retrac

Retrac Business Solutions Pty Ltd
Suite 16, 26 - 28 Verdun Drive
Narre Warren VIC 3805
1300 19 1300

General Terms of Supply

These General Terms of Supply govern the supply of Goods and Services by Retrac Business Solutions Pty Ltd as trustee for the T & L Carter Family Trust (ABN 18 038 148 832) ("we", "us" or the "Company") for a Customer.

Agreement to these General Terms of Supply

These General Terms of Supply apply if you are a Customer and:

- you accept a Quotation;
- you place an Order with the Company;
- you pay a deposit or any other amount in respect of Goods or Services;
- you instruct the Company to commence supplying Goods or Services;
- you accept delivery of Goods;
- you create or use an account for the purpose of acquiring Goods or Services; or
- you otherwise acquire Goods or Services from the Company.

By doing any of those things, you agree to be bound by these General Terms of Supply.

These General Terms of Supply apply to each Order except to the extent that the Company and the Customer expressly agree otherwise in writing.

If there is any inconsistency between these General Terms of Supply and a Quotation, the Quotation prevails to the extent of the inconsistency.

Privacy Policy

The Company's collection, use and disclosure of personal information in connection with the Agreement is governed by its Privacy Policy (located at https://www.retrac.com.au/privacy-policy/).

Supply of Goods and Services

Definitions

In these General Terms of Supply:

Agreement means the agreement between the Company and the Customer comprising:

- these General Terms of Supply;
- each applicable Quotation;
- each applicable Order; and
- any other terms expressly incorporated into a Quotation or otherwise agreed by the parties in writing.

Business Day means a day other than a Saturday, Sunday or public holiday in Victoria.

Customer means a person who orders, acquires or agrees to acquire Goods or Services from the Company.

Goods means hardware, equipment, devices, accessories, components and other goods supplied or to be supplied by the Company to the Customer.

Insolvency Event means, in relation to a person, any of the following events:

- the person is unable to pay its debts as and when they become due and payable;
- the person is bankrupt, insolvent or presumed to be insolvent under any applicable law;
- an administrator, controller, receiver, receiver and manager, liquidator, provisional liquidator, trustee in bankruptcy, restructuring practitioner or similar officer is appointed to the person or any material part of its property;
- an application is made, a resolution is passed or any step is taken for the winding up, dissolution, administration or restructuring of the person, other than a solvent reconstruction or reorganisation;
- the person enters into, proposes or takes any step towards entering into an arrangement, compromise or composition with its creditors generally or any class of its creditors;
- any execution, distress or similar process is levied against any material part of the person's property and is not discharged or stayed within 10 Business Days; or
- anything analogous to an event described above occurs in any jurisdiction.

Order means an order for Goods or Services submitted by the Customer and accepted by the Company.

PPSA means the *Personal Property Securities Act 2009* (Cth) and any regulations made under that Act.

PPSR means the Personal Property Securities Register established under the PPSA.

Quotation means a quotation, proposal, service order, statement of work or other document issued by the Company describing Goods or Services to be supplied to the Customer.

Services means any services supplied or to be supplied by the Company to the Customer, including IT support, consultancy, installation, configuration, device management, cloud, voice, connectivity, cyber-security and related services.

Quotations and Orders

A Quotation is valid for the period stated in the Quotation or, if no period is stated, for 30 days after the date on which it is issued.

A Quotation is an invitation to the Customer to submit an Order and does not oblige the Company to supply any Goods or Services until the Company accepts the Order.

The Company may accept an Order by:

- confirming acceptance in writing;
- issuing an invoice;
- accepting payment of a deposit or other amount;
- commencing the supply of Goods or Services; or
- delivering Goods.

The Customer must ensure that each Order and all information supplied to the Company are complete and accurate.

Any variation to an accepted Order must be agreed by the parties in writing. The Company may charge the Customer for additional Goods or Services requested by the Customer or reasonably required because information provided by the Customer was incomplete or inaccurate.

Prices and GST

Unless otherwise stated in a Quotation:

- all prices are in Australian dollars;
- all prices are exclusive of GST;
- the Customer must pay any applicable GST in addition to the stated price; and
- the Company may charge reasonable delivery, installation and third-party supplier costs.

The Company may change its standard prices prospectively by giving the Customer reasonable written notice. A price change does not apply retrospectively to Goods or Services already supplied.

If a proposed price change materially affects an ongoing Service, the Customer may terminate the affected Service by giving written notice before the change takes effect, subject to payment of:

- amounts accrued before termination; and
- any non-cancellable third-party charges reasonably and properly incurred by the Company on the Customer's behalf and disclosed in the relevant Quotation.

Invoicing and payment

The Customer must pay each invoice by the due date stated in the invoice or, if no due date is stated, within 14 days after the invoice date.

