



Carrolls Business Solutions Pty. Ltd.

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CBS Sales and Implementation Terms and Conditions

Effective 1st July 2023

ABN: 91 092 673 964

The most current Terms can always be found at <https://cbsau.com/terms-and-conditions>

In reading these CBS Sales and Implementation Terms and Conditions (Terms and Conditions), as an individual and on behalf of a Business, Company or Organisation, the reader shall hereafter be referred to as "**THE CLIENT**". A "Project Definition" herein refers to a CBS Implementation Project Definition. Please review these Terms and Conditions carefully. By continuing to use CBS for Software Sales, Implementation, Training or Support, **THE CLIENT** agrees to the Terms and Conditions set forth below and updated occasionally.

1) Definitions

- a) Unless the context otherwise requires, the following expressions shall have the following meanings:

"**ACL**" means Australian Consumer Law It is contained in Schedule 2 to the Competition and Consumer Act 2010 (Cth) (CCA) and is applied as a law of each state and territory by state or territory legislation

"**CBS**" means Carrolls Business Solutions Pty. Ltd. ABN 91 092 673 964

"**BUG (Bug)**" means a fault in the Software that prevents the Software from performing according to the Software's manual or the Developer's intent. A lack of a specific function would not be deemed a Bug if the Software was not designed to perform that function.

"**BUSINESS DAY (Business Day)**" means any day from Monday through Friday on any non-public holiday, determined by NSW State Law, between the hours of 9.00 am AEST (NSW) and 5.00 pm AEST (NSW). Or Monday through Friday on any non-public holiday, determined by the current State Law, between 9.00 am and 5.00 pm of the current time zone if on-site. Or if overseas, the usual business hours and days prescribed for that country.

"**DISBURSEMENTS (Disbursements)**" means any cost(s) incurred by CBS on behalf of **THE CLIENT**.

"**GOODS (Goods)**" mean any Software, Material or Equipment supplied by CBS to **THE CLIENT**.

"**SERVICES (Services)**" means any Professional Services CBS provides to **THE CLIENT**.

"**SOFTWARE (Software)**" means any Software supplied by CBS to **THE CLIENT**.

"**Software Developer**" means, in reference to SYSPRO ERP, Syspro Software Pty Ltd (ABN 62 100 582 134) in reference to CBS developed Software it means CBS, in reference to any other provided software, it means the owner of that intellectual property.

"**SUPPORT (Support)**" means any guidance or instruction provided by CBS to **THE CLIENT**.

"**THE CLIENT**" means the company that is being supported

"**TRAINING (Training)**" means any information provided by or any teaching by CBS, by remote access, classroom style or on-site that increases, or has the potential to expand, knowledge and understanding by **THE CLIENT**.

"**TRAINING COURSE (Training Course)**" is a specific course run on a topic or topics via remote one-on-one or classroom-style learning.



2) Confidentiality Statement

- a) CBS acknowledges that during the relationship created by embarking on an implementation project, a lot of information pertaining to **THE CLIENT**'s business ("Confidential Information") may be disclosed to CBS. CBS agrees to treat all Confidential Information disclosed to it as strictly confidential and agrees:
 - i) Not to disclose the Confidential Information to anyone or copy the Confidential Information without **THE CLIENT**'s written consent;
 - ii) Not to use the Confidential Information for any purpose other than what is reasonably contemplated under this agreement for its performance;
 - iii) To notify **THE CLIENT** immediately on becoming aware or suspecting that unauthorised disclosure or use of the Confidential Information has occurred or is likely to occur;
 - iv) To take all reasonable precautions to ensure that its personnel do not disclose or make unauthorised use of the Confidential Information;
 - v) On expiry or earlier termination of this agreement, return to **THE CLIENT** all documents or material containing or embodying the Confidential Information; and
 - vi) If requested by **THE CLIENT**, ensure that its Personnel sign and deliver to **THE CLIENT** a confidentiality agreement in substantially the same terms as this agreement.
- b) **THE CLIENT** agrees that CBS may disclose information about **THE CLIENT**:
- c) To any person who guarantees, provides insurance, or provides any other credit Support in relation to **THE CLIENT**'s obligations to CBS; and
- d) To such persons as may be necessary or desirable to enable CBS to exercise any power, enforcement or attempted enforcement of CBS rights, remedies and powers under these Terms and Conditions
- e) **THE CLIENT** agrees that CBS may occasionally obtain from the Bankers and professional advisors of **THE CLIENT** and/or third parties all information that CBS reasonably requires to trade with **THE CLIENT**, and such persons are authorised to release that information.

