

SERVICE AGREEMENT (including terms of trade)

for Hardware, Software and/or Services

Between

Ambient iT Pty Ltd and Cloud King
(the service provider)

And

(the customer)

Acceptance of service from Ambient iT automatically acknowledges acceptance of our terms of trade as specified in this document. If you do not agree to our terms of trade please do not accept our assistance

Ambient iT Pty Ltd (Authorised Representative)	Customer: (Authorised Representative #1)
Name: _____	Name: _____
Title: _____	Title: _____
Signature: _____	Signature: _____
Date: _____	Date: _____
	Customer: (Authorised Representative #2)
	Name: _____
	Title: _____
	Signature: _____
	Date: _____

1. Introduction

Purchase of goods and services from Ambient iT Pty Ltd are subject to the following terms and conditions. By purchasing or receiving goods or services from Ambient iT Pty Ltd, you accept the following terms and conditions, without limitation or qualification unless otherwise site specific agreements or contracts have been entered into with agreement by both parties.

2. Basis of Contract

- 2.1 Unless otherwise agreed by Ambient iT Pty Ltd in writing, these Conditions apply exclusively to every contract for the sale of goods or services by Ambient iT Pty Ltd to the Customer and cannot be varied or supplanted by any other conditions without the prior written consent of Ambient iT Pty Ltd.
- 2.2 Any written quotation provided by Ambient iT Pty Ltd to the Customer concerning the proposed supply of goods or provision of services is valid for 30 days unless otherwise specifically stated and is an invitation only to the Customer to place an order based upon that quotation. A quotation may include additional terms and conditions and may include overrides or negations of a general Condition.
- 2.3 Long term contracts and maintenance agreements will be subject to 6 monthly review at the anniversary date of the initially presented contract based on the presentation date of the agreement, not the acceptance date of the agreement or the date of any amendments to the agreement prior to acceptance. Request for review or amendment of the terms and conditions of a long term contract or agreement may be initiated by either party.

3. Charges and Payments

- 3.1 Prices for Goods and Services will be set out in each Commercial Agreement Engagement Document or by individual quote for goods or services. Any non-specifically stated costing for services will be subject to the advertised Casual Services Rates. All stated rates and charges exclude GST unless otherwise specifically stated. All prices are quoted in Australian dollars.
- 3.2 Unless otherwise stated, arranged or agreed, all quoted prices are subject to change without notice.
- 3.3 Payment for goods and services must be made by cash, cheque or direct deposit on or prior to the completion of the provision of goods or services unless the Customer has a credit account with Ambient iT Pty Ltd. If any agreement is silent with respect to payment terms then those payment terms default to Ambient iT Pty Ltd's standard 14 days from the date of invoice.
- 3.4 Ambient iT Pty Ltd will provide the Customer with a correctly rendered Tax Invoice that clearly identifies the goods or service for which the charge has been incurred.
- 3.5 All Ambient iT Pty Ltd visits are chargeable and are charged in 15 minute units. Any part thereof is chargeable at the same rate as a full 15 minute block.
- 3.6 All goods supplied by Ambient iT Pty Ltd are charged separately from the services.
- 3.7 Where there is any change in the costs incurred by Ambient iT Pty Ltd in relation to the goods or services, Ambient iT Pty Ltd may vary its price for goods or services on order to take account of any such change, without giving notice to the Customer.
- 3.8 Call-out fees may be applied at rates dependent on the Customer's suburb.
- 3.9 Agreed maintenance agreement costs are to be paid in advance of the commencement for the period to which the payment relates.

4. Payment Default

- 4.1 If the Customer defaults in payment by the due date of any amount payable to Ambient iT Pty Ltd, or if any cheque drawn by the Customer is dishonoured, then all money which would become payable by the Customer to Ambient iT Pty Ltd at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Ambient iT Pty Ltd may, without prejudice to any other remedy available to it:-
 - (a) charge the Customer interest on any sum due at the prime lending rate of our principle banker + 4% for the period from the due date until the date of payment in full;
 - (b) charge the Customer for all expenses and costs (including legal costs on a solicitor/own client basis and dishonoured cheque fees) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due;

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- (c) cease or suspend for such period as Ambient iT Pty Ltd thinks fit, supply of any further goods or services to the Customer;
 - (d) by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by Ambient iT Pty Ltd; without effect on the accrued rights of Ambient iT Pty Ltd under any contract.

