

TERMS OF TRADE

These Terms of Trade (“**the Terms**”) are incorporated by reference into each agreement (“**the Agreement**”) pursuant to which PABX Sales and Service Pty Ltd trading as Prosum (“**Prosum**”) supplies goods or services to the applicable customer (“**the Customer**”)

1. SCOPE OF AGREEMENT

- 1.1** Prosum and the Customer hereby agree that the Agreement will be formed between Prosum and the Customer when the Customer accepts a Proposal issued by Prosum referring specifically to these Terms.
- 1.2** The Parties agree that the Agreement shall consist only of the Terms together with any Special Conditions. In the event of any conflict between the Terms and the Special Conditions, the Special Conditions will prevail to the extent of the inconsistency.
- 1.3** The Agreement commences on the Effective Date and continues in effect until the earlier of: (a) the date on which the Services are fully performed by Prosum and all Fees for such Services have been paid by the Customer; and (b) the date on which the Agreement is terminated in accordance with the Terms.
- 1.4** The Customer agrees that the Agreement and the Special Conditions are the complete and exclusive statement of the agreement between the parties in respect of the Equipment and the Services and supersedes all proposals oral and written, and all other communications between the parties.
- 1.5** No amendment to the Agreement will be valid unless in writing and signed by both parties.

2. RELATIONSHIP OF THE PARTIES

- 2.1** The relationship between the parties intended by the Agreement will be only that of supplier as independent contractor or supplier to the Customer. Nothing in the Agreement will be construed as creating a relationship between the parties as that of employment, agency, joint venture or partnership.
- 2.2** The Customer will not take any action nor make any comment to any client, organisation or other third party which, in the opinion of Prosum, could damage the reputation of Prosum or any of Prosum’s suppliers or licensors.

3. SALE OF THE EQUIPMENT

- 3.1** To the extent the Proposal includes the sale of Equipment to the Customer then the Customer hereby acknowledges that:
 - (a) Prosum will, to the extent it has the legal right to do so, pass through to the Customer the full extent of any product warranty (by the applicable manufacturer) relating to the Equipment.
 - (b) Except as otherwise provided in clauses 3.1(a) or 11.5, Prosum makes no representations (and gives no warranties), of any kind relating to the Equipment.
 - (c) Risk in relating to the loss of or damage to the Equipment passes to the Customer once the Equipment has been despatched by Prosum (or Prosum’s applicable supplier or manufacturer) for delivery to the Customer.
 - (d) Title to the Equipment shall pass to the Customer upon receipt by Prosum (in immediately available funds) of all amounts due to be paid under the Proposal by the Customer to Prosum for the supply of the Equipment.

4. SUPPLY OF MAINTENANCE SERVICES

- 4.1** To the extent the Proposal includes the supply of Maintenance Services to the Customer (in respect of one or more items of Equipment) then:
 - (a) The Customer is responsible for ensuring the Equipment is free of defects and operating normally at the commencement of the Maintenance Services Term.
 - (b) Prosum will provide parts and labour throughout the Maintenance Services Term to ensure the applicable Equipment remains in serviceable condition. All parts removed for replacement will become the property of Prosum. All parts installed will become the property of the Customer.
 - (c) Prosum will however be excused from its obligations pursuant to clause 4.1(b) to the extent the necessary parts, services, information, software and/or Intellectual Property Rights cease to be

available to Prosum for any reason. In such event Prosum shall refund to the Customer (on a pro rata basis) any Fees that have been prepaid by the Customer and which relate to the period during which Prosum was unable to provide the applicable parts and/or labour.

- (d) Any Maintenance Services provided by Prosum pursuant to this clause 4.1 will be performed substantially in accordance with Schedule A (Service Levels).
- (e) The Maintenance Services will only be provided during Business Hours, except where specifically stated otherwise in the Proposal.
- (f) Preventive Maintenance Services (where necessary in accordance with the applicable manufacturer's specification as determined by Prosum) will be provided under the Agreement. Preventive Maintenance Services will be performed at a mutually agreeable time within Business Hours.
- (g) Additional Services requested by the Customer (for example, unscheduled remedial maintenance service outside Business Hours) will be provided, subject to availability, on a time-and-materials basis at Prosum's then current labour rates. The Customer shall pay for such additional services within 30 days of the date of Prosum's applicable invoice, including reasonable travel time and associated expenses.

