



## Terms and Conditions of Trade

### **1. General**

- 1.1. The supply of the Services to You by Us is conditional upon your acceptance of these terms and conditions. Any modification to these terms and conditions will not apply unless agreed in writing by Us.
- 1.2. This Agreement constitutes the entire agreement between the Parties and supersedes and replaces all agreements, arrangements and understanding, whether reduced to writing or not, that may have preceded this Agreement. This Agreement contains the entire understanding of the Parties as to its subject matter. There is no other understanding, agreement, warranty, condition or representation (express or implied) in any way defining, extending or otherwise relating to the matters to which this Agreement relates.
- 1.3. This Agreement is governed by and is to be construed in accordance with the laws of the State of Queensland and the parties hereby submit to the non-exclusive jurisdiction of the Courts of that State.
- 1.4. Unless otherwise agreed by Us in writing, these Conditions apply to every provision of Services by Us to You and cannot be varied, amended or supplemented by any other terms or conditions without Our prior written consent.
- 1.5. If any term or provision of this Agreement shall be declared invalid by a Court of competent jurisdiction, then such provision will be interpreted, construed, or reformed to the extent reasonably required to render it valid, enforceable, and consistent with the original intent underlying such provision and the remainder of this Agreement shall remain in full force and effect, according to its terms.
- 1.6. Where warranties, conditions or obligations (hereafter called “obligations”) are imposed or implied by the Consumer Law or other Acts or Regulations which cannot be excluded. These terms and conditions are to be read and construed as subject to those provisions. Where such obligations can be excluded they are. Where such obligations or liability arise from those obligations cannot be excluded but can be restricted or modified then such restriction or modification shall apply to the fullest extent permitted by law.
- 1.7. A reference to any laws includes variations or substitutions of those laws. A reference to a party of this Agreement or any other document or Agreement includes its successors and permitted assigns.
- 1.8. Reference to one gender includes all genders: the singular includes the plural and vice versa: reference to a person includes a corporation or other entity and vice versa.

### **2. Definitions**

- 2.1. “Agreement” means this Agreement;
- 2.2. “Customer” or “You” or “Your” means a person, firm or corporation, jointly and severally if more than one, that requests Services from us;
- 2.3. “Party” and “Parties” means (severally and not jointly) NQ Programming Services and the Customer as the context it requires;
- 2.4. “Services” means all services performed by Us for You or on Your behalf;
- 2.5. “We” or “Us” or “Our” means NQ Programming Services;

### **3. Payment**

- 3.1. We may agree to provide You with any Services requested by You from time to time at such prices and/or rates as the Parties may agree. You acknowledge that this Agreement will apply to the provision of all such Services unless otherwise agreed in writing.
- 3.2. Terms of payment are fourteen (14) days from the date that the Services are performed by Us. If You default in the payment by the due date of any amount payable to Us, then all money which is then due as well as all monies that are payable by You



to Us at a later date on any account, shall be due and payable immediately and We may without any further notice to You, and without prejudice to any other right or remedy available to Us:

- 3.2.1. Charge You interest on any sum due at the rate of two (2) percent above the Corporate Reference Rate of Our principle banker. This interest shall be calculated daily and compounded every thirty (30) days for the period from the due date until the date of payment in full;
  - 3.2.2. Charge You for all expenses and costs (including debt collection, commission and fees, legal costs on a full indemnity basis) suffered or incurred by Us resulting from the default, including taking whatever action We deem to be appropriate to recover any amounts due (which, for the avoidance of doubt, shall include engaging any debt collection agency to seek recovery of the amounts due);
  - 3.2.3. Cease or suspend for such period as We think fit, supply of any further Services to You; and
  - 3.2.4. By giving notice in writing to You, terminate any contract with You.
- 3.3. All payments must be made in Australian dollars;
- 3.4. If any payment made by one party to any other party under or relating to this Agreement constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be deemed to include GST and will be payable by You;
- 3.5. By accepting payment of any sum after its due date We do not waive Our right either to require payments as they fall due or to suspend or end Our arrangements.

#### **4. Completion of Services**

- 4.1. Any completion time for Services given by Us to You is an estimate only and We are not liable to You if the Services take longer to complete than originally quoted.

#### **5. Use of Services**

- 5.1. You agree that You will only use the Services in accordance with this Agreement.
- 5.2. You must at all times at times during the use of the Services ensure compliance with all applicable laws of Australia.
- 5.3. You will only use the Services for Your personal use for the backup of Your data and for any other purposes as specifically permitted in writing by Us.
- 5.4. You will not use the Services to store, backup or transmit any files, programs, videos, images or data that contains any illegal or unlawful content that could be considered to be harassing, defamatory, libellous, slanderous, abusive, threatening, harmful, vulgar, pornographic, obscene or otherwise objectionable, that contains any material which could constitute a criminal offence, give rise to civil liability or otherwise violate any applicable local, state, national or international law or regulation: that violates the intellectual property rights of any third party or that contains any virus's, worms, trojans or any other malicious code, data or material with destructive or contaminating features.
- 5.5. You must not when using the Services cause harm to the Service or its users. You agree that you will not access or attempt to access any files, data, images, videos or programs that You are not authorised to use or access.
- 5.6. You will not use the Services for any use that may disrupt or negatively affect the Services or the networks through which You access and use the Services.
- 5.7. You will not use the Services to send unsolicited bulk emails or for spamming.
- 5.8. That you will only access the Services by way of your unique user name and password, which will be selected by You.

