# Terms & Conditions

The terms and conditions set out below apply in the case of all sales of products and provision of all services by Nallawilli Communications Pty Ltd (ABN 61 626 829 598), a company having its principal place of business at 13 Gladman Close, Isaacs ACT 2607.

1. INTERPRETATION: In these terms and conditions “THE SELLER” means Nallawilli Communications Pty Ltd (61 626 829 598); “THE BUYER” means the person or company placing an order with the Seller for the purchase of product; and “PRODUCT” means the goods, merchandise and/or services supplied or quoted by the seller under its contract with the buyer.

2. GENERAL: The singular includes the plural and vice versa. A reference to gender includes all genders. Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.

3. OPERATION: Sale and supply of product by the Seller to the Buyer shall be upon the Seller’s terms and conditions of sale in force at the date of ordering the product.

4. QUOTATIONS: Quotations are not an offer or obligation to sell, but an invitation to treat only. All quotations are subject to withdrawal or variation at any time prior to acceptance of order. Unless previously withdrawn, quotations are valid for 30 days or other such period as is stated therein.

5. WHOLE OF OFFER: The prices offered in any quotation are subject to the following: (a) the whole of the offer being accepted; AND (b) the Buyer placing an order for all the products quoted upon in the said quotation; AND (c) the Buyer accepting delivery of all the products quoted upon in one delivery or in as many deliveries as the Seller may deem fit.

6. ORDER: The Seller reserves the right to accept or reject in its absolute discretion any orders which may be received by it.

7. RESCHEDULING OF ORDERS: If an order is rescheduled by the Buyer, the Seller reserves the right to charge the Buyer for the product under normal terms and conditions.

8. CANCELLATIONS: Any orders cancelled either in whole or in part will be subject to a minimum cancellation charge of 30% to be determined by the Seller.

9. PRICING: (a) Prices quoted are valid for a period of thirty (30) days from the date appearing on the quotation, unless other specific provisions apply by negotiation. After the expiration of the stipulated thirty days from the date of the quotation, prices may be subject to variation at the Seller’s discretion.

(b) Quotations could at the Sellers discretion, be subject to variation due to change in freight charges, currency exchange rates, customs duty and/or government policy.

10. PAYMENT: (a) Unless otherwise agreed in writing, payment terms are 30 days from date of invoice. (b) The Seller reserves the right to cancel any further credit and to take legal action for the recovery of all sums outstanding if there is a breach of the payment terms. (c) For amounts remaining unpaid after forty-five (45) days from the invoice date, the Seller reserves the right to charge interest at the rate of 1.5% per month. (d) If payment remains outstanding beyond the Seller’s payment terms, the Buyer is liable for all costs including legal costs (on a Solicitor/own client basis) and mercantile agents fees incurred by the Seller in recovering the amount outstanding.

11. DISCOUNTS: The Seller reserves the right to cancel all trade discounts or rebates in the event that the Buyer fails to comply with these terms and conditions, as to payment.

12. EXTENSION OF CREDIT: The extension of credit to the Buyer and the terms upon which it is provided shall be at the absolute discretion of the Seller at all times, and the Seller retains the right to withdraw credit facilities at any time. The Seller reserves the right at any time to vary the terms of payment. If the Buyer fails to make any payment to the Seller by the due date, the Seller can: (a) withhold delivery of any product; (b) require cash payments to be made prior to any further deliveries; (c) treat the Buyer as having repudiated any or all existing contracts, and (d) treat the whole of the amount of all invoices then outstanding as becoming due and payable.

13. TITLE AND RISK: Retention of title of the product, on leaving the Seller’s premises, shall not pass to the Buyer until the Seller has received payment in full although risk in the product passes on delivery to the Buyer, his carrier or agent. The Buyer authorises the Seller to retake possession and delivery of product in which title remains with the Seller, and for which payment has not been received. It is the responsibility of the Buyer to arrange any insurances. The Buyer cannot make any claim for compensation, damages, costs, fees, expenses, nor in any way hold the Seller responsible for any loss or damage to the product and the Buyer shall indemnify the Seller in this regard.

14. GST AND IMPOST: Unless otherwise stated prices quoted do not include any GST, duty or other impost which if applicable shall be payable by the Buyer at the current rate ruling at time of delivery.

15. CLERICAL ERROR: Clerical errors are subject to correction.

16. DELIVERY: The Seller reserves the right to make part deliveries of any order, and each part delivery shall constitute a separate contract for the sale of product. Failure by the Seller to deliver product on or before a quoted date, does not entitle the Buyer: (a) to terminate or cancel the contract, or (b) to compensate for any loss or damage however arising.

Amendments to the delivery schedules must be agreed in writing by a duly authorised officer of the Seller. If the amendments are not given in sufficient time to alter the Sellers product program, the Seller reserves the right to continue to deliver according to schedule. If the Buyer is unable to accept delivery the Seller will be entitled to charge the Buyer for the product, and storage, insurance, and other applicable costs.

