

**Talk to Us Communications Australia Pty Ltd ABN 74 076 141 707** of Level 1, 95 Queen Street, Melbourne 3000; ("TTUA") provides and Reseller accepts (as applicable) Hardware, Software, and Services, subject to the following Resellers terms and conditions.

## **1. Definitions**

1.1 In these Terms unless the context otherwise requires:

- (a) Terms means these terms and conditions and any schedule of these Terms including without limitation any Orders or Work Order Request and Terms of Credit.
- (b) Clause means a clause of these Terms.
- (c) Commencement Date means the date of execution of these Terms.
- (d) Reseller means a company authorised to resell 2N device/hardware and Third Party Software/Licensing supplied by TTUA;
- (e) Confidential Information means each Party's confidential information which is not in the public domain, other than by breach of these Terms and includes, without limitation:
  - (i) confidential information relating to the design, specifications, source code and content of the Software/Service;
  - (ii) information relating to the personnel, policies or business strategies of a Party; and
  - (iii) information relating to these Terms;
- (f) Deliverables, if applicable means any deliverables or materials created in connection with a particular Quote, Order, Work Order Request, and required to be provided by TTUA to Reseller through the provision of Hardware, Software and/or Services.
- (g) Force Majeure means an act, omission or circumstance over which a Party could not have reasonably exercised control, excluding any obligation to pay money.
- (h) Hardware/Products, if applicable, means hardware supplied to Reseller by TTUA from time to time.
- (i) Intellectual Property Owner means TTUA.
- (j) Intellectual Property Right means all intellectual or industrial property protectable by statute, at common law or in equity and includes all know how, inventions, patents, copyright, designs (whether or not registrable), trade secrets, circuit layout designs, circuit layout rights registered and unregistered trademarks, trade names, logos and get-up (and any copyright in such trademarks, trade names, logos and get-up) and confidential information and all other rights and interests of a like nature.
- (k) Party means a party to these Terms and its successors, trustees and permitted assigns.
- (l) Related Entity has the same meaning as "related entity" under *Corporations Act 2001 (Cth)*.
- (m) Services, if applicable, means services supplied to reseller by TTUA from time to time.
- (n) Sub-clause means a sub-clause of these Terms.
- (o) Third Party Software, if applicable, means third party software specified in a Quote, Order, Work Order Request and supplied subject to an End User Licence Agreement.
- (p) Terms of Credit Agreement means the approved Credit and Payment terms and conditions in which TTUA supplies Services, Software and Hardware to Reseller being a materially separate and additional document and set of terms and conditions.
- (q) Territory means in Australia.

## **2. Interpretation**

2.1 In the interpretation of these Terms unless the context otherwise requires:

- (a) Words denoting a person shall include corporations, statutory corporations, partnerships, joint ventures, associations, boards, governments or semi-government agencies or authorities.
- (b) Words denoting the singular number shall include the plural number and vice versa.
- (c) Words denoting any gender shall include all other genders.
- (d) A reference to a statute or a regulation also refers to any statute or regulation amending, or consolidating or re-enacting any such statute or regulation.
- (e) Money references are references to Australian currency.
- (f) Headings used in these Terms are for convenience and ease of reference only, and are not part of these Terms and shall not be relevant or affect the meaning or interpretation of these Terms.
- (g) Every obligation, agreement, condition express or implied in these Terms and entered into by more than one party shall bind them jointly and each of them severally.
- (h) If any provision or part provision of these Terms is held invalid, unenforceable or illegal for any reason, these Terms shall remain otherwise in full force apart from such provision or part provision, which will be deemed to be deleted.
- (i) These Terms shall be read in the following order of precedence: the recitals and clauses of these Terms and the relevant Order, Work Order Request (if any). These Terms prevail over any purchase order to the contrary from Reseller.

## **3. Appointment**

3.1 Whereas the Reseller has requested to sell 2N Devices supplied by TTUA on a non-exclusive basis and to the Resellers end users within the Territory and TTUA has agreed to appoint the reseller to sell the products on same basis.



## **4. Scope**

- 4.1 An Order or Work Order Request will describe whether Reseller is obtaining Hardware and/or Third Party Software and/or Services from TTUA.
- 4.2 TTUA may, at its option, provide support Services for Hardware and/or Third Party Software (Support). The provision of Support shall be governed by any separate agreement(s) that set out any additional terms and conditions (including price) applicable to such Support and these Terms.
- 4.3 These Terms shall continue until replaced by another written Terms signed by the Parties or Reseller advises TTUA by notice in writing that it does not intend to place any further Orders. Such notification shall not affect any current Orders or Work Order Requests.

## **5. Variations**

5.1 No modification, variation or alteration of any provision of these Terms, including any Orders or Work Order Request, shall be valid except in writing signed by each Party.

