



## Terms and Conditions

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## 1. Definitions and Interpretation

In these Conditions, the Rate Schedule and every Quote, Order, Plan contract, or other arrangement in connection with the supply of Goods or Services by Vision3 the following words have the following meanings:

- a) **"After Hours"** means from 17:30 - 09:00 hours Monday to Friday and all day Saturday and Sunday, including Public Holidays;
- b) **"Vision3"** means Vision3 Holdings Pty Ltd ATF Vision3 Group Trust Trading As Vision3 IT ABN 56 970 255 137 and its heirs, successors and assigns;
- c) **"Business Hours"** means Monday to Friday from 09:00 to 17:30 hours excluding Public Holidays;
- d) **"Conditions"** means these terms and conditions;
- e) **"Customer"** or 'you' means a person who seeks or obtains a quote for, or who orders, Goods or Services from Vision3, and includes both a person whose name is on the order or on an email attached to which is an order, a person who places an order, and a person on whose behalf an order is placed or on whose behalf it appears and order is placed, and in any case each of their heirs, successors and assigns;
- f) **"Goods"** means any goods and/or services sourced by Vision3 or provided by Vision3 in connection with any such goods and/or services including computer hardware and Software and any goods or services provided in connection with any of those things;
- g) **"GST"** has the meaning given to it under A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- h) **"Hours"** means, where a customer agrees to buy Services from Vision3 for a specified number of hours, that number of hours;
- i) **"Order"** means any order provided to Vision3 for Goods or Services in any form;
- j) **"Quote"** means a quote provided by Vision3;
- k) **"Period"** means a particular number of half-days, days, weeks, fortnights, months, or any other period, as may be agreed between Vision3 and the Customer as the period during which some Services will be provided;
- l) **"Plan"** means any arrangement between Vision3 and a Customer (whether alone or in conjunction with any other person) for Services (including unlimited support) and/or the provision of Goods provided by Vision3 under an arrangement in connection with Work agreed to be done or progressed for or on account of the Customer or any other person at the Customer's request, including as set out in a Plan Schedule;
- m) **"Plan Schedule"** means the key terms applicable to Plans as set, and as may be varied by, Vision3 from time to time in its absolute discretion without notice to the Customer;
- n) **"Public Holidays"** means any day which is a public holiday throughout New South Wales other than a bank holiday;
- o) **"Rates"** means the hourly rates and other charges for Services (including any call-out fees and any Return/Cancellation Fees) set out in the Rates Schedule, a Plan, Plan Schedule, Quote, contract or arrangement entered into by Vision3 and a Customer or in these Conditions, and includes any monies payable to Vision3 on a quantum meruit basis for any work it has done;
- p) **"Rate Schedule"** means the schedule of rates, charges and conditions for the services of Vision3 as set, and as may be varied, by Vision3 from time to time in its absolute discretion without notice to any Customer;
- q) **"Reasonable Assistance Limits"** has the meaning set out in clause 9.b);

- r) **“Return/Cancellation Fee”** means a fee charged pursuant to clause 5d) as set by Vision3 from time to time, currently \$75.00 plus GST;
- s) **“Services”** means the provision of any services by Vision3 including Work, advice and recommendations;
- t) **“Software”** includes software and any installation, update, associated software and any services provided in connection with any of these things; and
- u) **“Work”** means anything Vision3 may do, provide, customise, produce or acquire, whether or not in connection with, or for the purposes of, a Customer or a Customer’s use or benefit, and includes testing, troubleshooting, installation and configuration of new equipment or software, consulting, scoping, planning, documenting and quoting for complex items.

**In these Conditions, the Rate Schedule and every Quote, Order, Plan, contract, or other arrangement in connection with the supply of Goods or Services by Vision3, unless the contrary intention appears:**

