

## 1. Definitions

The following definitions have the corresponding meaning:

**"Customer"** means the individual or organisation purchasing a Product or Service from Generation-e.

**"Generation-e"** means Generation-e Productivity Solutions Pty Ltd (ABN 25 163 718 714), a company registered in Victoria, Australia, that supplies Products and/or Services to the Customer, and includes Generation-e's successors, assigns and contractors.

**"Bank Cheque"** means a cheque drawn by a bank on the applicable bank's own bank account.

**"Non-Bank Cheque"** means a cheque drawn by an individual or business on their own bank account.

**"Activity"** means the provision of any Product and/or Service to the Customer by Generation-e.

**"Proposal"** means the proposal or other specification type document that these Terms and Conditions are attached to, incorporated by reference into, including without limitation, quotes and invoices.

**"Products"** means the products supplied by Generation-e to the Customer specified on the Proposal and/or any invoice dispatched by Generation-e to the Customer.

**"Services"** means the services scoped and/or specified (including any deliverables) in the Proposal.

**"Service Levels"** means the performance set out in any Annexure, and incorporated by reference into these Terms and Conditions.

**"Installation Signoff"** means the time when the Customer signs Generation-e's Signoff form or in the case of the Customer not signing, 2 working days from the date the Activity occurs.

**"Terms and Conditions"** means these legally binding and enforceable terms and conditions of agreement between Generation-e and the Customer.

**"Update"** means interim software application updates (excluding hardware updates), including software bug patches, provided by Generation-e and/or the Software manufacturer under a manufacturer's effective contract or warranty.

**"Upgrades"** means a major release of Software (excluding hardware), not covered under a manufacturer's effective contract or warranty, but is to be provided by Generation-e and/or Software manufacturer under a newly defined sales contract.

## 2. Terms of Payment

- a) Payment terms are strictly cash, cheque, direct deposit or credit card on delivery. For credit card transactions, Generation-e will automatically deduct the total amount owing from the Customer's provided credit card immediately on delivery. Completion of the delivery is defined as initial delivery by Generation-e of Product and/or Services to a designated date. Where the Customer fails to make a cash, cheque, direct deposit or credit card payment, Generation-e is authorised to, within 3 days of the due date of such charge, charge the Customer's designated credit card (details set out in this Proposal), the amount of money that is due and owing to Generation-e.
- b) Acceptable means of payment include Bank Cheque (made payable to Generation-e), direct deposit to a designated Generation-e bank account, cash or credit card. Non-Bank Cheques are acceptable providing funds have cleared and are available prior to any Activity being commenced.
- c) The Customer acknowledges that, should any amount not be paid immediately when it is due, or any cheque given in payment for it be dishonoured, the Customer agrees that an additional service charge of 10% compounded per calendar year on overdue balances will be charged and all possible courses of action for restitution will immediately be commenced. The Customer authorises Generation-e to immediately notify all relevant credit ratings agencies of the failure of the Customer to pay.
- d) In the event of Generation-e instructing its solicitors to collect an overdue amount, all legal fees, collection charges and tracing agent's fees as between solicitor and client shall be borne by the Customer and all payments made shall firstly be allocated towards these charges, thereafter to service charges, and finally to the purchase price.
- e) Generation-e reserves the right to charge a surcharge for payment by credit card
- f) The Customer agrees that the terms set out in these Terms and Conditions are governed by, and construed in accordance with the laws of the State of Victoria, and the Customer hereby consents to the exclusive jurisdiction of the courts of the State of Victoria, and all courts to which a rightful appeal may be made, including for all actions that may be instituted against it for the recovery of any amounts owing to Generation-e.

## 3. Title, Risk and Insurance

- a) The Customer acknowledges that:

- i. Product supplied by Generation-e will be at the Customer's risk on delivery, and the Customer shall maintain custody of the Product on trust for the sole benefit of Generation-e, until the Customer rightfully makes all necessary payments for the Product.
- ii. ownership of the Product supplied by Generation-e will not pass to the Customer and will remain with Generation-e until such time as the Product has been fully paid for, and Generation-e shall have a right of full set off against any Product for which the Customer has not fully paid.
- iii. until such time as the Product and/or Service has been paid for in full and all other debts discharged by the Customer, the Customer must store the Product in such a manner as to show clearly that the Product is the property of Generation-e.
- iv. the Customer irrevocably agrees and undertakes that until ownership passes to the Customer, Generation-e (its servants or agents) will have the right forthwith (and without prejudice to any other rights Generation-e may have pursuant to these Terms and Conditions or at law or in equity) with notice or demand to immediately enter upon the Customer's premises and retake possession and remove the Product in the possession of the Customer or wheresoever situated.
- v. The Customer assumes risk of loss or damage upon delivery of the Products to the Customer (or to any person or place as agreed or directed by the Customer) or collection of the Products by the Customer or by any agent acting on their behalf.
- vi. In the event that the Customer on sells the Products or Services provided, then the Customer shall hold such part of the proceeds of such sale as relates to the Products or Services provided in trust for Generation-e. Such part shall be deemed to be equal in dollar terms to the amount owing by the Customer to Generation-e at the time of the receipt of such proceeds.
- vii. Generation-e will insure Products against such risks that Generation-e considers appropriate for the transport of the Products from Generation-e's place of business to that of the Customer.

