
1. Standard Terms & Conditions

The following General Terms and Conditions for the Rendering of Professional Services ("General Terms and Conditions") describe the terms and conditions pursuant to which TechConnect, will provide Services to a customer.

Definitions

The following expressions used in these General Terms and Conditions shall have the following meaning, unless the context clearly requires otherwise:

- 1.1. **Agreement**: means any agreement between TechConnect and Customer with respect to the actual rendering of Services, in which the terms and conditions of the General Terms and Conditions will be regarded to be incorporated by reference, including any Work Order or schedules thereto;
- 1.2. **Customer**: means any person or corporation which has concluded an Agreement with TechConnect with respect to the rendering of Services;
- 1.3. **Fees**: means the fees payable by Customer to TechConnect for the Services provided pursuant to a Work Order;
- 1.4. **Goods**: means any (novel) software programs, source and object codes, specifications, designs, processes, techniques, concepts, improvements, discoveries, ideas, inventions and related documentation, made or arising in connection with the Services;
- 1.5. **Rights**: means all intellectual property rights, including but not limited to patents, copyrights, design rights, database rights, trademarks and trade names, including any applications in respect thereof, and all rights regarding inventions, know-how and trade secrets under Australian and foreign law, pertaining to the Goods;
- 1.6. **Services**: means the services elected by Customer and rendered by TechConnect, including but not limited to implementation services, system integration services, business and/or technical consultancy services and training, excluding the provision of any updates, new releases or new versions with respect to the Goods;
- 1.7. **Work order**: means an agreement executed between TechConnect and a Customer for the rendering of Services specifying i.a. the kind of Services requested and the applicable fees.

2. **Applicability**

These General Terms and Conditions are applicable on any Agreement between TechConnect and a Customer with respect to the rendering of Services. The applicability of conditions of supply, delivery, and/or payment and other (general) conditions of Customer is hereby explicitly excluded, regardless of any failure of TechConnect to object to such conditions.

3. **Relationship of Parties**

- 3.1. **Independent Parties**. Each party will be and act as an independent contractor and not as an agent or partner of, or joint venturer with, the other party for any purpose related to any Agreement or the transactions contemplated by any Agreement, and neither party by virtue of any Agreement will have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party.
- 3.2. **Contact Persons**. Each party will appoint in writing an employee or agent of such party to act as the "Contact Person" for all communication between the parties related to the Services. The Contact Person will be responsible for monitoring the status of the Services and will schedule regular meetings with both technical and management personnel of each party to review the status of the Services. Either party may change its Contact Person upon written notice to the other.
- 3.3. **Replacements**. If an individual being assigned to the project by TechConnect is not acceptable in the reasonable opinion of the Customer, TechConnect shall make commercially reasonable efforts to replace said individual with another individual acceptable to Customer. TechConnect may, at its sole discretion, replace individuals assigned to the project with other individuals having similar qualifications or assign new individuals to the project.
- 3.4. **Non-Solicitation**. Customer acknowledges and agrees that the employees and consultants of TechConnect who perform the Services are a valuable asset to TechConnect and are difficult to replace. Accordingly, Customer agrees that, during the rendering of Services and for a period of 1 year after the completion of the Services, it will not solicit/offer employment (as an employee, independent contractor, or consultant) to any TechConnect employee or consultant deployed by TechConnect who renders any of the Services. In the event Customer is in breach of this provision, TechConnect will be entitled to recover from Customer liquidated damages equal to the greater of (i) the gross revenue generated by such employee or consultant for the 12-month period immediately preceding the breach or (ii) the employee's or consultant's gross income paid by TechConnect in the same 12-month period.
- 3.5. **Direction**. TechConnect will perform the Services under the direction and responsibility of Customer. TechConnect may subcontract any and all of its rights and obligations under any Agreement.