- a) Words denoting the **singular** number only **shall include the plural** number and vice versa;
- b) Reference to **any gender shall include every other gender**;
- c) Reference to **any Act of Parliament, Statute or Regulation shall include any amendment** currently in force at the relevant time and any Act of Parliament, Statute or Regulation enacted or passed in substitution therefore;
- d) **Headings** and words put in **bold** are for convenience of reference only and **do not affect the interpretation or construction** of these Conditions;
- e) All references to dollars (\$) are to **Australian currency**;
- f) A reference to time is to **Sydney, Australia time**;
- g) A reference to an **individual or person includes a corporation**, partnership, joint venture, association, authority, trust, state or government **and vice versa**;
- h) A reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to these Conditions;
- i) A recital, schedule, annexure or description of the parties forms part of these Conditions;
- j) A reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions), as amended, novated, supplemented or replaced from time to time;
- k) Where an expression is defined, **another part of speech or grammatical form of that expression has a corresponding meaning**;
- l) A reference to **“includes”** means **includes without limitation**;
- m) A reference to **“will”** imports a condition not a warranty; and
- n) A reference to **bankruptcy or winding up** includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration (as defined in section 9 of the Corporations Act), being subject to administration and the occurrence of anything analogous or having a substantially similar effect to any of those conditions or matters under the law of any applicable jurisdiction and to the procedures, circumstances and events which constitute any of those conditions or matters.

## 2. Application of these Conditions

Unless otherwise agreed by Vision3 in writing, these Conditions are deemed incorporated in and are applicable to (and to the extent of any inconsistency will prevail

over) the terms of every Quote, Order, Plan, contract, or other arrangement in connection with the supply of Goods and/or Services by Vision3 to the Customer.

### 3. Quotes

- a) **Term and effect:** Vision3 may give a Customer a written quote for the supply of Goods and/or Services. Quotes will only be valid for 7 days unless otherwise specified in the Quote. A Quote is merely an invitation to the Customer to place an Order with Vision3 and the acceptance of a Quote by a Customer will not create a binding contract between the Customer and Vision3.
- b) **Varying or withdrawing Quotes:** Vision3 may vary or withdraw a Quote at any time in its absolute discretion and without prior notice to a Customer. It may do so for any reason it considers fit, including, e.g. where the Goods or Services become unavailable or the cost price of Goods or Services increases after the date of the Quote.

### 4. Orders

- a) **Order forms:** A Customer may place an Order for Goods and/or Services with Vision3. Normally, Vision3 will require that the Customer provides either a completed Order form or the Customer places the quote electronically through either an email or a web based system with, the date and the details of the Customer, including **the Customer's full legal name or description and any applicable ABN or ACN number (including the full name or description of any person on whose behalf the order is placed), their address** (including in the case of an individual, their residential address) together with any relevant Quote number and date.
- b) **Approval of Orders:** Each Customer will need to sign the Order or have it duly executed on its behalf, unless the Order is sent by email or via the web based ordering system, in which case the Order will be treated or deemed as if signed by or on behalf of the Customer by the person whose name appears as the sender of the email.
- c) **Reliance on appearance of validity:** Absent actual knowledge to the contrary, Vision3 may rely upon the apparent validity of an Order. If any Order is signed or sent by email or approved through the web based ordering system by a named person, that person warrants that the Order is, and it is acknowledged the Order is deemed in favour of Vision3 to be:
  - 1. signed by, and duly authorised by, both the person who signed the Order and the person who sent the email; and
  - 2. duly authorised by the person on whose behalf the Order is placed or apparently placed.
- d) **Acceptance and Orders over \$1,000.00:** An Order has no effect unless or until it is accepted by Vision3 in writing and, in the case where an Order over \$1,000.00, until Vision3 has received from the Customer payment in clear funds for the Order and any related freight, delivery and (where applicable) in-transit insurance costs in clear funds.
- e) **No obligation to deliver:** Vision3 is not obliged to deliver any Order until Vision3 has received from the Customer payment in clear funds for the Order any related freight, delivery and (where applicable) in-transit insurance costs or where Vision3 is unwilling or unable to complete the Order for any reason provided it refunds any payment made by the Customer in respect of the Order.

- f) **Credit checks:** For the purposes of ascertaining the credit standing or history of a prospective Customer to whom Vision3 is considering extending credit or payment terms, the Customer hereby consents to Vision3 undertaking a credit reference check in respect of the Customer.
- g) **Cancellation of Orders:** A Customer will not cancel an Order unless Vision3 agrees to do so in writing in its absolute discretion. The Customer acknowledges that, amongst other things, Vision3 cannot cancel an Order once the manufacturer or supplier has despatched the relevant Goods and that such despatch often occurs the same day as the Order is placed by Vision3.
- h) **Processes and Procedures:** Vision3 has process and procedures that it follows in the course of the provision of its Services and the supply of Goods. The Customer agrees to co-operate with Vision3 and to comply with such processes and procedures as advised to the Customer from time to time.

