

# Terms and Conditions

## 1 INTERPRETATION

In these Conditions the following words shall have the following meanings:

“Commencement Date”:	the commencement date specified in the Order Details;
“Conditions”:	these terms and conditions;
“Contract”:	the contract for the provision of Products comprising the Order Details, any Service Schedule, any subsequent Orders accepted by Supplier, the Conditions and such other schedules as are agreed in writing by the parties as forming part of the Contract, and in the event of any inconsistency or conflict between those documents, their order of prevalence shall be the same order as written in this clause;
“Customer”:	the person, firm or company who contracts for Products pursuant to the Contract;
“Customer Platform”:	means Customer’s system specified in the Order Details through which Customer will access and (if permitted) allow access to the Product for its authorised Users and/ or External Users;
“Electronic Media”:	computer readable media for use on a computer or the Internet;
“Excess Usage”:	means any usage of the Product above the levels permitted by the Fees paid by Customer, which will be charged at the rate indicated in the Order Details;
“External Use”:	means Use by Customer and by its customers via the Customer Platform;
“External Users”:	means third party users provided with access to the Product by Customer in accordance with the Contract;
“Fee”:	the amount payable by Customer in respect of the Products as specified in the Order Details and as subsequently varied in accordance with this Contract;
“Intellectual Property Rights”:	(i) patents, registered trade or service marks, registered designs; (ii) unregistered trademarks, copyright, topography rights, database rights, moral rights, know-how rights in designs and inventions; (iii) trade business and company names, Internet domain names and e-mail addresses; (iv) the goodwill attaching to any of the aforementioned rights; and (v) any forms of protection of a similar nature and having equivalent or similar effect in any jurisdiction; in each case including applications and rights to apply for any registered right;
“Internal Use”:	means Use only by Customer for its own internal use, and, in respect of Products supplied for use with computer equipment, the copying or transmission of Products into the computer equipment only within Customer’s organisation and not accessible to any third party for the purpose of the Contract;
“Order”:	Customer’s request to Supplier to supply specified Products which shall be subject to confirmation on an Order Form;
“Order Details”:	the order details section A of this Contract, in which Customer’s order for the Products is described;
“Product(s)”:	the products supplied by Supplier pursuant to the Contract, as indicated in the Order Details, including any and all data, Updates and any computer software enabling access to and/or Use of the Products however supplied (whether in hard copy, or Electronic Media or via a remote communication link such as the Internet);
“Service Schedule”:	a schedule to the Contract or Order Form indicating specific services terms forming part of the Contract in relation to specific Products, to the extent applicable;
“Supplier”:	Glass’s Information Services Pty Limited, ABN 44 004 382 478;
“Territory”:	means the territory specified in the Order Details.
“Update(s)”:	any updated, improved or modified version of Products from time to time issued by Supplier;
“Use”:	accessing, operating or running Products as permitted by the Contract; and
“Users”:	individuals having access to Products via electronic equipment at any one time, excluding External Users.

## **2 TERMS OF THE CONTRACT**

- 2.1 These Conditions shall apply to all supplies of Products by Supplier to Customer to the exclusion of all other terms, conditions or representations (whether express or implied) including (but not limited to) any terms, conditions or representations which Customer may purport to apply under any purchase order, confirmation order or similar document. This Contract is the entire agreement and replaces all previous agreements and understandings between the parties relating to the Products.
- 2.2 Save as otherwise specified in these Conditions, no variation to this Contract shall be binding unless agreed in writing between the authorised representatives of Supplier and Customer.
- 2.3 Any typographical, clerical or other error or omission in any sales literature, quotation, Fee list, acceptance of offer, invoice or other document or information issued by Supplier shall be subject to correction without any liability on the part of Supplier.

## **3 ACCEPTANCE OF ORDERS**

- 3.1 A Contract shall exist between the parties upon Supplier confirming acceptance of Customer's Order. For the avoidance of doubt, the issuing of a Tax Invoice by Supplier constitutes acceptance of an Order.
- 3.2 Supplier may perform credit checks on Customer before an Order is confirmed and Customer hereby consents to such checks being undertaken. Supplier shall not disclose any information obtained by the credit check to any other party except to the extent that Supplier is required or permitted to do so by law.