#### 4. Delivery of Product

- a) In consideration of the payment by the Customer in addition to the price, of Generation-e's freight, handling and insurance charge calculated according to Generation-e current prices, Generation-e will arrange delivery of Products to the Customer's nominated location within major metropolitan areas of Australian capital cities.
- b) Delivery times quoted by Generation-e are estimates only and Generation-e may extend delivery times.
- c) Generation-e may make part delivery of any Products ordered by the Customer and any Products so delivered shall constitute a separate contract upon these Terms and Conditions. As such, an invoice on any Products part delivered is due in accordance with the agreed terms of payment.
- d) Delivery of Product(s) is deemed to take place at the time Generation-e initially delivers the Product(s) to the Customer site; or within 7 days of notification by Generation-e to the Customer that the Products are available, whichever first occurs.

#### 5. Warranty

- a) Except for the warranty set forth in the relevant manufacturers' limited warranty programmes, Generation-e makes no warranties with respect to the performance of Products or Services provided. The foregoing warranties are in lieu of all other, express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose, are hereby disclaimed. Notwithstanding anything to the contrary set forth elsewhere in these Terms and Conditions, the liability of Generation-e for damages caused by defective products is limited to the terms of the limited warranty statement specified by the relevant manufacturers. The manufacturers have reserved the right to change their limited warranty programs at any time without further notice or obligation to Generation-e or any other person by reason of such change. Warranty coverage for any services performed is limited to one (1) calendar month from date of Installation Signoff.
- b) Generation-e does not warrant the functions contained in the Proposal provided will meet the Customer's requirements, nor that the operation of the Products and/or Services provided will be error-free or uninterrupted.
- c) Generation-e does not warrant or guarantee that Products and/or Services provided will be compatible with any hardware or software, or the Customer's designated computer environment.
- d) To the maximum extent permitted by applicable law, Generation-e, its agents and its suppliers disclaim all other warranties and conditions, either express or implied, including, but not limited to, implied warranties or conditions of merchantability, fitness for a particular purpose, title and non-infringement, with regard to hardware, software or services provided and the provision of or failure to provide support services.
- e) Generation-e makes no commitment to response time for warranty claims.

- f) Any items deemed by Generation-e to be subject to accidental or intentional misuse or abuse will have their warranty voided immediately. Rectification of faults on any item not covered by warranty is subject to standard services charges plus the cost of any necessary parts for repair. Generation-e makes no commitment that any item can be repaired and in some cases replacement is the only option, which will incur normal product charges.

## 6. Customer Responsibilities

- a) The Customer agrees to provide free and timely access to their site for the purposes of Service delivery, including installation and/or warranty services. Free and timely access is defined as availability within 2 business days of notification by Generation-e during the hours of 8:30AM and 5:30PM weekdays Australian EST.
- b) As a condition of Generation-e's performance of the Services, Customer shall perform certain Customer tasks specified in the Proposal or other scoping document attached to these Terms and Conditions and/or agreed by the parties at no charge to Generation-e.
- c) Customer data is the responsibility of the Customer and Generation-e is not responsible for any loss, corruption or inability to access Customer data. Generation-e is not responsible for any consequential damages or losses associated with a Customer's ability to access its data.

