

## TERMS AND CONDITIONS

### 1. Definitions

"**ACL**" means the Australian Consumer Law schedule of the *Competition and Consumer Act*;

"**Teracom Solutions**" means Teracom Solutions Pty Ltd (ABN 19 381 251 882);

"**consumer**" is as defined in the ACL;

"**Contract**" means any contract for the provision of Goods and Services;

"**Customer**" means the person, jointly and severally if more than one, acquiring the Goods and Services;

"**Goods**" means goods supplied by Teracom Solutions to the Customer in the course of providing the Services;

"**Quote**" means any written quote provided by Teracom Solutions to the Customer for the proposed supply of Goods and Services;

"**Services**" means the services provided to the Customer, including the design and installation of home automation and smart-wired technologies;

"**Site**" means the site at which the Services are to be performed; and

"**Terms**" means these Terms and Conditions of Trade.

### 2. Basis of Contract

2.1 These Terms apply exclusively to every Contract.

2.2 A Quote is valid for 30 days.

2.3 The Terms may include additional terms in Teracom Solutions' Quote, which are not inconsistent with the Terms.

2.4 Teracom Solutions has absolute discretion to refuse to accept any offer.

2.5 The Customer must provide Teracom Solutions with its specific requirements, if any, in relation to the Goods and Services.

2.6 The Contract is accepted when Teracom Solutions accepts a booking from the Customer based on a Quote, or when Teracom Solutions provides the Customer with the Goods and Services.

### 3. Pricing & Payment

3.1 The price for the Goods and Services is specified in the Quote.

3.2 Teracom Solutions reserves the right to change the price:

- (a) if the Customer requests any additional or different Goods and Services;
- (b) if Teracom Solutions encounters unexpected problems or latent conditions;
- (c) if there is any change in the costs incurred by Teracom Solutions in relation to providing the Goods and Services.

3.3 If credit terms are offered, then unless otherwise agreed by Teracom Solutions, payment for the Goods and Services must be made in full within 30 days of the date of Teracom Solutions' invoice.

3.4 If credit terms are not offered, then unless otherwise agreed by Teracom Solutions, payment for the Goods and Services must be made as follows:

- (a) a deposit, of 20%, on booking;
- (b) progress payments in the amounts and at the times specified in the Quote; and
- (c) the balance on delivery of the Goods and / or completion of the Services.

3.5 Time for payment is of the essence.

### 4. Payment Default

4.1 If the Customer defaults in payment by the due date of any amount payable to Teracom Solutions, then all money which would become payable by the Customer to Teracom Solutions at a later date on any account, becomes immediately due and payable without the requirement of any notice, and Teracom Solutions may, without prejudice to any of its other accrued or contingent rights:

- (a) charge the Customer interest on any sum due at the rate specified in the *Penalty Interest Rates Act 1983* (Vic) plus 2% for the period from the due date until the date of payment in full;
- (b) charge the Customer for and the Customer must indemnify Teracom Solutions from, all costs and expenses (including legal costs on an indemnity basis) incurred by Teracom Solutions resulting from the default;
- (c) cease or suspend provision of any further Goods or Services to the Customer;
- (d) by written notice to the Customer, terminate any uncompleted Contract.

4.2 Clauses 4.1(c) and (d) may also be relied upon, at Teracom Solutions' option, where the Customer becomes bankrupt or insolvent or has an administrator, receiver, liquidator or similar functionary appointed in respect of its assets.

### 5. Passing of Property

5.1 Until Teracom Solutions receives full payment in cleared funds for all Goods and Services supplied by it to the Customer, as well as all other amounts owing to Teracom Solutions by the Customer:

- (a) title and property in all Goods remains vested in Teracom Solutions and does not pass to the Customer;
- (b) the Customer must hold the Goods as fiduciary bailee and agent for Teracom Solutions;
- (c) the Customer must keep the Goods separate from its goods and maintain Teracom Solutions' labelling and packaging;
- (d) the Customer must hold the proceeds of sale of the Goods on trust for Teracom Solutions in a separate account with a bank to whom the Customer has not given security however failure to do so will not affect the Customer's obligation as trustee;
- (e) in addition to its rights under the PPSA, Teracom Solutions may without notice, enter any premises where it suspects the Goods are and remove them, notwithstanding that they may have been attached to other goods not the property of Teracom Solutions, and for this purpose the Customer irrevocably licences Teracom Solutions to enter such premises and also

indemnifies Teracom Solutions from and against all costs, claims, demands or actions by any party arising from such action.