## **4 SUBSCRIPTION FEE AND PAYMENT**

- 4.1 In consideration of the supply of Products and/ or services, Customer will pay the Fee to Supplier, including any amounts indicated in the Order Details in respect of any Excess Usage, which shall be invoiced by Supplier monthly in arrears, unless otherwise stated in the Order Details.
- 4.2 The Fee shall be in the currency stated in the Order Details and is exclusive of GST and any other tax or duty payable by Customer, carriage and delivery costs.
- 4.3 Supplier shall not deliver Products until Customer has paid for them.
- 4.4 The Fee is payable annually in advance or monthly in advance by direct debit or as otherwise agreed in writing between Customer and Supplier in the Order Details. Any fees expressed in the Order Details to be payable on invoice must be paid within 30 days of the date of the relevant invoice. Customer is not obliged to pay the GST on a taxable Supply to it, until it is given a valid Tax Invoice for the Supply by Supplier.
- 4.5 Any facility for monthly payments is subject to a minimum payment as determined by Supplier from time to time. If any agreed monthly payments payable by Customer fall below such minimum amount, Supplier reserves the right to require annual payment and to collect payment accordingly, along with any interest accrued.
- 4.6 If Customer fails to make any payment when due for any reason (including, without limitation, dishonoured cheques or card payments, direct debit cancellation), Supplier reserves the right to:
- 4.6.1 charge Customer reasonable administration and bank charges in respect of such failure;
  - 4.6.2 require immediate full payment of all Fees for the remainder of the then current duration of the Contract;
  - 4.6.3 charge interest on the full amount (after, as well as before, judgment) at the rate of 4% p.a. above the rate for the time being fixed by section 2 of the Penalty Interest Rates Act 1983 (Vic) from the due date therefor until payment in full;
  - 4.6.4 suspend any and all licences granted to Customer until it has made payment in full;
  - 4.6.5 withhold delivery of any further Updates or Products until such time as all arrears have been settled; and/or
  - 4.6.6 terminate the Contract pursuant to clause 11.2.1.
- 4.7 Customer acknowledges that any promotional discounts or offers given when entering into the Contract are valid for a limited period only, and that full tariffs will apply after the initial term of the Contract unless otherwise agreed in writing by Supplier.
- 4.8 Supplier shall be entitled to increase all fees and rates on the anniversary of the Contract.
- 4.9 For the purposes of this Contract and this clause 4, the expressions GST, Tax Invoice and Supply, shall have the meanings given to them in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended).

## **5 DELIVERY**

- 5.1 Any dates quoted for delivery of Products are approximate only and Supplier shall not be liable for any delay in delivery of Products howsoever caused. Time for delivery shall not be of the essence. Supplier will deliver the Products by the method specified in the Order Details.
- 5.2 Supplier will use its reasonable endeavours to provide Updates by any date specified. Where any Product is supplied via a remote communication link such as the Internet, Customer acknowledges that Supplier shall not

be liable for any delay or failure to supply or any corruption of information caused by the communication link. Supplier's obligation will be limited to using reasonable endeavours to ensure that any version of a Product which is so affected is supplied to Customer uncorrupted as soon as reasonably possible after it becomes aware of the problem. Supplier may, at any time during the term of this Contract, withdraw a Product from general availability and, at Supplier's option, either (i) replace it with an alternative product or deliver the applicable data through an alternative medium, provided that the replacement product or medium shall deliver materially the same capability and/ or data to the Customer; or (ii) provide a pro rata refund of the Fee relating to the withdrawn Product.

