

Computer Services & Support

Introduction

The supply of goods and/or the performance of services by Templestowe Computer Help (“we” or “us” or “our”) to all its customers (“you”) is offered only and exclusively on the following terms and conditions. By requesting, ordering or otherwise permitting us to supply goods to or perform services for you, you hereby accept irrevocably and unconditionally our offer without derogation or qualification.

1.0 Definitions

In these conditions:

“**Conditions**” means these Terms and Conditions;

“**Customer**” or “**you**” means a person, firm or corporation, jointly and severally if more than one, that requests goods or services from us;

“**goods**” means all products and other goods (including any software) supplied by us to you or on your behalf;

“**including**” is not a word of limitation and means without limitation;

“**services**” means all services performed by us for you or on your behalf;

“**business hours**” means Monday to Friday 9am to 5pm at your local time, excluding gazetted public holidays;

“**Neighbourhood Nerds**” or “**we**” or “**us**” or “**our**” means Templestowe Computer Help; and

“**Party**” and “**Parties**” means (severally and not jointly) Templestowe Computer Help and/or the Customer as the context requires.

2.0 Basis of Contract

2.1 Unless otherwise agreed by us in writing, these Conditions apply to every supply of goods and 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.

2.2 Any written quotation provided by us to you concerning the proposed supply of goods or services is valid for 30 days and is an invitation only to you to place an order based upon that quotation. These Conditions may be supplemented by additional terms in our quotation which are not inconsistent with these Conditions.

2.0 Charges and Payment

3.1 Payment for goods and services must be made by cash on or prior to the supply of the goods or the performance of the services unless you have a credit account with us.

3.2 All our visits are chargeable and are charged in quarter hour units after the first hour. Any part thereof is chargeable at the same rate as a full hour.

3.3 All goods supplied by us are charged separately from the services.

3.4 Where there is any change in the costs incurred by us in relation to the goods or services, we may vary our price for goods or services on order to take account of any such change, without giving notice to you.

3.5 Surcharges may be applied at rates dependent on your suburb.

3.6 Call-out fees may be applied on same day and/or outside business hours visits.

3.7 If you nominate and are approved for the good(s) or service(s) you have purchased to be invoiced, you may be charged an account fee per invoice issued. This fee will be advised in

advance.

3.0 Performance of contract

3.1 Any period or date for delivery of goods or provision of services stated by us is intended as an estimate only and is not a contractual commitment. We will use our reasonable endeavours to meet any estimated dates for delivery of the goods or completion of the services.

3.2 Whilst every attempt will be made to perform the repairs onsite, it may be necessary to return your system to our base or third party for diagnosis and repair.

4.0 Neighbourhood Nerds Warranties

5.1 If we cannot diagnose your problem, we will not charge you for those services in respect of that problem (**Service Guarantee**). In some cases, the solution may be that you need to upgrade or replace your software or hardware. If we advise you to do so and you choose not to upgrade or replace your software or hardware, you acknowledge that we have met our commitment to you by providing you with a solution to your problem, whether or not you choose to implement that solution.

4.2 We stand behind our service. If you notify us of a problem with the services you were provided, and our diagnosis of the problem indicates that our services were not performed satisfactorily, we will work to provide a solution to your problem quickly and at no additional cost to you.

4.3 You acknowledge that computers are complicated and sometimes problems are more deeply rooted or complicated than initially diagnosed. You also acknowledge that a problem which occurs with your computer after our visit may be unrelated to the work we performed for you and is therefore outside the scope of our Service Guarantee.

4.4 When we sell you equipment, hardware or software, we may be selling such equipment, hardware or software on behalf of a third party manufacturer or licensor. We do not warrant that the operation of any software we install or service will be uninterrupted or error free. You acknowledge that software (and information technology and communications products generally), including your software, may have errors and may encounter unexpected problems, and accordingly, you may experience downtime and errors in the use of software. You also acknowledge that your use of such software may be subject to a third party licence.