The Company may require:

- payment of a deposit;
- payment in advance;
- staged payments;
- payment by direct debit; or
- payment before delivery or installation of Goods.

If the Customer disputes an invoice in good faith, the Customer must:

- notify the Company in writing before the due date, or as soon as reasonably practicable after becoming aware of the basis for the dispute;
- identify the disputed amount and the reasons for the dispute in reasonable detail; and
- pay any undisputed portion of the invoice by the due date.

The parties must use reasonable endeavours to resolve a disputed invoice promptly and in good faith.

Delivery, installation and risk

The Company will use reasonable endeavours to deliver and install Goods within any estimated timeframe stated in a Quotation. Unless expressly stated otherwise, a delivery or installation date is an estimate only.

Risk in Goods passes to the Customer when the Goods are delivered to the Customer's premises or collected by the Customer or its representative.

The Customer must provide safe, timely and reasonable access to its premises, systems and personnel where required for delivery, installation or performance of Services.

Ownership of Goods

Legal and beneficial ownership of Goods supplied by the Company remains with the Company until the Customer has paid the Company in full for those Goods and any related delivery, installation and other charges.

Until ownership of Goods passes to the Customer, the Customer must:

- hold the Goods as bailee for the Company;
- take reasonable care of the Goods and keep them in good condition;
- keep the Goods identifiable as goods supplied by the Company, where reasonably practicable;
- not sell, dispose of, encumber or otherwise deal with the Goods except with the Company's prior written consent; and
- promptly notify the Company if the Goods are lost, damaged, destroyed, seized or subject to any claim by a third party.

Personal Property Securities Act

The Customer acknowledges and agrees that:

- these General Terms of Supply constitute a security agreement for the purposes of the PPSA; and
- the Company has a security interest in:
  - all Goods supplied by the Company to the Customer for which payment has not been received in full; and
  - any identifiable or traceable proceeds of those Goods,

as security for the payment of all amounts owing by the Customer to the Company in respect of those Goods.

To the extent that the Company's security interest secures payment of the purchase price of Goods supplied to the Customer, the Company may register its security interest as a purchase money security interest.

The Customer consents to the Company effecting and maintaining any registration on the PPSR that the Company reasonably considers necessary or desirable to protect its security interest, including by registering a financing statement or financing change statement.

The Customer must promptly provide the Company with any information and assistance reasonably required by the Company to:

- register, maintain, amend or discharge a registration on the PPSR;
- perfect or otherwise protect the Company's security interest; or
- exercise the Company's rights in connection with its security interest.

The Customer must promptly notify the Company in writing of any change to the Customer's name, address, contact details, business structure, ABN, ACN or other identifying information that may affect a PPSR registration.

The Customer must reimburse the Company for the reasonable costs actually incurred by the Company in registering, maintaining, amending or discharging a PPSR registration relating to the Customer.

To the extent permitted by section 157(3) of the PPSA, the Customer waives its right to receive notice of a verification statement where the collateral is commercial property.

Nothing in this section limits any right or remedy available to the Company under the PPSA or any other applicable law.

Recovery of unpaid Goods

If the Customer fails to pay for any Goods when payment is due and does not remedy that failure within the period specified in a notice issued under the section headed "Default, suspension and termination", the Company may recover possession of those Goods.

For the purpose of recovering Goods, the Customer:

- authorises the Company and its authorised representatives to enter premises occupied or controlled by the Customer where the Company reasonably believes that the Goods are located; and
- must use reasonable endeavours to procure lawful access to any other premises where the Goods are located.

The Company may exercise its recovery rights only:

- at a reasonable time;
- after giving the Customer reasonable written notice, unless urgent action is reasonably necessary to protect the Goods or the Company's security interest;
- to the extent permitted by law;
- without breaching the peace; and
- without causing avoidable damage to any premises or other property.

The Company must take reasonable care when exercising its recovery rights and must promptly repair, or reimburse the reasonable cost of repairing, any avoidable physical damage caused by the Company or its representatives.

The Customer must not obstruct the Company from lawfully recovering possession of Goods in accordance with this section.

Consumer guarantees and manufacturer warranties

Nothing in these General Terms of Supply excludes, restricts or modifies any consumer guarantee, right or remedy that cannot lawfully be excluded, restricted or modified, including under the Australian Consumer Law.

Any manufacturer warranty is in addition to, and does not limit, any rights or remedies available to the Customer under applicable law.

Subject to any rights that cannot lawfully be excluded, the Company may assist the Customer to make a claim under an applicable manufacturer warranty.

Returns

Subject to any rights or remedies that cannot lawfully be excluded, the Company is not required to accept the return of Goods merely because the Customer has changed its mind or no longer requires the Goods.

