



Pro Computers – Retail Terms of Trade

Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- to cancel your service contract with us; and
- to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

Any warranty against defects provided by Pro Computers to you in your capacity as a consumer under the Australian Consumer Law is in addition to your other rights and remedies under a law in relation to the goods or services to which the warranty relates.

1 General

- (a) These Terms of Trade apply to all transactions between the Customer and Pro Computers relating to the provision of Goods and Services. This includes all quotations, contracts and variations. These Terms of Trade take precedence over any terms and conditions contained in any document of the Customer or elsewhere.
- (b) The variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties or otherwise agreed by Pro Computers.
- (c) Pro Computers may amend any details in a Quote by notice in writing to the Customer. Such amended details supersede any relevant prior detail in dealings between the parties.

2 Quotes

- (a) Pro Computers may provide the Customer with a Quote. Any Quote issued by Pro Computers is valid for the period set out in the Quote, or where no such period is set out in the Quote, for 30 days from the date of issue.
- (b) Unless otherwise expressly agreed in writing, a Quote does not include delivery or installation of the Goods.
- (c) Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary material, cooperation and instructions to Pro Computers.
- (d) Following provision of a Quote to the Customer, Pro Computers is not obliged to commence work until the Quote has been accepted by the Customer. This occurs by the Customer signing a Quote or confirming acceptance in writing (including by email) to Pro Computers. Pro Computers may also, in its discretion, accept a Customer's verbal acceptance of a Quote.
- (e) An indication in a Quote of the time frame for the provision of the Goods or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, estimates provided by Pro Computers are not binding upon Pro Computers.

3 Orders

- (a) Any costs incurred by Pro Computers in reliance on incorrect or inadequate information provided by the Customer for the purposes of a Quote may result in the imposition of an Additional Charge.
- (b) The Customer's acceptance of a Quote under clause 2(d) signifies acceptance by the Customer of these Terms of Trade and will result in a binding contract between Pro Computers and the Customer for the purposes of these Terms of Trade for the supply of the

Goods or Services set out in the Quote by Pro Computers to the Customer (**Order**).

- (c) Pro Computers may in its absolute discretion refuse to provide Goods or Services where:
- (i) Goods are unavailable for any reason whatsoever;
 - (ii) credit limits cannot be agreed upon or have been exceeded; or
 - (iii) payment for Goods or Services previously provided to the Customer or to any other party who is, in the reasonable opinion of Pro Computers, associated with the Customer, has not been received by Pro Computers.
- (d) An Order cannot be cancelled by the Customer without the prior written consent of Pro Computers. Where an Order is cancelled, the Customer indemnifies Pro Computers against any Losses incurred by Pro Computers as a result of the cancellation.
- (e) Each time the Customer purchases any computer from Pro Computers or delivers any computer to Pro Computers, the Customer authorises Pro Computers to install the following software onto the Customer's computer (in addition to any other software purchased by the Customer). The Customer shall be deemed to have read and agreed to each applicable software vendor's licence agreement, end user agreement, and/or other applicable terms and conditions, by purchasing the computer, including those referred to below:
- (i) Windows Updates (includes 3rd party updates for software installed on windows)
 - (ii) System Driver Updates
 - (iii) Google Chrome
- https://www.google.com/intl/en_au/chrome/terms/
 - (iv) Adobe Reader
- <https://www.adobe.com/products/eula/tools/capivate.html>
 - (v) VLC Media Player
- <https://www.videolan.org/legal.html>
 - (vi) Team Viewer
- <https://www.teamviewer.com/en-us/eula/>
 - (vii) Windows EULA for new desktops and laptops.

4 Variations

- (a) The Customer may request that its Order be varied by providing a request in writing to Pro Computers. Except as otherwise agreed by Pro Computers, a request for a variation must be agreed to in writing by Pro Computers in order for the variation to have effect.
- (b) If the Customer wishes to vary its requirements after a Quote has been prepared by Pro Computers or after the placement of an Order, Pro Computers reserves the right to vary the Quote to include any Additional Charge in

respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by Pro Computers in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods and Services.

- (c) Pro Computers has an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation.