3) Software and Hardware Requirements

- a) Backup of Software data files is **THE CLIENT**'S responsibility.
- b) **THE CLIENT** warrants that adequate backup procedures and the ability to recover operating Software, applications and Software data files are in place before Services, Support or Training are provided by CBS and acknowledges there is no, or will have no, claim against CBS for any loss or damage to data on **THE CLIENT**'S computer system or network.
- c) **THE CLIENT** acknowledges that no claim can or will be made against CBS for any Hardware problems, errors, damages or faults that may appear to be due to actions performed by CBS from on-site or remote assistance.
- d) All Software must be supervised and controlled under the relevant Software License Agreement terms with the Software owners. **THE CLIENT** shall ensure that its employees, subcontractors or agents who have authorised access to the Software know the Terms of such License and comply with them.
- e) Licences are sold without installation, Training or Support of any kind and are individual products that contain no Agreement between **THE CLIENT** and CBS. Implementation is separate from the Licence.
- f) **THE CLIENT** is responsible for all damages resulting from violating copyright laws or illegal use.
- g) CBS does not guarantee or warrant that Software will satisfy all of **THE CLIENT**'S requirements. The CLIENT is responsible for determining whether Software will fulfil their



needs. A summary of the functionality of the Software can be requested from CBS if not already provided.

- h) CBS gives no performance warranties. CBS excludes and expressly disclaims all express and implied warranties of merchantability or fitness for purpose.
- i) CBS does not warrant that the Software will be compatible in every operating environment. The CLIENT is responsible for ascertaining whether the Software is compatible with their operating environment. CBS expressly disclaims any representation, warranty or guarantee that the Software will function as intended while running in any particular device, computer, computer network or network file server or with other Hardware or Software.
- j) Except for any limited warranty provided by the Software Developer, there are no other warranties, expressed or implied, concerning the Software. **THE CLIENT** understands that the Software is licensed to **THE CLIENT** "as is" and that CBS shall not make any refunds for Software or Services.
- k) It is **THE CLIENT'S** responsibility to ensure that their Software, Hardware and other computer infrastructure always meet the minimum system requirements and compatibility required by the Software. These requirements are available from CBS on request.
- l) It is **THE CLIENT'S** responsibility for the setup of the Software, and any changes to the setup or location of the Software are at **THE CLIENT'S** own risk. Support for remote or on-site assistance regarding setup or modification to the Software may incur a Support charge.
- m) **THE CLIENT** is responsible for the timely installation of all Software updates, where provided. CBS may attend **THE CLIENT'S** site, physically or by remote connection, where necessary, requested and possible, to install these updates, which will attract a Software Support charge.
- n) **THE CLIENT** acknowledges that other updates, installs or changes to operating systems, application Software, Hardware, and other computer infrastructure can and may cause problems with Software operation.
- o) **THE CLIENT** acknowledges sole responsibility for and agrees to release CBS of any liability in maintaining operating systems, application Software, Hardware and other computer infrastructure. CBS recommends that before any changes are made on a computer or network that Software is deployed on, CBS is notified for clarification, which may incur a Support charge.
- p) **THE CLIENT** acknowledges they are responsible for diagnosing whether Hardware or Software causes faults. If CBS is requested to investigate and diagnose faults to advise **THE CLIENT** of corrective action, the Service and Support charges will be applicable.
- q) Services, Support or Training may not be available for older versions of the Software at CBS' sole discretion.

4) Remote Access

- a) **THE CLIENT** gives permission where possible and necessary for CBS to use remote access to **THE CLIENT'S** server, laptops or desktop computers. CBS will use a remote session between CBS and a computer or computers on **THE CLIENT'S** network to complete Services detailed in a valid Project Definition or to provide Support. CBS may have partial or full-unrestricted access to gain further access on such computer or computers on the network as well as **THE CLIENT'S** content on the network. **THE CLIENT** understands that CBS will then be able to transfer files with or without additional authorisation and at all times keeping within the CBS Confidentiality Statement, which forms part of these Terms and Conditions. Although CBS cannot guarantee that providing CBS remote access technical Support will resolve the issue, CBS will make exceptional efforts to perform Support Services professionally.



