

Terms and Conditions Of Supply

Computer Products and Services

Computer & Virus Check Up, CvCU

Introduction

The supply of goods and/or the performance of services by Computer & Virus Check ("CvCU" or "we" or "us" or "our") to all its customers ("clients" or "customers" or "you") is offered only and exclusively on the following terms and conditions. By requesting, ordering or otherwise permitting us to perform services or supply goods for you, you hereby accept the terms and conditions contained herein.

1.0 Definitions

"Conditions" means these Terms and Conditions;

"Customer" or "you" means a person, firm or corporation, jointly and severally if more than one, that requests goods or services from us;

"goods" means all products and other goods (including any software) supplied by us to you or on your behalf;

"including" is not a word of limitation and means without limitation;

"services" means all services performed by us for you or on your behalf;

"business hours" means Monday to Friday 9:00am to 5:00pm AEST;

"Computer and Virus Check Up, CvCU" or "we" or "us" or "our" means CvCU; and

"Party" and "Parties" means (severally and not jointly) CvCU and/or the Customer as the context requires.

2.0 Basis of Contract

2.1 Unless otherwise agreed by us in writing, these Conditions apply to every supply of goods and provision of services by us to you and cannot be varied, amended or supplemented by any other terms or conditions without our prior written consent.

2.2 Any written quotation provided by us to you concerning the proposed supply of goods or services is valid for 30 days and is an invitation only to you to place an order based upon that quotation. These Conditions may be supplemented by additional terms in our quotation that are not inconsistent with the Conditions in this agreement.

2.3 By accepting Products and/or Services from us the client accepts the terms and conditions contained herein.

2.4 Any advice, recommendation, assistance or service provided by us in relation to the performance, application or appropriateness of a Product is given in good faith. We will not be liable for any loss or damage flowing from the Client's decision to act upon such advice.

3.0 Charges and Payment

3.1 Payment for goods and services must be made by cash, cheque or direct deposit on or prior to the supply of the goods or the performance of the services unless you have pre-approved credit terms with us. We do not accept credit cards.

3.2 All our visits are chargeable and are charged in half hour units after the first hour. Any part thereof is chargeable at the same rate as a full half hour.

3.3 All products/goods supplied by us are charged separately from the services.

3.4 Where there is any change in the costs incurred by us in relation to the goods or services, we may vary our price for goods or services on order to take account of any such change, without giving notice to you.

3.5 Call-out fees may be applied at rates dependent on your geographic location. Services within a 20km radius of the Chipping Norton Area will not attract a call out charge.

3.6 Surcharges may be applied on same day and/or outside business hours visits. You will be informed of any applicable surcharges prior to technician's dispatch.

3.7 If you exceed your approved credit terms, you will be charged a 10% or \$20 late payment fee whichever is greater. A revised invoice will be sent to you.

4.0 Payment Default

4.1 If you default in the payment by the due date of any amount payable to us, or if any cheque drawn by you is dishonoured, then all money which is then due as well as all monies that are payable by you to us at a later date on any account, shall be due and payable immediately without the requirement of any notice to you, and we may, without prejudice to any other right or remedy available to us:

(a) charge you interest on any sum due at the rate of 2% above the corporate reference rate of our principal banker. This interest shall be calculated daily and compounded every 30 days for the period from the due date until the date of payment in full; and

(b) charge you for all expenses and costs (including debt collection commission and fees, legal costs on a full indemnity basis and dishonoured cheque fees) suffered or incurred by us resulting from the default, including taking whatever action we deem appropriate to recover any amounts due (which, for the avoidance of doubt, shall include engaging a debt collection agency of our choice to seek to recover the amounts due); and

(c) cease or suspend for such period as we deem fit, supply of any further goods or services to you; and

(d) by notice in writing to you, terminate any contract with you so far as unperformed by us; without effect on our accrued rights under this or any other contract.