5 Hardware Maintenance Service

- (a) The Pro Computers Hardware Maintenance Service entitles Customers who pay for this service to the following from Pro Computers in respect of any computer delivered to Pro Computers by the Customer for the purposes of the Pro Computers Hardware Maintenance Service:
 - (i) physically cleaning of the Customer's computer (by wiping down external surfaces and applying compressed air);
 - (ii) running diagnostic tools on the computer;
 - (iii) applying Windows operating system and application updates on the Computer that are freely available to Pro Computers at no cost to Pro Computers;
 - (iv) flushing cookies;
 - (v) deleting junk and temporary files;
 - (vi) using reasonable endeavours to optimise the computer by configuring the system using our standard optimisation procedures;
 - (vii) applying software and driver updates that Pro Computers is aware of and that are available to Pro Computers at no cost to Pro Computers; and
 - (viii) disabling unnecessary programs and background apps to free up system resources.
- (b) The Pro Computers Hardware Maintenance Service does not include any other services and is not designed to identify actual or potential bugs or defects.
- (c) The Pro Computers Hardware Maintenance Service is only available if the Customer:
 - (i) delivers their computer to Pro Computers's premises for Pro Computers to apply the Pro Computers Hardware Maintenance Service to;
 - (ii) has paid all fees and charges for the Pro Computers Hardware Maintenance Service specified in the applicable Pro Computers Quote; and
 - (iii) has paid all other fees and charges then due and owing by the Customer to Pro Computers.
- (d) The Pro Computers Hardware Maintenance Service may be cancelled by Pro Computers or the Customer at any time on 1 month's written notice to the other.

6 Backup Service

- (a) The Pro Computers Backup Service entitles Customers who pay for this service to the following from Pro Computers:
 - (i) configuration of a third party backup service for the Customer, to backup the Customer's data specified in the relevant Quote at the frequency specified in the Quote;
 - (ii) configuration of the third party backup service to retain the number of backups specified in the Quote; and
 - (iii) using reasonable endeavours to recover backed up data held by the third party backup service, within a reasonable time following a request for such recovery by the Customer.
- (b) The Pro Computers Backup Service requires an active internet connection. The Customer acknowledges that if its internet connection goes down at any time, the Pro Computers Backup Service will not operate.

- (c) The Pro Computers Backup Service:
 - (i) does not include allowing the Customer to configure or manage the third party backup service product themselves; and
 - (ii) subject to the Australian Consumer Law and other similar State and Territory non-excludable consumer law, does not come with any guarantee that it can be used to recover lost software, files or data.
- (d) Subject to the Australian Consumer Law and other similar State and Territory non-excludable consumer law, Pro Computers is not liable for loss of data caused by any non-performance of the Pro Computers Backup Service beyond its reasonable control.
- (e) Pro Computers does not guarantee that the Pro Computers Backup Service will facilitate recovery from CryptoLocker or other ransomware attacks.
- (f) The Pro Computers Backup Service may be cancelled by Pro Computers or the Customer at any time on 1 month's notice to the other.

7 Antivirus Service

- (a) The Pro Computers Antivirus Service entitles Customers who pay for this service to the following services from Pro Computers:
 - (i) Pro Computer will make a third party antivirus software product available to the Customer;
 - (ii) Pro Computers will configure the third party antivirus software product to scan the computer of the Customer specified in the Quote; and
 - (iii) Pro Computers will use reasonable endeavours to remove viruses from the computer of the Customer specified in the Quote.
- (b) The Pro Computers Antivirus Service requires an active internet connection. The Customer acknowledges that if its internet connection goes down at any time, the Pro Computers Antivirus Service will only have limited operation.
- (c) Pro Computers:
 - (i) does not represent that the Pro Computers Antivirus Service will be able to remove or detect all viruses or prevent all or any (A) viruses from entering any computer system of the Customer; (B) ransomware attacks; or (C) phishing, spam, malware or other attempts or attacks (including attacks that occur as a result of the Customer clicking on a malicious link);
 - (ii) does not include attempted recovery from phishing attacks; and
 - (iii) subject to the Australian Consumer Law and other similar State and Territory non-excludable consumer law, is provided on a "best efforts" basis only and without any representations or guarantees of any kind.
- (d) The Pro Computers Antivirus Service may be cancelled by Pro Computers or the Customer at any time on 1 month's notice to the other.

