

Entello Pty Ltd and the National Institute of Financial Studies Pty Ltd (Entello Group) – Terms & Conditions of Trade

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Definitions</p> <p>1.1 "Goods & Services Provider" shall mean Entello Pty Ltd or the National Institute of Financial Studies Pty Ltd and their successors and assigns.</p> <p>1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.</p> <p>1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Client on a principal debtor basis.</p> <p>1.4 "Goods" shall mean Goods supplied by the Goods & Services Provider to the Client (and where the context so permits shall include any supply of Services as hereinafter defined).</p> <p>1.5 "Services" shall mean all services supplied by the Goods & Services Provider to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).</p> <p>1.6 "Price" shall mean the cost of the Goods as agreed between the Goods & Services Provider and the Client subject to clause 4 of this contract.</p> <p>1.7 "Trade Client" shall mean a retail book store.</p> <p>2. Acceptance</p> <p>2.1 Any instructions received by the Goods & Services Provider from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Goods & Services Provider shall constitute acceptance of the terms and conditions contained herein.</p> <p>2.2 Where more than one Client has entered into this agreement, the Client's shall be jointly and severally liable for all payments of the Price.</p> <p>2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Goods & Services Provider.</p> <p>2.4 None of the Goods & Services Provider's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Goods & Services Provider in writing nor is the Goods & Services Provider bound by any such unauthorised statements.</p> <p>2.5 The Client undertakes to give the Goods & Services Provider not less than fourteen (14) days prior written notice of any proposed change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice).</p> <p>3. Goods</p> <p>3.1 The Goods are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Goods & Services Provider to the Client.</p> <p>4. Price And Payment</p> <p>4.1 At the Goods & Services Provider's sole discretion;</p> <p>(a) The Price shall be as indicated on invoices provided by the Goods & Services Provider to the Client in respect of Goods supplied; or</p> <p>(b) The Price of the Goods shall be the Goods & Services Provider's quoted Price which shall be binding upon the Goods & Services Provider provided that the Client shall accept in writing the Goods & Services Provider's quotation within thirty (30) days.</p> <p>4.2 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods.</p> <p>4.3 At the Goods & Services Provider's sole discretion, payment for approved Clients shall be made by instalments in accordance with the Goods & Services Provider's delivery/payment schedule.</p> <p>4.4 At the Goods & Services Provider's sole discretion, for certain approved Clients payment will be due seven (7) or fourteen (14) days following the date of the invoice.</p> <p>4.5 Payment will be made by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Client and the Goods & Services Provider.</p> <p>4.6 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Goods & Services Provider.</p> <p>5. Delivery Of Goods / Services</p> <p>5.1 Delivery of the Goods shall be made to the Client's address. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Client at the Goods & Services Provider's address.</p> <p>5.2 Delivery of the Goods to a carrier, either named by the Client or failing such naming to a carrier at the discretion of the Goods & Services Provider for the purpose of transmission to the Client, is deemed to be a delivery of the Goods to the Client.</p> <p>5.3 The costs of carriage and any insurance which the Client reasonably directs the Goods & Services Provider to incur shall be reimbursed by the Client (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Client's agent.</p> <p>5.4 The failure of the Goods & Services Provider to deliver shall not entitle either party to treat this contract as repudiated.</p> <p>5.5 The Goods & Services Provider shall not be liable for any loss or damage whatever due to failure by the Goods & Services Provider to deliver the Goods (or any of them) promptly or at all.</p> <p>6. Risk</p> <p>6.1 If the Goods & Services Provider retains property in the Goods nonetheless, all risk for the Goods passes to the Client on delivery.</p> <p>7. Client's Disclaimer</p> <p>7.1 The Client acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Goods & Services Provider shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Client and shall not be transferable to any subsequent Client.</p> <p>8. Defect/Returns</p> <p>8.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Goods & Services Provider of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Goods & Services Provider an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.