

Terms and Conditions (Data Services)

1 Supply of the Services

1.1 Supply

- (a) These terms and conditions apply to the sale of all services (which may include training and support) (Services) supplied, or to be supplied, by the Supplier to the person requesting the supply of those Services (Customer) and whose details are specified in the quotation or other documentation (including email) produced by the Supplier and incorporated by reference into these term and conditions (together, the Contract).
- (b) The Customer may from time to time place a request with the Supplier for Services.
- (c) Subject to the Customer paying the Fees in accordance with clause 3, if the Supplier notifies the Customer that it accepts a Request then the Supplier must endeavour to provide the Services to the Customer in volumes acceptable to the Supplier.
- (d) For clarity, the Supplier may elect not to accept a Request.
- (e) The Supplier may provide any data that forms part of the Deliverables to the Customer in a format acceptable to the Supplier.

1.2 Customer requirements

The Customer must:

- (a) provide the Supplier with access to the Customer's premises and the necessary facilities and equipment to enable the Supplier to provide the Services;
- (b) provide the Supplier with a safe and secure working environment at the Customer's premises in accordance with all applicable workplace health and safety laws;
- (c) provide the Supplier, in a format and manner acceptable to the Supplier, with the Customer Data and any other material, information and assistance (including site calibrations and relevant software versions) necessary to enable the Supplier to provide the Services; and
- (d) cooperate with the Supplier and act reasonably in connection with this agreement and receipt of the Services.

1.3 Acknowledgement

The Customer acknowledges and agrees that:

- (a) any timeframes provided by the Supplier to the Customer in relation to particular Services are an estimate only, and are not binding on the Supplier;
- (b) if the Customer does not comply with clause 1.2 then the Supplier is not obliged to supply the Services to the Customer;
- (c) the Supplier, in entering into this agreement, is relying on the warranties and on the representations in or under this agreement; and
- (d) the Supplier is relying on the accuracy and completeness of the Customer Material in performing the Services.
- (e) No quotation or estimate provided by the Supplier to the Customer constitutes an offer to sell or to contract and no binding contract will arise as a result of any purchase order or other documentation received by the Supplier from the Customer in relation to a quotation or estimate (Offer) except as a result of the acceptance by the Supplier of an Offer made by the Customer that incorporates these Terms and Conditions (Data Services).
- (f) If the Customer has made an application to the Supplier for the provision of credit in relation to the sale of Services contemplated by the Contract then the Customer acknowledges that the Supplier's obligations under the Contract remain subject at all times to the Supplier being prepared to provide such credit to the Customer on terms satisfactory to the Supplier.

2 Warranties

2.1 Intellectual property warranty

The Customer represents and warrants that use of the Customer Material will not infringe the Intellectual Property Rights or other rights of any third party.

2.2 Customer Accuracy and reliance warranties

The Customer represents and warrants, and it is a condition of this agreement, that:

- (a) all information and Customer Material provided by the Customer or on the Customer's behalf to the Supplier is complete and accurate and is not, whether by omission of information or otherwise, misleading;
- (b) the Customer has not withheld from the Supplier any document, information or other fact material to the decision of the Supplier to enter into this agreement; and
- (c) the Customer did not rely upon any representation made to the Customer by the Supplier or any Related Body Corporate of the Supplier (if any) prior to entry into this agreement.

2.3 Acknowledgement

The Customer acknowledges that the Supplier is relying on the representations and warranties of the Customer in this clause 2 in entering into this agreement.

2.4 Supplier Warranties

The Supplier warrants that it:

- (a) has the requisite skills, experience and expertise to carry out the Services in accordance with these terms and conditions;
- (b) has reviewed and analysed and understood all the information provided to it; and
- (c) will use all reasonable endeavours to co-operate with the Customer and any other party nominated by the Customer including any other consultant to complete the Services in a manner consistent with both the Project and the scope of Services;
- (d) will use all reasonable endeavours to co-ordinate the performance of the Services with any services being performed by other consultants;
- (e) has reviewed the documents and/or digital data supplied by the Customer, quantified the items requested by the Customer which are free from errors, omissions and/or any other discrepancies;
- (f) indemnifies the Customer, in the event that any such errors are later discovered, based on the information provided to the Supplier (see clause 7.2 for limitations); and
- (g) if any errors or discrepancies are found in the documents or digital data supplied by the Customer the Supplier will use all reasonable endeavours to notify the Customer of the errors or discrepancy found.

