

## **Terms of Trade**

### **Agreed Terms**

#### **1. Who we are and how to contact us**

- 1.1. <https://olna.com.au/> and <https://atarsupport.com.au/> are websites (Site or Sites) operated by OLN A Support Pty Ltd (ACN 624 860 528) trading as ATAR Support, of Denning & Associates Suite 7, 177-179 Davy Street, Booragoon, Western Australia 6154, Australia (we, us and our).
- 1.2. To contact us, please email [info@olna.com.au](mailto:info@olna.com.au) or [info@atarsupport.com.au](mailto:info@atarsupport.com.au).

#### **2. Our contract with you**

- 2.1. These terms and conditions (Terms) apply to the order by you and supply of Services by us to you (Contract). To the extent permitted by law, no other terms are implied by trade, custom, practice or course of dealing.
- 2.2. The Contract is the entire agreement between you and us in relation to its subject matter. You acknowledge that you have not relied on any statement, promise or representation or assurance or warranty that is not set out in the Contract.

#### **3. Placing an order and its acceptance**

- 3.1. Please follow the on-screen prompts to place an order. Each order is an offer by you to buy the goods specified in the order (Services) subject to these Terms.
- 3.2. Please check the order carefully before confirming it. You are responsible for ensuring that your order is complete and accurate.
- 3.3. After you place your order, you will receive an email from us acknowledging that we have received payment, but please note that this does not mean that your order has been accepted. Our acceptance of your order will take place as described below.
- 3.4. Our acceptance of your order takes place when we send an email to you to accept it (Order Confirmation), at which point and on which date (Commencement Date) the Contract between you and us will come into existence. The Contract will relate only to those Services confirmed in the Order Confirmation.
- 3.5. If we are unable to supply you with the Services for any reason, we will inform you of this by email and we will not process your order. If you have already paid for the Services, but we are unable to supply you with the Services for any reason, we will refund you the full amount.

#### **4. Cancelling your order and obtaining a refund**

- 4.1. You may cancel the Contract, if you notify us by email. We require 14 days' notice for the

cancellation of a subscription.

- 4.2. You may be entitled to a refund under Australian consumer law, but otherwise we do not generally provide refunds, for instance, for changing your mind or mistakenly purchasing particular services. We will not generally provide partial refunds, for instance for the remainder of the subscription purchased.
- 4.3. To cancel the Contract, you must email us. We will email you to confirm we have received your cancellation. Please include details of your order to help us to identify it.

## **5. Our services**

- 5.1. Any descriptions or illustrations on our site or via your online log-in are published for the sole purpose of giving an approximate idea of the services described in them.
- 5.2. We will supply the Services to you in accordance with the specification for the Services appearing on our website at the date of your order in all material respects.
- 5.3. We warrant to you that the Services will be provided using due care and skill.
- 5.4. We will use all reasonable endeavours to meet any performance dates specified, but any such dates are estimates only and failure to perform the Services by such dates will not give you the right to terminate the Contract. As you may be a consumer, the Services will be supplied within a reasonable time if no specific time for performance has been stated.

## **6. Your obligations**

- 6.1. It is your responsibility to ensure that:
  - (a) the terms of your order are complete and accurate;
  - (b) you cooperate with us in all matters relating to the Services;
  - (c) you provide us with such information and materials we may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - (d) you obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
  - (e) you comply with all applicable laws, including health and safety laws;
  - (f) you keep all of our materials, equipment, documents and other property (Our Materials) at your premises (whether online or in printed form) in safe custody at your own risk, maintain Our Materials in good condition and not dispose of or use Our Materials other than in accordance with our written instructions or authorisation.
- 6.2. Failure to comply with the above will be a default (Your Default).

## **7. Any other relevant obligations**

- 7.1. If our ability to perform the Services is prevented or delayed by any failure by you to fulfil any obligation listed in the “Your Obligations” section of these Terms of Trade:
  - (a) we will be entitled to suspend performance of the Services until you remedy Your Default,

and to rely on Your Default to relieve us from the performance of the Services, in each case to the extent Your Default prevents or delays performance of the Services. In certain circumstances Your Default may entitle us to terminate the Contract;

- (b) we will not be responsible for any costs or losses you sustain or incur arising directly or indirectly from our failure or delay to perform the Services; and
- (c) it will be your responsibility to reimburse us on written demand for any costs or losses we sustain or incur arising directly or indirectly from Your Default.

## **8. Services in Australia only**

We will only perform the Services at addresses within Australia.