5) Statement of Capabilities

- a) CBS consultants are generally specialists in the Software that CBS provides and may not, at their discretion, provide any information on, or Support of, any Software other than that provided by CBS. CBS consultants are also not qualified to and do not provide legal, accounting or bookkeeping advice or Support.

6) Services, Support, Training

- a) CBS notes that any party acting with authority or perceived authority from **THE CLIENT** (e.g. Business partner, senior employee, Company liaison) will be understood to have authority to provide CBS with instructions unless **THE CLIENT** advises in writing to the contrary. **THE CLIENT** acknowledges that all instructions received are made collectively by all parties. Therefore CBS cannot be held responsible for any misunderstanding or actions performed on instructions provided by the mentioned party(ies).
- b) Pricing for Software DOES NOT include Software installation, system setup and configuration, Training, Implementation Services, any other Software, Hardware, wiring etc.
- c) CBS offers Services, Support and Training based on time and materials and is subject to the availability of Consultants. To provide efficient and effective Services, CBS may assign Services, Support or Training to CBS-approved sub-contractors for some of its obligations.
- d) CBS does not take responsibility for any misunderstanding or comprehension issues. Support or Training DOES NOT include any examination or evaluation of **THE CLIENT**. The CLIENT is responsible for learning, questioning and clarifying during the course of Services, Support or Training. Any additional questions, queries or Support provided after the Services or Training is completed will be charged at the current Hourly rate deemed by the current CBS Support Rates.
- e) CBS can and will provide, where requested and possible, Software Support to either **THE CLIENT** or Technical Support of **THE CLIENT**. Such Support can be ad-hock and charged per the CBS Support Rates provided occasionally or based on a tiered Support agreement that may be purchased.
- f) CBS shall take all reasonable steps to respond to **THE CLIENT'S** requests in a timely fashion. Responses to requests are treated in primarily chronological order. However, Paid Silver and Gold Support Agreements TAKE PRIORITY OVER ANY AD-HOC SUPPORT OR TRAINING. In determining the priority of the request, CBS considers how quickly the task needs to be completed and how important that request is to **THE CLIENT'S** Business. Requests can be addressed earlier or delayed at CBS' discretion. CBS cannot guarantee response times unless covered by a Paid Silver or Gold SUPPORT AGREEMENT. Response time means the time it takes to respond to a request by **THE CLIENT**. It does not mean the time it takes to resolve an issue, although all due diligence shall be exercised.
- g) Any Service, Support or Training provided by CBS or any independent external specialists approved by CBS regarding the setup or management of any General Ledger Accounts, cost centres, pricing and GST, Financial reports or any other financial data MUST BE SUPERVISED by **THE CLIENT** and preferably **THE CLIENT'S** accountant, bookkeeper or manager experienced in **THE CLIENT'S** financial data. **THE CLIENT** acknowledges they completely understand the Statement of Capabilities within these Terms and Conditions and that CBS is NOT QUALIFIED TO AND DOES NOT PROVIDE legal, accounting or bookkeeping advice or Support. **THE CLIENT** acknowledges that any errors in setup or consequential errors due to setup are entirely their own, and CBS or any independent external specialists approved by CBS shall not be held liable for such errors.



- h) **THE CLIENT** is primarily responsible for managing Services, Support or Training provided by CBS. CBS shall take all reasonable steps to perform assigned Tasks and Services but does not guarantee meeting deadlines, be they imposed or implied.
- i) **THE CLIENT** understands and acknowledges that their responsibility is to ensure that the appropriate employees/contractors are available when CBS requires them.
- j) On-site Training is HIGHLY recommended to be in a closed (non-open plan) location where attendees will not be interrupted by phones, messages, or work for the duration of the Training. On-site Training is provided for only eight (8) hours daily, including a lunch break. CBS acknowledges that this is not always possible, and if Training is not conducted in this manner, **THE CLIENT** acknowledges that CBS shall not be held liable for further Training. Further or repeat Training can be purchased from CBS if required.
- k) **THE CLIENT** has five (5) Business Days from completing any Training or consulting activity to raise any disputes in writing. Otherwise, such Training or Consulting is finalised, and **THE CLIENT** has no ground for dispute. Disputes are prioritised over any other Services, Support or Training for **THE CLIENT**, within a Project Definition or not.