4.2 Clauses 4.1(c) and 4.1(d) may also be relied upon, at the option of Ambient iT Pty Ltd:

- (a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

5. Sub-Contracts

- 5.1 Ambient iT Pty Ltd may sub-contract for the performance of an individual contract or any part of an individual contract subject to clause 5.3, on obtaining the Customer's prior written consent.
- 5.2 The Customer must not unreasonably withhold consent for the engagement of a sub-contractor pursuant to clause 5.1
- 5.3 Ambient iT Pty Ltd may, without the Customer's consent, engage individuals on a sub-contract or consultancy basis, whether or not operating under a corporate structure, to assist in the delivery or provision of services pursuant to an individual contract.

6. Passing of Property

- 6.1 Until full payment in cleared funds is received by Ambient iT Pty Ltd for all goods supplied by it to the Customer, as well as all other amounts owing to Ambient iT Pty Ltd by the Customer:-
 - (a) title and property in all goods remain vested in Ambient iT Pty Ltd and do not pass to the Customer;
 - (b) the Customer must hold the goods as fiduciary bailee and agent for Ambient iT Pty Ltd;
 - (c) the Customer must keep the goods separate from its goods and maintain the labeling and packaging of the goods;
 - (d) the Customer is required to hold the proceeds of any sale of the goods on trust for Ambient iT Pty Ltd in a separate account however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee;
 - (e) Ambient iT Pty Ltd may without notice, enter any premises where it suspects the goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of Ambient iT Pty Ltd, and for this purpose the Customer irrevocably licenses Ambient iT Pty Ltd to enter such premises and also indemnifies Ambient iT Pty Ltd from and against all costs, claims, demands or actions by any party arising from such action.

7. Risk and Insurance

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

8. Performance of Contract and Delays

- 8.1 Any period or date for delivery of goods or provision of services stated by Ambient iT Pty Ltd is intended as an estimate only and is not a contractual commitment. Ambient iT Pty Ltd will use its best reasonable endeavours to meet any estimated dates for delivery of the goods or completion of the services.
- 8.2 If Ambient iT Pty Ltd is delayed in the performance of its obligations specified in an individual contract, Ambient iT Pty Ltd must:
 - (a) Promptly notify the customer of that delay
 - (b) Cooperate with the customer to establish and implement (to the extent commercially possible or viable) a work-around plan to overcome the or minimize the effect of the delay; and

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- (c) If necessary, submit a change order request.
 - 8.3 To the extent that any delay is caused or contributed to by an act or omission of the customer; or a customer related event that is not solely within the control of Ambient iT Pty Ltd; or a force majeure event such as acts of God, natural disasters, acts of war, riots and strikes; the customer must grant an appropriate extension to the time for Ambient iT Pty Ltd to perform its obligations under the contract.
 - 8.4 If the customer does not comply with 8.3, it acknowledges that Ambient iT Pty Ltd may terminate the relevant individual contract with written notice to the customer.
 - 8.5 To the extent that a delay is caused solely by factors other than those set out in clause 8.3 above, the customer must either:
 - (a) Grant an appropriate extension of time to Ambient iT Pty Ltd to perform those obligations; or
 - (b) Provided such delay is a material delay, exercise its right to terminate the relevant individual contract in accordance with the provisions of clauses 12.4 and 12.5
 - 8.6 Ambient iT Pty Ltd will have no liability to the Customer in respect if a delay or series of delays to the extent that it is caused by factors attributable to caused as set out in clause 8.3.