8 Hardware and Software Repair Services

- (a) If the Customer places an Order for:
 - (i) a Pro Computers Hardware Repair Service, Pro Computers will use reasonable endeavours to resolve any fault that the Customer identifies in its computer or other equipment that is specified in the Quote; or
 - (ii) a Pro Computers Software Repair Service, Pro Computers will use reasonable endeavours to configure the relevant software requested by the Customer, as set out in the Quote,in respect of the hardware or software that the Customer delivers to Pro Computers that Pro Computers considers it may be able to resolve in exchange for the fees and charges set out in the Quote issued by Pro Computers to the Customer for this service.

- (b) The Pro Computers Hardware Repair Service and the Pro Computers Software Repair Service do not include:
 - (i) managing warranty claims with the hardware manufacturer or software vendor;
 - (ii) replacing equipment or supplying new equipment or software;
 - (iii) fixing software bugs;
 - (iv) making software or hardware compatible;
 - (v) software development or programming of any kind;
 - (vi) resolving faults that arise as a result of a Customer's use of unlicensed software or data;
 - (vii) resolving faults in equipment that Pro Computers considers is beyond repair.
- (c) Pro Computers does not warrant that a fault in any hardware or software (or any software configuration issue) that it has resolved will not reoccur and Pro Computers is not responsible for any such reoccurrence beyond its reasonable control. Without limiting the foregoing provisions, Pro Computers is not responsible for a software fault that arises because the Customer reconfigures any software after Pro Computers has resolved a software configuration fault in that software.
- (d) Pro Computers will inform the Customer where any replacement parts are required in order to resolve a fault that the Customer has engaged Pro Computers to resolve in any hardware and the cost associated with Pro Computers ordering and installing those parts. Where Pro Computers agrees to install any such replacement parts, such parts and their installation shall incur an Additional Charge payable by the Customer to Pro Computers.
- (e) Subject to the Australian Consumer Law and other similar State and Territory non-excludable consumer law, Pro Computers is not liable for any loss or damage that may occur to any computer or other hardware that a Customer may deliver to Pro Computers for repair, while it is in Pro Computers's possession or control, where such damage arises:
 - (i) as a result of fair wear and tear (for example, where the plastic on an old computer is brittle and cracks when pried open or where screws that have been overtightened by the Customer or where any third party snaps the threaded hole on a computer chassis); or
 - (ii) where due to any matter beyond Pro Computer's reasonable control (such as data loss that occurs due to a damaged drive or malware).
- (f) Notwithstanding any other provisions of these Terms of Trade, Pro Computers shall have no obligation to carry out any Services with respect to any illegally downloaded, copied or cracked software of any kind.

9 Backup obligation

- (a) The Customer must ensure that it has a backup of all data on any computer or other equipment delivered to Pro Computers for repair or other Services prior to so delivering the computer or equipment.
- (b) Subject to the Australian Consumer Law and other similar State and Territory non-excludable consumer law, Pro Computers is not liable for data loss beyond its reasonable control.

10 Software Licenses

- (a) If Pro Computers refers to its supply of a software licence in a Quote for any Goods that is software (**Software**), the price of the relevant Goods includes the licence fee for the Customer's right to use the Software.
- (b) If the Customer is provided with any software licence in respect of the Software, the Customer shall be deemed to have accepted the licence upon receipt of the Software, unless the licence has been supplied on a "click-wrap" basis in which case the licence shall be

accepted when the Customer accepts the licence via clicking an "I accept" button or otherwise indicating its acceptance.

- (c) If the terms and conditions of the applicable software licence:
 - (i) have not been provided to the Customer; or
 - (ii) are not available upon request by the Customer to Pro Computers,
 the Customer hereby accepts a non-exclusive, non-transferable licence to use the Software on the following conditions:
 - (iii) the Customer shall not copy (except to the extent permissible under applicable law which is not capable of exclusion by agreement or for normal operation of the Goods), reproduce, translate, adapt, vary or modify the software, nor communicate it to any third party, without Pro Computer's prior written consent;
 - (iv) the Customer shall not use the Software on any equipment other than the hardware that it is installed on when Pro Computers supplies the hardware to the Customer, and shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software on the medium on which it resides;
 - (v) such licence shall be terminable by either party on 28 days' written notice, provided that Pro Computers terminates only if the continued use or possession of the Software by the Customer infringes the developer's or a third party's rights, or Pro Computers is compelled to do so by law, or if the Customer has failed to comply with these Terms of Trade; and
 - (vi) on or before the expiry of the licence, the Customer shall return to Pro Computers all copies of the Software in its possession or control.
- (d) Despite the above provisions of this clause 10, if the terms and conditions of the applicable software licence are referred to in clause 3(e) or attached, or linked, to from a Quote, the Customer shall be deemed to have accepted the terms and conditions of the applicable software licence upon the Customer's acceptance of the Quote.