## 7. Support Services

- a) Limited service - Support services are available to customers according to the service agreement entered into. Services only continue to be available when either verification of payment has been accepted or when outstanding service invoices have been paid in full.
- b) Pre purchased Support - Is a support service where hours are pre-purchased in packages and then redeemed for support activities as required – both ad hoc and scheduled. Each support activity is charged upon activity completion at a pre agreed rate by drawing down on the hours available in the original purchase block.
- c) Ad Hoc Support - Is offered under the general terms contained in these Terms and Conditions and will be charged according to an agreement reached with the customer before commencement of any Activity, including service delivery activity. All support activities conducted on behalf of the Customer will be agreed, recorded and then referenced in the invoice to the Customer. The scope of Services is set out in the Proposal.
- d) Remote support – Many support activities are undertaken off site using secure communications to the customer site. Offsite services allow more flexible support arrangement and more rapid response time. Offsite services can be used to address problems or for scheduled maintenance or support activities. Offsite services are charged at the same rate as onsite services.
- e) Service activities - Generation-e reserves the right to change the availability of Service activities at any time. The Customer will be notified in writing prior to the changes taking effect.

## 8. Availability of Services

- a) Onsite representatives used in the delivery of Services, including support service activities, may be Generation-e staff, nominated representatives or outsourced third parties.
- b) Normal business operating hours - All support services are controlled and operate through the Generation-e 'Support Operations Centre' during the hours of 8:00am to 6:00pm Monday to Friday Australian EST. Public holidays are excluded from normal operating hours. Out of hours support can be scheduled in advance through the Support Operations Centre.
- c) Out of hours support - Out of hours support is available and will incur a 100% premium over the agreed normal business operating hour rate.
- d) Service coverage area - Service coverage includes the Melbourne CBD and extends to include up to 20km from the Melbourne GPO. No call out fee for onsite visitation will be charged within this service coverage. Onsite visits required outside this coverage will incur an additional charge equal to one hour of service under the provided Service Type rate. Coverage outside of 40Km from the Melbourne GPO will incur travel and accommodation (if applicable) at cost.
- e) Service levels - Generation-e will do everything to ensure our representatives are available to take your requests by telephone from 8:00AM to 6:00PM Australian EST. If for any reason a representative is unavailable to take your call, we will endeavour to return your call within 1 hour of receiving your email or voicemail message. Generation-e aims to initiate action on all support requests within 12 working hours of receipt (for support during the hours of 8:00am to 6:00pm Australian EST on normal Weekdays).
- f) Services are provided on a best effort basis unless a guaranteed response time has been stated in your agreement. General services are segmented into three broad categories: Critical-Service is completely down and is directly affecting more than five users, Standard-Routine support tasks and Basic-Request is for an informational or

planned requirement. Generation-e will work with the Customer to classify service requests and we prioritise our response in line with the agreed criticality of the request.

- g) Priority service - Priority service is available at a premium service charge. If emergency support is required onsite, Generation-e can normally provide a support representative onsite within 2 working hours that will be charged at a 200% premium for the relevant support activity.
- h) Provision of Services which is for equipment maintenance services and provided by the manufacturer will be in accordance with the manufacturer's terms and conditions. Equipment maintenance services provided by Generation-e will be in accordance with Generation-e terms and conditions (as amended from time to time).

## 9. Service charging

- a) Fees will be charged for all Services, including support activities according to the pre agreed rate set out in the Proposal. When a Customer requests services, including a support activity, the relevant details will be recorded and an applicable service classification and charge assigned as per the scope defined in the Proposal. Following completion of the support activity the nominated charge will be either be deducted from the Customer's account or invoiced directly to the Customer. Service charges assigned to activities are based on the use of one resource. If additional resources are required additional service charges will be incurred. Charges do not include any software or hardware required to complete the assignment. All service charges are GST inclusive.
- b) Pricing policy - Generation-e reserves the right to change their pricing policy at any time. Existing customers will be notified in writing prior to any pricing changes taking effect.

## 10. Intellectual Property

- a) "Work Product" means any written materials, reports, computer software or software documentation, inventions, discoveries, improvements, ideas, techniques or know-how created, developed or delivered by Generation-e hereunder whilst providing the Services. Generation-e shall own all intellectual property rights (including copyright) in the Work Products (even if such Work Product consists of portions, modifications or additions to existing software or documentation) unless except if third party software and the license conditions of the software expressly exclude third party ownership of modifications or additions.
- b) Generation-e grants to Customer, subject to these Terms and Conditions, a non-exclusive, non-transferable right and license to use such Work Product solely for Customer's internal purposes provided, however, that this license does not extend to the use of any third party software which may require the prior written consent of such party and/or payment of royalties or other license fees to such party by Customer This license shall include the right to use, copy and, with respect to documentation, copy and distribute internally only and not to third parties, such Work Product. This license does not expand any license Customer has for any of Generation-e's commercial software products. Customer agrees to include the Generation-e copyright notice in all copies Customer makes. Generation-e or its third party licensor will retain ownership, including copyright, registrations and any other similar protections, in all Work Product.
- c) Customer acknowledges and agrees that all rights in all copyright, designs, patents and trademarks existing in relation to the Products or Services are reserved to the owner of those rights. Furthermore, Customer acknowledges Generation-e's ownership of the intellectual property in methodologies, processes and procedures ("Generation-e IP") used and developed by Generation-e while undertaking the Services and furthermore acknowledges that they have no interest in the Generation-e IP other than that expressly provided to the Customer in writing by Generation-e.
- d) Customer shall indemnify, defend and hold Generation-e harmless from any action brought against Generation-e based on a claim that any materials or information provided by Customer to Generation-e constitute an infringement of a third party's patents, copyrights or trademarks, or a misuse of a third party's confidential, proprietary or trade secret information.
- e) Customer shall ensure that each part and copy of the computer software licensed for the use of the Customer is kept under conditions of strict security and confidentiality