#### **6. Customer Responsibilities**



- 6.1. You shall be responsible for:
  - 6.1.1. Selecting and maintaining the password used for access and all other user log in details and keeping them in the utmost confidence in order to prevent unauthorised use and access to the Services.
  - 6.1.2. Ensuring that Your system and the Services are used solely for their intended purpose.
  - 6.1.3. Ensuring that there is no unauthorised access of the Services by You or Your employees.
  - 6.1.4. Notifying Us immediately of any security breach whether it be suspected or otherwise of the Services or Your confidential password or user log in.
- 6.2. We are not responsible for setting or ensuring that a particular username or password is available. We recommend that You use your email address as the username for access to the Services.
- 6.3. It is Your responsibility to add users as administrators of the Services. The administrator will have access to add, modify and delete all data in the System.
- 6.4. You shall be solely responsible for all data inputs and all outputs derived and all other results arising from Your use of Services.
- 6.5. You must immediately report any errors or faults to Us in the provision of the Services.

## **7. Change to Services**

- 7.1. We reserve the right to modify, discontinue, suspend, prohibit, use or terminate the Services as a whole or any part thereof, to You or to all or some subscribers at large, with or without notice to You. Other than a pro-rata refund for any prepaid but unused portion of the Services as determined in our sole discretion, we shall not be liable to you or any third party should we exercise our right to modify, discontinue, suspend, prohibit or terminate the Services or any part thereof.

## **8. Passwords**

- 8.1. All passwords are encrypted and stored in a database of the system for security services.
- 8.2. It is Your responsibility to keep your passwords safe and secure and we recommend that You change your password on a regular basis to improve your security.
- 8.3. We recommend that the more complicated and longer that Your password is and the more often that you change it, the more secure it will be.

## **9. IP Address**

- 9.1. You IP address is collected every time that You log into the Services. It is kept only for the time of log in and is destroyed immediately after You log out. It solely used to ensure that Your connection is kept secure.

## **10. Exclusion of Liability**

- 10.1. You acknowledge that there has been no reliance on the skill, judgment or any representation by Us whatsoever in deciding whether the Services are fit for any particular purpose.
- 10.2. Except as provided in this Agreement we are not liable to You or any other person for:
  - 10.2.1. Any cost, loss or liability including loss of profit or other consequential damage arising from Our supply or failure or delay in supplying any Services.
  - 10.2.2. The content, context or confidentiality of any communications made using any Service. We are not able to provide support for software not supplied by Us including software downloaded from the internet.



## 11. Breach of Agreement

- 11.1. You shall indemnify Us from all liabilities, damages, claims, actions, proceedings and expenses (including loss of profit) incurred by Us as a result of any breach of the terms of this Agreement.
- 11.2. If You breach any term of this Agreement (including terms relating to payment or use) or You (if a company) enter into liquidation (whether voluntary, compulsory or provisional) or are wound up dissolved or placed under external administration, enter into a scheme or arrangement for Your creditors, are placed under official management or a receiver and or manager of any of the company's assets are appointed or if You are an individual, become insolvent, then We may immediately terminate the Agreement and Your right to use the Services will immediately cease.
- 11.3. This Agreement shall remain effective until terminated. Either Party may terminate this Agreement by giving thirty (30) days prior written notice to the other. Upon termination of the Agreement Your right to access and/or use the Services immediately ceases.

## 12. Limitation of Liability

- 12.1. Notwithstanding anything contained herein, We will not under any circumstances whatsoever be liable to You or to any third party for any direct, indirect or consequential loss, damage, cost or expense of any kind (including legal fees on an indemnity basis) whatever and however caused, whether arising under statute, contract, tort (including negligence) or otherwise including (without limitation) for loss of production, loss of or corruption to data, loss of profits or of contracts, loss of time or loss of good will or anticipated savings, even if We have been advised of their possibility arising out of the use of or inability to use the Services.

## 13. Intellectual Property Rights

- 13.1. You agree that You have no right, title or interest in the Services or any part thereof except for the limited licence to use the Services on and subject to the terms of this Agreement. We reserve all rights that are not specifically granted to You.

## 14. Notices

- 14.1. To be valid or effective a notice or document required to be provided in accordance with the terms of this Agreement must be in writing and must be left at, posted by registered post or sent by facsimile transmission to the address provided by the receiving party.