7) Physical Delivery of Goods, Risk, Ownership and Title

- a) The legal and beneficial ownership of any Goods supplied by CBS remains with CBS until all Goods have been paid for in full. The risk in any Goods supplied passes to **THE CLIENT** on delivery.
- b) Intellectual property shall remain in ownership by CBS and is non-transferable unless CBS chooses to pass ownership by written consent.
- c) Any development, including but not limited to scripted functions, additional modules, custom reports, or interfaces between Software and other Software programs requested by **THE CLIENT** and accepted by CBS shall be specified and developed on a time and materials basis only. Ownership of scripted functions, additional modules, custom reports, or interfaces between Software and other Software programs remains with CBS, and **THE CLIENT** is granted non-exclusive use.
- d) It is agreed by the parties that CBS shall not provide Training or Support for **THE CLIENT** to develop their own scripted functions, additional modules, custom reports, or interfaces between Software and other Software programs within the context of installation and implementation. Such Training or Support is provided at the sole discretion of CBS.

8) Support Agreements

- a) CBS has optional paid post-go-live support options with two agreements that customers will need to sign. There are three levels: Help Desk, Silver and Gold. Post-Go-Live, you should take out a Gold level agreement as it gives you continued access to your implementation consultant. The Silver agreement still gives you access to the consulting team. If you do not have an agreement, you will only deal with our help desk. The Silver and Gold support agreements, which need to be signed, set out all the negotiated terms and fees. There are options for pre-paying help desk support at a cheaper rate. All time spent responding to support calls, or emails will be charged for in units with a minimum of one unit. There are four units per hour, and overtime rates will apply.
- b) Below are the major items each level covers, but note that Silver and Gold offerings can be negotiated.
 - i) Help Desk support



- No signed agreement
 - All communication via the CBS Help Desk
 - No Service level agreement
 - On-site or Online Support is chargeable
 - Silver and Gold support customers get priority
- ii) Silver level support
- All communication via the CBS Help Desk
 - Can be assigned to a consultant
 - Service level agreement
 - 30 min Online support included
 - Advice on new or different procedures for processing or setting up transactions.
 - Assistance and advice on changing any of the setup options within the Product
 - Gold support customers get priority
- iii) Gold level support
- All communication via the CBS Help Desk
 - Can be assigned to a dedicated consultant
 - Service level agreement
 - 60 min Online support included
 - Advice on new or different procedures for processing or setting up transactions.
 - Assistance and advice on changing any of the setup options within the Product
- iv) Other support options available
- Pre-paid hours
 - Project rates
 - Casual rates

9) Basis of Calculations

- a) All Training and Support time, including but not limited to phone, email, remote access research or on-site work, is chargeable and invoiced accordingly unless covered by a Support Agreement.
- b) CBS reserves the right to increase consulting rates by at least the increase in the prevailing CPI on 1st July each year
- c) Fees for Services in a valid Project Definition in which CBS reserves the right to change prices with thirty (30) days prior notice and prices in a current CBS Quotation with its own termination date.
- d) All fees are calculated based on a Business Day. All other times are considered after hours. After Hours Service, Support, or Training may be provided at the discretion of CBS.
- e) All charges of fees set out are exclusive of GST or any other taxes and based on the current CBS Support Rates.
- f) All Services, Support and Training are charged based on the time taken for administration, preparation, research and actions required for task completion, not just the time spent with your users.



- g) If Service, Support or Training Hours exceed allocated time estimates, CBS reserves the right to continue charging at an hourly rate, except that a Business Day has finished, in which case CBS will charge at an After-Hours rate at our discretion.
- h) **THE CLIENT** will pay for Service time if CBS has presented itself to commence Services at pre-arranged times, including where **THE CLIENT**, its employees or agents have caused delays by appropriate staff not being available at the site or computer equipment not being fully available
- i) All time will be charged for in units of fifteen (15) minutes. Where the time spent is not an exact multiple of fifteen (15) minutes, the time will be rounded up to the next multiple of fifteen (15) minutes.

10) Travel and Accommodation Terms

CALLOUT Time

- **Sydney Metro Area** – 1 Hour travel per site visit. NB this is charged at 50% of the Normal Time rate.
- **Country NSW** – By Car-- actual travel time will be charged.
 - By Airtime measured from 1 hr. before the time of departure from Sydney airport to arrival on-site or accommodation and from departure from the site or accommodation to arrival at Sydney Airport
- **Interstate** – Time measured from 1 hr. before departure from Sydney Airport to arrival on-site or accommodation and from departure from the site or accommodation to arrival at Sydney Airport.
- **International** – Time measured from 3 hrs. before departure time from Sydney Airport to arrival at the overseas accommodation or site office and departure from the accommodation or site office to arrival at Sydney Airport after customs clearance.

