

# General Terms and Conditions (revised 29 March 2006)

## 1. Role of these General Terms and Conditions

- 1.1 These General Terms and Conditions apply to all the Services we provide to you. We may update them from time to time. You should therefore regularly check our website to ensure you are aware of the current provisions.
- 1.2 They are additional to the terms of any Order Form relating to the Services.
- 1.3 The Order Form and these General Terms and Conditions are all the terms agreed between us relating to the Services. Together they are referred to as the **Agreement**.
- 1.4 If there is an inconsistency between these General Terms and Conditions and the Order Form, the Order Form prevails to the extent of the inconsistency.

## 2. Definitions and interpretation

- 2.1 In this Agreement unless otherwise indicated:

**Business Day** means any day other than a Saturday, Sunday or recognised public holiday in the jurisdiction in clause 15.2.

**Cancellation Fee** means a fee (if any) which applies if you cancel a Service before the end of the period in which we agree to supply it.

**Fees** means the fees and charges set out in the Order Form or, in the absence of an applicable Order Form, on our website or in our currently published price list, and includes interest payable for late payment of those fees and charges.

**Services** means any services we provide to you or which we arrange to be provided to you. The Order Form will set the scope of the Services.

**Site** means any premises or space which is leased, occupied or owned by you to which we supply a Service.

**Taxes** means a tax, levy, duty, charge, deduction or withholding, however described, imposed by law or a government agency, together with any related interest, penalty, fine or other charge, including in respect of GST but not including income tax payable by us on amount received from you.

**Us** means Sublime IP Ltd, a United Kingdom company with registered number 5480388, and **we** and **our** have corresponding meanings.

**You** means the customer to whom we supply the Services and **your** has a corresponding meaning.

- 2.2 In this Agreement unless otherwise indicated:

- (a) a reference to this Agreement includes any amendment to or replacement of these General Terms and Conditions or the Order Form;
- (b) a reference to a statute, code or other law includes regulations and other instruments under it and amendments or replacements of any of them;
- (c) a reference to a party includes a reference to the party's executors, administrators, successors and assigns;
- (d) the singular includes the plural, and vice versa; and
- (e) "including" and similar terms are not words of limitation.

### 3. Term

- 3.1 This Agreement begins on the start date specified in the Order Form or, if no start date is specified, on the date on which we start supplying the Services to you.
- 3.2 This Agreement continue for the period specified in the Order Form and for any extensions of that period which are agreed in writing between you and us (**Service Period**). This Agreement may be terminated earlier in accordance with its terms.
- 3.3 At least 30 days before the expiry of the Service Period either party may give written notice to the other that it does not wish to extend the Service Period. If neither party gives that notice, the Service Period automatically extends for a further 12 months on the terms of the Agreement (including fees) or on any amended terms.

### 4. Services

- 4.1 We agree to supply the Services to you, and you agree to acquire them from us, at the prices and on the terms of this Agreement.
- 4.2 If we are aware of an alternative service which we reasonably believe is substantially the same as or better than, the Service we may substitute the other service for the Service, by giving you prior notice, but only if the price of the substituted service is the same or less than greater than the price of the Service.

### 5. Service standards

- 5.1 We will:
- (a) provide the Services in accordance with the Order Form and with due care and skill;
  - (b) ensure that any goods supplied in connection with the Services are reasonably fit for the purpose for which they are supplied;
  - (c) ensure that all work we perform in connection with the Services is carried out by competent and suitably qualified personnel; and
  - (d) use reasonable efforts to provide continuous and fault-free Services but do not guarantee that the Services will be continuous and fault-free.
- 5.2 Will comply with our relevant written policies (including the Privacy Policy if applicable) which are available on our website.

