

TERMS AND CONDITIONS OF SUPPLY

1. Definitions

Somerville (trading as Atturra Managed Services) means any one or more of the following: The Somerville Group Pty Limited ABN 67 002 876 360, Netfilter Pty Limited ABN 53 089 036 019 and Cosys Integration Pty Limited ABN 98 089 079 658 as partners of The Somerville Group ABN 14 141 617 410.

Business Days means a day that is not a Saturday, Sunday or any other day that is a public holiday in Sydney, Australia.

Confidential Information means all information of a confidential nature, in any form whether tangible or not and whether visible or not, disclosed or communicated by a party to the other, or learnt or accessed by, or to which the other party is exposed as a result of entering into these Terms and Conditions and includes, without limitation, any information and material concerning the contractual or commercial dealings, financial details, products or services (current or proposed), customers, employees, internal policy, intellectual property or other proprietary information or material of a party or dealings under these Terms and Conditions, but does not include information or material which is or becomes known or generally available to the public.

Force Majeure Event means any circumstance not within the reasonable control of the party affected, but not limited to acts of God, natural disasters, wildfires, earthquakes, tornadoes, lightning, floods, high winds, civil disturbances, physical damage caused by third parties, terrorism, war (declared or undeclared), epidemics, pandemics, shortages of materials or transporters, national or local strikes, labour disputes, or transportation delays or accidents, provided, that force majeure events does not include any inability to make any payments that are due under these Terms and Conditions, or to procure insurance required to be procured under these Terms and Conditions.

Terms and Conditions means the terms and conditions set out below as attached the credit application signed between Somerville and the Customer.

2. Interpretation and application

- 2.1 In these Terms and Conditions, a reference to the Customer means the Customer, its employees, agents or subcontractors. The actions or signatures of any person appearing to Somerville to have the authority of the Customer will bind the Customer.
- 2.2 These Terms and Conditions will apply to any and all supplies of goods or services by Somerville to the Customer.
- 2.3 No terms and conditions of the Customer will apply, except where consistent with these Terms and Conditions.

3. Payment

- 3.1 The Customer agrees that payments to Somerville must be made within 14 days from date of invoice unless agreed otherwise and, if at any time moneys are overdue the whole debt will then become due and Somerville will be at liberty to sue for the recovery of the whole debt and may cease all further deliveries and the performance of work for the Customer.
- 3.2 All prices are exclusive of GST. Subject to receipt of a tax invoice complying with the GST Legislation, the Customer will pay in addition to the price GST thereon at the prevailing rate at the time of issue of these Terms and Conditions.

4. Credit Approval

- 4.1 Provision of goods or services by Somerville is subject to Somerville being satisfied at all times that the Customer can and will pay the amount specified in the invoice.
- 4.2 The Customer must provide Somerville with all information Somerville reasonably requires for the purpose of assessing the Customer's credit rating.
- 4.3 The Customer consents to Somerville obtaining from a credit reporting agency a credit report containing personal credit information about the Customer and to Somerville providing personal information about the Customer to a credit reporting agency for this purpose.
- 4.4 Somerville may revoke any credit granted to a Customer at any time by giving reasonable notice.

5. Insurance

- 5.1 The Customer must arrange and maintain for the duration of these Terms and Conditions with a reputable insurance company:
- contents insurance to cover any hardware supplied by Somerville that is physically located on the Customer's premises;
 - a broad form public liability policy of insurance to the value of at least [\$20 million dollars] in respect of each claim; and
 - workers' compensation insurance in accordance with applicable legislation.

- 5.2 The Customer must make available to Somerville any certificate of currency on request by Somerville.

6. Indemnity

- 6.1 Somerville will not be liable to and will be indemnified by the Customer in respect of any claim made by any third party which arises out of any defects however caused which may exist in any goods delivered or work performed by Somerville to or for the Customer.
- 6.2 The Customer indemnifies, and must keep indemnified, Somerville and its officers, employees, agents and contractors ("those indemnified") from and against any claim or loss incurred or suffered by any or all of those indemnified in connection with:
- any personal injury or death of any person or the loss of, damage to or loss of use of, any real or personal property arising out of or in connection with the Customer's breach of these Terms and Conditions or the negligence or any act or omission of the Customer, its officers, employees, agents, subcontractors and contractors; or
 - any breach by the Customer, its officers, employees, agents, subcontractors and contractors of any obligation under these Terms and Conditions.
- 6.3 The Customer's liability under this clause 6 will be reduced to the extent that the claim or loss suffered or incurred by those indemnified was caused or contributed to by the wilful, unlawful or negligent act or omission, or the breach of a provision of these Terms and Conditions by those indemnified.

