegraphic transfer rate applicable at time of the Proposal. C4 may adjust the Fees to take into account any variation in this rate between the date when the Proposal was prepared and the time when C4 was required to pay for the supplies or when the Customer pays the Fees, whichever occurs first.
- 3.7 Unless otherwise notified to the Customer, the Fees include the cost of delivery to sites within 50 kilometres of the GPO of Melbourne, Sydney, Brisbane, Adelaide, Perth and Canberra. The Customer must pay C4's costs or (if applicable) its standard charges for deliveries to sites outside these areas.
- 3.8 If the Customer fails to make any payment when due (Unpaid Amount) for either Product purchases or Maintenance / Support Services then:
- the Customer must pay on demand, as agreed damages for late payment, interest of 0.3% per week on the Unpaid Amount;
 - subject to clause 13, C4 can cease delivery of further items of Supplies and suspend the performance of Maintenance and/or Services until the Unpaid Amount is received; and
 - on reasonable notice to the Customer (unless C4 considers that its ability to repossess maybe jeopardised by any delay), C4 may repossess any Hardware or Software for which the Unpaid Amount is owing,
 - In the event of C4 instructing its solicitors to collect an overdue amount, all legal fees and collection charges as between solicitor and C4 shall be borne by and charged to the Customer
- and exercise of these rights will be without prejudice to any other rights C4 may have under the Agreement.
- 4 GST**
- 4.1 **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other law dealing with the imposition or administration of a goods and services tax in Australia. Terms used in this clause which are defined in the GST Law have the meanings given in that law.
- Each party warrants to the other that it is registered for GST. Each party must notify the other if it ceases to be registered for GST.
- 4.2 Amounts payable under the Agreement do not include GST unless otherwise stated.
- If any payment made or other consideration given by a party (**Payer**) in connection with this agreement does not include GST and is the consideration for a taxable supply for which the party who makes the supply (**Supplier**) is liable for GST, the Payer must, at the same time as the consideration is given, pay to the Supplier an additional amount equal to the amount of the consideration multiplied by the rate of GST under the GST Law.
- 4.3 Any reference in the Agreement to a cost or expense to be reimbursed by one party to another (**Payee**) includes any GST payable in connection with a taxable supply to which that cost or expense relates, less the amount of any input tax credit that the Payee or, if the Payee is a member of a GST group, the representative member of the GST group is entitled to claim.
- 5 DELIVERY AND PERFORMANCE**
- 5.1 Delivery of Supplies will be made to the delivery address stated on the Proposal or Customer Purchase Order or as agreed in writing by the parties.
- 5.2 Dates for delivery of the Supplies or the performance of any services are only estimates and are not binding on C4.
- 5.3 If C4 is unable to deliver all or any part of the Supplies or perform any Services within (in C4's opinion) a reasonable time or at all, then C4 may terminate the Agreement, in whole or in part. In this event, the Customer will have no claim against C4 for any damage, loss or expense incurred in connection with the delay in delivery or performance or the termination.
- 5.4 If the Customer refuses to accept delivery of any Supplies or performance of any Services, then the Fees for those Supplies or Services, together with all reasonable costs as determined by C4 incurred by C4 arising from the Customer's refusal to accept delivery (including any transport, inventory and storage costs) will become payable by the Customer on demand.
- 6 INSTALLATION AND COMMISSIONING**
- 6.1 If stated in the Proposal, C4 must install and commission the Hardware or Software at the Customer's premises nominated in the Proposal.
- 6.2 The Customer must provide C4 with all assistance reasonably requested by C4 in respect of the installation and commissioning of the Supplies, including:
- giving C4 access to the premises and equipment in respect of which the Supplies will be installed and commissioned; and
 - ensuring that the premises and the technology environment conform with any requirements notified by C4.
- 6.3 Upon completion of the installation and commissioning of the System Configuration the Customer must sign the Acceptance Certificate.
- 7 ACCEPTANCE**
- Except where the Customer is deemed to have accepted the Hardware and Software pursuant to clause 6.3, unless the Customer gives C4 written notice within 7 days:
- of delivery, if Hardware or Software; or
 - of completion, if Services,
- of the Customer's non-acceptance of the Supplies, then the Supplies are deemed to be accepted by the Customer. The Customer's notice of non-acceptance must give details of the basis for the non-acceptance.
- 8 TITLE AND RISK**
- 8.1 Risk in the Supplies passes to the Customer on delivery of the Supplies to the Customer but no legal or equitable title to the Supplies will pass to the Customer until C4 has received full payment of the Fees.