### 6. Your obligations

- 6.1 You are solely responsible for:
- (a) ensuring that, if you need equipment to use the Services, the equipment is connected to and technically compatible with the Services and that your Site and the equipment complies with and is used in accordance with all reasonable procedures notified by us and any applicable legislation;
  - (b) selecting, supplying and maintaining your own equipment;
  - (c) the content and security of any data or information which you send or receive using the Services; and
  - (d) are solely responsible for any use of the Services, or any equipment connected to the Services at your Site, by you or any third party whether authorised or not.
- 6.2 You must use the Services in accordance with, and otherwise comply with, our relevant written policies (including the Acceptable Use Policy if applicable) which are available on our website.

## 7. Payment and invoices

- 7.1 You must pay us the Fees.
- 7.2 Except where Fees are payable in advance, Fees will ordinarily be charged in arrears on a single monthly invoice. All Fees are payable within 30 days of the date of invoice.
- 7.3 If you dispute an invoice:
- (a) and your dispute is genuine, you need not pay the disputed amount until the dispute is resolved;
  - (b) you must give us written notice of the dispute within 14 days of the date of invoice;
  - (c) you must pay all undisputed amounts by the due date; and
  - (d) your notice must include all details reasonably necessary for us to resolve the dispute include the amount in dispute and the reason you claim that the amount is not owing.
- 7.4 If you do not pay any amount due under this Agreement on time, we may charge you interest (calculated on a daily basis) on any unpaid amounts at an annual rate equivalent to 4% above the Official Cash Rate set by the Reserve Bank of Australia.
- 7.5 We will use reasonable efforts to invoice charges for the billing period on an invoice for that period. We may include charges on an invoice for a previous billing period if we are presented with relevant charges for a previous period by our telecommunications carriers or our other suppliers.
- 7.6 You may only make a claim on the basis that the charges on an invoice for Services are incorrect within 12 months of the invoice due date.
- 7.7 If there is more than one outstanding invoice in respect of one or more Services, we may allocate any payments received from you to particular invoices at our sole discretion.
- 7.8 All Fees and invoices are stated in Australian dollars unless otherwise stated.
- 7.9 We may agree to specify Fees and invoice you in another currency (**Alternative Billing Currency**).
- 7.10 You acknowledge that our Services may be comprised of supplies of goods or services from more than one country. If we use an Alternative Billing Currency and:
- (a) our costs of providing the Services increase by more than 10% due to a change in a relevant currency exchange rate; or
  - (b) the value of the Fees payable by you decreases by more than 10% after conversion to Australian dollars,
- or both, between the date on which the Fees were agreed (**Agreement Date**) and the date of the relevant invoice (**Invoice Date**), we may adjust the Fees to be invoiced. In that case the Fees to be invoiced will be adjusted to compensate for the relevant increases and decreases based on the relevant currency exchange rates published by our principal bank on or nearest to the relevant dates.
- 7.11 If you pay us any amount and the payment is dishonoured, reversed or stopped we may charge you a fee, cancel any discounts which we offered to you and require immediate payment of all amounts owing to us. The fee for a cheque which dishonoured or stopped is AUD 33.00 for a cheque in Australian dollars drawn on an Australian bank and USD 33.00 in other cases. The fee for a payment that is reversed or refused by credit card is 3.34% inclusive of GST of the relevant amount.

## 8. Taxes

- 8.1 You must pay all Taxes in connection with the Services.
- 8.2 If we do not include Taxes on an invoice, and Taxes are later determined to be payable in respect of the relevant Services, you will promptly pay the relevant Taxes.
- 8.3 Where GST is imposed on a supply made in connection with this Agreement and the recipient of that supply receives a tax invoice for that supply, the recipient must pay the GST to the supplier (without deduction or set-off) by the tax invoice due date.

## 9. Confidentiality

- 9.1 You and we must treat as confidential information all information provided by the other party under this Agreement, including our technical, operational, and commercial information relating to the supply of Services. The terms of the Order Form are our confidential information.
- 9.2 A party must not disclose the other party's confidential information to any person except:
- (a) to its employees, lawyers, accountants and our sub-contractors on a 'need to know' basis provided those persons first agree to observe the confidentiality of the information;
  - (b) with the other party's prior written consent;
  - (c) if required by law; or
  - (d) if it is in the public domain.