4.5 We shall honour all terms (if any) that are implied under applicable State and Commonwealth laws concerning the supply of the goods and/or the performance of the services and nothing in this clause 8 seeks to restrict, modify or exclude such terms. Our express warranty and guarantee are in addition to and do not affect your statutory rights and remedies.

4.6 We will comply with our obligations under the Privacy Act 1988 and in accordance with our Privacy Policy which can be viewed at www.neighbourhoodnerds.com.au/privacy You must read and shall be deemed to have read the Privacy Policy. You agree and consent irrevocably to our use of your personal information in accordance with the Privacy Policy.

4.7 Goods presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the goods.

5.0 Customer's Responsibilities

5.1 You shall be solely responsible for all data inputs, the manner of use of the goods by all those to whom it provides access and all outputs derived, and all other results of such processing.

5.2 You shall comply, at your own expense, with any recommendations and guidelines with respect to the use of the goods, including any adjustments or replacements required in respect of

equipment and software that is incidental or collateral to the use of the goods.

5.3 You shall ensure that your operators are adequately trained and informed as to the use of the goods and shall comply with guidelines and procedures supplied by us and/or any third party manufacturer from time to time.

5.4 You shall promptly report errors or faults in the operation of any aspect of the goods or any provision of the services in accordance with applicable fault reporting procedures from time to time.

5.5 You agree to exercise due care and carry out such precautions which may be recommended by us or otherwise required as a matter of prudence in connection with the performance by us of any of our obligations hereunder, for example, but without limiting the generality of the foregoing, advising your staff of system restarts or scheduled downtime, recording of error information, and will co-operate with other system administration activities such as, but not limited to, running diagnostic tests and operational readiness tasks.

5.6 Onsite services involve Templestowe Computer Help technicians visiting you at your home or other location (**Premises**) requested by you.

5.6.1 You must ensure that a person of at least 18 years of age is present for the duration of the provision of onsite services.

5.6.2 You must provide our technicians with:

- (a) access to the areas of your premises necessary to provide services;
- (b) necessary passwords to your computer;
- (c) a safe working environment and working space;
- (d) electrical power and internet access (where applicable).

5.6.3 If the services involve the installation of software, then you must provide our technicians with the installation disks for your operating system or software along with a product key for this software.

6.0 Liability

6.1 To the full extent permitted by applicable law, all conditions, warranties, representations, indemnities and guarantees with respect to the goods and/or the services, or other goods or services that may be provided by Templestowe Computer Help under these Conditions, that may otherwise be implied by statute, law, equity, trade custom, prior dealings between the Parties or otherwise (including, but not limited to, any implied warranty of merchantability, fitness for particular purpose, quiet enjoyment or non-infringement) are hereby expressly excluded.

6.2 Except to the extent specifically provided in these Conditions, our sole liability to you for any and all breaches of any term or terms of these Conditions, whether express or implied, shall be limited to:

6.2.1 subject to sub-clauses 6.2.2 and 6.2.3, the aggregate amount of the fees and charges paid by you under these Conditions as at the date of the breach;

6.2.2 in relation to goods if supplied to you as a consumer (as defined in the Trade Practices Act 1974):

- (a) the replacement of the goods or the supply of equivalent goods; or
 - (b) payment of the cost of replacing the goods or acquiring equivalent goods; or
 - (c) the repair of the goods or payment of the cost of having the goods repaired,
- as in each case we may elect; and

6.2.3 in relation to services if supplied to you as a consumer (as defined in the Trade Practices Act 1974):

- (a) the supplying of the services again; or
- (b) the payment of the cost of having the services supplied again, as in each case we may elect.