5. SUPPLY OF CONSULTING SERVICES

5.1 To the extent the Proposal includes the supply of Consulting Services to the Customer (in respect of one or more items of Equipment) then:

- (a) Prosum will provide such Services in a workmanlike manner, but Prosum does not warrant that any specific outcome or results will result from the performance of those Services.
- (b) The Customer is responsible for ensuring the Services are described in sufficient detail to fulfil the stated commercial and technical requirements of the Customer.

6. OTHER OBLIGATIONS OF THE CUSTOMER

6.1 To the extent the Proposal includes the supply of Services to the Customer, the Customer:

- (a) will provide Prosum with all physical and remote access to the Equipment and associated communications facilities necessary for Prosum to provide such Services in an efficient and timely manner.
- (b) is responsible for ensuring Prosum has access to all internal resources and information of the Customer relevant to the performance of the Services.
- (c) will provide all consents, approvals and decisions relating to the Services as and when required by Prosum, to ensure the Services can be provided in an efficient and timely manner.
- (d) will ensure the site environmental conditions for the Equipment is kept within the tolerances specified by the manufacturer in respect of but not limited to, heat and humidity; and electrical supply.

7. EXCLUSIONS

7.1 The Agreement does not cover or include:

- (a) Services attributable to misuse of Equipment, external equipment problems, custom interfaces, use of improper supplies, attempted repair by the Customer or others, or conditions arising from abnormal usage of the Equipment.
- (b) Services necessary to correct defects or issues caused by software or systems being incorrectly shutdown, altered or configured by anyone other than Prosum,
- (c) Applying operating system patches on server-based products.
- (d) Repairs to Equipment operated outside the manufacturer's specifications, such as, but not limited to, fluctuation or failure of electrical power, cleanliness, temperature, humidity, and vibration.
- (e) Repairs to overcome failure of equipment not forming part of the Equipment.
- (f) Fault or negligence of any Customer Personnel;
- (g) Unauthorised de-installation, removal, and / or re-installation of Equipment at another location.

- (h) Repairs or parts required to repair damage to equipment caused by acts of God, fire, water, accident, malicious damage, wars, riots, strikes, lockouts or causes beyond Prosum's reasonable control.
- (i) Refurbishing due to causes beyond the scope of normal preventive and remedial maintenance, including non-performance of recommended regular cleaning by the Customer, the use of unapproved consumables, the completion of the life expectancy of the Equipment, or unreliability which cannot be improved by regular maintenance services.
- (j) Equipment faults or damages existing prior to the Effective Date.

8. FEES AND PAYMENT TERMS

- 8.1** Prosum will issue a tax invoice for the applicable Fees in anticipation of the due dates specified in the Proposal or otherwise in accordance with this clause 8. All Fees must be paid by the Customer within thirty (30) days of the date of the applicable invoice.
- 8.2** Where Fees are specified in the Proposal on a per-annum basis, such fees are payable (and will be invoiced) in advance as specified in the Proposal.
- 8.3** In addition to paying the Fees and any other amounts payable under or in connection with the Agreement (such sums being exclusive of GST), the Customer will pay to Prosum an amount equal to any GST payable on any supply by Prosum to the Customer in respect of which the Fees or such other amounts is payable under the Agreement.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1** The Customer agrees that any and all Intellectual Property Rights resulting from the provision of the Services by Prosum will be the sole property of Prosum and the Customer agrees to take all steps necessary and to execute any assignment or other instrument to give effect to this clause 9 including, if necessary, obtaining assignments from the Customer's Personnel.
- 9.2** At the request and expense of Prosum, the Customer will: (a) provide assistance to Prosum in relation to, the filing of patent applications in countries selected by Prosum; (b) give all reasonable assistance in connection with the preparation and prosecution of any such patent applications; and (c) cause to be executed all assignments and other instruments and documents as Prosum may consider necessary or appropriate to carry out the intent of this clause 9.
- 9.3** The Customer represents and warrants that the Customer Personnel will not provide or otherwise make available to Prosum any materials, information or documents of a third party that are not generally available to the public, unless: (a) the Customer has obtained prior written authorisation from such party for the unconditional possession and use of such materials; and (b) all Intellectual Property Rights in such materials are lawfully assigned to Prosum to the extent such materials form any part of the Deliverables or were used in the performance of the Services.