- 8.2 Until the legal and equitable title to the Hardware passes to the Customer, the Customer:
- must hold the Hardware as bailee of C4 and, if demanded by C4, immediately deliver up the Hardware to C4;
 - must ensure that the Hardware is readily identifiable and distinguishable from all other equipment held by the Customer and can be retrieved intact or, if necessary, reconstituted or separated, and returned to C4 and, where the Hardware includes hardware previously supplied by C4 to the Customer and in respect of which title has passed to the Customer, then the Customer must attach to the Hardware in respect of which title has not passed a notice indicating that the Hardware is held as bailee for C4; and
 - authorises C4 and C4's agents, at any time, to enter the premises in which the Hardware is stored and to repossess the Hardware regardless of the degree and manner of its attachment to realty.
- 8.3 Pending full title of the Hardware passing to the Customer, the Customer must not purport to assign any right or interest in the Hardware to any person.
- 8.4 Until the legal and equitable title to the Software passes to the Customer in accordance with the relevant licence agreement, the Customer authorises C4 and C4's agents, at any time, to enter the premises in which the Software is stored and to repossess all copies of the Software and to ensure that all Software is downloaded from computer equipment located at such premises.
- 9 SOFTWARE**
- 9.1 The Customer is granted a non-transferable non-exclusive licence to use the Software only for the purpose for which it is supplied.
- 9.2 The Customer may only use the Software for the Customer's internal business purposes and as notified in writing by C4 from time to time.
- 9.3 The Customer must not modify, alter, tamper with, reverse engineer or disassemble the Software or make copies of part or all of the Software without prior the written consent of C4 except to make a copy of the Software for the purpose of backup, security testing.
- 9.4 If the Software is identified in the Proposal as third party software (Third Party Software) then:

- (a) subject to clause 13.1 and any conditions set out in the Agreement, C4 gives no warranties in relation to the Third Party Software; and
- (b) the licences for the Third Party Software will be between the Customer and the third party software licensors and the Customer must enter into the applicable software licence agreements with those third party software licensors.
- 10 SERVICES**
- 10.1 C4 will provide the Services with due care and skill. C4 reserves the right to determine which personnel will perform the Services.
- 10.2 The Customer must obtain all third party consents required for C4 to provide the Services, provide a safe working environment at the Customer's premises for the personnel performing the Services and supply them with such assistance, including access to the Customer's resources, personnel, equipment and systems, as C4 may reasonably require to provide the Services.
- 11 INTELLECTUAL PROPERTY RIGHTS**
- 11.1 Intellectual Property Rights in the Supplies are owned by C4 or the manufacturer or licensor of the Hardware or Software (Third Party Suppliers).
- 11.2 The Customer must promptly notify C4 of any infringement, or any suspected or claimed infringement, of any Intellectual Property Rights in the Supplies (Infringement) and the Customer:
- (a) must give C4 all information available to the Customer in connection with the Infringement;
- (b) must render its fullest co-operation and assistance to C4 in relation to resolving the Infringement;
- (c) must not, without the prior written consent of C4, make any admissions concerning the Infringement; and
- (d) releases and holds harmless C4 from any liability in respect of an Infringement if the Customer used the Supplies on or with equipment or software not supplied or authorised by C4, or modified in a manner not authorised by C4, or in any way not authorised by or reasonably foreseen by C4.
- 11.3 C4 and the Third Party Suppliers will have complete control at their own expense of all matters relating to any claim including any defence, negotiations, settlement or compromise in respect of the claim.
- 11.4 C4 agrees to provide to its Customers all reasonable assistance to make available to the Customers any remedies granted by Third Party Suppliers under the licence agreements entered into between the Customer and the Third Party Suppliers, and the Customer agrees that C4 has no liability to any party arising out of any such agreements with Third Party Suppliers.
- 12 WARRANTY**
- 12.1 C4 warrants the Hardware against defects in design, material and workmanship, commencing on the date of installation and continuing for 6 months, in accordance with one of the following options and subject to the terms set out in the Proposal:
- (a) "Manufacturer Warranty": includes the replacement of defective parts only and specifically excludes any labour and additional parts.
- (b) "Extended Warranty": includes the replacement of defective parts, labour, and next day response time for critical and catastrophic faults, but excluding any additional parts.
- (c) "Enhanced Warranty": includes the replacement of defective parts, labour, and 6 hours response time for critical and catastrophic faults subject to any travel required being within 50km from the GPO of the city, and any additional parts.
- 12.2 C4 will be responsible for the cost of returning the Hardware repaired or replaced under warranty to the Customer. However, unless otherwise agreed in the Proposal, the Customer is responsible at its own cost for the return of defective Hardware to C4 at the address stated in the Proposal or, if no address is stated, to C4's closest office to the premises where the Hardware is installed.