## **9. Charges**

- 9.1. In consideration of us providing the Services, you must pay our charges (Charges) in accordance with these terms of trade.
- 9.2. The Charges are the prices quoted on our site at the time you submit your order.
- 9.3. If you wish to change the scope of the Services after we accept your order, and we agree to such change, we will modify the Charges accordingly.
- 9.4. Our Charges are inclusive of goods and services tax (GST). Where GST is payable in respect of some or all of the Services, you must pay us such additional amounts in respect of GST, at the applicable rate, at the same time as you pay the Charges.

## **10. Payment**

- 10.1. Payment for the Services is in advance. We will take your payment upon acceptance of your order and will take subsequent payments in advance.
- 10.2. You can pay for the Services using a debit card or credit card, or by PayPal (only on the OLN Support Website).
- 10.3. We will send you an electronic invoice following payment.
- 10.4. If you fail to make a payment under the Contract by the due date, then, without limiting our remedies under our Termination clause, you will have to pay interest on the amount unpaid at the interest rate of 3% per annum. Interest accrues on a day to day basis from the due date up to and including the date of actual payment.

## **11. Set Off**

Without affecting any other rights or remedies available to you or us under the Contract, each party to this contract is authorised to deduct any amount due and payable by another party from amounts otherwise due and payable to that other party under or in connection with this contract.

## **12. Intellectual Property Rights**

- 12.1. All intellectual property rights in or arising out of or in connection with the Services will be owned by us.
- 12.2. We agree to grant you a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the deliverables specified in your order (excluding materials provided by you) for the purpose of receiving and using the Services. You may not sub-license, assign or otherwise transfer the rights granted in this clause, or copy or exploit the deliverables specified in your order other than in accordance with this clause.
- 12.3. You agree to grant us a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by you to us for the term of the Contract for the purpose of providing the Services to you.

## **13. Personal Information and Privacy**

- 13.1. We will use any personal information you provide to us to:
- (a) provide the Services;
  - (b) process your payment for the Services; and
  - (c) inform you about similar services that we provide, but you may stop receiving this information at any time by contacting us.
- 13.2. Further details of how we will manage personal information are set out in our privacy policy.

## **14. Limitation of Liability**

- 14.1. Nothing in this Contract limits or excludes our liability:
- (a) for death or personal injury caused by its negligence or wilful misconduct or that of its employees, as applicable;
  - (b) for fraud or fraudulent misrepresentation by it or its employees, as applicable; or
  - (c) where liability cannot be limited or excluded by applicable law.
- 14.2. Subject to this clause, we will not be liable to you, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with this Contract, including any:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of production;
  - (d) loss of agreements or contracts;
  - (e) loss of business opportunity;
  - (f) loss of anticipated savings;
  - (g) loss of or damage to goodwill;
  - (h) loss of reputation; or
  - (i) loss of use or corruption of software, data or information.
- 14.3. Subject to this clause in relation to special, indirect or consequential loss, our maximum

aggregate liability to you for any loss or damage or injury arising out of or in connection with the performance or non-performance of or the supply of services under this Contract, including any breach by us of this Contract however arising, under any indemnity, in tort (including negligence), under any statute, custom, law or on any other basis, is limited to the amount of the service provided to the customer or not more than \$200.

- 14.4. Nothing in this Contract is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (ACL), or the exercise of a right conferred by such a provision, or any liability of ours in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of services.
- 14.5. If we are liable to you in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL that cannot be excluded, our total liability to you for that failure is limited to, at our option, the resupply of the services or the payment of the cost of resupply.
- 14.6. Nothing in this Contract limits or affects the exclusions and limitations set out in our website terms and condition of use.
- 14.7. This clause will survive termination of the Contract.

## **15. Confidentiality**

- 15.1. To the extent that any confidential information is shared or exchanged between us, we each undertake that we will not at any time during the Contract disclose to any person any confidential information concerning one another's affairs, except:
  - (a) where the information is in the public domain as at the date of this Contract (or subsequently becomes in the public domain other than by breach of any obligation of confidentiality binding on either of us);
  - (b) if either of us is required to disclose the information by applicable law or the rules of any recognised stock exchange or other document with statutory content requirements, provided that the recipient has to the extent practicable having regard to those obligations and the required timing of the disclosure consulted with the provider of the information as to the form and content of the disclosure;
  - (c) where the disclosure is expressly permitted under this Contract;
  - (d) if disclosure is made to our respective officers, employees and professional advisers to the extent necessary to enable either of us to properly perform our obligations under this Contract or to conduct our business generally, in which case the we each must ensure that such persons keep the information secret and confidential and do not disclose the information to any other person;
  - (e) where the disclosure is required for use in legal proceedings regarding this Contract;  
or
  - (f) if the party to whom the information relates has consented in writing before the disclosure.
- 15.2. Each of us may only use the other's confidential information for the purpose of fulfilling our respective obligations under the Contract.