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4. **Work Orders**

- 4.1. **Nature of the Services.** The generic nature of the Services to be rendered by TechConnect to Customer shall be set forth in Work Orders. TechConnect shall not have any obligations towards Customer with respect to any project unless parties have executed a Work Order. Each Work Order shall be governed by the terms and conditions of these General Terms and Conditions.
- 4.2. **Content.** Each Work Order shall set forth or incorporate by reference:
 - (i) A description of the Services to be performed;
 - (ii) The fee rates which will be applicable on a time and materials basis;
 - (iii) The location where the Services will be performed;
 - (iv) The professional categories to be deployed in the project;
 - (v) If applicable (and solely and exclusively for planning purposes), the time periods for starting and completing the project, and the number of days such individuals shall be retained;
 - (vi) A description of any software to be provided by and licensed from third party vendors required for the Services;
 - (vii) The acceptance procedure for the Services to be performed, if applicable;
 - (viii) Any other relevant terms and conditions as may be agreed by the parties in writing.
- 4.3. **Changes.** Changes to Work Orders regarding the items (i) to (viii) mentioned in section 4.2 above shall be accomplished by either a) written amendment to the applicable Work Order or b) via an e-mail confirmation from Customer's Contact Person upon the proposal prepared by TechConnect's Contact Person.
- 4.4. **Software.** Unless otherwise specifically noted in the applicable Work Order, if TechConnect renders services to Customer with respect to any TechConnect proprietary software, the Services will be provided for the release of the software used by the Customer on the date of execution of the Work Order (under the conditions that said release of the software is supported by TechConnect pursuant to the terms of the applicable license agreement). TechConnect will not be responsible for the migration or re-implementation of the Services for future releases of the software, unless Customer separately contracts for such migration or re-implementation.

5. **Manner of Performance**

TechConnect shall perform the Services in a manner consistent with generally accepted industry standards and shall use its commercially reasonable efforts to perform the Services in accordance with the terms and conditions of any Work Order. However, it is understood that the time schedules and budgets mentioned in a Work Order are estimates. If TechConnect foresees that the time schedules or budget estimate(s) included in the Work Order will be exceeded, it will inform Customer in writing accordingly.

6. **No representations**

No employee, agent, representative or affiliate of TechConnect has authority to bind TechConnect to any oral representations or warranty concerning the Software. Any written representation or warranty not expressly contained in this Agreement is unenforceable.

7. **Customer's duties and responsibilities**

- 7.1. **Data and Information.** Customer shall make available in a timely manner and at no charge to TechConnect all technical data, computer facilities, programs, files, documentation, test data, sample output, or other information and resources required by TechConnect for the performance of the Services. Customer will be responsible for, and assumes the risk of any problems resulting from the content, accuracy, completeness, and consistency of all such data, materials, and information supplied by Customer.
- 7.2. **Equipment.** Customer shall provide, at no charge to TechConnect, office space, services and equipment (such as copiers, fax machines and modems) as TechConnect requires to perform the Services. Customer agrees that certain Services to be performed by TechConnect hereunder may be provided via remote access, requiring the establishment of a secure link via the internet, and Customer agrees that it will assist TechConnect in establishing such a remote connection. TechConnect agrees to abide by standard security procedures required by Customer and notified to it pursuant to the establishment of such a connection.

8. **Fees and Payments**

- 8.1. **Fees.** Customer shall pay TechConnect on a time and materials basis for the Services in accordance with the fees set forth in the applicable Work Order. TechConnect reserves the right to modify the fees by providing Customer with ninety (90) days prior written notice. TechConnect will invoice Customer on bi-weekly basis as Services are performed. All payments for Services and related expenses must be made within fourteen (14) days as of the date of the applicable invoice.
- 8.2. **Expenses.** Unless otherwise agreed in the Work Order, Customer shall reimburse all reasonable travel and other related expenses incurred by TechConnect in performance of the Services.
- 8.3. **Taxes and Prices.** All charges and fees pursuant to any Work Order are exclusive of and do not include any taxes, duties, or similar charges imposed by any government. Customer agrees to pay or reimburse TechConnect for all federal, state, dominion, provincial, or local sales, use, ad valorem, personal property, excise or other taxes, fees, or duties arising out of any Agreement or the transactions contemplated by any Agreement (other than taxes on the net income of TechConnect).
- 8.4. **Interest.** Customer shall pay TechConnect one percent (1.0%) interest per month on the outstanding balance of any fees or expenses not paid within fourteen (14) days of the date of the applicable invoice.
- 8.5. **No-Offset.** Fees and expenses due from Customer under any Agreement may not be withheld or offset by Customer for any reason. In any action or proceeding brought by TechConnect to recover fees or expenses to be paid by Customer under this Agreement, there will be included as an item for damages that TechConnect will be entitled to recover reasonable attorneys' fees incurred by reason of such action or proceeding.

