

BIGFISH TECHNOLOGY PTY LTD - TERMS AND CONDITIONS



BIGFISH
TECHNOLOGY

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Dated: 22 March 2014

Section 1: Introduction

Bigfish Technology Pty Ltd (**Bigfish Technology**) will sell and the customer (**Customer** or **You**) shall acquire the Products and/or Services subject to these terms and conditions. Submitting a Quotation with Bigfish Technology via email or print will constitute acceptance of these terms and conditions. The terms and conditions forming the contractual relationship between Bigfish Technology and the Customer comprise of the following:

Section 1. Introduction

Section 2: General Terms & Conditions:

Section 3: Maintenance and Support Contract Conditions

Section 2: General Terms and Condition

This document sets out Bigfish Technology's terms and conditions of a customer (**Customer** or **you**) use of any of Bigfish Technology's products (**Products**) or its services including customer service and technical backup (**Services**) or any other transactions. Unless otherwise agreed in writing by Bigfish Technology, execution of the Quotation constitutes an acceptance by you to acquire the Products and/or Services offered on these Terms and Conditions (**Agreement**).

1. Price and Payment

- 1.1 Prices quoted exclude GST. Prices provided by Bigfish Technology are based on current all inclusive costs, and are subject to variation without notice if such costs increase or decrease either before or after acceptance of any order by You.
- 1.2 Unless otherwise specifically stated all Bigfish Technology tenders and quotations:
 - a) are based on receiving an order;
 - b) are effective for that quotation only;
 - c) are valid 30 days from the date of quotation; and
 - d) unless expressly stated to the contrary, exclude GST.

For all purchases of Products or Services, the Price must be paid in full within fourteen (14) days of the invoice date or such longer period of time as may be agreed in writing by Bigfish Technology. Bigfish Technology may increase the Price of its Products or Services upon prior notice to You. You must pay the Price, without deduction, set off or counterclaim. If any amount is not paid on the due date, You will pay interest on the unpaid amount (**Overdue Amount**). Interest on any Overdue Amount will be calculated monthly, at the rate of 12% per annum on the Overdue Amount, from and including the due date to and including the date that Bigfish Technology receives the Overdue Amount in cleared funds.

In the event of Bigfish Technology having to engage an agent to collect overdue amounts, all fees and charges associated with the recovery of overdue amounts will be charged to the Customer.

"Making IT work for you"

All payments made by the Customer shall be first allocated to such fees and charges and then to the overdue amount.

2. Passing of risk and title

2.1 Risk of damage to or loss of the Products supplied passes to the Customer at the time they are delivered. Ownership of the Products supplied to the Customer will only transfer upon payment of all accounts owing to Bigfish Technology in full in cleared funds. In the event that any monies are due and payable to Bigfish Technology, ownership of the Products supplied will not transfer, notwithstanding that those Products may have been affixed to or incorporated with other materials or goods. The Customer consents to Bigfish Technology, their agents and contractors, entering upon any land of the Customer or of any third party where these goods are located and repossessing the same.

2.2 You acknowledge and agree that, by accepting these Terms, You grant Bigfish Technology a security interest over the Products and their proceeds (by virtue of the retention of title in these Terms) until such Products are paid in full and title has passed from Bigfish Technology to You.

2.3 You undertake:

- a) to provide to Bigfish Technology on request all information reasonably required by Bigfish Technology to register a financing statement or financing change statement on the Personal Property Securities Register; and
- b) to advise Bigfish Technology in writing of any proposed change to its name or address at least 7 days before the changes takes effect.

2.4 You:

- a) waive your right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest;
- b) waive your rights and, with Bigfish Technology's agreement, contract out your rights under paragraphs (a), and (l) to (q) inclusive of section 115(1) of the PPSA; and
- c) agree that where Bigfish Technology has rights in addition to those in chapter 4 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 123 of the PPSA.

2.5 You must pay any costs incurred by Bigfish Technology including all reasonable legal costs arising from any disputes or negotiations with third parties claiming an interest in any Products supplied to You.

2.6 Unless the context requires otherwise, the terms and expressions used in this clause have the meanings given to them in, or by virtue of, the PPSA.

3. Product warranty

3.1 Product is supplied by Bigfish Technology only with the warranty provided by the manufacturer. All warranties for goods and or services that Bigfish Technology sells are provided by the manufacturer or service provider and are not provided by Bigfish Technology.