EXPENSES

- **Airfares** – Airfares will be recovered at cost. Every attempt will be made to book the cheapest Qantas or Virgin Australia economy airfare available, travelling to the site with a fully flexible fare return.
- **Accommodation and subsistence** – Accommodation, meals, internet connections, and other reasonably incurred expenses will be recovered at cost.
- **Travelling** – Taxis, Car Hire, Fuel, Parking, and Tolls will be recovered at cost.
- **Mileage** Using a private vehicle instead of a taxi at the ATO accepted rate (currently 85 cents per kilometre for the 2023 - 24 income year).
- **Any other sundry expenses** – Recovered at cost as agreed by **THE CLIENT**

ON CALL Rate

If we are required to be "on-call" for any reason, the rate charged for that time will be 25% of the appropriate on-site rate that would be charged. The ON CALL amount is due and payable even if we are not required. The usual rate as specified above will be charged should we be called.

Note: These rates will apply for all work carried out unless a separate quote for a specific project has been agreed upon.

Help Desk Rates

Available 9:00 – 5:00 Sydney time, Monday to Friday, excluding NSW Public Holidays



The rate is AUD 220.00 per hour billed in 15 min blocks unless a support agreement is in place, in which case the agreement will dictate the rules.

11) Invoicing and Payments

- a) All references to prices charged shall be those prescribed by CBS in your proposal (subject to the number of days the proposal is stated to be valid) or, if no proposal is provided, the amounts quoted by CBS in written correspondence with **THE CLIENT**. Recommended resale or retail prices appearing in any price list are suggested only, and CBS is not obligated to comply with such recommendations. Unless otherwise advised by CBS in writing, prices do not include GST and other taxes (which, if payable, shall be to the customer's account). If a goods and services tax or similar value-added tax ("GST") is levied in respect of any supply made under or in connection with these Terms of Trade, the amount payable for that supply would be increased by the rate of GST. All Australian **CLIENTs** will be invoiced in Australian dollars, and all **CLIENTs** not registered to trade in Australia will be invoiced in Australian dollars.
- b) The support schedule will reflect the fees charged to **THE CLIENT** from CBS for the telephone/email and on-site support services. Fees charged to **THE CLIENT** from CBS for ad-hoc support services will be CBS' current support rates when it renders the support services to **THE CLIENT**.
- c) **THE CLIENT** shall effect payment of CBS fees in respect of: -
 - i) the telephone/email support services within 7 (seven) days from the date of each of CBS invoices;
 - ii) product sales (including hardware sales and Software licensing) **at the time of order** unless prior arrangements have been made with CBS management.
 - iii) the on-site support services within 7 (seven) days from the date of each of CBS invoices;
 - iv) any expenses incurred in providing the on-site services within 7 (seven) days from the date of each of CBS invoices
 - v) the ad-hoc support services within 7 (seven) days from the date of CBS invoices;
 - vi) or as otherwise agreed to in writing between CBS and **THE CLIENT** and recorded in the support schedule.
- d) if **THE CLIENT** fails to pay CBS' fees per the provisions of this agreement, CBS shall be entitled, without prejudice to its rights in terms of this agreement and in terms of the law, to: -
 - i) Immediately suspend the support services until **THE CLIENT** pays the total outstanding fees. **THE CLIENT** acknowledges that it will have no claims of whatever nature against CBS in respect of the suspension of the support services in terms of this clause; or
 - ii) Cancel this agreement and claim any damages that it may have suffered.
- e) CBS is not obligated to supply Goods and Services on credit to **THE CLIENT**.
- f) CBS reserves the right to invoice for any ex-gratia work at the current CBS Hourly rate.
- g) Full payment of invoices for quoted or unquoted Software, including Software Licenses, is required in advance and before delivery of Software, including Software Licenses.
- h) Late payment shall constitute a default, and **THE CLIENT** shall, at the discretion of CBS, pay default interest on overdue amounts from the date the payment falls due to the actual payment date at CBS overdraft rate plus five per cent (5%) per annum. CBS may also suspend its supply of Services, Support or Training at its option until the overdue amounts are fully paid. Such termination is without prejudice to the rights of either party.



