

## **TERMS OF TRADE**

### **Between**

Task Technology Pty Ltd (ACN 004 572 614) as Trustee for the CaseWare ANZ Trust Trading as CaseWare Australia & New Zealand (ABN 98 878 099 363) with offices at Unit 2A, 12 Hoddle Street, Abbotsford, VIC 3067 (referred to as "Us" or "We")

&

Customers obtaining goods or services from us (referred to as "You" or "Your")

### **1. AUTHORISED RESELLERS**

- 1.1 By accepting goods and services from us, you agree to be bound by these Terms of Trade.
- 1.2 You understand and accept what our core business is and that we are merely a re-seller of software products exclusively owned by CaseWare International, CaseWare IDEA Inc, Lunic Software and others (referred to as "Developers"). Nothing in this agreement shall be construed that ownership of the software is transferred to you.
- 1.3 You agree to be bound by the applicable End User Licence Agreement provided by CaseWare International Lunic Software or others to the maximum extent permitted under Australian law. You acknowledge that the installation of the software onto your computer system cannot commence without you clicking "Yes" to the electronic terms and conditions. You agree that you will read the terms and conditions and will only click "Yes" if the terms are amenable to you.
- 1.4 You acknowledge that as the authorised reseller, we are also bound by the End User Licence Agreement we give to you. The Developers are separate entities to us and we are merely their representatives in Australia, New Zealand and Papua New Guinea. The Developer owns the software you are about to install. Entering into this agreement constitutes a "supply of limited title" as per Section 51(2) of the Australian Consumer Law.
- 1.5 This agreement is not exclusive to you, the Developer reserves the unrestricted right to sell, licence, market, distribute or grant the right to others to do so anywhere in the world.
- 1.6 All templates, content, licences, services, information and software (goods and services) provided by us, Task Technology Pty Ltd (ACN 004 572 614) in its own capacity and as trustee for the CaseWare ANZ Trust Trading as CaseWare Australia & New Zealand (ABN 98 878 099 363) of Unit 2A, 12 Hoddle Street, Abbotsford, VIC 3067 or its employees/agents ("us" "our" or "we"), may be only be used in accordance with these Terms of Trade.

### **2. INTELLECTUAL PROPERTY**

- 2.1 Unless otherwise stated, intellectual property in all information, data, software, text, graphics, images, logos trade-marks, sound recordings and software is owned by the Developer and all rights are reserved by Developer.
- 2.2 Whilst you are entitled to possession of the electronic file that contains a copy of the software, we are only able to transfer only such title in that file as we are entitled to under the End User Agreement, therefore characterising this agreement between all of the parties as a "supply of limited title".
- 2.3 Whilst you are entitled to undisturbed possession and usage of the software and/or services under the supply of limited title for the term of this agreement, you are not authorised to sell, distribute, rent, lend, reproduce, copy, modify, reverse engineer, alter or store any part of the data on any unsecured database or cloud, without the Developer's express written permission.

### **3. PRICES, CHARGES AND PAYMENT**

- 3.1 Unless otherwise agreed by us in writing:
  - (a) If you are a new customer, all payments are to be made in advance. Once payment is received, we will deliver the product to you and commence providing support in accordance with clause 4.
  - (b) If you are an existing customer, you agree to pay in full the amount specified on any invoice rendered by us for goods and services supplied to you within 7 days of the date of receipt of a valid invoice. If you dispute any amount in an invoice submitted by us, you will pay the undisputed portion on the due date. The dispute regarding the remainder may be referred to dispute resolution procedure prescribed by this agreement. If it is subsequently resolved that a further amount is payable, you will pay that amount plus penalty interest in accordance with the Penalty Interest Rates Act Victoria.
  - (c) If you are an existing customer, we reserve the right not to supply you with electronic licence codes unless your account is up to date in accordance with our payment terms.
  - (d) Payment by Visa or Mastercard credit card may be by offered by you and, if accepted by us, we shall be entitled to add a credit card surcharge, currently 2% but subject to change, to the total due and process this in full to your credit card.

### **4. SUPPLY OF SUBSCRIPTION PRODUCTS & SUPPORT**

- 4.1 We will, from the date we agree with you, supply the product and maintenance and support service to you for an initial subscription of 12 months and will continue to supply until you cancel in writing.
- 4.2 We reserve the right to cancel your subscription at any time by giving you written notice if there is a breach of any of the essential terms within this agreement. Essential terms are:
  - (a) your intellectual property obligations set out clause 2 or anywhere else in this agreement including the End User Licence Agreement; and
  - (b) your payment obligations as set out in clause 3.
- 4.3 We also reserve the right to cancel your subscription for any other reason, however if we do, we will refund to you, on a pro-rata basis, any part of the subscription fee that you have already paid for that relates to the unused portion of that subscription. You may terminate your subscription at any time on written notice to us and receive a pro rata refund if (a) we fail to remedy a breach of this agreement within 30 days of receipt of written notice from you or (b) if we become insolvent, file or have filed against us any petition in bankruptcy, or make an assignment for the

benefit of creditors.