3 Fees

3.1 Fees

- (a) The Customer must pay the Fees and Expenses to the Supplier in the manner contemplated by the Proposal.
- (b) If there is a dispute about whether a Fee, Expense or other amount contemplated by this agreement is payable or available, the Customer must not withhold the amount in dispute.
- (c) The Fees may change during the Term in the manner contemplated by the Proposal.

3.2 Invoices

- (a) the Supplier must invoice the Customer from time to time for the Fees and Expenses.
- (b) The Customer must pay an invoice issued under clause 3.2(a) within 14 days after the date of issue of the invoice.

3.3 Deferral of performance

If the Customer fails to pay the Fees and Expenses in accordance with this agreement, without limiting any other remedies available to the Supplier, the Supplier may defer performance of all Services until the outstanding Fees and Expenses are paid.

4 Term and termination

4.1 Term

This agreement commences on the Commencement Date and continues until terminated in accordance with this clause 4.

4.2 Termination for breach

(a) If:

- (i) the Customer commits a breach of this agreement; or
- (ii) an Insolvency Event occurs in relation to the Customer,

then the Supplier may terminate this agreement by written notice to the Customer in which case this agreement will terminate on the date specified in that written notice or, if no date is specified, immediately.

(b) If the Supplier:

- (i) commits a material breach of this agreement that has a material and adverse affect on the Customer; and
- (ii) fails to remedy that breach within 60 days of receiving written notice from the Customer requiring that the Supplier remedy that breach,

then the Customer may terminate this agreement by written notice to the Supplier in which case this agreement will terminate immediately.

4.3 Termination for convenience

- (a) Subject to clause 4.3(b) either party may terminate this agreement at any time by one month's written notice to the other party.
- (b) If the Customer terminates this agreement under clause 4.3(a), the Customer must pay to the Supplier the costs (as notified by the Supplier to the Customer), which have or will be incurred by the Supplier in connection with accepted Requests, including staffing costs.

4.4 Waiver and acknowledgement

- (a) The Customer expressly waives any rights it may have to terminate this agreement other than as contemplated by clauses 4.2(b) or 4.3.
- (b) The Customer acknowledges that the Supplier may terminate this agreement under this clause 4 without considering the impact of the termination on the Customer.

4.5 After termination

On termination of this agreement:

- (a) accrued rights or remedies of a party are not affected; and
- (b) the Customer must deliver to the Supplier any of the Supplier's Confidential Information or other property in the Customer's care, custody or control.

4.6 Survival

Termination of this agreement will not affect clauses 4.5, 5.1, 5.3, 6, 7 or 8 or any provision of this agreement which is expressly or by implication intended to come into force or continue on or after the termination.



5 Intellectual property

5.1 Licence of the Supplier material

- (a) Subject to the Customer paying the Fees in accordance with this agreement, the Supplier grants to the Customer a non-exclusive, licence to use each Deliverable solely for the purpose for which it was provided to the Customer.
- (b) The licence granted under clause 5.1(a) does not include the right to sublicense to third parties.

5.2 No assignment

Subject to clause 5.1(a), nothing in this agreement grants the Customer any Intellectual Property Rights or other rights in any the Supplier Material.

5.3 Licence of customer material

- (a) The Customer grants to the Supplier a non-exclusive, irrevocable, global licence to exercise the Intellectual Property Rights in any Customer Material in connection with the Supplier providing Services to the Customer including by modifying and using the Customer Material.
- (b) The licence granted under clause 5.3(a) includes the right to sublicense to third parties.