- i) Failure to satisfy any outstanding debts within sixty (60) days will be subject to Court proceedings.
- j) THE CLIENT will bear all costs incurred in recovering the debt, including the cost of any Court proceedings.
- k) CBS will apportion payments to outstanding accounts as CBS thinks fit.
- l) If at any time CBS deems the credit of **THE CLIENT** to be unsatisfactory, it may require **THE CLIENT** to provide, at their cost, security for payment and CBS may suspend the performance of its obligations until satisfactory is provided.
- m) Payments can be made by cash, cheque, direct deposit or PayPal. Any payments made by PayPal will be subject to their terms and conditions as advised on the PayPal Australia website www.PayPal.com.au
- n) All payments via PayPal incur a 2.5% surcharge. The surcharge is to cover fees charged by PayPal. When using PayPal, the invoices cannot be split for payment.

12) Default and Termination Implementation Project

- a) **THE CLIENT** may terminate an Implementation Project at any time by written confirmation. CBS will deem such termination valid once approval is received and written acknowledgment of such termination is delivered from CBS to **THE CLIENT**. All outstanding invoices are due within invoice dates. All Services, Support or Training provided before acceptance of such termination but not yet invoiced will be invoiced immediately and will still be payable to CBS per these Terms and Conditions. No refunds will be given for Services, Support, or Training paid for but not just completed by CBS.
- b) CBS may immediately terminate an Implementation Project if THE CLIENT breaches any of the Terms and Conditions herein without any further liability whatsoever on the part of CBS.
- c) An Implementation Project may be immediately terminated by CBS on written notice to **THE CLIENT** if of the following events occurs:
 - i) Does not Pay CBS within its payment terms
 - ii) Goes into bankruptcy or enters into any composition or arrangement with creditors.
 - iii) Where **THE CLIENT** as a Business, Company, or Organisation does any act which would render it liable to be liquidated or if a resolution is passed or proceedings commenced for the liquidation of **THE CLIENT** or if a receiver is appointed in respect of all or any assets of **THE CLIENT**.
- d) Termination of an Implementation Project shall not relieve **THE CLIENT** of its obligations to pay all money owed to CBS. Any money owed will be payable immediately.
- e) Termination of an Implementation Project shall not relieve **THE CLIENT** from liability arising from any accidental breach of the Terms and Conditions herein.
- f) Upon the termination of an Implementation Project in the event of default by **THE CLIENT**, all rights of **THE CLIENT** granted by such shall terminate. **THE CLIENT** will not be entitled to receive any rebate or refund of the whole or any part of the money paid pursuant to such, and **THE CLIENT** shall return any Goods remaining unpaid (meaning licensed Software and equipment) to CBS.

13) Warranty, Guarantee, Liability

- a) CBS will not be held liable for any changes in the Software in future updates.
- b) CBS does not warrant that the Software will be compatible in every operating environment. The CLIENT is responsible for ascertaining whether the Software is compatible with their operating environment. CBS expressly disclaims any representation, warranty or guarantee