10. CONFIDENTIALITY

- 10.1** The Customer will treat all Confidential Information as strictly confidential and agrees not to discuss it with third parties and must only disclose or use Confidential Information as required for the purpose of receiving the Services, or as otherwise approved in advance in writing by Prosum.
- 10.2** The Customer will ensure that all Confidential Information made available to it or to the Customer Personnel by Prosum during the currency of the Agreement is safely and securely stored when not in use.
- 10.3** The Customer will promptly, upon notice by Prosum, hand over to Prosum all whole or partial copies of Confidential Information in the possession, power or control of the Customer Personnel, and will not make or retain any copies of them.
- 10.4** The Customer will not remove (or cause or permit to be removed by the Customer Personnel) any Confidential Information from the Customer's principal place of business.
- 10.5** The provisions of clauses 10.1 to 10.4 do not apply to:
 - (a) information which at the time of its first disclosure or observation pursuant to the Agreement was generally available to the public;
 - (b) the use or disclosure of information received by the Customer from a third person (other than from the Customer Personnel) legally entitled to provide it to the Customer, where the use or

disclosure by the Customer accords with the rights or permission lawfully granted to the Customer by that third person; or

- (c) information after it becomes generally available to the public other than because of:
 - (i) a breach of any part of clause 10; or
 - (ii) any other misuse or unauthorised disclosure by any Customer Personnel of any Confidential Information.

10.6 The parties agree to keep the contents of the Agreement confidential as between themselves and their legal and financial advisers.

11. LIABILITY

11.1 The Customer hereby irrevocably indemnifies Prosum, and Prosum's officers, employees and agents from and against any loss, damage or injury (including death) to property or employees of Prosum resulting from the negligent acts or omissions of any Customer Personnel in connection with the Agreement or its subject matter.

11.2 The liability of Prosum for damages in connection with or arising out of the Agreement will be limited to the replacement of the goods or the supply of equivalent goods, the repair of the goods or the payment of the cost of having the goods repaired, the supply of the services or the payment of the cost of having the services supplied again. In addition Prosum will not be liable for any indirect, special or consequential damages, or for any loss of or damage to revenue, data or business reputation, in connection with or arising out of its obligations under the Agreement.

11.3 To the extent permitted by law, no action, regardless of form, arising out of any alleged breach of the Agreement or obligations under the Agreement may be brought by either Party more than two (2) years after the cause of action has accrued.

11.4 Except to the extent prohibited by applicable law, all warranties not expressly specified in the Agreement (including for example warranties of fitness for purpose) are hereby excluded.

11.5 Nothing in the Agreement excludes, restricts or modifies any condition, warranty, right or remedy conferred on a Party by the *Trade Practices Act 1974 (Cth)*, or any other applicable law, that cannot be executed or modified by agreement.

12. INSURANCE

12.1 Prosum shall maintain public liability Insurance, workers compensation insurance and insurance against liability for death of or injury to its employees for the period during which Prosum is providing the Services.

12.2 Prosum shall provide a certificate of currency to the Customer in respect of such insurance cover upon request by the Customer.

13. ASSIGNMENT

The Customer must not assign or transfer the Agreement (by operation of law, as a result of change of control, or otherwise) without the prior written consent of Prosum, and any assignment without such consent will be null and void.

14. FORCE MAJEURE

14.1 With the exception of an obligation to make a payment, a Party ("**Affected Party**") will not be liable for any delay or failure to perform its obligations if such failure or delay is due to Force Majeure.

14.2 The Affected Party will notify the other Party as soon as practical of any anticipated delay due to Force Majeure. The performance of Affected Party's obligations under this Agreement will be suspended for the period of the delay due to Force Majeure

14.3 If a delay due to Force Majeure exceeds 14 days, Prosum may terminate the Agreement immediately on providing notice to the Customer. If Prosum gives such notice to the Customer:

- (a) Prosum will refund moneys previously paid by the Customer under this Agreement for which no Equipment and/or Services (as the case requires) have been provided; and
- (b) The Customer will pay Prosum a reasonable sum in relation to Services rendered or costs and expenses incurred prior to termination for which no payment has been made by the Customer.

15. TERMINATION

15.1 Either Party may terminate the Agreement immediately by notice in writing to the other Party:

- (a) in the case of termination by Prosum, at any time during the Agreement, upon giving the Customer one months' prior notice in writing expressing an intention to terminate (without any need to specify any reason);
- (b) if the other Party is in breach of any clause of the Agreement and such breach is not remedied within 14 days of written notice of the breach by the first Party; and
- (c) if the other Party ceases to be able to comply with the terms of the Agreement due to insolvency, but not so if Prosum continues to be able to deliver the Services.