- 4.4 Any support services provided will be in accordance with the terms listed in our proposal agreed to between you and us at the time of sale, and if no agreement, you are entitled to one (1) hour of help desk support and implementation assistance per licence to assist in installation and use of the software. Unless otherwise agreed to by us in writing, all support hours provided under a proposal have an expiry period of 12 months from the date of our invoice. Any unused support hours expire after the 12 month period. Under no circumstances do unused support hours accumulate, irrespective of whether you continue to do business with us or not, unless agreed by us in writing.

## **5. EVALUATION PERIOD AND YOUR RIGHT TO A REFUND**

- 5.1 You are entitled to a full refund, including fees paid for support/subscription services, within 30 days, should the software not be suitable to your individual requirements. This 30 day evaluation period (or "rejection period" as per section 262(2) of the Australian Consumer Law) provides you with an opportunity to determine the suitability of the software to your specific needs. Should you deem the software unsuitable, you must notify us in writing and deliver the software to our office within 30 days of the date of the invoice.
- 5.2 You are also entitled to cancel your subscription for products and services, if you change your mind after the 30 day period; however such refunds will only be made pro rata. No refund will be given on the software after 30 days as you acknowledge you were provided with ample time during the evaluation period to determine whether the software was suited to your specific needs.
- 5.3 To redeem a refund you must:
- (a) Cease using the product immediately;
  - (b) Uninstall the product;
  - (c) Email The Manager at sales@caseware.com.au or you can write to us at CaseWare Australia & New Zealand Unit 2A, 12 Hoddle Street, Abbotsford, VIC 3067. In the written notice you must include the product description, the number of licences and invoice number of the subscription products and services;
  - (d) Return the subscription products to our office at the address above in their original condition; and
  - (e) Cancellation shall take effect at the end of the billing month from the date we receive the written notice (effective date of cancellation).
  - (f) We will then issue you with a refund or a credit on a pro rata basis, unless the refund falls under 5.1, in which case you will be entitled to a full refund.
- 5.4 Nothing in clause 5 makes us responsible for any other associated costs with the refund such as implementation, training, consulting and delivery/postage fees. Associated costs with the refund will be unreservedly borne by you alone.
- 5.5 Nothing in this clause affects your rights to refund under the Australian Consumer Law for a major failure/problem with our software and/or services.
- 5.6 You acknowledge that our acceptance of the delivery of returned software or our decision to grant a refund, whether in full or not, is in no way an admission of liability of any wrongdoing, but rather our commitment to good customer service and desire to strengthen client relationships.
- 5.7 We are not required by law to provide you with a refund in the event you destroy, damage or lose the software after it is installed on your system, provided the damage, loss or destruction is through no fault of us or CaseWare International. If we are required to repair the software because of your actions leading to any event set out in this clause (such repair occurring through either remote access or in person at your business premises), we reserve the right to charge you a service fee of \$300.00 per hour or at the standard rate for consulting services provided by us at the time.

## **6. WARRANTIES**

- 6.1 Our goods and services will be provided with professional skill and care and come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods and/or services repaired or replaced if the goods and/or services fail to be of acceptable quality and the failure does not amount to a major failure.
- 6.2 The warranty period is 12 months from the date of invoice. To claim the warranty you must do the following within the warranty period:
- (a) Email us stating that you wish to exercise the warranty and set out the reasons you rely upon to claim a warranty. Emails should be addressed to The Manager at sales@caseware.com.au or you can write to us at CaseWare Australia & New Zealand Unit 2A, 12 Hoddle Street, Abbotsford, VIC 3067.
  - (b) uninstall the software from your computer; and
  - (c) Return the software to us with the letter/email outlining the reasons you rely upon to claim a warranty (stating that the law entitles you to a warranty is not sufficient. You must set out the factual scenario you say forms the basis for your right to the warranty under law. I.e. the software has a major failure because of x,y,z) via registered mail with purchase verified to our address at Unit 2A, 12 Hoddle Street, Abbotsford, VIC 3067.
- 6.3 If you make a warranty claim, you will be responsible for all expenses associated with the warranty claim including the cost of returning any defective goods to us, unless otherwise required by law.

