

# Freshmethod Technology Pty Ltd Product and Services Terms

Freshmethod's customer relationships are paramount and we live by a code of conduct around this value. We believe in the importance of being upfront and open on the way we do business and our obligations to our customer. We therefore apply these standard terms of business.

These terms govern the provision of Products and Services by Freshmethod Technology Pty Ltd (ABN 67 157 840 349) ("**Freshmethod**," "**we**," "**us**," "**our**") to our customers ("**the Customer**," "**you**," "**your**"). Please read the terms carefully. Ordering or use of Products or Services by you indicates your acceptance of these terms. If you do not accept these terms, you must not order or use any Products or Services.

These terms may be amended by us from time to time. Amendments will be published on our web site at <http://www.freshmethod.com.au/termsofbusiness.pdf> and will apply to you, in respect of subsequent Product and Service orders, on and from communication or publication by us.

## 1 Interpretation

In this document:

"**Business Hours**" means 8am-5pm on days other than weekends or public holidays in Brisbane.

"**Price**" means the price for Products and Services calculated by us in accordance with these terms and any written quote provided by us (or, if we have not provided a quote, then in accordance with our usual charges from time to time). Unless otherwise stated, prices and rates are stated by us exclusive of GST which is payable in addition.

"**Products**" and "**Services**" means products and services ordered by you from us in accordance with these terms.

## 2 Orders for Products and Services

2.1 From time-to-time you may order Products or Services from us. We may accept or decline orders at our discretion. When we accept an order, the applicable Products or Services are provided on these terms.

2.2 You must place orders in writing. You cannot cancel your order once made, unless we agree to cancel it at our discretion.

### 3 Warranties about Products and Services

- 3.1 We will provide the Products and Services ordered by you in accordance with these terms.
- 3.2 We will provide the Services with due care and skill. We will pass-on to you any supplier's or manufacturer's warranty about the Products. We may prioritise Services to customers that have a Service Membership Agreement with us.
- 3.3 Our warranties about our Products and Services are limited to their technical performance. We cannot provide a warranty that you will achieve a particular commercial purpose or outcome by using them. . This clause does not exclude any rights or obligations under the Australian Consumer Law.
- 3.4 Third party Products such as software licences may be subject to the applicable third party supplier's terms. You must comply with those terms in respect of such Products.

### 4 Price and payment

- 4.1 In return for the Products and Services, you must pay us the Price.
- 4.2 You may choose to enter into a term support arrangement ("Service Membership Agreement"), acquire a prepaid block of support Service hours, or acquire support Services on a fixed-fee quote basis. We offer discounts from our standard rates for such arrangements, which are subject to further written agreement between you and us. If you do not have a "Service Membership Agreement" or "Project Services Agreement" or "Systems Audit" the below pricing applies:
- 4.3 As at the date of this agreement, our normal Pricing is calculated as follows:

<b>Item</b>	<b>Price (ex GST)</b>
<b>(non-discounted standard rate)*</b>	<b>(non-discounted standard rate)*</b>
Support Services (Business Hours)	\$175.00/hour*
Support Services (after hours, weekends)	1.5 × Business Hours rate
Support Services (public holidays)	2.00 × Business Hours rate
Block Hourly Agreement (reactive)	\$125.00/hour*
Service Membership Agreement (proac- tive)	(see separate agreement)

Other Products and Services In accordance with our quote

*\*Discounts are available for pre-contracted support arrangements such as fixed-fee quote, prepurchased blocks of support hours or Service Membership Agreements.*

- 4.4 We may adjust Prices from time-to-time in line with CPI or other increases to our cost of business. The adjusted pricing will be applicable to Products and Services under this agreement immediately on notification of the updated Prices by us.
- 4.5 We charge for support Services in units of 15 minutes (or part). The minimum charge for on-site support Services is one hour, plus travel time. Travel time is calculated on the basis of an estimate by us of the usual travel time between our premises and yours in normal daytime conditions.
- 4.6 We will endeavour to resolve a support request by providing Services remotely in the first instance. However, we may decide at our discretion that on-site support is necessary. Examples are where customer consultation or input is required for resolution, where an unexpected increase in requests from you is encountered, or where physical equipment changes are required.
- 4.7 We will engage in any change or resolution process (reactive support) and/or mitigation of risks to your business continuity, security or productivity (proactive support) until resolution of the issues raised by a Services request. An automated notification will be sent by email to your nominated site contact or the related individual to advise we have commenced work. You may notify us of a time or Price budget for a particular Services request. In that case, we will notify you when that budget is about to be exceeded, and seek your authorisation to continue or cease activity.
- 4.8 A commissioning fee is payable (except for pre-contracted Support customers) in respect of new or refreshed workstations or mobile devices and covers installation, configuration and testing at our premises. If on-site commissioning is required, an additional fee may be payable.
- 4.9 Unless otherwise agreed, a deposit of 50% of the price of Products is required on order, and the balance of the Price is due on or before the Product is delivered.
- 4.10 We are entitled to charge you in addition for expenses reasonably incurred by us in providing on-site Services, including parking and taxi fares. We will endeavour to minimise or avoid such expenses.
- 4.11 We are entitled to charge you for any Products supplied by us, and third party products or services supplied, during provision of support Services. We will endeavour to seek your approval before such costs are incurred.