- 12.3 C4 does not warrant that the Software is error free or that its use will be uninterrupted. C4 will assist the Customer in making a claim under any warranty given in a Third Party Software licence entered into by the Customer for the Software in accordance with clause 9.4(b).
- 12.4 C4 has no liability for defects in the Hardware or Software where it has been used outside the normal use for that Hardware or Software or where there has been inadequate or improper maintenance by the Customer of the Hardware or Software, modifications to the Supplies not authorised by C4 or misuse of or accidental damage to the Hardware or Software.
- 12.5 If the Customer reports a defect in the Supplies and that defect is found by C4 to not exist or to have arisen as a result of a matter referred to in clause 12.4, the Customer must pay C4 the costs as determined by C4 which C4 incurred in investigating the defect.
- 13 INDEMNITY AND LIABILITY**
- 13.1 The Customer must indemnify C4 in relation to all losses, damages, expenses, claims, demands, actions and suits suffered or incurred by, or made or instituted against, C4 as a result, directly or indirectly, of a breach by the Customer of its obligations under the Agreement.
- 13.2 Subject to any condition, warranty or right implied by the *Trade Practices Act 1974* (Cth) or any other law which cannot by law be excluded by agreement, C4 gives no warranties apart from those, if any, expressly set out in the Agreement and all other implied conditions, warranties and rights are excluded.
- 13.3 Where any condition, warranty or right is implied by law and cannot be excluded, C4 limits its liability for breach of that implied condition, warranty or right to the extent permitted by law.
- 13.4 Subject to the qualifications in section 68A of the *Trade Practices Act 1974* (Cth) or any other law, C4's liability for any breach of any implied condition, warranty or right, in connection with the supply of goods or services, is limited:
- (a) in the case of goods supplied, to any one or more of the following (as C4 may determine):
- (i) the replacement of the goods or the supply of equivalent goods;
- (ii) the repair of the goods;
- (iii) the payment of the costs of replacing the goods or of acquiring equivalent goods; or
- (iv) the payment of the costs of having the goods repaired; and
- (b) in the case of services supplied, to one of the following (as C4 may determine):
- (i) the supplying of the services again; or
- (ii) the payment of the costs of having the services supplied again.
- 13.5 Subject to the provisions of 13.2, 13.3, and 13.4, and despite any implication arising from any other provisions of the Agreement, C4 is not liable to the Customer in contract, in tort (including negligence), under any statute (to the extent permitted by law) or otherwise for, or in respect of, any indirect or consequential loss or damage suffered by C4 or any other person arising out of any breach or other act or omission in connection with this agreement.
- 13.6 The parties agree that indirect or consequential loss or damage, for the purpose of clause 13.6 means or includes:
- (a) any financial loss or expense including loss of business opportunity, including where caused by loss of use or of goodwill, loss of data or delay in the performance of any obligation;
- (b) any expense incurred in connection with that loss or in mitigation or attempted mitigation of that loss; and
- (c) payment of liquidated sums or damages in accordance with any other agreement,
- even if those losses were in the contemplation of the parties at the time they entered into the Agreement.
- 13.7 Subject to clauses 13.1, 13.2, 13.3, 13.4 and 13.5 and except in the case of any claim for damages arising from the death of, or injury to, any person caused by any wilful or negligent act or omission of C4, but otherwise notwithstanding anything else to the contrary contained in or implied in the Agreement, any liability which C4 may have to the Customer in relation to breach of an obligation:
- (a) in relation to the Supplies, will be limited to the remedies set out in clauses 13.4(a) and 13.4(b); and
- (b) otherwise, for the aggregate of all events, is limited to the total Fees then paid by the Customer under the Agreement.

- 14 TERMINATION**
- 14.1 C4 may by notice immediately terminate the Agreement on the occurrence of any of the following:
- (a) failure by the Customer to perform any material obligation under the Agreement, where the failure cannot be rectified;
 - (b) failure by the Customer to perform any obligation under the Agreement where C4 determines the failure can be rectified but it is not rectified within 30 days of C4 giving notice requesting rectification;
 - (c) the Customer is "insolvent" within the meaning of the word in the Corporations Act (*Cth*) 2001;
 - (d) the Customer fails to make any payment when due;
 - (e) the Customer purports to assign any of its rights under the Agreement without C4's consent; and
 - (f) the Customer breaches another agreement with C4 and C4 is entitled to terminate the other agreement pursuant to the terms of the other agreement.
- 14.2 Upon termination of the Agreement by C4 under clause 14.1, the Customer must immediately pay C4 all Fees and other amounts payable under the Agreement, other than Fees for Services due to be provided after the date of termination.