6 Confidential information

6.1 Obligations of confidence

Each party agrees to keep confidential, and not to use or disclose, other than as permitted by this agreement, any Confidential Information of the other party provided to or obtained by that party prior to or after entry into this agreement.

6.2 Exclusions

The obligations of confidence in clause 6.1 do not apply to Confidential Information:

- (a) that is required to be disclosed by applicable law, or under compulsion of law by a court or government agency or by the rules of any relevant stock exchange or regulator, as long as the disclosing party:
 - (i) discloses the minimum amount of Confidential Information required to satisfy the law or rules; and
 - (ii) before disclosing any information, gives a reasonable amount of written notice to the other party and takes all reasonable steps (whether required by the other party or not) to maintain such Confidential Information in confidence;
- (b) that is in the public domain otherwise than as a result of a breach of this agreement or other obligation of confidence; or
- (c) that is already known by, or rightfully received, or independently developed, by the recipient of that Confidential Information free of any obligation of confidence.

6.3 Restriction on disclosure

Each party may use and disclose Confidential Information of the other party only:

- (a) with the prior written consent of the other party; or
- (b) to that party's directors, agents, related bodies corporate, third party service providers, professional advisors, employees, contractors and permitted sub-contractors solely for the exercise of rights or the performance of obligations under this agreement.

7 Limitation of liability

7.1 Exclusion

The Supplier is not liable for any loss or damage, however caused, in connection with any misleading, inaccurate or incomplete Customer Material, and any rectification work required due to misleading, inaccurate or incomplete Customer Material must be the subject of a new Request.

7.2 Limitation

- (a) Subject to clauses 7.1, 7.3 and 7.5, any liability of the Supplier for any loss or damage, however caused (including by the negligence of the Supplier), suffered by the Customer in connection with this agreement is limited to 3 times the Fees.
- (b) The limitation set out in clause 7.2(a) is an aggregate limit for all claims, whenever made.

7.3 Consequential loss

- (a) Subject to clause 7.5, the Supplier is not liable for any Consequential Loss however caused (including by the negligence of the Supplier), suffered or incurred by the Customer in connection with this agreement.
- (b) Consequential Loss in clause 7.3 means:
 - (i) indirect loss;
 - (ii) consequential loss;
 - (iii) loss of revenues;
 - (iv) loss of reputation;
 - (v) loss of profits;
 - (vi) loss of bargain;
 - (vii) loss of actual or anticipated savings;
 - (viii) lost opportunities, including opportunities to enter into arrangements with third parties; and
 - (ix) loss or corruption of data.

7.4 Seriousness or nature

For clarity, and without limiting clauses 7.1 and 7.3, the parties agree that clauses 7.1 and 7.3 are to apply in connection with a breach of this agreement, anticipated breach of this agreement and other conduct regardless of the seriousness or nature of that breach, anticipated breach or other conduct.

7.5 Competition and Consumer

If the *Competition and Consumer Act 2010* (Cth) or any other legislation implies a guarantee, condition or warranty into this agreement in respect of goods or services supplied, and the Supplier's liability for breach of that condition or warranty may not be excluded but may be limited, clauses 7.1, 7.3 and 8.1 do not apply to that liability and instead the Supplier's liability for such breach is limited to, in the case of a supply of goods, the Supplier replacing the goods or supplying equivalent goods or repairing the goods, or in the case of a supply of services, the Supplier supplying the services again or paying the cost of having the services supplied again.

8 Indemnity

8.1 Customer indemnity

The Customer is liable for, and indemnifies the Supplier from and against, all loss or damage (including legal costs) incurred or suffered by the Supplier however caused in connection with:

- (a) any breach of this agreement by the Customer;
- (b) any alleged or actual infringement of a third party's Intellectual Property Rights or other right in connection with the Customer Material;
- (c) use of the Supplier Material by the Customer;
- (d) any misleading, inaccurate or incomplete Customer Material; or
- (e) any allegation or claim by a third party in connection with the Services.