17. ACCEPTANCE: The Buyer shall accept or reject goods included in each consignment within 7 days from receipt. If the Buyer fails to notify the Seller in writing of its rejection, and the reasons therefore within such time period, the Buyer will be deemed to have accepted such consignment. If the Buyer receives goods that are damaged and is not accepting the delivery, the consignment note from the transport company must stipulate that goods are damaged so that the appropriate credit may be raised and replacement goods organised. If the Seller is not notified of the damaged goods by the Buyer within 7 days, it will be taken that the goods have been accepted and no claim can be made against the Seller.

18. REQUESTS FOR CREDIT: All credit requests must be made in writing outlining the reason why a credit is requested as well as the order number, invoice number, type of product and the date when the product was returned and the mode of return.

19. RETURNS: No product may be returned to the Seller without the prior written approval of the Seller and then only upon such terms as the Seller may require. Product returned will only be credited in full to the Buyer’s account if received by the Seller in the same condition as initially delivered by the Seller to the Buyer. Please note the Buyer is responsible for any costs incurred for the return of product.

20. WARRANTY: The Seller guarantees its product against defective material or workmanship for a period of 12 months from the date of delivery to the Buyer. Faulty product claimed under this warranty provision must be returned to the Seller within the warranty period and at the expense of the Buyer whereupon the Seller will at its option either repair or replace such faulty product and return same to the Buyer. All warranties are subject to the equipment being used in a proper manner.

21. LIMITATION OF WARRANTY: The Seller does not accept liability: (a) for any consequential or remote damage, loss of profit, damage to property, death or injury to persons etc.; (b) for any figures or estimates given for the performance of goods, unless the Seller has guaranteed them in writing; (c) for any advice, recommendation, information, assistance or service given for the use or application of product. All such advice relied upon is at the Buyer’s risk; (d) whilst every effort is made to ensure their accuracy the descriptions illustrations and material contained in any catalogue, price list, brochure, leaflet, or other descriptive matter provided by or on behalf of the Seller represent the general nature of the items therein and shall not form a part of any order or agreement or amount to any representation or warranty; (e) The Seller reserves the right to discontinue product and to modify designs and changes specifications of any of their product included in their price list without incurring any obligation of the Buyer.

22. LIABILITY FOR DAMAGES: Unless specific arrangements have been made in writing between the Buyer and the Seller prior to the delivery of the product, the Seller shall in no circumstances whatsoever be liable for any claim for liquidated damages in respect of any actual or proposed supply of product.

23. PATENTS, TRADEMARKS, COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS: The Buyer acknowledges that any and all of the trademarks, trade names, patents, copyright and other intellectual property rights embodied in or in connection with the Products and any information, documentation, parts or software relating thereto are the property of the Seller or such other manufacturer/supplier of any such rights and further acknowledges that the Seller has the right to import and distribute the Products in Australia. The Buyer also acknowledges that certain copyright and intellectual property rights and other rights belonging to the Seller or other manufacturer/supplier as the case may be, may only be used by the Buyer with the consent of the Seller or other manufacturer/supplier via the Execution of an Agreement, and such consent extends only to use essential for the direct purposes of the proper implications of the Agreement. Upon expiry or termination of the Agreement the Buyer shall forthwith discontinue such use, without receipt of compensation for such discontinuation, and the Buyer acknowledges that upon expiry or termination of the Agreement any licence of intellectual property rights in software created or implied hereby will immediately cease.

24. WAIVER: Failure by the Seller to insist upon strict performance of any term or condition hereof shall not be deemed a waiver thereof or of any rights which the Seller may have and shall not and nor shall any express waiver be deemed to be a waiver of any subsequent breach of any term or condition.

25. FORCE MAJEURE: If by reason of “force majeure”, either directly or indirectly, the Seller is unable to perform in whole or in part its contractual obligations, then the Seller shall be relieved of those obligations. Such inability to perform shall not make the Seller liable to the Buyer or any other person in any way whatsoever. In these terms and conditions “ force majeure” means an act of God, strike, lockout, or other interference with work, war declared or undeclared, blockage, disturbance, lightning, fire, earthquake, storm, flood, explosion, government or quasi government restraint, expropriate prohibition intervention direct or embargo, unavailability or delay in availability of equipment or transport, inability or delay in obtaining government or quasi government approvals consents permits licences authorities or allocations, and other cause whether of the kind specifically enumerated above or otherwise which is not reasonably within the control of the party affected. The obligation on the Buyer to pay his account is never excused by force majeure.