- 15 CONFIDENTIAL INFORMATION**
- 15.1 In this clause, "confidential information" means information disclosed by or on behalf of one party (**Discloser**) to the other party (**Recipient**) or of which the Recipient becomes aware, during the term of the Agreement or in prior discussions between the parties in anticipation of the Agreement, including:
- (a) information designated as confidential by the Discloser; and
 - (b) any other information which by its nature should reasonably be considered to be confidential information of the Discloser or of a person to whom the Discloser owes a duty of confidence.
- Confidential information may be provided in writing, electronically, verbally or otherwise. Confidential information does not include any information which the Recipient can prove either is in the public domain or was known by the Recipient at the time of disclosure, other than through a breach of the Agreement.
- 15.2 The Recipient must:
- (a) subject to clause 15.3, keep confidential and not disclose to any person any confidential information;
 - (b) not use or permit the use of any confidential information for any purpose other than that contemplated by the Agreement, unless authorised by a separate agreement between the parties; and
 - (c) establish and maintain comprehensive security measures to ensure that all confidential information in its possession, custody or control is secure at all times. This includes information provided to its employees, officers and agents. Without limiting this obligation, the Recipient must keep all confidential information no less secure than its own confidential information.
- 15.3 The Recipient may disclose confidential information:
- (a) as expressly required or permitted by this agreement (if applicable);
 - (b) with the written consent of the Discloser; or
 - (c) to the extent required by law, by an order of a court or of a regulatory body or by the listing rules of the Australian Stock Exchange.
- 15.4 If the Recipient is required to disclose any confidential information, the Recipient must before doing so:
- (a) notify the Discloser; and
 - (b) if possible, give the Discloser a reasonable opportunity to take any steps it considers necessary to protect the confidentiality of the confidential information.
- 15.5 On termination of the Agreement, the Recipient must, on the request of the Discloser, immediately:
- (a) at the Discloser's choice, either return to the Discloser or destroy all documents in the possession, custody or control of the Recipient containing any confidential information;
 - (b) delete the confidential information from any computer system or other device operated, controlled or which may be addressed by the Recipient; and
 - (c) confirm by notice in writing to the Discloser that this clause 15.5 has been complied with.
- 16 FORCE MAJEURE**
- 16.1 C4 is not liable for any failure to observe its obligations under the Agreement where such failure is wholly or substantially due to any cause beyond the reasonable control of C4 including strikes, industrial action, breakdown of plant, machinery or delivery vehicles or vessels, war, blockades or governmental interference or request or any act of God, or due to a shortage in transportation or inability to obtain labour or materials from the usual sources of C4 or the manufacturer or licensor of the Hardware, Software or any part of the Hardware or Software.
- 16.2 Any delay resulting from any of the above causes described in clause 16.1 will immediately extend the date for performance by C4 of any obligations under the Agreement by the period of the delay.
- 17 MISCELLANEOUS**
- 17.1 The Customer must not sell or export the Hardware and Software outside of Australia without first obtaining the consent of C4 and, in the case of Hardware and Software of US origin, without first obtaining any relevant United States Government licence to do so. The Customer agrees to indemnify and hold harmless C4 against any losses arising as a result of a breach by the Customer of this clause.
- 17.2 The Customer must not assign any or all of its rights under the Agreement without the prior written consent of C4.
- 17.3 C4 does not waive a right or remedy under the Agreement or at law if it fails to exercise a right or remedy, only partially exercises a right or remedy, or delays in exercising a right or remedy. A waiver or consent is effective only if in writing and properly signed by or on behalf of C4.
- 17.4 The Agreement will be governed by the laws of the State of Queensland and the parties submit to the jurisdiction of the courts of that State.
- 17.5 Notices under the Agreement must be in writing and transmitted by mail, email or facsimile to the address set out in the Agreement or such other address as may be nominated from time to time by notice. Proof of posting, delivery of email or of dispatch of facsimile is proof of receipt:
- (a) in the case of a letter on the second day after posting;
 - (b) in the case of a facsimile upon production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile communication was sent in its entirety to the facsimile number of the recipient notified for the purposes of this clause; and
 - (c) in the case of delivery by email, when sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.
- 17.6 Even if a part of the Agreement is for any reason invalid or unenforceable, the remaining portion remains in full effect as if it had been signed it without the invalid portion.
- 18 NON-EMPLOYMENT**
- For the Period during which this Agreement is in effect, and for a period of twelve (12) months thereafter, neither party will solicit for employment employees of the other. However, should one party advertise a position and an employee of the other party be the successful candidate and be offered the position, a placement fee will be chargeable, such placement fee being equal to three (3) months of the annual salary offered for the advertised position.