## 5. Pricing and Rates

**Rates exclude GST:** All rates and amounts charged or quoted for Goods and/or Services by Vision3 are exclusive of GST and any other applicable taxes or government charges (unless otherwise stated in writing by Vision3).

- a) **Rates Schedule:** The Customer must pay for Goods and Services at the Rates set out in any applicable Plan and the Rate Schedule as applicable from time to time during the provision of the Goods and/or Services.
- b) **Vary Rates:** Vision3 reserves the right vary any Block Rate, Rate and/or the Rate Schedule from time to time (subject to any fixed pricing for specific periods in any Plan), in its absolute discretion and without notice to the Customer.
- c) **Call-out fees:** The Customer acknowledges that call-out fees may be charged in addition to the Rates at Vision3' absolute discretion and that the amount of the call-out fee will depend upon where the Services are provided.
- d) **Return/Cancellation Fee:** Where Vision3 arranges a return or refund on behalf of a Customer, or where an Order is cancelled by a Customer after acceptance by Vision3, Vision3 may charge the Customer a Return/Cancellation fee to cover the administration costs of Vision3 in processing the return or refund, or in processing the Order, the cancellation and any refund. Vision3 may deduct the Return/Cancellation fee from out of any moneys otherwise due to be refunded to the Customer by Vision3.
- e) **Expenses:** The Customer must pay any out of pocket expenses incurred by Vision3 in providing the Services to a particular Customer, in addition to the Rates, charges and call-out fees, upon written demand. Such expenses will include travel costs, flights, car hire, petrol, insurance, taxi fares, accommodation and related meal allowance, tolls (outside of Sydney) and car parking expenses. Where appropriate, Vision3 will obtain prior written authorisation from the Customer before such expenses are incurred.
- f) **Separate charges for Goods and Services:** Vision3 may in its absolute discretion charge for Goods separately from Services or may charge for Goods and Services together.
- g) **Calculation of increments:** Where a charge is calculated based on increments of time, e.g. 1 hour or 30 minutes, Vision3 will charge the applicable rate for the whole increment of time even if work is done during part of, but not for the whole of, that increment of time.

- h) **Change in underlying costs:** Without prejudice to any other rights of Vision3 under these Conditions, where there is any increase in the underlying costs incurred by Vision3 in connection with the supply of Goods or Services to a Customer, Vision3 may, in its absolute discretion, vary any of its Rates.
- i) **Blocks of Time:** Where a customer agrees to buy **Hours** during a **Period**:
1. payment **must be made in advance** for the Hours at the rate applicable pursuant to the Rates Schedule for either:
    - A. **Onsite and Remote support** during **Business Hours** (the “**Onsite/Remote Block Rate**”); or
    - B. **Remote support** during **Business Hours** (the “**Remote Block Rate**”), each such rate being less any discount agreed in writing between the Customer and Vision3 in respect of the **Hours** (each such rate being a “**Block Rate**”).
- j) Services **included in a Block Rate** during the Period:
1. where the **Onsite/Remote Block Rate** has been paid, may be provided by Vision3 **either as Onsite or Remote support** (as may be necessary or applicable);
  2. where the **Remote Block Rate** has been paid, Services are **limited to Remote support** such that if, during any period where **Onsite support** is provided, the Customer will pay for it separately and in addition to the **Remote Block Rate**);
  3. are calculated in accordance with the applicable minimum **time periods and increments** set out in the Rates Schedule for Onsite support or Remote support (as applicable);
  4. **are only provided by Vision3 during Business Hours** provided that where, during the Period, Vision3 provides the Customer with Services **After Hours** or on **Public Holidays** the Customer will pay for such Services separately and in addition to the Block Rate; and
  5. **are only provided by Vision3 during the applicable Period.** Where Services are provided for a number of hours that is less than the relevant Hours during a Period:
    - A. the hours remaining unused in the Hours for that Period cannot be rolled over into any subsequent Period; and
    - B. Vision3 is not liable to refund, re-imburse, pay damages or otherwise compensate or indemnify the Customer in respect of those unused hours.
- k) **Term:** Where a Plan sets out an applicable term, e.g. six months or a year, unless you give Vision3 written notice of the cancellation of your Plan up to 30 days before the end of any applicable term, Vision3 will extend the term of your Plan automatically for another term equal to the original term (or such other term as may be agreed between Vision3 and the Customer).