9. **Rights**

- 9.1. **Ownership.** All Rights in the Goods will solely and exclusively vest in TechConnect. Customer shall not sell, transfer, publish, display, disclose, or otherwise make these Rights available to any third party without the prior written consent of TechConnect.
- 9.2. **Right to Use.** Upon completion of the Services under the applicable Work Order and full payment to TechConnect of all fees due for the respective Services under the applicable Work Order, Customer shall be granted a non-exclusive, nontransferable license to use the Goods for internal purposes only.

10. **Support**

Support and maintenance for any of the Goods is not covered by any support agreement which may have been concluded between TechConnect and Customer with respect to any software licensed by TechConnect to Customer. In the event that Customer desires to obtain support for any of the Goods, Customer may separately contract with TechConnect pursuant to mutually agreeable support terms and conditions.

11. **Indemnification for infringement**

- 11.1. **Defense.** TechConnect shall, at its expense, defend or settle any claim, action or allegation brought against Customer that the Goods infringe any patent, copyright, trade secret or other proprietary right of any third party and shall pay any final judgments awarded or settlements entered into, provided that Customer gives prompt written notice to TechConnect of any such claim, action or allegation of infringement and gives TechConnect the authority to proceed as contemplated herein. TechConnect will have the exclusive right to defend any such claim, action or allegation and make settlements thereof at its own discretion, and Customer may not settle or compromise such claim, action or allegation, except with prior written consent of TechConnect. Customer shall give such assistance and information as TechConnect may reasonably require to settle or oppose such claims. In the event any such infringement, claim, action or allegation is brought or threatened, TechConnect may, at its sole option and expense: (i) modify or amend the Goods or infringing part thereof, or replace the Goods or infringing part thereof with other goods having substantially the same or better capabilities; (ii) procure for Customer the right to continue the use of the Goods or infringing part thereof; or (iii) if neither of the foregoing is commercially practicable, TechConnect shall terminate the Agreement with respect to the infringing part of the Goods and refund the fees paid by Customer for the infringing part thereof. TechConnect will then be released from any further obligation whatsoever to Customer in connection with the infringing part of the Goods.
- 11.2. **Scope.** This Section 11 states the entire liability of TechConnect with respect to infringement of any (intellectual or industrial property) rights of any third party.

12. **Limitation of liability**

- 12.1. Except as expressly stated in this Section or where an exclusion of liability is prohibited by law, TechConnect shall have no other liability of any nature, whether in contract, tort or otherwise, for any damage whatsoever and howsoever caused arising from or in any way connected with the performance of Services to the Customer.
- 12.2. TechConnect will not be liable for any damage suffered (or cost incurred) by Customer due to the provision of false, misleading or incomplete information or documentation by or on behalf of Customer.
- 12.3. TechConnect's maximum aggregate liability to Customer, its employees, agents, subcontractors or other representatives, for damage, including interest, connected with or arising out of Services provided to Customer (whether in contract or in tort or under any other form of liability) shall in no event be greater than the amount of the fees paid by Customer under the applicable Work Order.
- 12.4. In no event will the Customer be liable for any loss of profits, loss of use, business interruption, loss of data, cost of cover or indirect, special, incidental or consequential damages of any kind incurred by the TechConnect in connection with the performance of the Services. The Customer's maximum aggregate liability to TechConnect, its employees, agents, subcontractors or other representatives shall in no event be greater than the amount of the Fees paid by the Customer under the applicable Work Order.
- 12.5. Any liability of TechConnect towards Customer, its employees, agents, subcontractors or other representatives for bodily injury or death connected with or arising out of the performance of Services to Customer shall be limited to the amounts paid to TechConnect by the insurance company under the respective insurance policy(s).
- 12.6. The above limitations of liability do not apply in case of negligent or willful misconduct of TechConnect.