8.2 Continuing obligation

Each indemnity contained in this agreement is a continuing obligation notwithstanding:

- (a) any settlement of account; or



(b) the occurrence of any other thing,

and it is not necessary for the Supplier to incur expense or make payment before enforcing or making a claim under an indemnity.

9 Change Control

- (a) The Customer may, from time to time, propose amendments to the Services by giving written notice to the Supplier.
- (b) The Supplier may accept or reject an amendment proposed under clause 9(a).
- (c) If the Supplier accepts a change proposed under clause 9(a), the Supplier must provide the Customer with written notice of the increased Fees due to the proposed change to the Services.
- (d) The Customer may elect to accept or reject the increased Fees notified under clause 9(c) by written notice to the Supplier.
- (e) If the Customer accepts the increased Fees in relation to amendments proposed under clause 9(a) those Fees and the proposed amendments will apply to this agreement from the date of that written notice.

10 Representatives

- (a) The Customer Representative will represent the Customer for the day to day purposes of this agreement.
- (b) the Supplier Representative will represent the Supplier for the day to day purposes of this agreement.

11 Force majeure

The Supplier will not be:

- (a) in breach of this agreement as a result of; or
- (b) liable for,

any failure or delay in the performance of the Supplier's obligations under this agreement to the extent that such failure or delay is wholly or partially caused, directly or indirectly, by a Force Majeure Event or any act or omission of the Customer.

12 Costs and taxes

- (a) Each party must meet or pay its own legal costs and disbursements in respect of the preparation, negotiation and execution of this agreement.
- (b) The Customer must pay all stamp duty (including penalties and interest) assessed or payable in connection with this agreement.
- (c) Subject to clause 13, the Customer must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this agreement.

13 GST

- (a) In this clause 13:
 - (i) **'GST Act Supplier'** means the entity making the Supply; and
 - (ii) other capitalised terms used that are not defined in clause 15.1 have the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) Except under this clause 13, the consideration for a Supply made under or in connection with this agreement does not include GST.
- (c) If a Supply made under or in connection with this agreement is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
 - (i) the Recipient must pay the GST Act Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under this agreement for that Supply); and
 - (ii) the GST Act Supplier must give the **Recipient** a Tax Invoice for the Supply.



- (d) If either party has the right under this agreement to be reimbursed or indemnified by another party for a cost incurred in connection with this agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).

14 General

- (a) The laws of Queensland, Australia govern this agreement.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, Australia and courts competent to hear appeals from those courts.
- (c) Where this agreement contemplates that the Supplier may consent to, elect, determine, approve, nominate, decide or consider any matter or thing, the Supplier may provide such consent or make such election, determination, approval, nomination, decision or consideration in its absolute discretion and conditionally or unconditionally without being required to give reasons or act reasonably, unless this agreement expressly requires otherwise.
- (d) The Customer must not assign, in whole or in part, or novate the Customer's rights and obligations under this agreement without the prior written consent of the Supplier.
- (e) The Supplier may assign its interest under this agreement.
- (f) Time is not of the essence in the performance of obligations under this agreement except in relation to performance of payment obligations.
- (g) Unless expressly stated otherwise, this agreement does not create a relationship of employment, trust, agency or partnership between the parties.
- (h) Each provision of this agreement will be read and construed as a separate and severable provision or part and if any provision is void or otherwise unenforceable for any reason then that provision will be severed and the remainder will be read and construed as if the severable provision had never existed.
- (i) This agreement represents the parties' entire agreement, and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing, relating to its subject matter.
- (j) may subcontract the performance of all or any part of the Supplier's obligations under this agreement.
- (k) A right under this agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.
- (l) Without limiting any other remedies available to the Supplier, if the Customer fails to pay any amount payable under this agreement, the Customer must pay Interest on that amount.