4.2 Clause 4.1 may also be relied upon, at our option:

(a) where you are an individual, you become bankrupt or enter into any scheme of arrangement or any assignment or composition with or for the benefit of your creditors or any class of your creditors generally; or

(b) where you are a corporation, that enters into any scheme of arrangement or any assignment or composition with or for the benefit of your creditors or any class of your creditors generally, or you have a liquidator, provisional liquidator, administrator, receiver and/or manager appointed, or any action is taken for, or with the view to, your liquidation (including provisional liquidation), winding up or dissolution without winding up.

5.0 Passing of Property

5.1 Until full payment in cleared funds is received by us for all goods supplied by us to you, as well as all other amounts owing to us by you:

- (a) title and property in all goods remains vested in us and does not pass to you;
- (b) you must keep the goods separate from your other goods and maintain the labelling and packaging of the goods;
- (c) you hereby undertake to us to hold the proceeds of any sale of the goods on trust for us in a separate account, however any failure to do so will not affect your obligation to deal with the proceeds as our trustee;
- (d) we may, without notice, enter any premises where we suspect the goods may be stored and remove them, notwithstanding that they may have been attached to other goods that are not our property, and for this purpose you irrevocably license us to enter such premises and shall also indemnify us from and against all costs, claims, demands or actions by any party arising from such action.

6.0 Risk and Insurance

The risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods shall pass to you immediately upon delivery of the goods to the premises nominated by you.

7.0 Performance of contract

Any period or date for delivery of goods or provision of services stated by us is intended as an estimate only and is not a contractual commitment. We will use all reasonable endeavours to meet any estimated dates for delivery of the goods or completion of the services.

8.0 Warranties

8.1 In some cases, the solution may be that you need to upgrade or replace your software or hardware. If we advise you to do so and you choose not to upgrade or replace your software or hardware, you acknowledge that we have met our commitment to you by providing you with a solution to your problem, whether or not you choose to implement that solution.

8.2 We stand behind our service. If you notify us of a problem with the services we provided in writing within 7 days of providing that service, and our diagnosis of the problem indicates that our services were not performed satisfactorily, we will work to provide a solution to your problem quickly and at no additional cost to you.

8.3 You acknowledge that sometimes computer problems are more deeply rooted, complicated and interconnected than can be initially diagnosed. You also acknowledge that a problem which occurs with your computer after our visit may be unrelated to the work we performed for you and is therefore outside the scope of any warranty claim.

8.4 When we sell you equipment, hardware or software, we may be selling such equipment, hardware or software on behalf of a third party manufacturer or licensor. We do not warrant that the operation of any software we install or service will be uninterrupted or error free. You acknowledge that software (and information technology and communications products generally), including your software, may have errors and may encounter unexpected problems, and accordingly, you may experience downtime and errors in the use of software. You also acknowledge that your use of such software may be subject to a third party licence.

8.5 All new and manufacturer refurbished products purchased from us are covered by the applicable manufacturer's warranty and we do not supply any additional warranties. The Client must refer to the warranty details provided by the manufacturer or as stated on the product or in its associated documentation.

8.6 We shall honour all terms (if any) that are implied under applicable State and Commonwealth laws concerning the supply of the goods and/or the performance of the services and nothing in this clause 8 seeks to restrict, modify or exclude such terms. Our warranty is in addition to and does not affect your statutory rights and remedies.

9.0 Customer's Responsibilities

9.1 You shall be solely responsible for all data inputs, the manner of use of the goods by all those to whom it provides access and all outputs derived, and all other results of such processing.

9.2 You shall comply, at your own expense, with any recommendations and guidelines with respect to the use of the goods, including any adjustments or replacements required in respect of equipment and software that is incidental or collateral to the use of the goods.

9.3 You shall ensure that your operators are adequately trained and informed as to the use of the goods and shall comply with guidelines and procedures supplied by us and/or any third party manufacturer from time to time.