11 Returns Policy

- (a) Pro Computers will provide a refund or replacement in respect of any Goods where it is required to do so under the Australian Consumer Law or any other applicable law.
- (b) For further details about the Australian Consumer Law, please see the ACCC website at <https://www.accc.gov.au/business/treating-customers-fairly/consumers-rights-obligations>
- (c) Pro Computers does not accept returns, or provide refunds, for "change of mind" or merely because a Customer purchases Goods that the Customer discovers are incompatible or obsolete.

12 Abandoned Computer Hardware and Other Equipment

- (a) Pro Computers does not provide long term storage for any Customer hardware or other equipment.
- (b) Any computer hardware or other equipment that a Customer purchases from Pro Computers must be collected within 7 days from the date of purchase unless the equipment is not available for collection at the time of purchase, in which case the Customer must collect it within 7 days from the date that Pro Computers notifies the Customer that the equipment is available for collection.
- (c) Any computer hardware or other equipment that a Customer delivers to Pro Computers for repair or other services must be collected within 30 days from the date

that Pro Computers advises the Customer that it is ready for collection.

- (d) Any computer hardware or other equipment that is not collected by the Customer from Pro Computers in accordance with the times specified in paragraphs (b) or (c) may be destroyed or sold by Pro Computers without notice and in Pro Computers's sole discretion. Pro Computers shall have no liability to the Customer in respect of any profit, loss or damage suffered by the Customer as a result of Pro Computers exercising its rights under this paragraph (d).

13 Invoicing and payment

- (a) At or after the time that an Order is placed for Goods or Services by the Customer, Pro Computers may in its absolute discretion, issue an invoice to the Customer in any one or more of the following ways:
- (i) prior to commencing the supply of the Goods or the provision of Services, Pro Computers may issue an invoice for an amount equal to the Quote and Additional Charges or a deposit specified by Pro Computers;
 - (ii) Pro Computers may issue an invoice prior to making Goods available for collection by the Customer;
 - (iii) Pro Computers may issue an invoice prior to delivering Goods to the Customer;
 - (iv) at the end of each week before the Order is completed, Pro Computers may issue one or more invoices for a proportion or the whole of the amount of the Quote (the proportion to be calculated at Pro Computers's discretion either for work done or Goods delivered/or made available for collection to that point, or for work or Goods to be performed or delivered in the future or both) and require that proportion of the Quote be paid in advance of any further Goods or Services being provided; or
 - (v) upon completion of the provision of the Goods or Services or any time thereafter, Pro Computers may issue an invoice for an amount equal to the Quote or the balance of the Quote outstanding, any Additional Charges and any amount not previously invoiced, or if no Quote was provided, for an amount representing Pro Computers's charge for the work performed in completing the Order at Pro Computers's standard rates and for any Additional Charges.
- (b) The amount payable by the Customer will be the amount set out in the invoice. This will be calculated as:
- (i) the amount for the Goods or Services (or both) as set out in the Quote and any Additional Charges, or
 - (ii) where no Quote has been provided by Pro Computers, Pro Computers's standard rates for the goods or services (or both) as notified by Pro Computers from time to time.
- (c) The Customer must pay an invoice issued by Pro Computers within the timeframe specified in the Order or invoice, or where no timeframe is specified:
- (i) where the invoice is for Goods, prior to delivery or being released to the Customer for collection;
 - (ii) for Services, within 7 days of invoice.
- (d) All Services will incur a diagnostic fee or a bench fee (in each case, in the amount set out in the Quote). The Customer must pay such fees, in all circumstances. Without limiting the previous sentence, such fees are payable whether or not Pro Computers is able to resolve a fault in any relevant hardware or configure any relevant software.
- (e) Invoices must be paid via the payment method set out in the relevant Quote or invoice, which may include credit card or direct debit. In no circumstances will Pro Computers accept payment by cheque.