7. Limitation of Liability

- 7.1 Except in circumstances where Somerville is by law unable to exclude or limit its liability whether arising in contract, tort, negligence, breach of statutory duty or otherwise, all guarantees, warranties, conditions and representations whether express or implied, are expressly negated and excluded provided nevertheless that where a warranty or condition is implied by law Somerville's liability in respect of goods or services is limited:
- in the case of goods, to one of the following, as determined by Somerville: replacement of the goods or supply of equivalent goods, repair of goods, payment of the cost of replacing the goods or acquiring equivalent goods, or payment of the cost of having the goods repaired; and
 - in the case of services, to supplying the services again, or, at Somerville's option, the payment of the cost of having the services supplied again.
- 7.2 Somerville will not be liable in any manner whatsoever for delay or non-delay which is attributable to transport delays, unavailability of materials, lockouts or any other cause including a Force Majeure Event.
- 7.3 Somerville will not be liable under or in connection with these Terms and Conditions or with respect to any goods or services provided to the Customer for any loss of income, loss of actual or anticipated profits, loss of business, loss of anticipated savings, loss of, damage to, or corruption of data, loss of goodwill, loss of reputation or for any special indirect, incidental or consequential loss or damage of any kind in each case howsoever arising, whether such loss or damage was foreseeable in the contemplation of the parties and whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise.

8. Intellectual Property

- 8.1 The Customer grants Somerville the non-exclusive, non-transferable right to use, adapt and modify any materials supplied by the Customer or to which the Customer gives Somerville access as necessary for the purposes of delivering the services.
- 8.2 The Customer warrants to Somerville that it has all intellectual property rights necessary to enable Somerville to use those Customer materials in order to carry out the services. The Customer will indemnify Somerville from and against any and all damages, losses, claims, liabilities, demands, charges, suits, penalties, costs and expenses (including legal costs) which Somerville may sustain, or to which any of Somerville may be subjected, arising out of or relating to any breach of this warranty.

9. Sale of goods

- 9.1 This clause 9 applies to any sale by Somerville of goods to the Customer.
- 9.2 The ownership of goods delivered by or at the instigation of Somerville to the Customer will remain with Somerville and Somerville reserves the right to take possession of and dispose of the goods until payment in full for the goods delivered to the Customer has been received by Somerville in accordance with these Terms and Conditions.
- 9.3 Immediately upon delivery, the Customer accepts responsibility and risk for the goods.
- 9.4 If payment is overdue in whole or in part Somerville may (without prejudice to any of its other rights) recover or sell the goods or

any of them and may enter upon the Customer's premises or those premises to which the Customer has right of access and in this regard the Customer authorises Somerville to enter the premises by its employees or agents for that purpose.

9.5 Until the date of such payment the Customer will store the goods in such a way so that they are clearly identifiable as the property of Somerville and if the Customer sells them it will hold all proceeds in trust for Somerville.

10. Bailment or lease of goods

10.1 This clause 10 will apply where Somerville supplies goods to the Customer under bailment or lease, i.e. title of the goods is intended to remain vested in Somerville at all times.

10.2 Ownership of the goods remains vested in Somerville who will, subject to this clause, be responsible for their maintenance and repair.

10.3 On the expiration or early termination of a lease or bailment of the goods, Somerville will be entitled to collect such goods and will be entitled to access the Customer's premises for such purpose.

10.4 The Customer will ensure that the goods are not removed or damaged by the Customer.

10.5 If the goods are computer hardware, the Customer will not change the configuration of the hardware and will maintain the hardware in an environment in accordance with the specifications notified by Somerville to the Customer from time to time.

11. Termination

11.1 Somerville will have the right to terminate these Terms and Conditions or any other agreement between the parties in the event that the Customer:

- (a) being an individual or individuals, is or are declared bankrupt; or
- (b) being a company, has a liquidator, administrator or receiver appointed; or
- (c) is in breach of any term of these Terms and Conditions and fails to remedy such breach within 10 Business Days of receipt of such written notice from Somerville specifying the breach and requiring that it be remedied, or that breach is not capable of remedy; or
- (d) commits any repeated or persistent breaches of these Terms and Conditions and fails to remedy any or all breaches within 5 Business Days of receipt of such written notice from Somerville specifying the breaches and requiring that they be remedied.