9.4 You shall promptly report errors or faults in writing with the operation of any aspect of the goods or any provision of the services.

9.5 You shall perform general "housekeeping", testing, adjustment and/or maintenance as recommended by us in respect of any goods supplied by us in order to maximise the availability of and performance of the goods or permit performance by us of any of our obligations hereunder.

9.6 You agree to exercise due care and carry out such precautions which may be recommended by us or otherwise required as a matter of due diligence in connection with the performance by us of any of our obligations hereunder, for example, but without limiting the generality of the foregoing, advising your staff of system restarts or scheduled downtime, recording of error information, and will co-operate with other system administration activities such as, but not limited to, running diagnostic tests and operational readiness tasks.

9.7 You shall as a fundamental term of these Conditions back up all software, data and files that are stored on your computer and/or on any other storage devices you may have prior to the arrival of the CvCU technician. We and/or our third party service provider shall not be responsible at any time for any loss, alteration or corruption of any such software, data or files. If you choose not to back up your data yourself, you will advise the technician upon arrival. In the event of you choosing to not back up your own data, you will be provided with an option of data back up being performed by the technician. This service will attract an additional charge.

10.0 Liability

10.1 To the extent permitted by law, CvCU will not be liable to the Customer or any other person under any circumstances for any loss of use, profit, revenue, goodwill, interest or data, or for any injury or death to any person, or for any indirect, incidental or consequential damages sustained or incurred by the Customer, whether such liability arises directly or indirectly as a result of;

- a) any negligent act or omission or wilful misconduct of CvCU or it's employees, agents or partners,
- b) the supply, performance or use of any Products or Services, OR
- c) any breach by CvCU of its obligations under these Terms and Conditions or any relevant Quote / Sales Contract.

10.2 Except to the extent specifically provided in these Conditions, our sole liability to you for any and all breaches of any term or terms of these Conditions, whether express or implied, shall be limited to:

10.2.1 subject to sub-clauses 10.2.2 and 10.2.3, the aggregate amount of the fees and charges paid by you to CvCU under these Conditions as at the date of the breach;

10.2.2 in relation to goods if supplied to you as a consumer:

- (a) the replacement of the goods or the supply of equivalent goods; or
- (b) payment of the cost of replacing the goods or acquiring equivalent goods; or
- (c) the repair of the goods or payment of the cost of having the goods repaired,

as in each case we may elect; and

10.2.3 in relation to services if supplied to you as a consumer:

- (a) the supplying of the services again; or
- (b) the payment of the cost of having the services supplied again,

as in each case we may elect.

10.3 In no event shall we be liable to you or to any third party under or in connection with these Conditions or in respect of the use of (or failure or performance of) the goods or the supply of the services for:

10.3.1 malfunctions or failures caused directly or indirectly by:

- (a) any third party;
- (b) our actions that were expressly or impliedly authorised by you, or by your employees or agents;
- (c) accident, misuse or abuse by anyone other than us;
- (d) alteration or modification of the goods by anyone other than us;
- (e) products (including any hardware or software) not licensed or supplied by us that are attached to or used with the goods;
- (f) your failure to provide a proper operating and working environment for the goods;

- (g) damage during any movement, relocation or re-installation of the goods;
- (h) power surge or failure,
- (i) acts of God or acts outside our reasonable control;
- (j) any other condition not arising under normal operating conditions; or
- (k) due to any operation or handling of the product(s) not in accordance with the manufacturer's written instructions; or
- (l) operation of the product; or
- (m) normal wear and tear; or

10.3.2 any loss or damage of any nature arising or caused directly or indirectly by any breach of your obligations or responsibilities set out in these Conditions.

10.4 Any replacement of parts under warranty will be carried out at the premises nominated by us. The cost and risk of transport of any defective part to the nominated premises is your responsibility.