## **6 INTELLECTUAL PROPERTY RIGHTS AND LICENCE**

- 6.1 All Intellectual Property Rights in Products and any other items supplied pursuant to the Contract will remain the property of Supplier or its suppliers or sub-contractors.
- 6.2 Rights to vehicle images belong to their creator or rightsholder. Supplier offers no rights to use such images; Supplier service in relation to images is limited to providing a link from the Products to the images. Such links may only be used in conjunction with the Products and only online. Use in electronic mailings or printed material is prohibited. Supplier may withdraw the links to the images at any time, and any use of the links must cease if the image rightsholder so requires. In such circumstances, Supplier will at its sole discretion attempt to make other images available.
- 6.3 Subject always to Customer's compliance with its obligations in this Contract, Supplier grants to Customer a non-exclusive non-transferable licence to Use Products and any associated data, instruction manuals and guides within the Territory for the duration of the Contract for Internal Use.
- 6.4 Use shall only take place through the Customer Platform unless otherwise agreed in writing by the parties.
- 6.5 Where the Permitted Use expressly permits External Use, Customer shall:
- 6.5.1 be permitted to allow use of the Product in the Territory by its External Users only in accordance with the Permitted Use;
  - 6.5.2 not allow the Product or any part thereof to be displayed or made available other than via the Customer Platform without Supplier's prior written consent;
  - 6.5.3 not provide any links to or from the Customer Platform to any other entity whose products compete with the Product;
  - 6.5.4 be responsible for all use of the Product made by its External Users, and indemnify and hold harmless Supplier against all claims, damages, liabilities, costs and expenses arising from such use;
  - 6.5.5 incorporate Supplier trade mark on the Customer Platform as set out in the guidelines issued by Supplier from time to time to indicate that the information contained in the Product belongs to and is provided by Supplier;
  - 6.5.6 keep accurate records of the numbers and identities of all External Users permitted by it to use the Product, and provide the same to Supplier upon request; and
- 6.6 Any additional use or application of the Product or any data is expressly prohibited, including but not limited to the development and/or supply of any smartphone app or SMS service.

## **7 CONFIDENTIALITY**

Customer shall:

- 7.1 Keep Products confidential and limit access to Products to those of its employees, agents and sub-contractors who have a need to know. Under no circumstances shall information contained in Products be made available to any member of the general public or any other third party (except for information that is already generally available to the public without charge or restriction);
- 7.2 Notify Supplier immediately if it becomes aware of any unauthorised use or access to any part of Products by any third party;
- 7.3 At the request and expense of Supplier take all such further steps as shall from time to time be necessary to protect the confidential information or Intellectual Property Rights of Supplier in Products;
- 7.4 Inform all relevant employees, agents and sub-contractors that Products constitute confidential information of Supplier and that all Intellectual Property Rights therein are the property of Supplier or its licensors and Customer shall take all such steps as will be necessary to ensure compliance by its employees, agents and sub-contractors with the provisions of this clause 7.

## **8 SUBSCRIBER RIGHTS AND OBLIGATIONS**

- 8.1 Except as expressly permitted below Customer shall not copy, extract or re-utilise Products or any part of them, or create any derivative works based in whole or part on Products.
- 8.2 Customer shall not assign, transfer, lease, rent, charge, create a security interest (to which the Personal Property Securities Act 2009 (Cth) applies) or otherwise deal with Products or use Products on behalf of any

third party nor make Products available to any third party nor use Products to provide information bureau services.