16. SURVIVAL

The following clauses will survive the termination or expiration of this Agreement: 3.1(b), 3.1(c), 8.1, 8.3, 9.1, 9.2, 10, 11, 13 and 17.

17. GENERAL

- 17.1 All notices, including notices of address changes, required to be sent under or in relation to the Agreement will be in writing and will be deemed to have been validly despatched when mailed or sent by facsimile transmission to the address of the recipient as specified in the Proposal (or to such address as subsequently amended by written notice to that recipient). Notices will be deemed to have been received two (2) days after the date of mailing, or in case of facsimile transmission on the date on which the sending facsimile machine reports that the transmission was completed without error.
- 17.2 The Agreement is made in and will be governed by the laws of Victoria, without regard to its choice of law principles. Each Party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning the Agreement, the Services or the Deliverables.
- 17.3 The Agreement may be amended only by a written document executed by a duly authorised representative of each of the Parties. No purchase order or other document that purports to modify or supplement the Agreement will add to or vary the terms of the Agreement. All proposed variations or additions (whether submitted by Prosum or the Customer) are objected to and deemed material unless otherwise agreed to in writing signed on behalf of both Parties.
- 17.4 If any provision of the Agreement is held to be unenforceable, this Agreement will be construed without such provision.
- 17.5 No failure to exercise nor any delay in exercising any right, power or remedy by a Party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.
- 17.6 The Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior agreements and understandings between the Parties in connection with it. However, to the extent there is any conflict between the terms of the Agreement and any previously executed confidentiality agreement, the terms providing the most protection to Prosum's confidential information will prevail.
- 17.7 Each Party agrees to do all things and executes all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of the Agreement and the transactions contemplated by it.
- 17.8 The parties expressly disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods.
- ## 18. DEFINITIONS AND INTERPRETATION
- 18.1 In this Agreement unless expressly provided to the contrary:
- (a) "**Confidential Information**" means any information or material (including material provided to Prosum by third parties) disclosed by, or observed from, Prosum by the Customer Personnel solely or jointly with others in connection with the Services and/or Equipment. It includes without limitation: discoveries, ideas, trade secrets, know how, concepts, software in various stages of development, designs, drawings, specifications, techniques, models, data, source code, object

code, documentation, diagrams, flow charts, processes, procedures, customer lists, supplier lists and personal information.

- (b) **"Consulting Services"** means the consulting services (if any) to be provided by Prosum to the Customer, as described in the Proposal.
- (c) **"Customer Personnel"** means the Customer, and the employees, agents and advisors of the Customer.
- (d) **"Deliverable"** means the deliverables (if any) named, defined or otherwise described in the Proposal to arise from the performance of the Services or the supply of the Equipment.
- (e) **"Effective Date"** means the date from which Prosum is required to provide the Services, as specified in the Proposal or otherwise agreed between the Parties.
- (f) **"Equipment"** means, as the context requires, either:
 - (i) the goods (if any) to be provided by Prosum to the Customer; or
 - (ii) the goods which are to be the subject of Maintenance Services and/or Consulting Services to be provided by Prosum to the Customer,as described in the Proposal.
- (g) **"Fees"** means the fees specified in the Proposal and will be read in conjunction with any payment schedule specified in the Proposal.
- (h) **"Force Majeure"** means an act, omission or circumstance over which the affected Party could not reasonably have exercised control.
- (i) **"GST"** means:
 - (i) the same as in the GST Law;
 - (ii) any other goods and services tax, or any tax applying to the Agreement in a similar way; and
 - (iii) any additional tax, penalty tax, fine, interest or other charge under a law of such a tax.
- (j) **"GST Law"** means the same as "GST law" in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (k) **"Intellectual Property Rights"** means all present and future rights conferred by statute, common law or equity in or in relation to any confidential information, copyright, trade marks, service marks, designs, patents, circuit layouts, business and domain names, inventions, know-how and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not such rights are registered or registrable (including the right to apply for registration of such rights).
- (l) **"Maintenance Services"** means the maintenance services (if any) to be provided by Prosum to the Customer, as described in the Proposal.
- (m) **"Maintenance Services Term"** means the period as described in the Proposal during which Maintenance Services (if any) will be provided by Prosum to the Customer.
- (n) **"Moral Right"** means:
 - (i) a right of attribution of authorship;
 - (ii) a right not to have attribution falsely attributed;
 - (iii) a right of integrity of authorship; or
 - (iv) a right of similar nature,which is conferred by statute, and which exists or comes to exist anywhere in the world in a deliverable form arising in whole or in part from performance of the Services.
- (o) **"Parties"** means Prosum and the Customer and Party means either of them.
- (p) **"Proposal"** means a proposal, quotation, statement of work or other document issued by Prosum and detailing the goods or services Prosum proposes to supply to the Customer.
- (q) **"Schedule"** means a schedule to these Terms.