26. REMEDIES: In addition and without prejudice to all other rights and remedies available to the Seller if the Buyer fails to pay the purchase price or any other sums due in respect to product supplied pursuant to these terms and conditions, or if the Buyer breaches a contract, the Seller may (insofar as such action does not give rise to the imposition of a penalty): (a) sue the Buyer for the price and other sums and in the Sellers discretion withhold delivery of product until the price and other sums including storage charges are paid; (b) rescind any contract by notice in writing and retain all or any deposit paid by the Buyer and : (i) resell the products and recover from the Buyer any deficiency or resale after charging the Buyer for all expenses incurred in connection with such recovery, and (ii) treat the Buyer as having repudiated the contract for the product and recover from the Buyer the loss of profit on the transaction to the Seller (after allowing for any deposit), and (iii) in the case of either (I) or (ii) the Seller may recover possession of the product from person or premises where the product may be and the Buyer shall assist and indemnify the Seller in relation to such recovery, and (c) recover from the Buyer interest at the rate equal to the Seller’s then current overdraft rate as varied from time to time on the unpaid account and other sums until full payment has been made.

27. NOTICE: Notices under this Agreement may be delivered by hand, by mail, by email or by facsimile. Notice will be deemed given: (a) In the case of hand delivery or registered mail, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving party; (b) In the case of ordinary mail, on the expiry of three (3) business days from the date of sending; (c) In the case of facsimile, upon completion of transmission. If the facsimile is sent after 5:30 pm, then it is taken to be received, at 8:30 am the next day.

28. TERMINATION:

28.1 The Seller may by written notice to the Buyer terminate any contract forthwith at any time if: (a) the Buyer sells the whole or a material part of the Business; (b) an order is made or a resolution is passed for the winding up or bankruptcy of the Buyer; (c) a receiver or a receiver manager is appointed to the whole or part of the business of the Buyer either voluntarily or compulsorily; (d) the Buyer fails on the due date to make any payment due to the Seller; (e) the Buyer breaches any of the Terms and Conditions of Sale of the Seller; (f) the Buyer is convicted or is otherwise guilty of an offence which in the opinion of the Seller adversely reflects upon the reputation, good name or interests of the Seller; (g) any guarantor of the Buyers indebtedness to the Seller revokes its guarantee or commits any act of bankruptcy or enters into an arrangement with its creditors. For the purposes of this Clause, any reference to bankruptcy or winding up includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration, being placed under official management and the occurrence of anything analogous or having a substantially similar effect to any of those conditions or matters under the laws for the time being in force in the Australian Capital Territory and to the procedures, circumstances and events which constitute any of those conditions or matters.

28.2 Upon the termination of any contract in accordance with clause 28.1: (a) the Buyer shall not be entitled to any compensation in respect of such termination; (b) the Seller may ,but shall not be obliged to, complete any order from the Buyer which is unfulfilled at the time of the termination; (c) the Seller shall not be obliged to accept for return or credit any product in the possession of the Buyer; (d) all monies including storage costs and interest owing by the Buyer to the Seller shall become immediately due and payable; (e) the Buyer shall forthwith return to the Seller all price lists, catalogues, manuals, and all other technical and advertising materials previously supplied to the Buyer by the Seller.

29. BUYER STRUCTURE: It is the Buyer’s responsibility to notify the Seller of any change in the Buyer ‘s structure or shareholding by notice in writing and that until such time as such notice has been given, the Buyer shall be liable to the Seller pursuant to the obligations hereunto entered into by the Buyer.

30. SEVERANCE: If a provision of these terms and conditions is voidable by either party or unenforceable or illegal but would not be void or voidable or unenforceable or illegal as aforesaid if it were read down and its capable of being read down it shall be read down accordingly. If such provision is incapable of being so read down, the provision is hereby served and the remainder of these terms and conditions have full force and effect.

31. GENERAL: The Seller may at any time alter its Terms and Conditions in respect of all transactions taking place after notification to the Buyer of such altered Terms and Conditions. Terms and Conditions embody the entire understanding of the parties - no other promises, terms, conditions or obligations - oral or written - express or implied - other than those contained in these terms and conditions.

32. APPLICATION: These Terms and Conditions are considered to have been made in the Australian Capital Territory, and the construction, validity and performance of these Terms and Conditions shall be governed in all respects by the law for the time being in forced in the Australian Capital Territory and its Courts shall be considered Courts of competent jurisdiction.

37. CONFIDENTIAL INFORMATION: Each party undertakes at all times to hold in confidence the “Confidential Information” of the other party. “Confidential Information” means any item, which is marked as confidential or could reasonably be assumed to be confidential which is disclosed by either party to the other under this Agreement. “Confidential Information” also means any information that is stored, transmitted or communicated on, over or via the system to which the Services under this Agreement relate. “Confidential Information” does not however include any item which: (a) Is known to the receiving party, under no obligation of confidence, at the time of disclosure by the other party; or (b) Is or becomes publicly known through no wrongful act of the receiving party; or (c) Is lawfully obtained by the receiving party from a third party who in making such disclosure breaches no obligation of confidence to the other party; or (d) Is independently developed by the receiving party; or (e) Is disclosed by the other party to a third party under no obligation of confidence. Nothing in this Agreement shall be construed to prevent or restrict Nallawilli from disclosing or using in the course of its business any technical knowledge, skill or expertise acquired by Nallawilli in the performance of this Agreement.