- 8.3 Customer shall not use Products other than as expressly permitted under the Contract, and shall only use Products for its own business purposes.
- 8.4 Where Products are supplied for use in connection with computer equipment:
- 8.4.1 And where Products are licensed on a per user basis, Customer shall not permit or enable access to Products by more than the number of Users in respect of which it has paid a Fee;
  - 8.4.2 Customer may make one back-up copy of Products which shall in all respects be subject to the Contract, shall be deemed to form part of Products, shall be stored in a secure environment and shall be destroyed upon the creation of any subsequent back-up copy of Products or upon termination or expiry of the relevant Contract;
  - 8.4.3 All copies of Products must reproduce the proprietary notices appearing on the original;
  - 8.4.4 Customer shall maintain an up-to-date written record of the number of Users and copies of Products and their location and upon request immediately produce such record to Supplier;
  - 8.4.5 Customer shall not develop, modify or adapt the Products or any of the information contained in them except to the extent that the Product expressly permits Users to alter certain parameters in the course of their Use;
  - 8.4.6 Customer shall not reverse engineer or de-compile Products except to the extent necessary to obtain interface information for the interoperability of Products to the extent that such information is not available from Supplier;
  - 8.4.7 Customer shall ensure that Products are used and cared for as contemplated in any accompanying user documentation;
  - 8.4.8 Customer shall ensure that adequate procedures are in place in accordance with best computing practices with regard to data security, accuracy and back-up, and will be responsible for backing up all its data; and
  - 8.4.9 Customer shall be responsible for ensuring that it is adequately protected against any virus or other harmful component entering its systems and for ensuring that there is no unauthorised use of the Product or data; where External Use is permitted via a Customer Platform, Customer shall ensure that the Customer Platform has sufficient security protection to prevent access to or downloading of the Product or data, other than to individual data extracts contemplated by the Permitted Use.
- 8.5 Where any part of the Products is supplied in printed media, Customer shall not make any copies of the same or any part, and Customer shall not provide or transfer the same to any other person.
- 8.6 Customer shall install and Use any Update provided by Supplier within 5 working days of receipt of such Update.
- 8.7 Customer is responsible for the security and use of all passwords, log-ins and other details relating to its use of the Product.
- 8.8 Customer shall ensure that it has reliable and adequate network access and connectivity for receiving the Products via the delivery method specified in the Contract.
- 8.9 Customer shall ensure that it will not enter any personal information (as defined by the Privacy Act 1988 (Cth)) into any Product hosted by Supplier and will indemnify and hold harmless Supplier against all claims, damages, liabilities, costs and expenses arising from a breach by Customer of this clause 8.9.

## **9 WARRANTIES AND INDEMNITY**

- 9.1 Supplier warrants that Products do not infringe any Intellectual Property Rights of any third party in the Commonwealth of Australia. Supplier agrees to indemnify and hold Customer harmless from and against any damages awarded or agreed to be paid to any third party arising out of Supplier breach of the foregoing warranty, provided that (i) Customer gives notice to Supplier of any such claim forthwith upon becoming aware of it; and (ii) Customer gives Supplier sole conduct of the defence to any such claim and gives to Supplier such assistance as it shall reasonably require (at the expense of Supplier) in respect of the conduct of the said defence.
- 9.2 In the event of such a breach, Supplier may, at its expense, procure for Customer the right to continue exercising the rights granted hereunder with respect to Products or replace or modify Products at Supplier sole expense to make Customer's exercise of its rights under the Contract non-infringing.
- 9.3 Supplier warrants that:
- 9.3.1 Products have been compiled using reasonable skill and care in accordance with good industry practice. Customer acknowledges that when estimating present and forecasting future values or providing any other information, Supplier will use reasonable skill and care but that Supplier does not warrant the accuracy, completeness, correctness of any particular values which Customer shall treat as guides only;