10.5 In no event will we be liable to you or to any third party under or in connection with these conditions or in respect of the use of (or failure or performance of) the goods or the supply of the services for:

10.5.1 any loss of profit, data loss, business interruption, loss of or damage to goodwill, and/or any expectation benefit;

10.5.2 your liability to any third party; or

10.5.3 incidental, consequential, special, exemplary or punitive damages of any nature, howsoever arising or caused, including without limitation the breach of these Conditions or any expiration or termination of these Conditions, whether such liability is asserted on the basis of statute, contract, tort (including negligence or strict liability), equity or otherwise, even if we have been advised of the possibility of such loss or damage.

10.6 We will not be liable for any loss or damage suffered by you where we have failed to meet any delivery date or cancelled or suspended the supply of goods or services.

10.7 Nothing contained in these Conditions excludes, restricts or modifies any:

10.7.1 implied condition, warranty or other implied obligation in relation to these Conditions or the goods and services where pursuant to applicable law to do so is unlawful or void; or

10.7.2 liability for fraud or deceit; or

10.7.3 liability for death or personal injury caused by the negligence of either Party.

11.0 Copyright in Software

11.1 We will not be responsible to you or any third party for any breach of any software licence in respect of software provided to us by you to be installed on your computer.

11.2 You hereby warrant that you have a valid licence in respect of such software and shall indemnify us and hold us harmless against any loss, damage, costs, harm or other expense whatsoever arising either directly or indirectly as a result of us installing software at your request.

12.0 Cancellation

12.1 If, through circumstances beyond our reasonable control, we are unable to effect delivery or provision of goods or services, then we may cancel your order (even if it has already been accepted) by notice in writing to you.

12.2 If you give us less than 4 Business Hours notice to cancel any request for onsite service, then we may charge a cancellation fee equal to the first hour of service at the rates quoted at the time of booking for the loss and expense caused.

13.0 No Representation or Reliance

13.1 You acknowledge that neither we nor any person acting on our behalf has made any representation or other inducement to enter into these Conditions, except for representations or inducements expressly set out in these Conditions.

13.2 You acknowledge and confirm that you do not enter into these Conditions in reliance on any representation or other inducement by or on behalf of us, except for representations or inducements expressly set out in these Conditions.

13.3 Without limiting the generality of clauses 13.1 and 13.2, you understand and hereby confirm that:

(a) your decision to enter into these Conditions was, and is, not based on any promise, representation, statement, warranty or undertaking made or given by us or any person on its behalf in relation to the capacity, uses or benefits that might or would be derived or obtained from the goods or services, except as expressly set out in clause 8, and

(b) you have relied on your own skill and judgement in deciding to purchase and acquire the goods and services.

14.0 Entire Agreement

14.1 To the extent permitted by law, in relation to its subject matter, these Conditions:

14.1.1 embody and constitute the entire legal and contractual relationship of the Parties, including the entire terms agreed by the Parties; and

14.1.2 supersede, replace and terminate by mutual consent any prior written or oral representations, negotiations, understandings, agreements or contracts between the Parties.

14.2 In the event that one or more of these Terms and Conditions are not legally enforceable, the remaining Terms and Conditions shall remain valid and enforceable between the Client and CvCU.

15.0 General

15.1 These Terms and Conditions between CvCU and the Client supersede all prior negotiations, agreements, understandings and commitments between us and you in relation to the supply of Product and Services.

15.2 If a dispute arises concerning these Terms and Conditions then the dispute must first be referred for mediation in accordance with the Australian Commercial Disputes Centre Mediation Guidelines.

15.3 CvCU may amend these Terms and Conditions at any time, by giving the Customer notice by mail, e-mail or by posting a notice on the CvCU public website. By continuing to place orders for Products or Services after these terms are amended, the Customer will be deemed to have accepted the revised Terms and Conditions.

16.0 Governing law

16.1 This Agreement is governed by and must be construed according to the law applying in the State of New South Wales. The Parties hereby irrevocably submit to the competent jurisdiction of the courts of New South Wales nearest the city of Sydney.