9. Ambient iT Pty Ltd Warranties

- 9.1 If Ambient iT Pty Ltd is not able to diagnose the cause of any hardware or software problem, then no charge will apply to the Customer. Ambient iT Pty Ltd does not warrant that it will be able to fix all problems, which it diagnoses.
- 9.2 All goods and services supplied shall be free from defects in materials and workmanship for a period of 30 days from the date of delivery.
- 9.3 This warranty does not apply in circumstances where:
 - (a) the goods or services are not defective;
 - (b) the goods were used or services required for a purpose other than that for which they were intended;
 - (c) the goods were repaired, modified or altered by any person other than Ambient iT Pty Ltd;
 - (d) the defect has arisen due to misuse, neglect or accident;
 - (e) the defect has arisen due to normal wear and tear on the goods;
 - (f) the goods have not been stored or maintained as recommended by Ambient iT Pty Ltd or the manufacturer; or
 - (g) the Customer is in breach of the Conditions.

10. Liability

- 10.1 Except as specifically set out herein, any terms, condition or warranty in respect of the quality, suitability for purpose, condition, description, assembly, manufacture, design or performance of the goods or services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.
- 10.2 Replacement or repair of the goods or re-supply of the services is the absolute limit of Ambient iT Pty Ltd's liability howsoever arising under or in connection with the description, quality, condition, performance, assembly, manufacture, design, merchantability or fitness for purpose of the goods or services or alternatively the sale, use of, storage or any other dealings with the goods or service by the Customer or any third party.
- 10.3 Ambient iT Pty Ltd is not liable for any program or data loss or damage by any Customer arising directly or indirectly from the provision of the goods or services.
- 10.4 Any replacement of parts under warranty will be carried out at the premises nominated by Ambient iT Pty Ltd. The cost and risk of transport of any defective part to the nominated premises is the responsibility of the Customer.
- 10.5 Ambient iT Pty Ltd is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.
- 10.6 Ambient iT Pty Ltd will not be liable for any loss or damage suffered by the Customer where Ambient iT Pty Ltd has failed to meet any delivery date or cancels or suspends the supply of goods or services.
- 10.7 Nothing in the Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

11. Copyright in Software

- 11.1 Ambient iT Pty Ltd will not be responsible to the Customer or any third party for any breach of any software license in respect of software provided to Ambient iT Pty Ltd by the Customer to be installed on a Customer's computer.
- 11.2 The Customer hereby indemnifies Ambient iT Pty Ltd against any loss, damage, costs, harm or other expense whatsoever arising either directly or indirectly as a result of Ambient iT Pty Ltd installing software at the request of the Customer.
- 11.3 Software written, supplied and installed by Ambient iT Pty Ltd or any employee of Ambient iT Pty Ltd remains the intellectual property of Ambient iT Pty Ltd and is not to be distributed installed or used in any manner whatsoever without the express permission of an authorised representative of Ambient iT Pty Ltd.

12. Termination/Cancellation

- 12.1 If, through circumstances beyond the control of Ambient iT Pty Ltd, Ambient iT Pty Ltd is unable to effect delivery or provision of goods or services, then Ambient iT Pty Ltd may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.
- 12.2 If the Customer gives less than 2 hours notice to Ambient iT Pty Ltd to cancel any request for service, then Ambient iT Pty Ltd may charge a cancellation fee of at least the full quoted call out fee for the loss and damage caused.
- 12.3 Cancellation of an order placed by Ambient iT Pty Ltd with a third party supplier, manufacturer, wholesaler or sub-contractor may not be able to be cancelled and will be subject to any restocking fee charged by the supplier and may be subject to charges for costs incurred by Ambient iT Pty Ltd as a result of ordering or subsequently canceling the order.
- 12.4 Either party may terminate a whole or individual agreement or contract immediately where the other party:
 - (a) Commits a material breach of the agreement or contract which is not capable of being remedied
 - (b) Fails to remedy a material breach of an agreement which is capable of being remedied within 60 days of receipt of a written notice specifying such breach; or
 - (c) Commits an act of insolvency, comes under any form of insolvency administration or assigns its rights otherwise than in accordance with the agreement.
- 12.5 On termination of an agreement any accrued rights and remedies of each party remain unaffected