</p> <p>8.2 For defective Goods, which the Goods & Services Provider has agreed in writing that the Client is entitled to reject, the Goods & Services Provider's liability is limited to either (at the Goods & Services Provider's discretion) replacing the Goods or repairing the Goods provided that:</p> <p>(a) the Client has complied with the provisions of clause 8.1;</p> <p>(b) the Goods are returned at the Client's cost within fourteen (14) days of the delivery date;</p> <p>(c) the Goods & Services Provider will not be liable for Goods which have not been stored or used in a proper manner;</p> <p>(d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonable possible in the circumstances.</p> <p>8.3 In the event that the Client is a "Trade Client" then unsold goods may be returned on a (ninety) 90 day sale or return basis so long as the Goods are returned in the condition as they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonable possible in the circumstances, unless another agreement states otherwise.</p> <p>9. Warranty</p> <p>9.1 Warranty shall be the current warranty provided by the manufacturer of the Goods. The Goods & Services Provider shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturers warranty.</p> <p>10. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts</p> <p>10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.</p> <p>11. Intellectual Property</p> <p>11.1 Where the Goods & Services Provider has provided Goods and Services for the Client, then the copyright in those Goods and Services shall remain vested in the Goods & Services Provider, and shall only be used by the Client at the Goods & Services Provider's discretion.</p> <p>12. Default & Consequences Of Default</p> <p>12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.</p> <p>12.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Goods & Services Provider from and against all the Goods & Services Provider's costs and disbursements including on a solicitor and own client basis and in addition all of the Goods & Services Provider's nominees costs of collection.</p> <p>12.3 Without prejudice to any other remedies the Goods & Services Provider may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Goods & Services Provider may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Goods & Services Provider will not be liable to the Client for any loss or damage the Client suffers because the Goods & Services Provider exercised its rights under this clause.</p> <p>12.4 If any account remains unpaid at the end of the second month after supply of the goods or services the following shall apply: An immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.</p> <p>12.5 In the event that:</p> <p>(a) any money payable to the Goods & Services Provider becomes overdue, or in the Goods & Services Provider's opinion the Client will be unable to meet its payments as they fall due; or</p> <p>(b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client;</p> <p>then without prejudice to the Goods & Services Provider's other remedies at law</p> <p>(i) the Goods & Services Provider shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies; and</p> | <p>(ii) all amounts owing to the Goods & Services Provider shall, whether or not due for payment, immediately become payable.</p> <p>13. Title</p> <p>13.1 It is the intention of the Goods & Services Provider and agreed by the Client that property in the Goods shall not pass until:</p> <p>(a) The Client has paid all amounts owing for the particular Goods, and</p> <p>(b) The Client has met all other obligations due by the Client to the Goods & Services Provider in respect of all contracts between the Goods & Services Provider and the Client, and that the Goods shall be kept separate until the Goods & Services Provider shall have received payment and all other obligations of the Client are met.</p> <p>13.2 It is further agreed that:</p> <p>(a) Until such time as ownership of the Goods shall pass from the Goods & Services Provider to the Client the Goods & Services Provider may give notice in writing to the Client to return the Goods or any of them to the Goods & Services Provider. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease.</p> <p>(b) If the Client fails to return the Goods to the Goods & Services Provider then the Goods & Services Provider or the Goods & Services Provider's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.</p> <p>14. Security And Charge</p> <p>14.1 Notwithstanding anything to the contrary contained herein or any other rights which the Goods & Services Provider may have howsoever:</p> <p>(a) Where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Goods & Services Provider or the Goods & Services Provider's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Goods & Services Provider (or the Goods & Services Provider's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.</p> <p>(b) Should the Goods & Services Provider elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Goods & Services Provider from and against all the Goods & Services Provider's costs and disbursements including legal costs on a solicitor and own client basis.