## **6. Services**

- 6.1 If Reseller is obtaining Services from TTUA, the succeeding provisions of this Clause 5 will apply but not otherwise.
- 6.2 If Reseller is not nominated as the Intellectual Property Owner then:
  - (a) Reseller acknowledges that TTUA remains the sole owner of the Intellectual Property Rights in the Deliverables.
- 6.3 TTUA shall supply Services with all due care and skill. Notwithstanding that Services are supplied with all due care and skill, it is possible that Hardware supplied may include faults.
- 6.4 Subject to Sub-clause 14.2, the sole remedy for a breach of this Clause shall be for TTUA:
  - (a) to re-supply the relevant Services; or,
  - (b) If this cannot reasonably be achieved by TTUA, contract a qualified and capable contractor to provide the same services;

## **7. Products/Hardware and Third Party Software/Licenses**

- 7.1 If Reseller is obtaining Products/Hardware and/or Third Party Software/Licenses and/or Services from TTUA, the succeeding provision of this Clause 7 will apply but not otherwise.
- 7.2 Subject to Clause 7; TTUA offers no warranty in relation to Products/Hardware and Third Party Software other than those warranties that cannot be excluded by law. The Parties each respectively acknowledge and agree that any warranties applicable to such Products/Hardware and Third Party Software are the relevant manufacturer's or developer's (each a Third Party) warranties (Third Party Warranties) and such Third Party Warranties (if applicable) shall be provided by the Third Party.
- 7.3 TTUA may at its option, and when authorised by the Third Party as referred to in Clause 7.2 provide warranty services on behalf of the Third Party, however such services in no way transfer the Third Party Warranties and liability to TTUA.
- 7.4 TTUA has the right to modify, alter, amend or delete from the Products and published Product Lists at any time at its sole discretion, following when practical, at least thirty (30) days prior written notice.
- 7.5 The reseller agrees not to remove from the Products or there sales packaging any copyright notice, labels or any material included therein.

## **8. Return Policy:**

- 8.1 The whole of clause 8 outlines TTUA's complete obligation in its capacity to provide warranty services subject to clause 7.
- 8.2 All units in which a manufacturing defect appears within fourteen (14) days of purchase by the end user will be defined as a Dead on Arrival (DOA) / Out of box failure (OBF) as long as no more than fourteen (14) days have elapsed since the purchase date and they meet all of the criteria described in clause 8.4.
- 8.3 All units in which a manufacturing defect appears within twenty four (24) months of purchase by the Reseller will be defined as a Warranty claim as long as no more than twenty four (24) months have elapsed since the purchase date and they meet all of the criteria described in clause 8.4.
- 8.4 Units will only qualify for Warranty Services if:
  - (a) No physical or liquid damage can be found on the unit. (Damaged power sockets are not classified as warranty returns.)
  - (b) No modification or improper attempted repair has been made to the unit by anybody other than the Manufacturer or approved TTUA repair agent.
  - (c) No damage has been made due to use of incorrect voltage supply/source.
- 8.5 Proof of purchase is required for every OBF/DOA and Warranty return units.
- 8.6 The following Return procedure applies for both OBF/DOA and Warranty returns:
  - (a) The Reseller or the end user calls TTUA's technical support team to determine that the fault is due to a manufacturing defect and not due to a setup or configuration problem.

(b) If the unit is classified as a DOA or Warranty return TTUA will generate an RA number and either fax or email a Return Authorisation Form to the person returning the unit.

(c) The Reseller or the end user arranges to return the faulty unit to TTUA

(d) The Reseller or the end user will ensure the following items are sent back to TTUA:

(i) The complete sales package.

(ii) Proof of purchase.

(iii) The completed Return Authorisation Form with RA number.

(d) TTUA will then test the unit; and;

(e) If no fault is found; the unit will be returned to the Reseller or end user and the freight charge will be forwarded to the Reseller/end user.

(f) If the unit is faulty; a replacement will be sent to the Reseller/end user.

(g) If no replacement unit is available TTUA will return the unit to the manufacturer or repair agent and they will attempt to repair the unit at no cost to the Reseller/end user.

(h) If the unit cannot be repaired and TTUA cannot provide a replacement unit within a reasonable period of time a credit will be issued.

8.7 In the case of a DOA and if the Reseller/end user arranges to return the faulty unit via TTUA's nominated courier; TTUA will cover the freight cost for the return. (TTUA will not pay for DOA freight charges sent via couriers other than those nominated by TTUA.)

8.8 TTUA may at its sole discretion, and when products are available to do so, provide an advance replacement prior to receiving the faulty unit. In such cases special return instructions will be provided to the Reseller/end user.