- (r) **"Services"** means the Consulting Services and/or the Maintenance Services (as applicable), as described in the Proposal.
- (s) **"Special Conditions"** means any special conditions specified in the Proposal.

18.2 The following rules apply unless the context requires otherwise:

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The singular includes the plural and conversely.
- (c) A gender includes all genders.
- (d) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (e) A reference to a person, corporation or other entity includes any of them.
- (f) A reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or annexure to, this Agreement.
- (g) A reference to an agreement or document (including, without limitation, a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by the Agreement or that other agreement or document.
- (h) A reference to a Party to the Agreement or another agreement or document includes the Party's successors, permitted substitutes and permitted assigns (and, where applicable, the Party's legal personal representatives).
- (i) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- (k) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (l) The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.
- (m) Nothing in the Agreement is to be interpreted against a Party solely on the ground that the Party put forward the Agreement or any part of it.
- (n) A reference to "Customer Personnel" is separately a reference to each such person individually and collectively.

18.3 If the doing of any act, matter or thing under the Agreement is dependent on the consent or approval of a Party or is within the discretion of a Party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the Party in its absolute discretion unless express provision to the contrary has been made.

SCHEDULE A – SERVICE LEVELS

This Schedule applies only to the Maintenance Services

1. DEFINITION OF “RESPONSE TIME”

“Response Time” shall mean the duration of time during Business Hours (8:00am-6:00pm Monday to Friday excluding Public Holidays), commencing from a notification fault or failure (“**Fault**”) and ending when Prosum’s technician commences work to correct the fault. This may be by a technician attending on site or by remote intervention using remote access, or otherwise contacting Customer Personnel to assist the Customer to isolate the problem.

2. SEVERITY LEVELS

Dependent upon the severity of the Fault reported, Prosum shall respond to a Fault logged by the Customer according to the following categories;

Major Failure –System is not processing calls or imminent failure likely.

> 30% of users affected or not receiving priority inbound calls (e.g. 13 / 1300 / 1800, Listed Directory)

Minor Failure - System is processing calls

< 30% of the users affected.

Non-Urgent - Single user is affected.

3. RESPONSE TIMES (DURING BUSINESS HOURS)

Major Failure - 2 hours

Minor Failure - 4 hours

Non-Urgent - 8 hours

Business Hours 8:00am-6:00pm Monday to Friday (excluding Public Holidays)

4. AFTER HOURS SUPPORT COVERAGE

Reports of Faults or other Services delivered outside Business Hours will be performed at the rate of \$ 300.00 per hour (plus GST), with a minimum charge of 3 hours per occurrence.

5. MAINTENANCE SERVICES INCLUDED IN THE AGREEMENT

System Support:

- Response times in conjunction with the above Severity Levels.
- Liaison with preferred Carrier for Fault rectification and provisioning. Ad hoc technical advice on issues relating to the Equipment and associated carrier-related issues.
- Replacement of parts, to the extent required under the Agreement and subject to the Exclusions listed below.
- System software restoration.
- Backup of Customer Data

System Administration:

- Provide dial up support for basic Additions, Moves & Changes(although note that unless otherwise agreed no Response Time commitments will apply).
- Where reasonable to do so, provide temporary solution to work around the impact of any Fault.

6. EXCLUSIONS

- Additions, Moves and Changes that require additional on site attendance in excess of standard coverage
- Provision of additional hardware, software or licensed products
- Adds, Moves & Changes or upgrades that would be considered, and agreed, 'project based' and therefore are outside the normal request.
- Management of cable patching records.
- Installation or upgrade to building or distribution cabling.