- 3.2 To the fullest extent permitted by law, Bigfish Technology do not warrant:
- a) the performance, accuracy or reliability of the Products or Services;
 - b) that the Products or Services comply with any particular laws, regulations, codes or industry standards;
 - c) that the Products or Services will be suitable for your (or your Users') purpose.
- 3.3 You acknowledge and agree to use the Products and Services at your own risk and accept responsibility for ensuring or confirming compliance with all applicable laws in connection with your access to our Services or Products or any consequent transactions or dealings with other users, third parties or us.
- 3.4 Each party warrants that it has full power and authority to enter into this Agreement and it has not relied on any representation made by the other which has not been expressly stated in this Agreement.
- 3.5 Except as provided in this clause 3 and subject only to any implied warranties which cannot legally be excluded, Bigfish Technology make no other warranties, either express or implied, as to any matter whatsoever, including the merchantability or the fitness for any particular use of the Services or Products.

4. Subcontracting

You must not sub-license, transfer or assign any or all of your rights and obligations under these Terms without the prior written approval of Bigfish Technology, and on terms including any transfer and other fees which Bigfish Technology consider appropriate. Bigfish Technology may sub-contract novate or assign its rights and obligations under these Terms without your consent.

5. Limitation of Liability

- 5.1 If any act or parliament (**Act**) implies in this Agreement any term, condition or warranty and that Act avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of, or liability under, that term, condition or warranty, that term, condition or warranty is deemed to be included in this Agreement. However, to the fullest extent permitted by law, Bigfish Technology's liability for a breach of the applicable term, condition or warranty (other than a warranty implied by Section 64A of Schedule 2 Section 69 of the Competition and Consumer Act 2010 (Cth) is limited to any one or more of the following, at our option:
- a) if the breach relates to Products:
 - i) the replacement of the Products or the supply of equivalent Products;
 - ii) the repair of the Products;
 - iii) the payment of the cost of replacing the Products or of acquiring equivalent Products; or
 - iv) the payment of the cost of having the Products repaired; and
 - b) if the breach relates to Services:
 - i) the supplying of the Services again; or
 - ii) the payment of the cost of having the Services supplied again.
- 5.2 Subject to clause 5.1 and to the fullest extent permitted by law, Bigfish Technology have no liability to you for any consequential loss or damage, including without limitation, loss of profit or anticipated profit, loss of data, loss of use, damage to goodwill and loss due to delay (**Consequential Loss**), however caused (including by breach of contract, negligence or breach of statute), which is suffered or incurred in connection with or relating to these

Terms, the Services and Products or otherwise arising out of the relationship between the parties.

- 5.3 To the fullest extent permitted by law, Bigfish Technology's liability to you for any claims, liabilities, losses, costs, expenses and damages (**Loss**) (including Consequential Loss and legal costs and disbursements on a full indemnity basis) sustained or incurred, whether directly or indirectly or consequentially or in any other way, however caused (including by breach of contract, negligence or breach of statute), which is suffered or incurred by you in connection with or relating to these Terms, the Services and Products or otherwise arising out of the relationship between the parties, is limited to the Price (less any tax) paid to Bigfish Technology by you under these Terms in the 6 months prior to the Loss occurring (less any other claims paid by Bigfish Technology in that period).
- 5.4 You access material through the Electronic Services and Documentation at your own risk. Bigfish Technology are not liable for any Loss resulting from or associated with the use or download of any material, to the maximum extent permitted by law.

6. Privacy

Bigfish Technology understands that the privacy of our Customers – both individuals and businesses – is an important right. Bigfish Technology only requests and collects personal and business information if it is necessary for the provision of Services and Products to Customers. The Bigfish Technology Privacy Policy (insert link) and Acceptable Use Policy (insert link) form part of these terms and conditions

7. Termination and Suspension

- 7.1 Bigfish Technology may suspend your access to its Services without notice:
- a) where required for urgent maintenance;
 - b) if you breach these Terms; or
 - c) to prevent damage to our Services.
- 7.2 Bigfish Technology may terminate this Agreement immediately by written notice to you if at any time:
- a) any Overdue Amount remains outstanding for 14 days after our request for payment of that amount; or
 - b) you commit a breach of or fail to perform any or all of your obligations under these Terms and do not remedy that breach or non-performance (if capable of remedy) or make reasonable compensation in money (if not capable of remedy) within 30 days after receipt of notice requiring you to do so.
- 7.3 You may terminate this Agreement with immediate effect by written notice to Bigfish Technology if Bigfish Technology commit a breach of or fail to perform any or all of our material obligations under these Terms and do not remedy that breach or non-performance (if capable of remedy) or make reasonable compensation in money (if not capable of remedy) within 30 days after receipt of notice requiring Bigfish Technology to do so.
- 7.4 Without limiting the generality of clauses 7.2 and 7.3, a party may terminate these Terms with immediate effect by written notice to the other party if that other party is unable to pay its debts as and when they fall due.