## **7. DISPUTE RESOLUTION AND JURISDICTION**

- 7.1 If a dispute arises out of or relates to this agreement, or the breach, termination, validity or subject matter thereof, or as to any related claim in restitution or at law, in equity or pursuant to any statute, the parties to the agreement and the dispute expressly agree to endeavour to settle the dispute by mediation administered by a mediator agreed to by the parties and if no agreement, a mediator nominated by President of the Victorian Bar Association, before having recourse to litigation.

- 7.2 These terms will be construed according to the law of Victoria and the parties agree to submit to the jurisdiction of the courts/tribunals exercising jurisdiction in that State.
- 7.3 Clause 7.1 shall survive termination of this agreement.

## **8. PRIVACY**

- 8.1 Use of any personal data that you provide to us is governed by our privacy policy that is found on our website.

## **9. DISCLAIMER OF LIABILITY**

- 9.1 To the fullest extent permitted by law, our liability is limited as follows:
- (a) if the failure is in respect of services, our liability is limited to the supply of those services again or the payment of the cost of having those services resupplied;
  - (b) if the failure is in respect of goods, our liability is limited to replacement of the goods, the supply of equivalent goods, the repair of the goods or the cost of replacing the goods or having them repaired.
- 9.2 You assume all responsibility and entire risk as to the suitability and results obtained from use of the products and services, and any decisions made or actions taken based on the information contained in or generated by the products and services.
- 9.3 You understand and agree that results obtained from use of and support received concerning said products:
- (a) will not under any circumstances be considered tax, legal or accounting advice and it would be advisable for you to obtain such advice from your lawyer, accountant or tax or other business advisor;
  - (b) do not relieve you of your responsibility to any third party for the preparation, content, accuracy and review of, or the appropriate tax treatment of, items reflected on its tax returns or financial statements;
  - (c) do not necessarily abide by the terms and regulations set out in the Australian Accounting Standard Board and/or any other financial or legal regulatory board
  - (d) in relation to examination of records or financial accounts, the conduct of external and internal audits, business analysis, asset management including but not limited to the various methods of corporate and international reporting
  - (e) are only intended to supplement the knowledge of accounting, tax and other business professionals regarding tax planning, compliance and related business matters; and
  - (f) are not meant to replace sound professional judgment or individualised attention of such professionals or client circumstances.
- 9.4 To the maximum extent permitted by law, we shall not be liable for:
- (a) third party claims against us or you;
  - (b) damages to the extent they arise because you failed to perform your responsibilities under this agreement or you contributed or acted as an intervening cause including but not limited to your failure to comply with the reasonable directions given by us from time to time;
  - (c) any damage, injury or loss in or failure or defect of performance of our obligations under this Agreement, caused by or resulting from any act, event, occurrence, or cause beyond our reasonable control, including without limitation, failure of telecommunications or Internet services, war, vandalism, sabotage, terrorism, accidents, epidemics, quarantines, fires, explosions, earthquakes, floods, strikes, labour disputes, shortages or delays in obtaining suitable material, labour or transportation, interruption of utility services, acts of any government unit or agency thereof, or acts of the other party, or any similar cause
- 9.5 The Competition and Consumer Act 2010 (Cth) (including the Australian Consumer Law) provides for certain guarantees. These guarantees provide you with rights that cannot be excluded. Nothing in this Agreement excludes, restricts or modifies such non-excludable rights and the terms of this agreement are to be read subject to the provisions of the Competition and Consumer Act 2010

## **10. PRIVACY**

- 10.1 You acknowledge that personal information concerning you collected or held by us may be used for the following purposes only:
- (a) to supply goods and services that you have ordered; and
  - (b) to administer your account and to enforce this contract.
- 10.2 We shall not use your personal information for marketing purposes.
- 10.3 You also agree that if you provide us with personal information about any other individual, you will ensure that the individual is aware:
- (a) that you have supplied their personal information to us and the reason; and
  - (b) of the details in this clause 10 which apply to information we collect about them as well as information we collect about you.
- 10.4 If you fail to provide any information requested by us, we may be unable to supply the goods and services that you order or request.
- 10.5 You consent to us sharing your personal information with other CaseWare Australia & New Zealand group companies including those overseas and with our service providers who are located overseas but only to the extent reasonably necessary in order to provide the goods and services that you have ordered.
- 10.6 If you apply to us for credit terms we may give certain information about you including identity particulars to a credit reporting agency and we will tell you separately about other uses and disclosures of your personal information relevant to your application for, or our provision of, credit.