Where the Company agrees to accept a return, the return may be subject to:

- the relevant supplier’s return conditions;
- the Goods being returned unused, undamaged and in their original packaging; and
- a reasonable restocking charge notified to the Customer.

Nothing in this section limits any remedy available to the Customer under the Australian Consumer Law.

Default, suspension and termination

Events of Default

An **Event of Default** occurs if:

- the Customer fails to pay an undisputed amount owing to the Company by the due date and does not pay that amount within 10 Business Days after receiving written notice from the Company requiring payment;
- the Customer commits a material breach of the Agreement that is capable of remedy and does not remedy that breach within 10 Business Days after receiving written notice from the Company requiring the breach to be remedied;
- the Customer commits a material breach of the Agreement that is not capable of remedy; or
- an Insolvency Event occurs in relation to the Customer.

A notice issued by the Company in relation to a failure to pay or a remediable breach must:

- identify the relevant failure or breach in reasonable detail;
- state the action required to remedy the failure or breach; and
- state the date by which the failure or breach must be remedied.

Suspension of supply

If an Event of Default occurs, the Company may suspend the supply of any Goods or Services to the extent reasonably necessary to protect the Company’s legitimate interests, after giving the Customer written notice of the suspension.

The Company may suspend the supply of any affected Services immediately if the Company reasonably considers that urgent action is necessary to:

- protect the security, integrity or availability of the Company's systems or any customer system;
- prevent or respond to unauthorised access, malicious activity, a cyber-security incident or a material risk of harm;
- prevent unlawful conduct; or
- comply with any applicable law or the direction of a competent authority.

Where the Company suspends Services immediately, the Company must:

- notify the Customer as soon as reasonably practicable;
- provide reasonable details of the reason for the suspension, unless prohibited by law or where disclosure may reasonably compromise security; and
- restore the affected Services as soon as reasonably practicable after the reason for the suspension has been addressed.

Suspension does not limit any other right or remedy available to the Company.

Termination

If an Event of Default occurs, the Company may terminate the Agreement or any affected part of the Agreement by written notice to the Customer.

Termination does not affect any right, obligation or liability that accrued before termination.

On termination or expiry of the Agreement:

- the Customer must immediately pay all undisputed amounts properly due and payable to the Company for Goods and Services supplied up to the date of termination;
- the Customer must pay any third-party charges, licence fees, carrier charges or other committed costs that the Company has reasonably and properly incurred on the Customer's behalf and that cannot reasonably be cancelled or recovered, to the extent disclosed in the Quotation or otherwise approved by the Customer;
- the Company may recover any unpaid Goods in accordance with the section headed "Recovery of unpaid Goods";
- each party must return or securely destroy the other party's Confidential Information in accordance with the section headed "Confidentiality";
- the Company may cease providing the terminated Services and, subject to applicable law, revoke the Customer's access to any affected systems, portals, accounts or services controlled by the Company; and
- at the Customer's written request, the Company must provide reasonable transition assistance at the Company's then-current rates, subject to payment of all undisputed overdue amounts and any reasonable security for payment requested by the Company.

Any provision that is intended by its nature to survive termination continues to apply, including provisions relating to confidentiality, intellectual property, accrued payment obligations, liability, indemnities and dispute resolution.

Rectification of Customer breach

If the Customer fails to perform an obligation under the Agreement, the Company may take reasonable steps to rectify the Customer's failure, or to prevent or minimise the consequences of that failure, where:

- the Company has given the Customer reasonable written notice of the failure and a reasonable opportunity to rectify it; or
- it is not reasonably practicable to give prior notice because urgent action is required to prevent or minimise loss, damage, service interruption, a security risk or a breach of law.

The Company must notify the Customer as soon as reasonably practicable of any action taken without prior notice.

The Customer must reimburse the Company for the reasonable costs actually and properly incurred by the Company in taking action under this section, provided that:

- the action taken was reasonably necessary and proportionate to the Customer's failure;
- the Company provides reasonable details of the action taken and the costs incurred; and
- the Company provides reasonable supporting evidence of the costs if requested by the Customer.

Enforcement expenses and interest

If the Customer fails to pay an undisputed amount owing to the Company by the due date, the Company may charge interest on the overdue amount at the rate of [10]% per annum, calculated daily from the due date until payment is received in full.

If an Event of Default occurs, the Customer must reimburse the Company for the reasonable external costs actually and properly incurred by the Company as a direct result of the Event of Default, including:

- reasonable debt-recovery agency fees;
- reasonable legal costs; and
- reasonable costs incurred in lawfully recovering possession of unpaid Goods.

The Company must provide reasonable details of any amount claimed under this section and, if requested by the Customer, reasonable supporting evidence of the amount incurred.