8.9 If the faulty unit is not covered by warranty TTUA may arrange the repair of the faulty unit. Repair charges will be payable by the Reseller/end user and based on a time and parts plus freight basis.

8.10 Non faulty units returned for credit will attract a 30% restocking fee.

#### **9. Evaluation Products**

9.1 TTUA may, from time to time agree to supply the Reseller Evaluation products on the following basis:

(a) The purpose of the evaluation product is to allow the reseller to test the product at their place of business for the purpose of evaluating merchantability or product configuration and compatibility testing and troubleshooting.

(b) Evaluation products for the Resellers end users need to be purchased by the Reseller and provided by the Reseller and not TTUA.

(c) Unless otherwise approved in writing, evaluation products will be returned to TTUA within two (2) weeks. Products will be invoiced to Resellers if this period is exceeded.

(d) The Reseller agrees to accept liability for the evaluation product and any damage, wear, misuse and/or failure to return the product complete and in new merchantable condition as received will result in the Reseller being charged for the full normal listed price of the product plus freight.

#### **10. Prices, Fees & Payments**

10.1 Reseller shall pay TTUA the Fees prior to delivery unless specified otherwise in the applicable Order, Work Order Request or the Terms of Credit Agreement.

10.2 TTUA may increase its Fees and Hardware Prices at any time upon thirty (30) days' notice to Reseller for new Orders & Work Order Requests.

10.3 Fees and Prices are exclusive of all taxes, except where expressly stated to the contrary (including, without limitation, GST), duties, fees or other government levies or charges, which may be imposed on or in respect of the Hardware, Third Party Software or the Services. Such taxes, duties, fees or other government charges shall to the extent permissible by law be paid by Reseller to TTUA.

10.4 Payment made to TTU via Credit Card will incur a transaction fee of 2.5%.

10.5 If any payment owing to TTUA is not made within seven (7) days of the due date, TTUA may, without further notice to Reseller, suspend further services or its remaining obligations to under these Terms.

#### **11. No License to use Trademark and Trade Name.**

11.1 All trademarks and trade names that TTUA uses or is licensed to use by the manufacturer is non transferable and the Reseller is not permitted and agrees not to use, modify or publish any 2N or related Logo, Trademark or Trade Name for any purpose unless otherwise agreed by TTUA in writing.

#### **12. Confidential Information**

12.1 Each Party agrees to ensure that confidential information belonging to the other Party is kept Confidential.

12.2 Each Party shall not directly or indirectly divulge or communicate or otherwise disclose Reseller means a company authorised to resell 2N device/hardware and Third Party Software/Licensing supplied by TTUA;

12.3 Confidential Information belonging to the other Party, to unauthorised third parties and shall inform the other Party of any suspected or actual disclosure of the Confidential Information.

12.4 Each Party shall not remove or cause to be removed from the other Party's, its clients' or its business partners' premises any Reseller means a company authorised to resell 2N device/hardware and Third Party Software/Licensing supplied by TTUA;

12.5 Confidential Information without prior written consent from the other Party.

#### **13. Restraint Period**

13.1 Each Party shall not solicit for employment, whether directly or indirectly through an associated or subsidiary company or otherwise, any person, or any Related Entity to that person, who was employed or contracted by the other Party during the term of these Terms for a period of six (6) months after that person or any Related Entity was materially involved with the other Party.

13.2 Each Party shall promptly advise the other Party if a person, or any Related Entity to that person, who is or was employed or contracted by the other Party seeks to be employed or contracted by the other Party.

13.3 The Parties agree that in the event that a Party breaches Sub-clause 13.1 it shall pay the other Party Thirty (\$30,000) Thousand Dollars or Four (4) months base Salary, whichever the greater of any person so solicited.

#### **14. Exclusions and Limitation of Liability**

14.1 Subject to Clause 5.4 and 7 and this Clause, all warranties whether express, implied, statutory or otherwise, relating in any way to the subject matter of these Terms or to these Terms generally, are excluded.

14.2 Where legislation implies in these Terms any condition or warranty and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or the exercise of or liability under such term, such term shall be deemed to be included in these Terms. However, the liability of TTUA for any breach of such term shall be limited, at the option of TTUA, to any one or more of the following:

(a) if the breach relates to goods: the replacement of the goods or the supply of equivalent goods; the repair of such goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; and

(b) if the breach relates to services the supplying of the services again; or the payment of the cost of having the services supplied again.

14.3 Subject only to Sub-clause 14.2, TTUA shall not be under any liability to Reseller in respect of any loss or damage (including, without limitation, consequential loss or damage) however caused, which may be suffered or incurred or which may arise directly or indirectly in respect to the supply of goods or services pursuant to these Terms or the failure or omission on the part of TTUA to comply with its obligations under these Terms.