## 6. Services and Plans

- a) **Service and Plan Variations:** Currently, Vision3 offers the Services and Plans referred to in the Rates Schedule and any Plan Schedule. Vision3 may withdraw the provision of, or vary the scope or terms of, or add to or change, the Services without notice to the Customer, from time to time in its absolute discretion.
- b) **Copies on Request:** Vision3 will provide the Customer with a copy of the current Rates Schedule upon request. Plan Schedules are tailored for particular Plans and are available to Customers participating in the Plan.

- c) **Termination of Plans:** Where a Plan has been entered into by Vision3 with a Customer with respect to a specific Period, Vision3 may acquire and retain resources in order to provide the Services to the Customer for the duration of the Period. In consideration of this and subject to these Conditions, the Customer may not terminate the Plan before the end of the Period.

## 7. Delivery, Title and Risk

- a) **Delivery liability:** Vision3 will use all reasonable endeavours to despatch Goods by the due date, but does not accept any liability for non-delivery or failure to deliver on time where this is caused by circumstances beyond the reasonable control of Vision3, including, for example, due to failures in supply to Vision3 or delays caused by third parties, such as delivery companies or manufacturers.
- b) **Availability to accept delivery:** The Customer must be available to accept the Goods at their nominated delivery address Monday to Friday 0830-1700hrs unless otherwise arranged.
- c) **Passing of Risk:** Delivery is deemed to take place when the Goods are delivered to the Customer's nominated address, whereupon risks of loss, breakage and all damage and all other risks pass to the Customer. Nothing in this clause 7.c) will affect title to the Goods.
- d) **Obligation to insure:** The Customer will ensure that Goods are adequately insured from the time delivery under clause 7.c).
- e) **Retention of Title:** Until Vision3 receives full payment in cleared funds for any moneys due to Vision3 by a Customer on any account or for any reason:
1. title to, and property in, Goods supplied to such Customer remains vested in Vision3 and does not pass to the Customer;
  2. the Customer must hold those Goods as fiduciary bailee and agent for Vision3 and must not sell them;
  3. the Customer must keep those Goods separate from its other goods and maintain the Goods and their labelling and packaging intact;
  4. where a Customer sells the goods in breach of these Conditions, the Customer is required to hold the proceeds of any sale of those Goods on trust for Vision3 in a separate account (however any failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee and remit them to Vision3);
  5. Vision3 may, without prior notice, enter into any premises where it suspects those Goods may be, take possession of those Goods and sever and remove those Goods (notwithstanding that they may have been attached to other goods not the property of Vision3) and for this purpose, the Customer hereby irrevocably authorises and directs Vision3 (and its employees and agents) to enter into such premises as its duly authorised agent and the Customer hereby indemnifies and holds harmless Vision3 from and against any costs, claims, allegations, demands, damages or expenses or any other acts or omissions arising from or in connection with, such entry, repossession or removal.
  6. The Customer irrevocably appoints Vision3 its attorney to do anything Vision3 considers necessary in order to enter such premises and repossess the Goods as contemplated by this clause 7e).

## 8. Returns and Claims for Goods and Services

- a) **General Returns Policy:** Notwithstanding anything in these Conditions, the Customer acknowledges that Vision3 supplies Goods subject to all applicable conditions, including returns and claims policies, of any relevant manufacturer or supplier. The Customer will accept Goods subject always to these Conditions and the terms of such conditions and will indemnify and hold harmless Vision3 in respect of any further or other obligation or any failure or default on the part of that manufacturer or supplier.
- b) **Customised Goods not returnable:** Where Goods have some element of customisation for the Customer, are supplied pursuant to an Order for Goods that is in the opinion of Vision3 special or unusual, the Goods are obtained from overseas, the Goods are obtained from a supplier who is no longer trading, or the Goods are otherwise not readily returnable by Vision3 to the manufacturer or supplier or any related services may not be cancelled, the Customer may not return the Goods to Vision3 or cancel the related services.
- c) **Duty to inspect:** The Customer will inspect all Goods immediately upon their delivery. Within 7 days of such delivery a Customer may give written notice to Vision3 of any matter or thing, by reason of which the Customer might wish to return the Goods, ask for a refund, or make a claim. If no such notice is given on time, the Customer will accept the Goods without any such return, refund or claim.
- d) **Return Condition:** Where a Customer is entitled to return Goods under these Conditions, the Customer must return the Goods in their original condition and unopened, provided always that where, upon opening the packaging it becomes apparent that the Goods are different to what is described on the packaging or that the Goods are faulty, the Goods may be returned.
- e) **Return costs:** The Customer will pay all costs and expenses incurred by Vision3 in arranging the return of the Goods to a manufacturer or supplier and/or the cancellation of any related services unless that manufacturer or supplier pays such costs.
- f) **Consequences of use, installation, customisation or sale:** The Customer will indemnify and hold harmless Vision3 in respect of all allegations and claims in respect of Goods once such Goods have been used, installed, customised or re-sold by the Customer (without prejudice to the recourse of such a Customer to the manufacturer of the Goods).