## 10. Limitation of liability

- 10.1 Unless otherwise specified in this clause 10, we exclude all liability in tort (including negligence), contract, statute or otherwise for any loss or damage, incurred by you or a third party in connection with any act or omission by us under or in relation to this Agreement or the Services. This exclusion covers direct, special, incidental, indirect or consequential loss or damages, loss of profits, loss of data, loss of business opportunity and liabilities in respect of third parties.
- 10.2 Nothing in this Agreement is to be read as excluding, restricting or modifying the application of any legislation which by law cannot be excluded, restricted or modified. However, as far as the law permits, we exclude all warranties, rights and remedies you would otherwise be entitled to at law.
- 10.3 We accept liability for a breach of clause 5 or a non-excludable term implied by law into this Agreement but, as far as the law permits we limit our liability for that breach, (at our option):
- (a) in relation to services, to either resupplying the service or paying the cost of resupplying the service; and
  - (b) in relation to goods, to repairing or replacing the goods or paying the cost of repairing or replacing the goods.
- 10.4 Despite anything else in this clause 10, we accept liability to you for:
- (a) any personal injury or death caused by our negligence in supplying the Services;
  - (b) any damage to real or tangible property caused by our negligence, but we limit our liability to our choice of repairing or replacing the property or paying the cost of the repair or replacement; or

- (c) our failure to meet any of our service level obligations, but we limit our liability to the service level rebates or credits (if any) set out in the Order Form.

10.5 If you breach this Agreement you will pay us the amount of any loss or damage we suffer as well as our costs in recovering any Fees or other amounts from you, including our legal costs and the costs and commissions paid to collection agencies.

## 11. Third party IP claims

11.1 We indemnify you against any direct loss, damage, liability, costs or expenses incurred by you as a result of a claim by a third party against you that the Services or any material provided by us under this Agreement infringes the trade mark, copyright or other intellectual property rights (other than patent rights) of the third party, subject to you allowing us to direct any defence and settlement of the claim. This indemnity does not apply to the extent the claim:

- (a) arises out of any use of a name, domain name or trade mark approved or suggested by you;
- (b) arises out of materials provided by you or any modification of materials provided by us;
- (c) relates to services or materials provided by a third party in conjunction with the Services; or
- (d) is otherwise caused or contributed to by you.

11.2 Where any person makes a claim for patent, trade mark, copyright or other intellectual property right infringement in connection with the provision of Services or materials by us, we may modify, limit, suspend or cancel the provision of Services or materials, if required, in response to the claim.

## 12. Suspending and cancelling Services and termination

12.1 We may without notice limit, suspend or cancel the provision of Services to you at any time:

- (a) if we are compelled to do so by causes beyond our reasonable control;
- (b) if our supply or your use of a Service is unlawful or is reasonably likely to become unlawful; or
- (c) if in our reasonable opinion the provision or use of a Service is liable to cause death or personal injury or damage to property.

12.2 We may limit, suspend or cancel the provision of a Service or terminate this Agreement or any other agreement between you and us at any time by notice to you if you:

- (a) do not pay on time the Fees due for that Service;
- (b) use a Service in a manner which adversely affects our network, computer systems or other customers and you fail to rectify the situation;
- (c) otherwise breach this Agreement and do not rectify the breach within 14 days of a notice from us specifying the breach; or
- (d) become bankrupt or an administrator, receiver, liquidator, provisional liquidator or other external administrator is appointed to you, or you resolve to enter into any settlement, moratorium or similar arrangement for the benefit of your creditors, or you are unable to pay your debts when they are due, or the equivalent event occurs in your jurisdiction.

12.3 If we suspend or cancel a Service under clause 12.2a, we may require you to pay a charge when the Service is re-commenced.