## 11. Limitation of Liability

- a) Customer acknowledges that in accepting these Terms and Conditions, it will be relying upon its own experience, skill and judgment to evaluate any conclusion or recommendations made by Generation-e in any report supplied by Generation-e to the Customer in the course of providing the Services under these Terms and Conditions and that it will satisfy itself as to the suitability of any such conclusions or recommendations to meet its requirements
- b) To the maximum extent permitted by applicable law, in no event shall Generation-e or its suppliers be liable for any damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of information, or any other pecuniary loss) arising out of the use or inability to use Products and/or Services

provided, even if Generation-e has been advised of the possibility of such damages or for any claim by any other party.

- c) The Services provided through Generation-e are provided without warranty. Generation-e accepts no responsibility for errors or damage incurred as either a direct or indirect result of action or the content of information received.
- d) Claim waiver - Generation-e or any representative nominated or acting in behalf of Generation-e shall not be liable for any damage including but not limited to, the loss of data and software, hardware or property damage. This clause shall still apply if the Customer has not been expressly advised of any potential damage.

## 12. Confidentiality

- a) Generation-e agrees not to use any Customer confidential information other than for the purposes of providing:
  - i. The information reasonably required by Generation-e's financier; or
  - ii. The Services and agrees to use best endeavours to maintain the confidential nature of the confidential information. However, Generation-e shall bear no responsibility for disclosure where such information or data is publicly available, is already in the possession of Generation-e, known to Generation-e, or is obtained by Generation-e from a third party.
  - iii. The Customer agrees to maintain the confidentiality of Generation-e confidential information (including this document) and agrees not to disclose such information to anyone else without the prior written consent of Generation-e.

## 13. Termination

- a) Without limiting the generality of any other clause in these Terms and Conditions, either party may terminate these Terms and Conditions immediately by notice in writing if:
  - i. any payment due from the Customer to Generation-e pursuant to these Terms and Conditions remains unpaid for a period of 30 days;
  - ii. either party breaches any clause of these Terms and Conditions and such breach is not remedied within 15 days of written notice by the other party;
  - iii. the Customer disposes of equipment or materials or restructures its business, reallocates or reassigns its own personnel or otherwise creates a situation in which Generation-e, in its opinion, is no longer able to comply with its obligations under this agreement or no longer able to provide the Services in an efficient and cost effective manner.
  - iv. the customer becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
  - v. the Customer, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
  - vi. the Customer, being a natural person, dies; or
  - vii. the Customer ceases or threatens to cease conducting its business in the normal manner.
- b) If notice is given to the Customer pursuant to Clause 13.a, Generation-e may, in addition to terminating the agreement between the parties:
  - i. retain any monies paid;
  - ii. pursue any additional or alternative remedies provided by law;
  - iii. be discharged from any further obligations under this agreement; and
  - iv. pursue any additional or alternative remedies provided by law.
  - v. The Customer may terminate these Terms and Conditions for convenience subject to paying Generation-e the applicable fee for Products delivered and Services performed to the date of termination together with all reasonable costs, expenses and investments incurred by Generation-e in the course of delivering such Products and Services.

## 14. General

- a) By providing your contact details, Generation-e assumes permission to market to you in the future.
- b) No relaxation or indulgence granted by Generation-e to the Customer shall be deemed as a waiver of any rights of Generation-e in the terms of this agreement.
- c) These Terms and Conditions contained herein constitute the entire legal and commercial agreement, which is legally binding and enforceable, between the parties and no amendment or variation shall be of any force and effect unless in writing and signed by both Generation-e and the Customer. No representations have been made by Generation-e or on its behalf, which have induced the Customer to enter into this legally binding agreement.