The Company must take reasonable steps to mitigate its costs and must not recover the same cost more than once.

An amount payable under this section may be added to the Customer's account and is payable within 10 Business Days after the Company issues an invoice for that amount.

Confidentiality

In this section, **Confidential Information** means any information disclosed by or on behalf of a party (**Disclosing Party**) to the other party (**Receiving Party**) in connection with the Agreement that:

- is identified as confidential;
- is confidential by its nature; or
- the Receiving Party knows, or ought reasonably to know, is confidential,

including information concerning a party’s business affairs, customers, suppliers, systems, networks, security arrangements, credentials, pricing, finances, methods of operation, software, technical information, documentation, trade secrets and intellectual property.

Confidential Information does not include information that the Receiving Party can establish:

- is or becomes publicly available other than because of a breach of these terms;
- was lawfully known to the Receiving Party before disclosure by the Disclosing Party;
- was independently developed by the Receiving Party without use of the Disclosing Party’s Confidential Information; or
- was lawfully received from a third party without any obligation of confidence.

The Receiving Party must:

- use the Disclosing Party’s Confidential Information solely for the purpose of performing or receiving the benefit of the Agreement;
- keep the Confidential Information secure and protect it from unauthorised access, use or disclosure;
- disclose the Confidential Information only as permitted by this section; and
- promptly notify the Disclosing Party if it becomes aware of any unauthorised access to, use of or disclosure of the Confidential Information.

The Receiving Party may disclose Confidential Information:

- to its officers, employees, professional advisers, insurers, auditors and subcontractors who:
  - have a need to know the information for the purposes of the Agreement; and
  - are subject to obligations of confidence that are no less protective than the obligations in this section;
- with the Disclosing Party’s prior written consent; or
- to the extent required by law, a court order or the direction of a competent regulatory authority.

Before making a disclosure required by law, the Receiving Party must, to the extent permitted by law:

- give the Disclosing Party reasonable written notice of the proposed disclosure; and
- reasonably cooperate with the Disclosing Party if the Disclosing Party wishes to seek a protective order or other confidential treatment.

Each party is responsible for any breach of this section by a person to whom that party discloses Confidential Information.

On termination or expiry of the Agreement, or earlier at the written request of the Disclosing Party, the Receiving Party must promptly return or securely destroy the Disclosing Party’s Confidential Information, except to the extent that:

- the Receiving Party is required by law to retain the information; or
- the information is contained in an automated backup created in the ordinary course of business and cannot reasonably be deleted separately,

provided that any retained Confidential Information remains subject to this section.

The obligations in this section continue for 5 years after termination or expiry of the Agreement, except in relation to a trade secret, for which the obligations continue for so long as the information remains a trade secret.

Each party acknowledges that damages may not be an adequate remedy for a breach of this section and that the other party may seek urgent injunctive or equitable relief.

Force majeure

To the maximum extent permitted by law, and without limiting any other provision of the Agreement, the Company is not liable for any delay or failure in performing an obligation under the Agreement to the extent caused by circumstances beyond its reasonable control. The Company is entitled to a reasonable extension of time for performance.

General

Interpretation

In the Agreement, the following rules of interpretation apply:

- headings are for reference purposes only and do not define, limit or describe the scope or extent of any provision of the Agreement;
- the Agreement may not be construed adversely against the Company solely because the Company prepared it;
- the singular includes the plural and vice-versa;
- a reference to a "person" includes an individual, a firm, a corporation, a body corporate, a partnership, an unincorporated body, an association, a government body or any other entity; and
- the meaning of general words is not limited by specific examples introduced by "including", "for example", "in particular" or similar expressions.

Notifications

A notice under the Agreement may be given by email to the recipient's last notified email address.

Costs

Except as specifically provided in the Agreement, each party must bear its own legal, accounting and other costs associated with the Agreement.

Assignment

The Customer may not assign, transfer or sub-contract any of its rights or obligations under the Agreement without the Company's prior written consent.

The Company may assign, transfer or sub-contract any of its rights or obligations under the Agreement at any time without notice to the Customer.

No waiver

Waiver of any power or right under the Agreement must be in writing signed by the party entitled to the benefit of that power or right and is effective only to the extent set out in that written waiver. A failure by a party to act with respect to a breach by the other party does not waive the first party's right to act with respect to that breach or any subsequent or similar breach.

Severability

The provisions of the Agreement are severable and, if any provision of the Agreement is held to be illegal, invalid or unenforceable under present or future law, that provision may be removed and the remaining provisions will continue to be enforced.

Variation

The Agreement may only be varied or amended by written agreement between the Company and the Customer.

Governing law and jurisdiction

The Agreement is governed by the laws of Victoria. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria and the courts of appeal from them.