- (f) If any invoice is due but unpaid, Pro Computers may withhold or suspend the provision of Goods or Services until overdue amounts are paid in full.
- (g) Pro Computers may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to Pro Computers.
- (h) The Customer is to pay Pro Computers on demand interest at the rate of 8% per annum (or the highest rate of interest payable under applicable law, whichever is greater) on all overdue amounts owed by the Customer to Pro Computers, calculated daily.
- (i) All costs and expenses associated with collecting overdue amounts, including (but not limited to) debt collection and legal fees, costs, disbursements and internal costs and expenses of Pro Computers, are to be paid by the Customer as a debt due and payable on demand by Pro Computers.
- (j) The Customer and Pro Computers agree to comply with their obligations in relation to Goods and Services Tax (GST) under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any other applicable legislation governing GST.

14 Additional Charges

- (a) Pro Computers may require the Customer to pay Additional Charges in respect of Costs incurred by Pro Computers as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by Pro Computers in order for it to provide the Goods or Services within the specified time frame (if any).
- (b) The imposition of Additional Charges may also occur as a result of:
- (i) cancellation by the Customer of an Order where cancellation results in Loss to Pro Computers;
 - (ii) storage costs for Goods not collected from Pro Computers within the time required by these Terms of Trade; and/or
 - (iii) additional work required by the Customer in respect of the Customer's Order additional to the quoted price.

15 Acceptance of Goods

If the Customer fails to advise Pro Computers in writing of any fault in Goods or failure of Goods to accord with the Customer's Order within 24 hours of collection or delivery, the Customer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Customer's Order. However, nothing in this paragraph affects the Customer's rights under the Australian Consumer Law (including any rights for any alleged failure of a guarantee under the Australian Consumer Law that occurs before or after that 24 hour period has expired) or any other applicable law.

16 Title and risk

- (a) Risk in Goods passes to the Customer immediately upon delivery.
- (b) Property and title in Goods supplied to the Customer by Pro Computers does not pass to the Customer until all money (including money owing in respect of other transactions between Pro Computers and the Customer) due and payable to Pro Computers by the Customer has been fully paid.
- (c) Where Goods are supplied by Pro Computers to the Customer without payment in full, the Customer:
- (i) is a bailee of the Goods until property in them passes to the Customer;
 - (ii) irrevocably appoints Pro Computers to be its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any purchase money security interest in favour of Pro Computers with respect to the Goods under applicable law;

- (iii) must be able upon demand by Pro Computers to separate and identify as belonging to Pro Computers Goods supplied by Pro Computers from other goods which are held by the Customer;
 - (iv) must not allow any person to have or acquire any security interest in the Goods;
 - (v) agrees that Pro Computers may repossess the Goods if payment is not made within 7 days (or such longer time as Pro Computers may, in its complete discretion, approve in writing) of the supply of the Goods; and
 - (vi) the Customer grants an irrevocable licence to Pro Computers and its agents to enter the Customer's premises in order to recover possession of and resell Goods that the Customer has not paid for in full. The Customer indemnifies Pro Computers for any damage to property or personal injury which occurs as a result of Pro Computers entering the Customer's premises for such purposes.
- (B) a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of the party's property and undertakings;
 - (C) the entering of a scheme of arrangement by the party (other than for the purpose of restructuring).

- (b) Where an event of default occurs in respect of a Defaulting Party:
 - (i) the other party may cancel all active Orders;
 - (ii) where the Customer is the Defaulting Party, Pro Computers may pursuant to clause 16(c), repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received;
 - (iii) the other party may pursue any other remedies available to it, subject to any exclusions and limitations of liability set out in these Terms of Trade.
- (c) In addition to any action permitted to be taken by Pro Computers under paragraph 19(b), on the occurrence of an event of default all invoices will become immediately due and payable.

17 Intellectual Property Rights

- (a) The Customer warrants that it owns all Intellectual Property Rights pertaining to its Order for Goods or Services or has a licence to authorise Pro Computers to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied by the Customer to Pro Computers for the purposes of any Order, including any software and data held on any computer or other device supplied to Pro Computers for repair under any Order. Further, the Customer indemnifies and agrees to keep indemnified Pro Computers against all Losses incurred by Pro Computers in relation to or in any way directly or indirectly connected with any breach of any other Intellectual Property Rights in relation to any software and data supplied by the Customer.
- (b) Unless specifically agreed in writing between Pro Computers and the Customer, all Intellectual Property Rights in any works created by Pro Computers on behalf of the Customer vests in and remains the property of Pro Computers.
- (c) Subject to payment of all invoices due in respect of the Goods or Services, Pro Computers grants to the Customer a perpetual, non-exclusive licence to use the works created or produced by Pro Computers in connection with the provision of Goods or Services under these Terms of Trade for the purposes contemplated by any Order.