13. **Term and Termination**

- 13.1. **Term.** An Agreement will take effect on the date of execution by both parties and will remain in effect, until all of the Services have been completed unless earlier terminated in accordance with Section 13.2.
- 13.2. **Termination.** (a) An Agreement may be terminated, with or without cause, by Customer upon thirty (30) days' prior written notice to TechConnect. Unless TechConnect manages to re-allocate to another project the employees or consultants that TechConnect had scheduled to deliver to Customer within such 30 day period, the time and resources scheduled will be payable regardless of whether Customer instructs TechConnect not to deliver the said scheduled Services. Unless Customer wishes that the Services continue being delivered within the said 30 day period, TechConnect will deploy reasonable efforts to re-allocate the said idle resources to other projects or Customers. Each party shall be entitled to terminate or dissolve an Agreement in whole or in part, with immediate effect, by notice sent by registered mail and without prejudice to the right to claim damages, in the event and at the time when:
 - the other party applies for (provisional) suspension of payments;
 - the other party has presented a petition of bankruptcy or is declared bankrupt;
 - the other party is dissolved; -the other party closes down its business;
 - the other party fails to pay any amount due to the other Party within thirty (30) days after
 - the other party gives written notice of such non-payment;
 - the other party fails to meet any other substantive obligation under an Agreement or fails to perform it promptly or satisfactorily and if

this attributable default is not remedied within a period of 30 days after a written notice of default; and/or performance by the other party is impossible on a permanent basis, without any case of force majeure.

- 13.3. **Effect of Termination.** Rights and obligations which in their nature are intended to continue even after termination or dissolution of the respective Agreement shall continue to exist after termination or dissolution of the respective Agreement, including amongst others, the provisions with respect to payment of fees, the Rights, limitation of liability, confidentiality, governing law and competent courts.

14. Confidentiality

- 14.1. **Obligation.** The parties will receive and hold in complete confidence all information which they may obtain directly or indirectly pursuant to any Agreement or the execution thereof including the contents and substance of the respective Agreement itself (the "Confidential Information"). The parties will take such steps as may be reasonably necessary to prevent disclosure of the Confidential Information to others.
- 14.2. **Limited Use.** The parties will not use any of the Confidential Information, except as necessary for the proper execution of the respective Agreement, it being further understood that the Confidential Information may be communicated in confidence within the receiving party's organization, but only to those persons having a need to know such information for the proper execution of the respective Agreement. The parties warrant that the above mentioned persons within their respective organizations will be bound by the same confidentiality obligations that the parties have agreed upon in the respective Agreement. The parties further warrant that the Confidential Information shall be kept in secure places, under access and use restrictions not less strict than used by the parties itself to protect their own business secrets.
- 14.3. **Devolution.** The parties agree to return all tangible Confidential Information that has been received from the other Party under any Agreement including all copies made thereof, promptly upon request by the disclosing party.
- 14.4. **Duration.** The obligations imposed by this Section 14 shall continue in effect for the term of ten (10) years from the date of the last disclosure of any Confidential Information.

15. Miscellaneous

- 15.1. **Waiver.** Any waiver of the provisions of the General Terms and Conditions or Agreement, or rights or remedies of either party must be in writing to be effective. Failure, negligence or delay to enforce any such rights or remedies at any time, will not be construed as a waiver and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to make subsequent action.
- 15.2. **Severability.** If any provision in the General Terms and Conditions or Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties will in good faith agree to such amendments that will preserve, as far as possible, the intentions expressed in this General Terms and Conditions or Agreement. If the parties fail to agree on such an amendment, such invalid provision will be severed from the remaining provisions, which will continue to be valid and enforceable to the fullest extent permitted by applicable Law.
- 15.3. **Public Announcements.** Only with the prior written approval of the Customer, the Customer agrees that TechConnect may use its name in press releases, product brochures, and financial reports indicating that Customer is a customer of TechConnect.
- 15.4. **Governing Law and Competent Court.** This General Terms and Conditions and any Agreement will be interpreted and construed in accordance with the laws of the Australia, without regard to conflict of law principles. Any dispute will be finally and exclusively resolved by the competent court in Australia.

16. Warranty

TechConnect warrants that the Services shall be provided with due skill, care and attention, shall be fit for the purpose inferred from the General Terms and Conditions and the Work Order, and shall be free of defects in design, materials and workmanship for a period of 90 days from completion ("Defects Liability Period"). In the event of a breach of this warranty, TechConnect shall perform the relevant services again or otherwise repair the defects in the services to the reasonable satisfaction of the Customer during the Defects Liability Period.