## 9. Computer utility, functionality and fitness for purpose

- a) **Service limitations given the science of computing:** The Customer acknowledges that a reasonable incident of the Services may involve trial and error and that it is a science applied often in novel or unknown circumstances and involving experiment. In particular, the Customer acknowledges that the Services may involve tests, troubleshooting, advice and recommendations that may prove incorrect or inappropriate, particularly in an attempt to cure a problem a Customer is having. While Vision3 will make what it considers (in its absolute discretion) to be all reasonable endeavours to provide appropriate tests, troubleshooting, sound advice and good recommendations in order to assist Customers, the Customer will always indemnify and hold harmless Vision3 in the provision of its Services to the Customer.
- b) **Reasonable Assistance Limits:** Vision3 is only obliged to provide what it considers, in its absolute discretion, to be reasonable assistance in the circumstances (including with the installation and customisation of new software for a Customer or any other

Work) under any Plan and the Customer will pay for additional work at the Rates unless otherwise agreed. Without limiting the discretion of Vision3 to determine what reasonable assistance is, normally, reasonable assistance is limited to work done during Business Hours over a period of time not exceeding any period that Vision3 has allowed or allows for the Work or has estimated or estimates the Work will take, whether or not notice of the time allowed or estimated is given by Vision3 to the Customer.

c) **Recommendations, suitability, functionality and fitness for purpose:** The parties acknowledge that:

1. Vision3 may recommend that the Customer purchase Goods provided by third parties from time to time;
2. Recommendations may be made in situations where the Customer has made known to Vision3 the purpose for which the Goods will be used or some function sought to be fulfilled;
3. The Customer acknowledges that Vision3 has no control over many factors involved with the suitability, function or fitness for purpose of Goods in an existing or new computer environment, e.g.
  - A. the compatibility or ability of the Goods to fit into or perform to expectations in the receiving computer/internet environment; or
  - B. the behaviour of third party supplier, e.g. in relation to support;
4. The Customer acknowledges that for a whole number of reasons outside the control of Vision3, the Goods may fail to meet the Customer's expectations, may not turn out to be fit for all or any of the purposes sought, may not be suitable or may not function properly in all or any respects;
5. The Customer acknowledges that the Services provided by Vision3 may involve the very task of seeking to customise Goods so they may be fit for particular purposes and that customisation may be a very substantial project in itself;
6. Accordingly the Customer will accept the sole responsibility for, and indemnify and holds harmless Vision3 in respect of:
  - A. decisions as to whether or not to follow recommendations by Vision3;
  - B. decisions as to whether or not to purchase or customise Goods or obtain Services for that or any other purpose; and
  - C. any failure or defect in suitability, function or fitness for purpose of any Goods and/or Services,  
Including a responsibility to obtain its own independent advice or second opinion from a suitably qualified person;
7. Where Vision3 provides Services with a view to achieving the Customer's purposes, suitability, function or fitness for purpose (whether expressed, agreed or otherwise), the Customer must pay for those Services on time without any set-off or counter-claim, whether or not Vision3 is able to achieve any of such purposes, suitability, function or fitness for purpose, provided always that Vision3 has acted in good faith and has made what Vision3 considers, in its absolute discretion, to have made all reasonable endeavours to achieve those outcomes.

d) **Testing Procedures:** The Customer will follow the instructions of Vision3 with regard to testing or troubleshooting any problems and that if those do not resolve the outstanding problems, Vision3 will, subject to these Conditions, allocate such resources as it considers reasonable in the circumstances towards their resolution.