## **11. GST**

- 11.1 In these Terms and Conditions the terms "GST", "supply" and "tax invoice" have the meaning given to those terms in the A New Tax System (Goods and Services) Tax 1999 (Cth) and the term "GST" also includes any penalties or

additional tax imposed in relation to the GST payable in relation to the supply of services under these Terms and Conditions.

11.2 Any amount payable by you under clause 3 is inclusive of GST.

11.3 If the amount of GST paid or payable by us on a sale made to you differs from the amount of GST you have paid to us for the goods or services sold, then the amount of GST paid by you will be adjusted either by further payment by you to us or repayment to you by us of the amount of the adjustment.

11.4 In relation to any GST paid by a party under these Terms and Conditions, including any adjustment, the payee will provide the payer with a tax invoice.

## **12. GOVERNING LAW**

12.1 These Terms and Conditions will be governed by and construed according to the law of Victoria and the parties agree to submit to the jurisdiction of the courts and tribunals of or exercising jurisdiction in that State.

## **13. SEVERABILITY**

13.1 Any clause or part of any clause of these terms of trade that is illegal or unenforceable shall be read down to the extent necessary to give legal effect, or shall be severed from this agreement if it cannot be read down, and the remaining clauses of this agreement remain in full force and effect.

## **14. USE BY YOUR RELATED BODIES CORPORATE**

14.1 We acknowledge and agree that your related bodies corporate (as such term is defined in the Corporations Act 2001 of Australia) shall be entitled to use and benefit from the support/subscription services provided under by us.

## **15. CONFIDENTIALITY**

15.1 Neither party may, without the prior approval of the other party (which approval is to be within the other party's sole discretion) make a record of or make public or disclose to any person any information about this agreement, the other party's confidential information or the other party's operations.

15.2 We acknowledge and agree that we may disclose confidential information relating to you only to those of our employees, contractors and agents ("Representatives") who have a need to know, are aware that the confidential information must be kept confidential and have agreed in writing to comply with the terms of this clause. We agree that a failure by our representatives to comply with this clause will be deemed to be a breach of this agreement by us.

15.3 Each party must ensure that its Representatives engaged by it for the purposes of this agreement, do not make public or disclose information referred to in clause 15.1.

15.4 Either party may at any time require the other party to give, and arrange for its Representatives engaged in the performance of the agreement to give, written undertakings in a form acceptable to that party relating to the non-disclosure of that party's confidential information and the other party must arrange for all such undertakings to be given promptly.

15.5 The obligations of the parties under this clause are not to be taken to have been breached where the information referred to in this clause:

- (a) is or becomes public knowledge other than by breach of the obligations under this clause;
- (b) is lawfully in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;
- (c) is legally required to be disclosed; or
- (d) has been independently developed or acquired by the receiving party (other than as a result of a breach of this agreement, any other agreement or any duty of confidentiality between the parties).

## **16. NO PUBLICITY**

16.1 Both parties agree that they will not, nor will their Representatives, without your prior written consent in each instance:

- (a) use in advertising, publicity or otherwise the name, or the name of any of related bodies corporate or of any of any trade name, trade mark, trade device, service mark, symbol or any abbreviation, contraction or simulation thereof owned by either party; or
- (b) represent directly or indirectly, that any product or any service provided by us has been approved or endorsed by you.

## **17. NO BRIBERY**

Both parties warrant and undertake that:

17.1 They will, and will take reasonable steps to procure that their Representatives will, comply with all applicable anti-bribery and corruption laws and regulations;

17.2 they:

- (a) have not taken;
- (b) are not aware that any of their Representatives have taken;
- (c) will not take; and
- (d) will take reasonable steps to procure that their Representatives do not take any action in furtherance of an offer, payment, promise to pay, or authorisation of the payment or giving of anything of value (an Advantage) to any person in the knowledge that all or any part of the relevant Advantage will be offered, given or promised to anyone to improperly influence official action, to obtain or retain business or otherwise to secure any improper advantage; and

17.3 they will notify the other party as soon as reasonably practicable after becoming aware of any breach of the

warranties or undertakings in clause 14.

**18. INSURANCE**

- 18.1 We will effect and maintain adequate insurance with a reputable insurer, to cover our obligations under this agreement including:
- (a) statutory workers' compensation insurance as required by law;
  - (b) public liability insurance;
  - (c) professional liability insurance; and
  - (d) property insurance for the full replacement value of the property, covering Us for loss of or damage to property used directly or indirectly in relation to the Agreement.

CWA&NZ Terms of Trade 19<sup>th</sup> October 2018