## 5 Payment terms

- 5.1 We will provide a tax invoice for each payment due.
- 5.2 You must pay each invoice within 14 days after the date of the invoice. Recurring monthly payments are due on the first day of the relevant month. We may charge a late payment fee of 3% per month in respect of overdue invoices.
- 5.3 If you dispute an invoice, you must notify us of the dispute (including all relevant details) promptly and in any event before the due date of the invoice. If you do not notify us of the dispute before the due date, we can assume you accept the correctness of the invoice. When you notify us of a dispute under this clause, we will investigate the invoice and your concern, and either confirm the correctness of the invoice or provide an adjustment note. Unless we advise otherwise, you must still pay the disputed invoice by the due date, and we will provide a credit or refund if the invoice is later found by us to be incorrect.
- 5.4 If you choose to pay invoices by direct debit or credit card, you hereby authorise us to charge the amount of each invoice to that payment method on or around the due date of the invoice. We may charge an additional service fee of 2.2% in respect of credit-card payments. Recurring payments are managed by Wise Pay, and you must agree to Wise Pay's terms to pay invoices using that facility.
- 5.5 If you do not pay an invoice by the due date, then in addition to our other rights, we may discontinue the provision of Products and/or Services to you. If we do so, we do not need to provide to you any prior notice, and you will not be entitled to make any claims, demands, commence any actions, proceedings, seek costs, expenses, damages, loss and other liabilities whatever, however caused or arising, in connection with, in respect of or incidental to the discontinuance of the provision of the Products and/or Services.
- 5.6 Ownership of Products does not pass to you, even after delivery, until you pay the Price for such Products. You authorise us to enter your premises and re-possess any Products if you have not paid an invoice in respect of such Products by the due date. You acknowledge that we are entitled to repossess Products in these circumstances even if this may affect the continuity of your IT systems and result in loss of business to you.

## 6 Customer induction and responsibility for data

- 6.1 You acknowledge that we will not have a comprehensive understanding of your information systems when we first commence providing Services to you, and that your systems may not have been configured or maintained in accordance with industry practice.

6.2 You therefore acknowledge and agree that there may be periods of instability and unscheduled downtime in your systems after we first commence providing Services to you. We will endeavour to minimise such instability and downtime, and to schedule tasks or changes after business hours. We are not liable to you in respect of any such instability or downtime.

6.3 You also acknowledge and agree that information systems can fail and lose data. Freshmethod will provide recommendations for disaster recovery and backup in our initial audit phase. Until Freshmethod's recommended best practise backup and/or disaster recovery solution is implemented and declared "live" in writing by Freshmethod, it is your responsibility to implement robust backup and disaster recovery plans and we are not responsible to you for any system failure, data loss or the restoration of your systems (whether due to our negligence or otherwise).

6.4 We are entitled to assume that no important data is stored on devices such as workstations, laptops and mobile devices unless expressly advised in writing by you. Although we will endeavour to request confirmation prior to doing so, we may wipe and re-image such devices in the course of providing Services to you.

## 7 Your other responsibilities

7.1 You must nominate a contact person within your organisation who has authority to make decisions on your behalf in relation to these terms. You can nominate a replacement person by notifying us.

7.2 If Services are provided at your site:

- (a) you must provide us with safe access to your site, to all relevant equipment and cabling, and with sufficient electrical power; and
- (b) you must ensure that at least one representative of your organisation is present or immediately contactable while Services are being performed at your site. In case (for example) we need authorisation to proceed with work or access to specific equipment. Time spent on site by us waiting for authorisation or other customer input is chargeable at our normal rates.

## 8 Non-solicitation

8.1 For a period of 24 months following any order under this agreement, you must not engage or solicit anyone who is or was our employee or contractor during that period.

8.2 If you wish to engage or employ any such personnel, it would be subject to prior written agreement between you and us, and the terms of such agreement may include a payment by you to us of \$50,000.

## 9 Liability

9.1 We exclude any term about the Products or Services not expressly stated in this agreement.

9.2 Neither party has any liability to the other, whether in contract, negligence, or otherwise, for any consequential loss, lost revenue or profits, business interruption, or any special, indirect or incidental loss, related to this agreement, the Products or the Services. These exclusions apply even if a party knew or should have known that the other party might suffer loss.

9.3 Without limiting this clause 9, in no circumstances will our liability to you exceed the Price actually paid by you in respect of the Products or Services giving rise to the liability.

9.4 Except for payment of money, neither party is liable for any delay or failure to perform this agreement caused by circumstances outside that party's reasonable control. However, each party must use reasonable endeavours to mitigate such delay or failure.

9.5 If any term is implied by law in this agreement and cannot be excluded, then we limit our liability to you under that term to the maximum extent permitted by law.

9.6 You indemnify us, our officers, employees and service providers from and against any legal liability to any third party (including reasonable legal costs in respect of such liability) which arises because of any breach by you of this agreement.

## 10 General

10.1 **Confidentiality and privacy.** Each of us must maintain in confidence any confidential information and trade secrets of the other which is accessed as a result of performing this agreement. Each of us must comply with our obligations under the *Privacy Act 1988* (Cth) in respect of personal information collected as a result of performing this agreement.

10.2 **Notices.** The parties' details for delivery of notices are as set out in this agreement. A party may change those details by notifying the other party.

- 10.3 **No assignment.** Neither party may assign or transfer any of its rights or obligations under this document without the prior written consent of the other party. Any purported dealing in breach of this clause is of no effect.
- 10.4 **Governing law.** This document is governed by the law of Queensland, Australia. Each party submits to the jurisdiction of the courts of Queensland, and the courts of appeal from those courts.
- 10.5 **Entire understanding.** This document contains the entire understanding between the parties as to its subject matter. Any prior negotiations, representations or documents concerning the subject matter of this document are superseded by this document and are of no effect.
- 10.6 **Relationship of parties.** The parties are independent contractors. This document does not create a relationship of employment, trust, agency or partnership between the parties. Each party is responsible for its own obligations arising under this document and is not liable for any other party's obligations.