- 9.3.2 Supplier gives no warranty as to i) freedom from defects of information or (ii) software supplied by third parties and incorporated by Supplier into Products and warrants only that it has used reasonable endeavours to copy or import such information or software correctly from its original source;
- 9.3.3 It will during the term of the Contract use reasonable endeavours to correct any errors notified to it in Products promptly, where appropriate by including a correction in the next scheduled edition or Update of Supplier Products; and
- 9.3.4 It will use reasonable skill and care in the provision of any services provided under the Contract.
- 9.4 Supplier further warrants that where Products are delivered on Electronic Media:
- 9.4.1 where applicable, Products will comply with any accompanying product specifications in all material respects (it being acknowledged that Products may not operate entirely uninterrupted or error free);
- 9.4.2 the physical delivery media on which Products are carried will be free from any defect for a period of 30 days from delivery. In the event of any material inherent defects in the Electronic Media other than a defect caused by an accident, abuse or misuse by Customer, Supplier's sole liability will be to replace the defective original medium free of charge or, refund to Customer the Fee or a proportionate part of the Fee, in which case Supplier shall have no further liability to Customer.
- 9.5 The warranties and obligations contained in clauses 9.3 and 9.4 are subject to (i) Supplier being notified in writing within 5 days of Customer first discovering any such possible breach; and (ii) Customer using Products in accordance with the Contract and any applicable operating instructions.
- 9.6 The warranties set out in this Contract are exclusive of and in lieu of all other warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise which relate to the quality, condition and fitness for any purpose of Products.
- 9.7 In the event of any defect in the Products, subject to being notified in accordance with the Contract, Supplier will investigate the defect and, if the issue can be replicated or otherwise confirmed by Supplier as a defect, Supplier will take such action as it considers appropriate in the circumstances to remedy the situation.
- 10 LIMITATION OF LIABILITY**
- 10.1 This clause 10 applies to Supplier liability (including any liability for the acts and omissions of its employees, agents and sub-contractors) in respect of any breach of its contractual obligations arising under any Contract and any representation, statement or tortious act or omission including negligence and any other form of liability, and Customer's attention is in particular drawn to the provisions of this clause 10.
- 10.2 Supplier liability to Customer will not be limited for (a) death or personal injury resulting from Supplier negligence, (b) fraud (c) a breach of the warranty in clause 9.1 or (d) any other matter for which liability cannot as a matter of applicable law be limited.
- 10.3 Subject to clause 10.2, Supplier's entire liability shall be limited to an amount equal to the aggregate of the Fee paid or due to be paid for the Product concerned in respect of the 12 month period in which the liability arose.
- 10.4 Subject to clause 10.2, Supplier shall not be liable to Customer for (i) any loss of profits, business, anticipated savings, goodwill, data or other such loss; or (ii) any type of special indirect or consequential loss or damage; in each case including loss or damage suffered by Customer as a result of an action brought by a third party and even if such loss was reasonably foreseeable or Supplier had been advised of the possibility of Customer incurring the same.
- 10.5 Supplier will not be liable to any person other than Customer in connection with this Agreement or its subject-matter.
- 10.6 In the event that the above exclusions or any limitations contained in this Contract are held to be invalid and Supplier becomes liable for loss or damage that would otherwise have been lawful to exclude, such liability will be limited to the amounts as referred to in this clause 10.
- 11 TERM AND TERMINATION**
- 11.1 The Contract shall enter into force on the Commencement Date and unless otherwise specified in the Service Schedule or the Order Form shall have an initial duration of 12 months, continuing in force thereafter for further periods of twelve months. Either party may terminate the Contract with effect from the end of the then-current period by giving the other written notice of such termination not less than 60 days before the expiry of the then-current period.
- 11.2 The Contract may be terminated by notice in writing forthwith:
- 11.2.1 by Supplier if Customer, having been sent a written reminder, fails to pay any sums payable under the Contract or any other debt due to Supplier within 30 days after the due date;