### 6. Personal Property Securities Act

6.1 The PPSA applies to these Terms. These Terms are a security agreement.

6.2 For the purposes of the PPSA, Teracom Solutions has a Purchase Money Security Interest in all present and future Goods supplied by Teracom Solutions to the Customer and the proceeds of the Goods.

6.3 The security interest arising under these Terms attaches to the Goods when the Goods are collected or dispatched from Teracom Solutions' premises.

6.4 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

6.5 To the extent permitted by the PPSA, the Customer agrees that:

- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on Teracom Solutions will apply only to the extent that they are mandatory or Teracom Solutions agrees to their application in writing; and
- (b) where Teracom Solutions has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

### 7. The Customer's Obligations

7.1 The Customer warrants that it is the owner of the Site or is authorised to request that the Services be conducted at the Site.

7.2 The Customer is responsible for ensuring the accuracy of any specific requirements in respect of the Goods and Services. Such information may be relied upon by Teracom Solutions when preparing a Quote or providing the Goods or Services.

7.3 The Customer must provide Teracom Solutions with clean and safe access to the Site and ensure that the Site is suitably prepared for the provision of Goods and Services.

7.4 The Customer indemnifies Teracom Solutions against any loss or damage that Teracom Solutions suffers as a result of providing the Goods and Services, except where the Customer is a consumer and Teracom Solutions has not used due care and skill.

### 8. Delivery and Completion of Services

8.1 Any period or date for delivery of the Goods or completion of the Services stated by Teracom Solutions is an estimate only and not a contractual commitment.

8.2 Teracom Solutions is not liable for any loss or damage suffered by the Customer or any third party due to its failure to meet any estimated date for the supply of Goods.

8.3 If Teracom Solutions cannot complete the Services by any estimated date, it will do so within a reasonable time.

### 9. Liability

9.1 If the Customer is a consumer, nothing in this Contract restricts, limits or modifies the Customer's rights and remedies against Teracom Solutions for failure of a statutory guarantee.

9.2 Subject to clause 9.1, this Contract does not otherwise include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services, or any contractual remedy for their failure.

9.3 Teracom Solutions does not provide any express warranty with the Goods. Teracom Solutions will use its reasonable endeavours to enable the Customer to obtain the benefit of any manufacturers' warranties.

9.4 Teracom Solutions is not liable to the Customer for any indirect or consequential losses suffered by the Customer or any third party, unless the Customer is a consumer (in which case, Teracom Solutions' liability for indirect or consequential loss is limited to the extent that the loss was reasonably foreseeable).

9.5 The Customer assumes all risk and liability for loss, damage, or injury to persons or property, arising out of the Customer's use of the Goods and Services, unless recoverable from Teracom Solutions on the failure of a statutory guarantee.

### 10. Cancellation

10.1 If Teracom Solutions is unable to provide any Goods or Services, Teracom Solutions may extend any date for completion or cancel the Contract.

10.2 No purported cancellation or suspension of a booking by the Customer is binding on Teracom Solutions once the booking has been accepted.

10.3 If Teracom Solutions accepts a cancellation by the Customer, Teracom Solutions may charge the Customer for Goods provided and Services performed up until the cancellation date.

### 11. Force Majeure

11.1 Teracom Solutions is not liable in any way howsoever arising under the Contract to the extent that Teracom Solutions is prevented from acting by events beyond its reasonable control. If an event of force majeure occurs, Teracom Solutions may suspend or terminate the Contract by notice to the Customer.

### 12. Miscellaneous

12.1 The law of Victoria governs these Terms.

12.2 Teracom Solutions' failure to enforce any of these Terms shall not be construed as a waiver of any of its rights.

12.3 If any Term is unenforceable, it shall be read down to be enforceable, or if it cannot be read down, the term shall be severed from the Terms without affecting the enforceability of the remaining Terms.