</p> <p>(c) To give effect to the provisions of clause 14.1 (a) and (b) inclusive hereof the Client and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Goods & Services Provider or the Goods & Services Provider's nominee as the Client's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Goods & Services Provider and/or the Goods & Services Provider's nominee shall think fit in his/her/its their absolute discretion against the joint and/or several interest of the Client and/or the Guarantor in any land, realty or asset in favour of the Goods & Services Provider and in the Client's and/or Guarantor's name as may be necessary to secure the said Client's and/or Guarantor's obligations and indebtedness to the Goods & Services Provider and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Goods & Services Provider's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.</p> <p>15. Cancellation</p> <p>15.1 The Goods & Services Provider may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Goods & Services Provider shall not be liable for any loss or damage whatever arising from such cancellation.</p> <p>16. Privacy Act 1988</p> <p>16.1 The Client and/or the Guarantor/s agree for the Goods & Services Provider to obtain from a credit-reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Goods & Services Provider.</p> <p>16.2 The Client and/or the Guarantor/s agree that the Goods & Services Provider may exchange information about Client and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:</p> <p>(a) To assess an application by Client;</p> <p>(b) To notify other credit providers of a default by the Client;</p> <p>(c) To exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and</p> <p>(d) To assess the credit worthiness of Client and/or Guarantor/s.</p> <p>16.3 The Client consents to the Goods & Services Provider being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).</p> <p>16.4 The Client agrees that Personal Data provided may be used and retained by the Goods & Services Provider for the following purposes and for other purposes as shall be agreed between the Client and Goods & Services Provider or required by law from time to time:</p> <p>(a) provision of Services & Goods;</p> <p>(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services/Goods;</p> <p>(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and</p> <p>(d) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services and Goods.</p> <p>16.5 The Goods & Services Provider may give, information about the Client to a credit reporting agency for the following purposes:</p> <p>(a) to obtain a consumer credit report about the Client; and or</p> <p>(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.</p> <p>17. Unpaid Goods & Services Provider's Rights To Dispose Of Goods</p> <p>17.1 In the event that:</p> <p>(a) the Goods & Services Provider retains possession or control of the Goods; and</p> <p>(b) payment of the Price is due to the Goods & Services Provider; and</p> <p>(c) the Goods & Services Provider has made demand in writing of the Client for payment of the Price in terms of this contract; and</p> <p>(d) the Goods & Services Provider has not received the Price of the Goods,</p> <p>then, whether the property in the Goods has passed to the Client or has remained with the Goods & Services Provider, the Goods & Services Provider may dispose of the Goods and may claim from the Client the loss to the Goods & Services Provider on such disposal.</p> <p>18. Lien & Stoppage in Transit</p> <p>18.1 Where the Goods & Services Provider has not received or been tendered the whole of the price, or the payment has been dishonoured, the Goods & Services Provider shall have:</p> <p>(a) a lien on the goods;</p> <p>(b) the right to retain them for the price while the Goods & Services Provider is in possession of them;</p> <p>(c) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and</p> <p>(d) a right of resale,</p> <p>(e) the foregoing right of disposal.</p> <p>provided that the lien of the Goods & Services Provider shall continue despite the commencement of proceedings or judgement for the price having been obtained.</p> <p>19. General</p> <p>19.1 If any provision of these terms and conditions shall be invalid, void or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>19.2 All Goods supplied by the Goods & Services Provider are subject to the laws of Queensland and the Goods & Services Provider takes no responsibility for changes in the law which affect the Goods supplied.</p> <p>19.3 The Goods & Services Provider shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Goods & Services Provider of these terms and conditions.</p> <p>19.4 In the event of any breach of this contract by the Goods & Services Provider the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Goods & Services Provider exceed the Price of the Services.</p> <p>19.5 The Goods & Services Provider may license or sub-contract all or any part of its rights and obligations without the Client's consent.</p> <p>19.6 The Goods & Services Provider reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Goods & Services Provider notifies the Client of such change.</p> <p>19.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.</p> |
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