6.3 In no event shall we be liable to you or to any third party under or in connection with these Conditions or in respect of the use of (or failure or performance of) the goods or the supply of the services for:

6.3.1 malfunctions or failures caused directly or indirectly by:

- (a) any third party;
- (b) our actions that were expressly or impliedly authorised by you, or by your employees or agents;
- (c) accident, misuse or abuse by anyone other than us;
- (d) alteration or modification of the goods by anyone other than us;
- (e) products (including any hardware or software) not licensed or supplied by us that are attached to or used with the goods;
- (f) your failure to provide a proper operating and working environment for the goods;
- (g) damage during any movement, relocation or re-installation of the goods;
- (h) power surge or failure,
- (i) acts of God or acts outside our reasonable control;
- (j) any other condition not arising under normal operating conditions; or
- (k) normal wear and tear; or

6.3.2 any loss or damage of any nature arising or caused directly or indirectly by any breach of your obligations or responsibilities set out in these Conditions.

6.4 Any replacement of parts under warranty will be carried out at the premises nominated by us. The cost and risk of transport of any defective part to the nominated premises is your responsibility.

6.5 In no event will we be liable to you or to any third party under or in connection with these conditions or in respect of the use of (or failure or performance of) the goods or the supply of the services for:

6.5.1 any loss of profit, business interruption, loss of or damage to goodwill, and/or any expectation benefit;

6.5.2 your liability to any third party; or

6.5.3 incidental, consequential, special, exemplary or punitive damages of any nature, howsoever arising or caused, including without limitation the breach of these Conditions or any expiration or termination of these Conditions, whether such liability is asserted on the basis of statute, contract, tort (including negligence or strict liability), equity or otherwise, even if we have been advised of the possibility of such loss or damage.

6.6 We will not be liable for any loss or damage suffered by you where we have failed to meet any delivery date or cancelled or suspended the supply of goods or services.

6.7 Nothing contained in these Conditions excludes, restricts or modifies any:

6.7.1 implied condition, warranty or other implied obligation in relation to these Conditions or the goods and services where pursuant to applicable law to do so is unlawful or void; or

6.7.2 liability for fraud or deceit; or

6.7.3 liability for death or personal injury caused by the negligence of either Party.

7.0 Copyright in Software

7.1 We will not be responsible to you or any third party for any breach of any software licence in respect of software provided to us by you to be installed on your computer.

7.2 You hereby warrant that you have a valid licence in respect of such software and shall indemnify us and hold us harmless against any loss, damage, costs, harm or other expense whatsoever arising either directly or indirectly as a result of us installing software at your request.

8.0 Cancellation

8.1 If, through circumstances beyond our reasonable control, we are unable to effect delivery or provision of goods or services, then we may cancel your order (even if it has already been accepted) by notice in writing to you.

8.2 If you give us less than twenty-four (24) hours notice to cancel any request for on-site service, then we may charge a cancellation fee equal to the first hour of service at the rates quoted at the time of booking for the loss and expense caused.

9.0 No representation or reliance

9.1 You acknowledge that neither we nor any person acting on behalf of us has made any representation or other inducement to it to enter into these Conditions, except for representations or inducements expressly set out in these Conditions.

9.2 You acknowledge and confirm that you do not enter into these Conditions in reliance on any representation or other inducement by or on behalf of us, except for representations or inducements expressly set out in these Conditions.

9.3 Without limiting the generality of clauses 9.1 and 9.2, you understand and hereby confirm that:

- (a) your decision to enter into these Conditions was, and is, not based on any promise, representation, statement, warranty or undertaking made or given by us or any person on its behalf in relation to the capacity, uses or benefits that might or would be derived or obtained from the goods or services, except as expressly set out in clause 8, and
- (b) you have relied on your own skill and judgement in deciding to purchase and acquire the goods and services.

10.0 Entire Agreement

10.1 To the extent permitted by law, in relation to its subject matter, these Conditions:

10.1.1 embody and constitute the entire legal and contractual relationship of the Parties, including the entire terms agreed by the Parties; and

10.1.2 supersede, replace and terminate by mutual consent any prior written or oral representations, negotiations, understandings, agreements or contracts between the Parties.

11.0 Governing law

11.1 This Agreement is governed by and must be construed according to the law applying in Victoria. The Parties hereby irrevocably submit to the jurisdiction of the courts of Victoria.