11.2 Somerville will have the right to terminate these Terms and Conditions or any other agreement between the parties in the occurrence of a Force Majeure Event.

12. Hardware

To the extent otherwise specified or instructed by Somerville, with respect to any hardware supplied by Somerville, the parties agree the following:

- (a) ownership of hardware remains vested in Somerville who will, subject to this clause, be responsible for the maintenance and repair of the hardware;
- (b) on the expiration or earlier termination of these Terms and Conditions, Somerville will be entitled to collect such hardware and for such purpose will be entitled to access to the Customer's premises;
- (c) the Customer must ensure that the hardware is not removed or damaged by its servants, employees, contractors, consultants or agents;
- (d) the Customer must not change the configuration of the hardware at any time; and
- (e) the Customer must maintain the hardware in accordance with the specifications notified by Somerville to the Customer from time to time.

13. PPSA

13.1 The Customer acknowledges the right of Somerville to register a financing statement under the *Personal Property Securities Act 2009* ("PPSA") with respect to any security interest created by these Terms and Conditions.

13.2 If Somerville registers a security interest under the PPSA, Somerville may exercise any or all remedies afforded to Somerville as a secured party under it without prejudice to any other rights or remedies arising out of a breach by the Customer of any agreement with Somerville.

13.3 Any goods provided by Somerville to the Customer pursuant to these Terms and Conditions are collateral for the purposes of the PPSA.

13.4 The Customer waives any right that the Customer has under the PPSA to receive notice in relation to registration of events.

13.5 The parties agree that neither will disclose information of the kind specified in section 275(1) of the PPSA.

13.6 At the election of Somerville to be exercised at any time in its absolute discretion, any section of the PPSA specified in section 115 will not apply to the extent permitted by section 115.

14. Confidential Information

14.1 The Customer acknowledges that under these Terms and Conditions it may receive Confidential Information from Somerville. The Customer agrees not to use or disclose any Confidential Information except:

- (a) with the consent of Somerville;
- (b) in the proper performance of these Terms and Conditions;
- (c) where required by law or to obtain professional advice in relation to this agreement; or
- (d) where the Confidential Information enters the public domain other than by a breach of this clause by Somerville or a third party.

14.2 The Customer acknowledges that the contents of these Terms and Conditions constitute commercially sensitive and confidential information. The Customer agrees that it must not disclose the contents of these Terms and Conditions to any party without prior written consent from Somerville, unless legally compelled to do so, and then only after notifying Somerville of that legal requirement.

15. Privacy

15.1 Somerville adheres to the National Privacy Principles in respect of any personal information collected from an individual. In respect of such personal information, Somerville discloses that:

- (a) the identity and contact details of Somerville are attached to these Terms and Conditions;
- (b) the individual is entitled to access the personal information collected; and
- (c) the personal information is collected for the purpose of processing an application for the supply of goods and/or services.

The only organisations to which Somerville discloses the personal information are credit reporting agencies. The consequences, if the personal information is not provided to Somerville, is that Somerville will be unable to process the application for supply of goods or services.

16. Notices

16.1 Any notice to be given under these Terms and Conditions must be in writing and must be delivered or sent by post, facsimile or email to the registered office of the party to whom it is sent, or such other addresses, facsimile numbers and email addresses as notified in writing.

16.2 The party to whom a notice is sent will be deemed to have received the notice if:

- (a) it is delivered, when it is left at the relevant address;
- (b) sent by post, 2 business days after it has been posted;
- (c) if sent by facsimile, upon the sender receiving a transmission report from its fax machine indicating that the fax was sent successfully; or
- (d) if sent by email, either:
 - (i) twenty-four (24) hours after the sender sends the email if no bounce or failure delivery report is received by the sender from the email program; or
 - (ii) when the sender receives a receipt notification if one is sent by the receiver.
- (e) If a party gives the other party 3 Business Days' notice in writing of a change of its address, fax number or email address, then any notice, consent, information, application or request is only given or made to that other party if it is delivered, posted, faxed or emailed to the notified address, fax number or email address, as the case may be.

17. Governing law

These terms and conditions will be governed by the law of the state of New South Wales.