15 Definitions and interpretation

15.1 Definitions

In this agreement:

Commencement Date	means the date the Customer accepts the Proposal and/or the Supplier commences performing the Services for the Customer.
Confidential Information	of a party means the terms of this agreement and any information: <ul style="list-style-type: none">(a) relating to the business and affairs of that party;(b) relating to the customers, clients, employees, sub contractors or other persons doing business with that party;(c) which is by its nature confidential;(d) which is designated as confidential by that party; or(e) which the other party knows or ought to know, is confidential,



and includes all trade secrets, knowhow, financial information and other commercially valuable information of that party, and in the case of the Supplier, includes the Supplier Material.

Consequential Loss	has the meaning given in 7.3(b).
Corporations Act	means <i>Corporations Act 2001</i> (Cth).
Customer	means the customer specified in the Proposal.
Customer Data	means the data that the Supplier notifies the Customer that the Supplier requires in connection with performing the Services.
Customer Material	means the Customer Data and any material provided by or to which access is given by the Customer to the Supplier for the purposes of this agreement including documents, data, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, trade marks, logos, schedules and data stored by any means.
Customer Representative	means the customer representative set out in the Proposal.
Deliverable	means a deliverable provided to the Customer by the Supplier in the course of the Services.
Expenses	means any expenses incurred by the Supplier in connection with the Services, including consumables, travel, accommodation and meals.
Fees	mean the fees specified in the Proposal.
Force Majeure Event	<p>means any occurrence or omission outside a party's control and includes:</p> <ul style="list-style-type: none">(a) a physical natural disaster including fire, flood, lightning or earthquake;(b) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law;(c) epidemic or quarantine restriction;(d) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;(e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency;(f) failure of a third party service provider to the Supplier;(g) law taking effect after the date of this agreement; and(h) strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors.
Insolvency Event	<p>in the context of a person means:</p> <ul style="list-style-type: none">(a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the Corporations Act), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the person;(b) the person or the person's property or undertaking becomes subject to a personal insolvency arrangement under part X <i>Bankruptcy Act 1966</i> (Cth) or a debt agreement under part IX <i>Bankruptcy Act 1966</i> (Cth);(c) the person is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Act or is presumed to be insolvent under the Corporations Act;(d) the person ceases to carry on business; or



- (e) an application or order is made for the liquidation of the person or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the person, otherwise than for the purpose of an amalgamation or reconstruction.

Intellectual Property Rights

means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, moral right, patent, registered or unregistered trade mark, registered or unregistered design, registered or unregistered plant breeder's right, trade secret, knowhow, right in relation to semiconductors and circuit layouts, trade or business or company name, indication or source or appellation of origin or other proprietary right, or right of registration of such rights.

Interest

means interest on any payment owing under this agreement calculated:

- (a) at the rate which is 2% in excess of the published Australia and New Zealand Banking Group Limited variable interest rate for personal loans or, if lower, the maximum rate permitted by applicable law; and
- (b) daily from the date on which such payment was due to the date on which the payment is made (both inclusive) including the relevant Interest.

Proposal

means the Services proposed to be provided by the Supplier as outlined in a written proposal, quotation or email from the Supplier to the Customer and accepted by the Customer.

Related Body Corporate

has the meaning given to that term by section 9 Corporations Act.

Request

means a request contemplated by clause 1.1(a).

Services

means the services specified in the Proposal and agreed with the Customer.

Supplier

means the party providing the Services.

Supplier Material

means the Deliverables and any material provided by or to which access is given by 3D SiteWorxs Pty Ltd to the Customer for the purposes of this agreement including documents, data, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, schedules and data stored by any means.

Supplier Representative

means Supplier representative nominated in the Proposal.

Term

means the term contemplated by clause 4.1.

15.2 Interpretation

In this agreement:

- (a) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- (b) no rule of construction applies in the interpretation of this agreement to the disadvantage of the party preparing the document on the basis that it put forward this document or any part of it; and
- (c) a reference to a party is a reference to 3D SiteWorxs Pty Ltd or the Customer, and a reference to the parties is a reference to both 3D SiteWorxs Pty Ltd and the Customer.