- that the Product will function as intended while running in any particular device, computer, computer network or network file server or with any other Hardware or Software.
- c) CBS does not warrant that the Software is free of "Bugs" or is error-free. CBS shall not be responsible to **THE CLIENT** for costs or damages incurred due to such "Bugs", errors or defects. The existence of such errors shall not constitute a breach of any Project Definition. Fixes for any "Bugs" are provided as Software Updates by the Software Developer.
 - d) Except for any limited warranty provided by the Software Developer, there are no other warranties, expressed or implied, concerning the Software. **THE CLIENT** understands that the Software is licensed to **THE CLIENT** "as is" and that CBS shall not make any refunds for Software, including Software Licenses, Services, Support or Training.
 - e) The parties agree that for any breach or default by CBS, even for a breach of condition or fundamental term or for a fundamental breach, **THE CLIENT'S** exclusive remedy shall be payment by CBS of **THE CLIENT'S** direct damages to a maximum amount equal to the amount paid by **THE CLIENT** to CBS for the Services, Support and Training specified in the related and still valid Project Definition. **THE CLIENT** agrees to release CBS from any other claim in respect to the provision of Services, Support or Training, including but not without limitation to system damage, loss of any kind, including but not limited to data, privacy, revenue, profits, use or some other economic advantage.
 - f) To the extent allowed by law, CBS disclaims all liability, whether in contract or tort, for any loss or damage arising from **THE CLIENT'S** use of Software provided by CBS. Such disclaimer applies to direct, indirect, special and consequential damages, including loss of profit, business revenue, goodwill, loss of production, loss of Product, losses resulting from downtime of **THE CLIENT** domain or email system, losses resulting from system crashes, loss of data or emails, or failure to achieve anticipated savings or efficiencies.
 - g) CBS's liability for providing Services, Support or Training will be limited to an amount equal to the amount paid by **THE CLIENT** to CBS for the Services, Support and Training specified in the related and still valid Project Definition. **THE CLIENT** agrees to release CBS from any other claim concerning the provision of Services, Support or Training, including but not without limitation to system damage, loss of any kind, including but not limited to data, privacy, revenue, profits, use or other economic advantages.
 - h) It is agreed by the parties that in no event shall CBS nor any of its employees and licensors shall be liable for delay, damage, loss, injury, failure, downtime, breakdown, economic loss, consequential damages, consequential loss or any other form of damages or loss whatsoever, that **THE CLIENT** may suffer as a consequence by the Service, Support, Training or Software, including but not limited to indirect, incidental, special or consequential damages, or damages for loss of profits, loss of savings, revenue or data incurred by **THE CLIENT**.
 - i) In no event shall CBS be liable where:
 - i) The defect or failure of Goods is due to or resulting from damage, misuse, negligent maintenance or care from **THE CLIENT**, or **THE CLIENT** fails to follow care instructions for Goods
 - ii) Any delay, damage, loss, injury, failure or breakdown that **THE CLIENT** may suffer as a consequence of any defect or deficiency in the Software, including any delay, damage, loss, injury, failure or breakdown to other programs and equipment.
 - iii) There are any general, special, indirect, or consequential damages, including but not limited to loss of business, loss of operations, loss of profits, loss or corruption of information, data or records, re-procurement costs, statute penalties or loss of use from any cause whatsoever where the illegal use or copying of Software is present.



- j) Neither party will be liable for any failure to perform or delay in performing its obligations under this agreement due to strikes, riots, wars, flood, fire, an act of God or other event beyond the reasonable control of that party (each an "Event"). If an Event causes CBS to fail to perform or delay performing any of its obligations under this agreement, it must immediately give **THE CLIENT** written notice of the event and must use all reasonable endeavours to minimise its effect.
- k) Some jurisdictions do not allow the exclusion of certain implied warranties or conditions, so the above exclusions may not apply to **THE CLIENT**. These Terms and Conditions do not exclude any implied warranties or conditions that may not, under applicable law, be excluded. These Terms and Conditions give **THE CLIENT** specific legal rights and any other legal rights that **THE CLIENT** may have under the laws of their jurisdiction. These Terms and Conditions do not affect the statutory rights of **THE CLIENT**.
- l) CBS shall not be held liable for any promises or guarantees made by any other party for the capability of the Software or Services, Support or Training that CBS cannot complete.
- m) CBS shall not be held liable for any Services, Support or Training provided by an outside consultant.

14) Dispute Resolution

- a) As soon as reasonably practicable, a party will notify the other party of any dispute arising between them.
- b) Claims and disputes, outside of disputes resulting from a letter of notification, against CBS, including any breach or default by CBS, must be made within ten (10) Business Days.
- c) If there is a dispute, the parties to the conflict will attempt to resolve the dispute within a maximum of ten (10) Business Days of receiving notice of the dispute.
- d) If, following the dispute resolution process, the parties do not resolve the dispute, they will attempt to settle their dispute by mediation. Either party may initiate mediation by giving written notice to the other party. Such mediation process will not, unless otherwise agreed by the parties, extend beyond ten (10) Business Days following the appointment of a mediator. If the parties cannot agree on a mediator within a maximum of three (3) Business Days of the notice, then each party shall appoint one mediator, and these two mediators will then appoint a third mediator.
- e) If either party fails to appoint a mediator within three (3) Business Days after the other has appointed its mediator, then the party who has appointed an arbitrator may serve notice to the defaulting party that the defaulting party has defaulted on its right to appointment. On service of such notice, the party who has already appointed a mediator will be entitled to appoint that mediator as the sole mediator in the dispute.
- f) Any mediator:
 - i) will be suitably qualified for such purpose in matters relevant to the dispute;
 - ii) will be as independent of either party as possible;
 - iii) will not be an ex-employee of either party;
 - iv) will not have entered into significant contracts or arrangements with either party;
- g) Any mediation will be by a majority decision of the mediators;
- h) Pending the resolution of any dispute, the parties will continue to perform their obligations in any valid Project Definition that is not directly at issue.