7.5 Termination of these Terms in accordance with clauses 7.2 – 7.4 in no way limits or prejudices any right or remedy which either party may have in consequence of any breach by a party of these Terms.

7.6 Upon termination of these Terms each party must promptly return to the other party all confidential information, software, data, materials and other property of the other party held by it.

8. Guarantee

Where the Customer is a corporate entity, a Performance Guarantee must be provided in the form requested by Bigfish Technology.

9. Force Majeure

Bigfish Technology shall not be responsible for any delay or failure of performance occasioned or caused by strikes, riots, fire, insurrection, embargoes, failure or carriers, inability to obtain materials or transportation facilities, acts of God or of the public enemy, government tariffs and quotas, compliance with any law, regulation or other governmental or court order whether or not valid, or other causes beyond the control of Bigfish Technology, irrespective of whether the cause could be alleviated by the payment of money, or the performance is prevented or delayed because of the failure of Bigfish Technology's machinery, or failure of a supplier to Bigfish Technology.

10. No poaching of Bigfish Technology Employees & Contractors

10.1 You must not, without the prior written consent of Bigfish Technology, directly or indirectly in any capacity whatsoever: solicit, attempt to solicit to seek to entice away from Bigfish Technology any employees of Bigfish Technology for the Restraint Period.

10.2 In this clause Restraint Period means:

- a) 18 months;
- b) 12 months; or
- c) 6 months; or
- d) 3 months,

from the termination of or expiry of these Terms between you and Bigfish Technology.

10.3 Clause 10.2 will have effect as if it were a number of separate clauses, so that each Restraint Period forms a distinct and separate covenant.

10.4 If any of the distinct and separate covenants are regarded as invalid or unenforceable, they will be severed and their invalidity or unenforceability will not affect the validity or enforceability of any of the other distinct and separate covenants.

11. General

11.1 Bigfish Technology warrants that it has good title to all the Products it sells.

- 11.2 These Terms constitute the entire agreement between Bigfish Technology and the Customer. These Terms supersede any previous communications, representations or agreements between Bigfish Technology and the Customer, whether oral or written. The Customer's purchase of Products or Services will constitute the Customer's acceptance of these Terms.
- 11.3 If any term or provision contained in these Terms is determined to be illegal or unenforceable, the validity or enforceability of the remainder of these Terms will remain in full force and effect.
- 11.4 These Terms are governed by the law of the State of Victoria.

Section 3. Maintenance and Support Terms and Conditions

This document sets out our terms and conditions of your use of Maintenance and Support Services provided by Bigfish Technology. The Quotation for Maintenance and Support Services constitutes an offer by you to acquire the Maintenance and Support Services on the general Terms and Condition (detailed in Section 2), these Maintenance and Support Services Terms and Conditions and the terms of your Quotation, subject to acceptance by Bigfish Technology. Upon acceptance by Bigfish Technology, you agree to be bound by these Maintenance and Support Services Terms and Conditions, the General Terms and Conditions (detailed in Section 2) and the Quotation.

1. All support plans are charged automatically on the 1st (or next business day) of each month via direct debit or credit card.
2. All support plans are contracted for a fixed period and are automatically renewed at the end of each period. A contract can be cancelled prior to automatic renewal with 14 days written notice to Bigfish Technology
3. Additional time required outside of allocated time is charged at Bigfish Technology's then standard hourly (or part thereof) rate.
4. "Response" refers to recognising and initiating action plans to a formally submitted request. Work will subsequently commence at the earliest possible time. Under normal circumstances remote work will commence within the response time frame
5. A separate contract is required for each separate business, computer network or account/customer.
6. For platinum plans, if your dedicated technician is not available you have the choice of waiting for them to become available or for a different technician. If a different technician is provided they will be aware of your computer and network setup so that they can support you promptly.
7. Mission Critical means a majority of the business is unable to operate a core business function that is required for the business to operate
8. Contracted support plan onsite bookings occur at a fixed time each and can only be changed to a different mutually agreeable time with 14 days written notice.
9. Where possible clients are asked to make a conscious effort to use client access to submit support requests.