## 10. Force Majeure

**Force Majeure:** If Vision3 is unable to supply any Goods or Services due to circumstances beyond its reasonable control, Vision3 may cancel the Order (even if the Order has already been accepted) or cease to provide the Services by written notice to the Customer, in which case the Customer will hold Vision3 harmless.

Vision3 will not be liable for any breach of contract due to any matter or thing beyond Vision3' control, including failures by third parties to supply goods, services or transport, stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lock-outs, work stoppages, wars, riots or civil commotion, intervention or public authority, explosion or accident.

## 11. Payment, Late Payment and Default

- a) **Payment due date:** All invoices issued to the Customer are due and payable to Vision3 within the terms stated on the invoice (unless otherwise agreed in writing). by cash, cheque, credit card or direct deposit in accordance with these Terms and Conditions and in the way set out in the Invoice.
- b) **7 days late:** Where a Customer fails to pay an invoice within seven (7) days of the due date, Vision3 may, in its absolute discretion and without prior notice, suspend or discontinue the supply of Goods and/or Services to that Customer.
- c) **Recoveries:** All legal and other costs and expenses incurred in connection with the recovery of late payments will be added to the amount due by the Customer to Vision3 and will be recoverable from the Customer, in addition to the original invoice cost. If the Customer defaults in payment of any invoice on time, moneys which would have become due by the Customer at a later date shall be immediately due and payable without any further notice to the Customer. Collectively, all of these moneys are referred to in these Conditions as a "Sum Due".
- d) **Interest:** If payment of any Sum Due is not made on time, Vision3 will charge interest daily on the Sum Due at the rate of twelve (12) per centum per annum or the maximum allowed by law, calculated and charged daily on and from the due date until the Sum Due is paid in full.
- e) **Application of funds:** All payments of the Sum Due made by the Customer to Vision3 will be applied as follows:
  - i. first in or towards payment of any costs (including legal costs), charges, expenses or outgoings paid by Vision3 in relation to and dishonoured cheques fees, collection costs or any other action taken by Vision3 for the recovery of any amounts owing by the Customer to Vision3;
  - ii. secondly, in or towards payment of any interest due or payable hereunder, and
  - iii. thirdly, in or towards payment of the Customer's debts to Vision3 in order from the longest standing due to the most recently incurred.
- f) **Security:** Vision3 may require the Customer to provide security over the Customer's property (including the Goods or any other property of the Customer) as collateral to be held as security for any Sum Due or as a condition precedent to the continuation of supply of Goods or Services by Vision3 to the Customer.
- f) **Payment arrangements:** In the event that a repayment arrangement is made in relation to any Sum Due and the supply of Goods or Services is resumed, but then a

repayment due under that arrangement is not made on time, Vision3 may, in its absolute discretion and without prior notice, again suspend or discontinue the supply of Goods or Services to that Customer.

- g) **Power of Attorney:** The Customer hereby irrevocably appoints Vision3 as its attorney to do anything Vision3 considers fit for the recovery of the Sum Due or the creation, perfection or enforcement of any collateral held or to be held as security for any Sum Due.
- h) **Other remedies:** Vision3 may exercise any of its rights and remedies including taking legal action against the Customer for the recovery of any moneys due to Vision3, notwithstanding it may have exercised other rights under these Conditions.
- i) **Terminate Plan:** A customer may only terminate a Plan where:
  - a. Vision3 has, in the course of the performance of its Services, committed a material breach of an express term of these Conditions or any applicable Plan, and
  - b. Vision3 has failed to substantially remedy the breach within 21 days of a written notice served by the Customer on Vision3 specifying the breach.

## 12. Product specifications

- a) **Alterations to Specifications:** Vision3 makes every effort to supply the Goods in accordance with the Order however it may supply alternate Goods subject to minor variations in actual dimensions and specifications where these are changed by the manufacturer of the Goods after the Order date and before delivery.
- b) **Substitute Goods:** If Vision3 cannot supply the Goods ordered by the Customer, Vision3 may supply alternate Goods of equal or superior quality provided however that the Customer will not pay a higher price than the price Quoted or otherwise agreed for the Goods ordered.