## **16. Termination**

- 16.1. Without affecting any of our other rights, we may suspend the performance of Services, or terminate this Contract with immediate effect by giving written notice to you if:
- (a) you fail to pay any undisputed amount due under this Contract on the due date for payment and you remain in default not less than 30 days after being notified in writing to make such payment;
  - (b) you commit a material breach of any other term of this Contract and that breach is irremediable or (if that breach is remediable) you fail to remedy that breach within a period of 14 days after being notified in writing to do so; or
  - (c) an insolvency event occurs in relation to you.
- 16.2. On termination of the Contract you must cease using and return all of Our Materials and any deliverables specified in your order which have not been fully paid for. If you fail to do so, then we may seek to take possession of them. Until they have been returned, you will be solely responsible for their safe keeping and must not use them for any purpose unconnected with the Contract.
- 16.3. Termination of this Contract does not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages for any breach of the Contract that existed at or before the date of termination.
- 16.4. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination will remain in full force and effect.

## **17. Force Majeure**

- 17.1. We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under the Contract that is caused by any act or event beyond our reasonable control (Event Outside Our Control).
- 17.2. If an Event Outside Our Control takes place that affects the performance of our obligations under the Contract:
- (a) we will contact you as soon as reasonably possible to notify you; and
  - (b) our obligations under the Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. We will arrange a new date for performance of the Services with you after the Event Outside Our Control is over.
- 17.3. Each of us may cancel the Contract affected by an Event Outside Our Control which has continued for more than 90 days. To cancel please contact us. If you opt to cancel, we will refund the price you have paid, less the charges reasonably and actually incurred us by in performing the Services up to the date of the occurrence of the Event Outside Our Control.

## **18. Non-Solicitation**

- 18.1. During the Term of this Contract and for a period of 3 months following the termination or

expiration of this Contract, you will not make any solicitation to employ the other party's personnel without our prior written consent.

18.2. For the purposes of this clause, a general advertisement or notice of a job listing or opening or other similar general publication of a job search or availability to fill employment positions, including on the internet, will not be construed as a solicitation or inducement, and the hiring of any such employees or independent contractor who freely responds thereto will not be a breach of this clause.

## **19. Notice**

19.1. When we refer to "in writing" in these Terms, this includes email.

19.2. Any notice or other communication given by one of us to the other under or regarding the Contract must be in writing and be delivered personally, sent by pre-paid post or email.

19.3. A notice or other communication is deemed to have been received:

- (a) if delivered by hand to the nominated address, when delivered to the nominated address;
- (b) if sent by pre-paid post, at 9.00 am (addressee's time) on the second Business Day after the date of posting; or
- (c) if sent by email, at the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

19.4. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee.

19.5. The provisions of this clause will not apply to the service of any proceedings or other documents in any legal action.

## **20. Variation**

Any variation of the Contract only has effect if it is in writing and signed by you and us (or our respective authorised representatives).

## **21. No Waiver**

21.1. Neither of us may rely on the words or conduct of any other party as being a waiver of any right, power or remedy arising under or in connection with this Contract unless the other party or parties expressly grant a waiver of the right, power or remedy. Any waiver must be in writing, signed by the party granting the waiver and is only effective to the extent set out in that waiver.

21.2. Words or conduct referred to in this clause include any delay in exercising a right, any election between rights and remedies and any conduct that might otherwise give rise to an estoppel.

## **22. Assignment and Novation**

22.1. We may assign or transfer our rights and obligations under the Contract to another entity but will always notify you in writing or by posting on our webpage if this happens.

22.2. You may only assign or transfer your rights or your obligations under the Contract to another person if we agree in writing.

22.3. A breach of this clause by you entitles us to terminate this Contract.

### **23. Severability**

23.1. If the whole or any part of a provision of this Contract is or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.

23.2. This severability clause does not apply if the severance of a provision of this Contract in accordance with that clause would materially affect or alter the nature or effect of the parties' obligations under this Contract.

### **24. Relationship of the Parties**

24.1. The Contract is between you and us.

24.2. No other person has any rights to enforce any of its terms.

### **25. Announcements**

25.1. No party will make, or permit any person to:

- (a) make any public announcement statement, press release or other publicity or marketing materials concerning the existence, subject matter or terms of this Contract, the wider transactions contemplated by it, or the relationship between the parties; or
- (b) use the other party's trade marks, service marks, trade names, logos, symbols or brand names, in each case;
- (c) without the prior written consent of the other party, such consent not to be unreasonably withheld, conditioned or delayed, except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

### **26. Governing law and jurisdiction**

26.1. These terms and conditions, their subject matter and their formation, are governed by Australian law.

26.2. You and we both agree that the courts in Australia will have exclusive jurisdiction.