- 11.2.2 by either party if the other commits any material breach of any term of the Contract (other than one falling within clause 11.2.1) and which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same; For the purposes of this clause, a material breach is one that substantially affects the interests of the innocent Party under this Contract;
- 11.2.3 by either Party (other than for the purpose of solvent reconstruction or amalgamation) where the other: (i) is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act 2001 (Cth)); (ii) has a receiver, receiver and manager, liquidator, provisional liquidator, trustee, administrator, controller, or inspector appointed under any companies or securities legislation, or similar official is appointed in respect of that Party or any of its property, or where any security over any substantial part of its assets is enforced; (iii) ceases to carry on all or substantially all of its business, is unable to pay its debts when due, or is deemed unable to pay its debts under any law, or makes an assignment for the benefit of, or enters into or makes any arrangement or compromise with, that Party's creditors or threatens to do so, or stops payments to its creditors generally; (iv) is, becomes, or is deemed to be insolvent or bankrupt; (v) has a distress, attachment or other execution levied or enforced upon or commenced against any substantial part of its assets and is not stayed within thirty (30) days; (iv) is taken (under section 459F(1) of the Corporations Act 2001 (Cth)) to have failed to comply with a statutory demand; or (vii) is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act 2001 (Cth) (or it makes a statement from which the other Party to this Contract reasonably deduces it is so subject); and
- 11.2.4 By Supplier if Customer breaches the licence terms under this Contract.
- 11.3 Any termination of the Contract shall be without prejudice to any other rights or remedies a Party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either Party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination which shall include without limitation clause 7 which shall survive termination of the Contract by either Party.
- 11.4 Within 7 days of the termination of the Contract (which shall include termination of the licence granted pursuant to clause 8.4.2) Customer shall in the case of Products for use with computer equipment at Supplier's sole option either return or destroy all such copies of Products in its possession or control and a duly authorised officer of Customer shall certify in writing to Supplier that Customer has complied with this obligation.
- 11.5 For the avoidance of doubt, no termination of the Contract (other than by Customer pursuant to clauses 11.2.2 or 11.2.3) shall entitle Customer to a refund of any Fee paid or payable in respect of the then current term, but Subscriber may decide not to continue to receive further Updates for the remainder of the then current term.

## **12 DATA PROTECTION**

To the extent that Supplier is required to process any personal information on behalf of Customer, it shall (i) effect and maintain appropriate technical and organisational measures against unauthorized or unlawful processing of personal information and against accidental loss or destruction of, or damage to, personal information and (ii) act only in accordance with Customer's instructions in relation to such personal information.

## **13 FORCE MAJEURE**

Neither Party shall be liable for any loss or damage caused by delay or failure in the performance of any of its obligations under the Contract where the same is occasioned by a cause beyond its reasonable control. Should any such event occur the Party in default shall forthwith give notice to the other detailing the circumstances and if a default shall continue for more than 6 weeks then the other Party shall be entitled to terminate the Contract by written notice. Neither Party shall have any liability to the other in respect of the termination of the Contract as a result of such an event.

## **14 ASSIGNMENT**

Customer shall not without the prior written consent of Supplier assign, sub-license or otherwise transfer the Contract nor all or any of its rights and obligations under the Contract. Supplier shall be entitled to sub-contract or assign its rights and/or obligations under the Contract to any Related Body Corporate (as defined in section 50 of the Corporations Act 2001 (Cth)) or to any person to whom it outsources any function that relates to the Contract.

## **15 AUDIT**

Supplier (or any of its representatives or professional advisers) shall have the right, on providing reasonable notice to Customer, to enter Customer's premises during business hours and use all computer systems and facilities for the purpose of inspecting and copying any records or other information in any medium as reasonably necessary to monitor Customer's compliance with the Contract, subject to Customer's obligations of confidentiality to third parties.

## **16 NOTICE**

Any notice to be given to a party under the Contract shall be in writing (which includes e-mail) addressed to that party at its registered office or principal place of business or such other address as may have been specified in the Order Details or at the relevant time have been notified pursuant to this provision to the party giving the notice.

## **17 WAIVER**

Failure or delay by either party to exercise or enforce any rights will not be construed as a waiver of its rights under the Contract or otherwise. No waiver by a party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

**18 SEVERANCE**

18.1 If any provision (or part of a provision) of a Contract is held by any competent authority to be invalid, unfair or unenforceable in whole or in part, that provision or part will be deemed deleted, and the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected thereby.

**19 CHANGES**

Supplier may make changes to the Products, and will give not less than 3 months' prior notice of such changes and any steps required to be taken by Customer. If the change will not have a material adverse effect on Customer, it must implement the changes within the time specified in the notice of change. If the change will have a material adverse effect on Customer, it must notify Supplier as soon as it becomes aware of the issue and the parties will discuss in good faith to resolve the issue.

**20 LAW**

The Contract shall be governed by and construed in accordance with the law in force in the State of Victoria and the Parties submit to the non-exclusive jurisdiction of the courts of Victoria and the Commonwealth of Australia.