## 13. Warranties

- a) **Reliance on Manufacturer's Warranty:** The Customer will rely on the warranties provided by the manufacturer of Goods supplied by Vision3 (where applicable) and will deal direct with such manufacturer rather than Vision3 for all claims covered by such warranties.
- b) **No claim for manufacturer's default:** The Customer indemnifies and holds harmless Vision3 in respect of the performance or otherwise, by any manufacturer of Goods supplied to the Customer by Vision3, of any of the obligations of such manufacturer in respect of such Goods. This includes any damages or moneys due to the Customer arising under, or in connection with, any breach by the manufacturer of any the manufacturer's warranties in respect of the Goods.

## 14. Liability

- a) **Exclusion:** Except as specifically set out herein and so far as may be permitted by law, any term, condition or warranty in respect of the quality, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.
- b) **No liability for program or data loss:** The Customer indemnifies and holds harmless Vision3 in respect of any allegation, claim, loss or expense of the Customer or any third party for any program or data loss or damage suffered by the Customer or that

third party arising directly or indirectly from the supply of the Goods or Services by Vision3 to the Customer. The Customer acknowledges it is solely responsible for backing up its programs and data in order to mitigate its own potential loss of programs and data.

- c) **Limit on consequential damage:** The Customer indemnifies and holds harmless Vision3 in respect of any allegation or claim as to any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to the Customer or any third party.
- d) **Limit on damage from a failure in supply:** The Customer indemnifies and holds harmless Vision3 for any allegation or claim for loss or damage by the Customer or a third party where Vision3 has failed to meet any delivery date or cancels or suspends the supply of Goods or Services.
- e) **General limit on liability:** Except as otherwise expressly stated in these terms and conditions, Vision3 is not liable for any loss or damage of any kind however caused (including, but not limited to, by the negligence of Vision3) which is suffered or incurred by you in connection with:
  - a. Goods or Services provided to you or any Work;
  - b. these Terms and Conditions;
  - c. your use of Vision3 website (including the use of a credit card or other debit device) or any linked website;
  - d. the non-availability of Goods or Vision3 Services or website services for any reason;
  - e. any act or omission of Vision3 or the provision of inaccurate, incomplete or incorrect information by you, or
  - f. for any other reason whatsoever.
- f) **Limitation options:** To the extent that any legislation implies a condition or warranty that cannot be excluded but can be limited, clause 14.e) does not apply to that liability and Vision3' liability for any breach of that condition or warranty is limited to Vision3 doing any one or more of the following (at its election):
  - 1. replacing the Goods or supplying equivalent Goods, Services or Work;
  - 2. repairing the Goods or the Work;
  - 3. paying the cost of replacing the Goods or the Work or acquiring equivalent Goods, Services or Work; or
  - 4. paying the cost of having the Goods or the Work repaired.
- i) **Laws still apply:** Nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the supply of the Goods or Services which cannot be excluded, restricted or modified.
- j) **Severance:** If any provision contained in the Conditions is unlawful, invalid or unenforceable, those provisions may be severed without prejudice to the validity and enforceability of the remaining provisions of the Conditions.

## 15. Non Solicitation of Employees

The Customer agrees that employees are one of Vision3's most valuable assets, policy and professional ethics require that Vision3 employees not seek employment with, or be offered employment by any Customer during the course of engagement and for a period of two (2) years thereafter (or the maximum amount permissible by a Court).

Both parties acknowledge that they would gain substantial benefit and that the other party would be deprived of such benefit, if they were to directly hire any personnel employed by the other party. Except as otherwise provided by law, both parties shall not, without the prior written consent of the other party, solicit the employment of any employee of the other party during the term of this Agreement and for a period of one (2) year following expiration of this Agreement.

## 16. Errors and Omissions

Vision3 makes every effort to ensure that all prices and descriptions quoted are correct and accurate. In the case of an error or omission, Vision3 may rescind the affected contract by written notice to the Customer, notwithstanding that it has already accepted the Customer's Order and/or received payment from the Customer. Vision3' liability in that event will be limited to the return of any money the Customer has paid in respect of the Order.

## 17. Software

- a) All Software licences are the responsibility of the Customer and not that of Vision3. It is the duty of the Customer to store all licences for all Software used, so that that they can be reproduced if and when required. This includes all Software installed by Vision3.
- b) The Customer indemnifies and holds harmless Vision3 against any claim, allegation, loss, damage or expense arising directly or indirectly from:
  1. any unauthorised Software use by the Customer;
  2. any breach of any Software licence in respect of Software provided to Vision3 by the Customer to be installed on a Customer's computer;
  3. otherwise as a result of Vision3 installing Software at the request of the Customer where the Customer is not authorised to use the Software; and
  4. any problem, defect or malfunction associated with any Software (or related services) supplied by third parties.
- c) All copyright in custom software remains the sole property of Vision3 unless alternate arrangements are made as part of a separate software agreement.