18 Agency and assignment

- (a) The Customer agrees that Pro Computers may at any time appoint or engage an agent to perform an obligation of Pro Computers arising out of or pursuant to these Terms of Trade.
- (b) Each party will not assign, or purport to assign, any of its obligations or rights under these Terms of Trade without the prior written consent of the other party.

19 Default

- (a) Each of the following occurrences constitutes an event of default:
 - (i) A party (**Defaulting Party**) breaches these Terms of Trade for any reason (including, but not limited to, defaulting on any payment due under these Terms of Trade) and fails to remedy that breach within 14 days of being given written notice by the other party to do so;
 - (ii) a party, being a natural person, commits an act of bankruptcy;
 - (iii) a party, being a corporation, is subject to:
 - (A) a petition being presented, an order being made or a meeting being called

20 Australian Consumer Law; Exclusions and limitation of liability

- (a) All information, specifications and samples provided by Pro Computers in relation to the Goods or Services are approximations only and, subject to any applicable guarantees under the Australian Consumer Law and other similar State and Territory non-excludable consumer law, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods or Services will not entitle the Customer to reject the Goods upon delivery, or to make any claim in respect of them.
- (b) Other than any applicable implied guarantees under the Australian Consumer Law and other similar State and Territory non-excludable consumer law, Pro Computers gives no warranty in relation to the Goods or Services.
- (c) Except to the extent that such liability cannot be excluded by the Australian Consumer Law or any other applicable law, under no circumstances is either party liable or responsible in any way to the other party or any other person for any loss of profits, loss of savings, loss of business, loss of opportunity or loss of revenue.
- (d) The Australian Consumer Law gives the Customer certain guarantees from Pro Computers. Where liability for breach of any such guarantee can be limited, Pro Computers's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods or with respect to Services to the supply of Services again or cost of re-supplying the Services again.
- (e) Goods may be covered by a manufacturer's warranty supplied with the Goods. The Customer may contact the manufacturer in respect of such warranties. Such warranties are in addition to any guarantees from Pro Computers implied under the Australian Consumer Law in respect of the supply of Goods or Services
- (f) In no event will Pro Computers be liable for loss or damage to Goods arising in the following circumstances:
 - (i) where defects result from normal wear and tear, overuse or any misuse of Goods contrary to any instructions, user guides or user manuals that are provided by Pro Computers, the licensor or the manufacturer;
 - (ii) accidental damage or defects that arise as a result of negligent use or care by the Customer or any other person who uses the Goods after Pro Computers delivers them to the Customer

- or the Customer collects them from Pro Computers (including where caused by damage caused by dropping equipment, cracking or spilling liquid on any equipment);
 - (iii) where any Goods or component thereof that have been subject to neglect, accident, abuse, misuse, misapplication, incorrect connection or that have been subject to repair or alteration not authorised or undertaken by Pro Computers;
 - (iv) use of the Goods for any purpose other than what they were designed for.
 - (g) Upon receipt of a valid claim from a Customer under a Non-Excludable Guarantee, Pro Computers will contact the Customer to arrange a suitable remedy. Where Pro Computers elects to repair Goods the subject of a valid claim, the Goods may be replaced by refurbished Goods of the same type rather than being repaired and refurbished parts may be used to repair Goods. Where the Goods are repaired and are capable of retaining user-generated data, it is possible that the repair of the Goods may result in loss of data.
 - (h) The Customer must ensure that it has a backup of all data on any computer or other equipment delivered to Pro Computers for repair or other Services prior to so delivering the computer or equipment. Pro Computers will use its best endeavours to ensure that data loss does not occur in the course of it performing services for the Customer. However, the Customer acknowledges that data loss may occur from time to time as a result of matters beyond Pro Computers' control. Pro Computers will not be liable for any loss or damage suffered by the Customer as a result of data loss that occurs as a result of any such matters.
 - (i) In no event will Pro Computers be liable for any loss or damage suffered by the Customer as a result of the Customer not following any advice or recommendations of Pro Computers, including with respect to upgrading or updating any equipment, applying any software updates or installing new software versions.
 - (j) Further, in no event will Pro Computers be liable for any loss or damage suffered by the Customer as a result of placing an Order for Pro Computers to provide any specific upgrade or reconfiguration, or to apply any specific patch, error correction or fix to any Goods, in circumstances where the Customer has instructed Pro Computers to do so:
 - (i) contrary to Pro Computer's advice; or
 - (ii) without engaging Pro Computers to first diagnose any relevant fault, error, bug or defect in any computer system or other equipment.
 - (k) Pro Computers does not collect Customer passwords, licence keys or other credentials, other than for the purposes of providing Services. Pro Computers will delete any such passwords, licence keys and other credentials immediately upon completion of the relevant Services and will not be liable for any loss of passwords, licence keys or other credentials by the Customer at any time. The Customer must ensure that it has independent copies of its passwords, licence keys and other credentials.