12.4 You may terminate this Agreement by written notice to us if:

- (a) we materially breach this Agreement and do not rectify the breach within 14 days of a notice from you specifying the breach; or
- (b) an administrator, receiver, liquidator, provisional liquidator or other external administrator is appointed to us, or we resolve to enter into any settlement, moratorium or similar arrangement for the benefit of our creditors, or we are unable to pay our debts when they are due.

### 13. Consequences of termination

13.1 If for any reason this Agreement expires or terminates or a Service is cancelled:

- (a) you must pay us all outstanding invoices by the due date and within 30 days of request for payment, all other amounts outstanding as at the date of, or arising as a result of, expiry, termination or cancellation (including any Cancellation Fees); and
- (b) all rights that a party has accrued before expiry, termination or cancellation continue.

13.2 If for any reason this Agreement expires or terminates, clauses 6 (Your obligations), 7 (Payment and invoices), 8 (Taxes), 9 (Confidentiality), 10 (Limitation of Liability), 11 (Third Party IP Claims), 13 (Consequences of termination) and 14 (Dispute resolution) continue in full force and effect.

### 14. Dispute Resolution

14.1 The parties will use their best efforts to resolve in good faith any disputes or claims arising from this Agreement. The parties will follow the procedures in this clause 14 before starting arbitration or court proceedings (except for urgent injunctive or declaratory relief).

14.2 If a dispute or claim arises between the parties that cannot be resolved promptly between our contact person and your contact person, either party may notify the other party of a formal dispute. The parties must each nominate a senior executive to meet within 7 days of the notice (or another agreed period) to try to resolve the dispute. The meeting may occur in person or by electronic means as agreed by the parties.

14.3 If the dispute remains unresolved after following the procedure in clause 14.2, the parties must try to resolve it by mediation administered by the Australian Commercial Disputes Centre according to its Mediation Guidelines. The parties will bear their own costs and will bear the costs of the mediator in equal shares unless otherwise agreed.

### 15. General

15.1 This Agreement constitutes the entire Agreement between you and us about the Services.

15.2 This Agreement is governed by the laws applying in New South Wales. The parties submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia.

15.3 All notices and consents must be in writing and sent to the addresses or fax numbers for notices specified in Order Form or, if there is no Order Form, the addresses and fax numbers usually used for communications between you and us. Notices must not be sent by email unless previously agreed.

15.4 Notices sent:

- (a) by hand are deemed to be received when delivered;
- (b) by post to an address in Australia are deemed to be received 3 Business Days after posting;
- (c) by post to an address outside Australia are deemed to be received 6 Business Days after posting; or

- (d) by fax are deemed to be received when the sender's fax machine issues a successful transmission report.
- 15.5 This Agreement may only be varied by written agreement between the parties.
- 15.6 If any provision of this Agreement is held by a court to be invalid or unenforceable, that provision is to be regarded as having been deleted from this Agreement and this Agreement otherwise remains in full force and effect.
- 15.7 A condition of this Agreement, or a right created by it, may only be waived by a party by giving notice and the failure to exercise or any delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy.
- 15.8 A waiver of a breach of this Agreement does not waive any other breach.
- 15.9 Each party warrants to the other that entering into and performing its obligations under this Agreement does not breach any of its contractual obligations to any other person.
- 15.10 You warrant that you have not relied on any representations or warranties by us other than those in this Agreement.
- 15.11 You may not assign your rights or novate any obligations under this Agreement without the our prior written consent which will not be unreasonably withheld. We may assign or subcontract any or all of our rights and obligations.
- 15.12 Neither party is liable for not performing an obligation in whole or in part, or for not performing it on time (except an obligation to pay money), because of an event beyond that party's reasonable control.
- 15.13 If an event beyond a party's reasonable control occurs, that party must:
- (a) give the other party notice of the event promptly and an estimate of the non-performance and delay;
  - (b) take all reasonable steps to overcome the effects of the event (but this does not require the settlement of industrial disputes or other claims on unreasonable terms); and
  - (c) resume compliance as soon as practicable after the event no longer affects either party.