## 18. Copyright and Confidentiality

- a) **Warranty and breach:** The Customer warrants that any confidential or copyright information or intellectual property (of any kind and in any form held) or provided by the Customer to Vision3 belongs to the Customer. In the event of any breach of this warranty, the Customer will pay all sums due to Vision3 as if such warranty had not been breached (and regardless of any non-performance of any obligation by Vision3 on account of or in connection with the breach of such warranty). The Customer indemnifies and holds harmless Vision3 in respect of any allegations, claims, loss, costs or expenses in connection with such breach of warranty by the Customer.
- b) **Retention of title:** All copyright and other intellectual property rights in any Work created, commissioned or acquired by Vision3 in the course of the supply of Services by Vision3 to the Customer will be the exclusive property of Vision3 unless otherwise agreed in writing by Vision3 and the Customer.

- c) **Confidential Information:** Vision3 acknowledges that in the course of providing Services to the Customer, Vision3 may learn from the Customer certain non-public personal and otherwise confidential information relating to the Customer, including its customers, consumers or employees. Vision3 shall regard any and all information it receives which in any way relates or pertains to the Customer, including its customers, consumers or employees as confidential.

The Customer also acknowledges that all information and services, consulting techniques, proposals, and documents disclosed by Vision3 or which comes to its attention during the course of business and provided under this agreement constitute valuable assets of, and confidential and/or proprietary information to Vision3.

As such, both parties shall take all commercially reasonable steps to not disclose, reveal, copy, sell, transfer, assign, or distribute any part or parts of such information in any form, to any person or entity, or permit any of its employees, agents, or representatives to do so for any purpose except unless permitted in writing by the disclosing party or as required by applicable law.

## 19. Privacy Statement and Your Rights

- a) Vision3 is collecting your personal information for the fulfilment of Quotes, Orders and the provision of Goods or Services to you and it may retain and use it for any such purposes (“Authorised Purposes”).
- b) You are required to provide your personal information to Vision3 for Authorised Purposes.
- c) Vision3 may disclose your personal information to other persons for the purposes of the fulfilment of Quotes, Orders and Work for you or in order to provide Goods or Services to you, to verify the information you provide, for enquiries about Goods or Services that may be suitable for your purposes, or to confirm your requirements, to anyone proposing to supply Goods or Services to you, or to acquire Goods or Services on your behalf, or in respect of enquiries relating to any of the foregoing.
- d) Otherwise Vision3 will not disclose your personal information without your consent unless authorised by law.
- e) Your personal information will be held by Vision3 at its Principal Place of Business and you can contact Vision3 to request to access or correct it.
- f) Vision3 relies on you to submit correct information and details where requested. You accept that you may incur additional expenses if you submit incorrect information.

## 20. Vision3 Website

Vision3 makes no representations or warranties in relation to information available on the Vision3 website, including without limitation:

- a) that the information on the Vision3 website is complete or correct;
- b) that the Vision3 website will be continuously available or free from any delay in operation or transmission, virus, communications failure, internet access difficulties or malfunction in hardware or software; and that Vision3 endorses any internet site linked to the Vision3 website or any third party products or services referred to on the Vision3 website.

## **21. Representations**

The Customer acknowledges that no employee or agent of Vision3 has any right to make any representation, warranty or promise in relation to the supply of Goods or Services other than subject to and as may be contained in the Conditions.

## **22. Notices**

Any notices given under the Conditions shall be in writing and sent:

- a) by mail to the last known address of the Customer; or
- b) by facsimile to the last known facsimile number of the Customer; or
- c) by e-mail to the last notified e-mail address of the Customer.

## **23. Governing Law**

The Conditions shall be governed by and construed in accordance with the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of New South Wales.

## **24. Variation of these terms and conditions**

Vision3 may at any time vary these terms and conditions by publishing the varied terms and conditions on the Vision3 website. You accept that by doing this, Vision3 has provided you with sufficient notice of the variation. Vision3 is under no other obligation to notify you of any variation to these terms and conditions.