14.4 Reseller warrants that it has not relied on any representation made by TTUA or upon any descriptions or illustrations or specifications contained in any document including any catalogues or publicity material produced by TTUA.

#### **15. Termination**

15.1 Without limitation to any other clause within these terms TTUA or the Reseller may, given 30 days notice to the other party, terminate the Appointment as described in clause 3. in which case TTUA will cease to supply the Reseller the products.

15.2 TTUA may terminate these Terms or any Order & Work Order Request immediately by notice in writing if:

(a) any payment due from reseller to TTUA pursuant to these Terms remains unpaid for a period of fourteen (14) days;

(b) Reseller breaches any Clause and such breach is not remedied within fourteen (14) days of written notice by TTUA; or

(c) Reseller becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration; reseller, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; Reseller being a natural person, dies; or Reseller ceases or threatens to cease conducting its business in the normal manner.

15.3 Reseller may terminate a Order or Work Order Request immediately by notice in writing to TTUA if TTUA commits a material breach of that Order or Work Order Request (for reasons other than a Force Majeure) and does not remedy such material breach within a period of fourteen (14) days (or such longer period as Reseller may authorise in writing) after receipt by TTUA of written notice from Reseller specifying such material breach and requiring the material breach to be remedied.

15.4 If notice is given to Reseller pursuant to Sub-clauses 15.1, 15.3 or 17.1, TTUA may, in addition to terminating these Terms:

(a) repossess the Hardware and or any copies of the Third Party Software in the possession, custody or control of Reseller;

- (b) retain any moneys paid;
- (c) charge a reasonable sum for work performed in respect of which work no sum has been previously charged;
- (d) be regarded as discharged from any further obligations under these Terms; and
- (e) pursue any additional or alternative remedies provided by law.

#### **16. Survival**

16.1 The provisions of these Terms that are capable of having effect after the expiration of these Terms shall remain in full force and effect following the expiration of these Terms.

#### **17. Force Majeure**

17.1 Neither Party shall be liable for any delay or failure to perform its obligations if such a failure or delay is due to a Force Majeure and the affected Party takes all reasonable steps to remedy or mitigate the effects of the Force Majeure. If a delay or failure by the Party affected by the Force Majeure exceeds thirty (30) consecutive days, either Party may immediately terminate the relevant and affected Order or Work Order Request (and any related Order & Work Order Requests) by written notice to the other Party.

#### **18. Assignment, Novation and Sub-Contracts**

18.1 TTUA may sub-contract for the performance or part performance of these Terms.

18.2 These Terms shall not be dealt with in any way by Reseller (whether by assignment, novation, sub-licensing or otherwise) without TTUA's written consent.

#### **19. Waiver**

19.1 No right of a Party under these Terms shall be deemed to be waived except by notice in writing signed by the relevant Party. Such a waiver by a Party shall not prejudice its rights in respect of any subsequent breach of these Terms by the other Party.

19.2 Any express statement of a right of a Party under these Terms is without prejudice to any other right of that Party expressly stated in these Terms or arising at law.

#### **20. Dispute Resolution**

20.1 Prior to commencing legal action, the Chief Executive Officer or appropriate senior executive of the Parties must meet to attempt to resolve any dispute between the parties arising out of or related to these Terms.

20.2 A Party who serves a notice requiring such a meeting and setting out the nature of the dispute may unless a meeting occurs within 21 days thereafter commence legal proceedings without further notice.

20.3 Nothing in this Clause 20 shall prevent a Party:

- (a) seeking urgent interlocutory injunctive relief before a Court;
- (b) commencing proceedings after the meeting referred to in Sub-clause 20.1; or
- (c) exercising any rights of termination available to a Party under these Terms.

#### **21. Governing Law**

21.1 These Terms shall be governed by and construed according to the law of the State of Victoria, Australia.

21.2 The parties irrevocably submit to the exclusive jurisdiction of the Courts of Victoria and Australia and any Courts hearing appeals from such Courts.

#### **22. Notices**

22.1 Notices under these Terms may be delivered by hand, by mail or by facsimile to the addresses specified above.

22.2 Notices shall be deemed given in the case of:

- (a) hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving party;
- (b) posting, three days after dispatch; and
- (c) facsimile, upon completion of transmission.

#### **23. Entire Agreement**

23.1 These Terms constitutes the entire agreement between the parties for the subject matter referred to in these Terms. Any prior arrangements, agreements, representations or undertakings in relation to the subject matter referred to in these Terms are superseded.

23.2 These Terms are not to be construed as creating a joint venture, partnership or agency situation between the parties and neither party may represent such. Under no circumstances may any party obligate or bind the other party to any agreements, arrangements, contracts or understanding or represent that they have such authority.