15) Health and Safety

- a) In accordance with Work Cover requirements, all CBS staff shall be provided with a SMOKE-FREE Environment at all times.
- b) CBS will carry workplace-related insurance for their employees and fulfil their requirements under the regulations of Health and Safety in Employment.
- c) **THE CLIENT** will inform CBS of situations where **THE CLIENT**, its agents or employees have made the building site or premises unsafe (as determined by hazard identification under the Health and Safety in Employment regulations).
- d) CBS will conform to **THE CLIENT'S** Health and Safety in Employment policy for the site or premises to secure against accident or unlawful entry.

16) Notices

- a) Any notice required by **THE CLIENT** must be delivered to the CBS at PO BOX 7942 Baulkham Hills BC, NSW 2153, Australia or by email to support@cbsau.com.

17) Legal and Employment

- a) The laws of New South Wales, Australia, shall govern these Terms and Conditions and constitute the complete and exclusive statement between CBS and **THE CLIENT**. No statement or representation not contained in these Terms and Conditions shall be binding on CBS.
- b) Any disputes between CBS and **THE CLIENT** will be under the jurisdiction of the laws of the state of New South Wales, Australia (or under the jurisdiction of the federal courts of Australia, where applicable).
- c) In circumstances where you are purchasing goods or services from CBS as a consumer for the purpose of (and defined in section 3 of Schedule 2 of) the ACL, we acknowledge and agree that certain statutory guarantees and rights shall apply to you as provided by the relevant laws but subject to these terms and Conditions as applicable and where permitted by relevant laws.
- d) Nothing in these Terms and Conditions excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified, which may include the ACL and corresponding provisions and relevant laws of State or Territory legislation containing implied terms and statutory guarantees which operate to protect the purchaser of goods and services in various circumstances.
- e) If the Unfair Terms in Standard Form Contracts referred to in section 23 of the Australian Consumer Law (ACL) applies to any provisions in these Terms and Conditions, any such provision(s) shall be void to the extent they are unfair within the meaning of section 24 of the ACL.
- f) **THE CLIENT** agrees that they will not entice or procure employees or contractors of CBS to work for any other Business, Company or Organisation, including **THE CLIENT'S** own Business, Company or Organisation. If a CBS employee or contractor does become employed by **THE CLIENT'S** own Business, Company or Organisation, **THE CLIENT** acknowledges explicitly that CBS introduced these people and that an introduction fee, equivalent to 30% +GST of their total remuneration package, will be paid to CBS.
- g) These Terms and Conditions shall take precedence over any other oral or printed Terms or Conditions, and in the case of any conflict between these Terms and Conditions and any other document that may exist, these Terms and Conditions shall prevail.



- h) All the original rights, powers, exemptions and remedies of CBS shall remain in full force notwithstanding any neglect, forbearance or delay in the enforcement thereof. CBS shall not be deemed to have waived any term or condition herein unless such waiver shall be in writing under the signature of CBS or an authorised officer thereof, and any such waiver, unless the contrary is expressly stated, shall apply to and operate only in a particular transaction, dealing or matter

18) Disclaimer

- a) As a third-party supplier, CBS provides Software as a Software Package and holds no responsibility for any misconception of performance based on that Product. Reliance on information, material, advice, or recommended resources received from CBS shall be at **THE CLIENT'S** sole risk. CBS assumes no responsibility for any errors, omissions, or damages arising from the use of CBS, the Software or any other Service, Support, Training, Goods or Software provided by CBS or on behalf of CBS.
- b) Users of any information, material, advice or recommended resources are encouraged to confirm information received with other sources and seek qualified local advice if embarking on any actions that could carry personal, corporate, financial or Organisational liabilities.

19) General

- a) These Terms and Conditions remain the property of CBS and may not be disclosed or copied.
- b) Signed acceptance of a Project Definition, or Giving CBS instructions to work after receiving these Terms and Conditions, or Reading these Terms and Conditions is **THE CLIENT'S** acceptance to adhere to these Terms and Conditions.