21 Force majeure

- (a) If circumstances beyond Pro Computers's control prevent or hinder its provision of the Goods or Services, Pro Computers is free from any obligation to provide the Goods or Services while those circumstances continue. Pro Computers may elect to terminate the Order or keep the Order on foot until such circumstances have ceased.
- (b) Circumstances beyond Pro Computers's control include, but are not limited to:
 - (i) unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties, hacking;

- (ii) ransomware that is installed on any computer due to circumstances beyond Pro Computers' reasonable control;
- (iii) hardware BIOS/UEFI/Firmware updates made by any third party;
- (iv) failures or malfunctions of computers; or
- (v) any matter concerning information technology systems beyond Pro Computers's control including updates made to software configurations or settings by the Customer and/or any third party (including software vendor) and changes made to any software such as by way of updates or new versions that render software incompatible or otherwise subject to error or malfunction.

22 Miscellaneous

- (a) These Terms of Trade are governed by the laws in force in the State of Queensland and each party irrevocably submits to the exclusive jurisdiction of the courts in that State in relation to any dispute between the parties.
- (b) These Terms of Trade and any Quotes and written variations agreed to in writing by Pro Computers represent the whole agreement between the parties relating to the subject matter of an Order.
- (c) These Terms of Trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (d) If any provision of these Terms of Trade at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- (e) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (f) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quote and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Quote, or sent by email to the email address of the addressee specified in the relevant Quote.
- (g) A notice or other communication is taken to have been given (unless otherwise proved) if delivered by hand, upon delivery; if mailed, on the sixth Business Day after posting (where posted domestically) or on the fifteenth Business Day after posting (where posted from one country to another); or if sent by email before 4 pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- (h) A party may only change its address for service by giving notice of that change in writing to the other party.

23 Definitions and interpretation

23.1 Definitions

Additional Charge means:

- (a) fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with Pro Computers's then current rates; and
- (b) expenses incurred by Pro Computers, at the Customer's request or reasonably required as a result of the Customer's conduct.

Business Day means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods provided.

Customer means the person identified on a Quote as the customer and includes the Customer's agents and permitted assigns.

Goods means any goods supplied by Pro Computers including those supplied in the course of providing Services.

Intellectual Property Rights means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.

Loss includes, but is not limited to, costs (including party to party legal costs and Pro Computers's legal costs), expenses, lost profits, award of damages, personal injury and property damage.

Order has the meaning given to it in clause 3(b).

Pro Computers means JAGCAUS Pty Ltd ABN 92 616 765 407 trading as Pro Computers.

PPS Law means:

- (a) the Personal Property Security Act 2009 (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a PPS Law.

Quote means a written description and quotation for the Goods or Services to be provided, or a written estimate of Pro Computers's charges for the performance of the required work and an estimate of the time frame for the performance of the work.

Services means the services to be provided by Pro Computers to the Customer in accordance with a Quote.

23.2 Interpretation

In these Terms of Trade, unless the context otherwise requires:

- (a) a reference to writing includes email and other communication established through Pro Computers's website (if any);
- (b) the singular includes the plural and vice versa;
- (c) a reference to a clause or paragraph is a reference to a clause or paragraph of these Terms of Trade;
- (d) a reference to a party to these Terms of Trade or any other document or arrangement includes Pro Computers or the Customer as the context dictates and that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings are for ease of reference only and do not affect the meaning or interpretation of these Terms of Trade; and
- (g) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
 - (i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
 - (ii) in all other cases, must be done on the next Business Day.