

BIGFISH TECHNOLOGY PTY LTD - TERMS AND CONDITIONS



BIGFISH
TECHNOLOGY

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This document (Terms and Conditions) sets out the terms and conditions under which Bigfish Technology Pty Ltd A.C.N 114 613 115 (Bigfish Technology) has agreed to commencement of business with Products and Services.

Definitions and Interpretation

“**Customer**” means the person or entity however constituted to whom the Product or Services are to be provided by Bigfish Technology.

“**Guarantors**” mean the directors of the Customer where the Customer is a body corporate.

“**Product**” means products supplied by Bigfish Technology to the Customer.

“**Price**” means the agreed price for the Products and Services.

“**Services**” means services supplied by Bigfish Technology to the Customer.

The singular includes the plural and vice versa. In the event of any inconsistency or conflict between the Customer's purchase order or associated documents and these Terms and Conditions, these Terms and Conditions shall prevail.

Section 1. General Terms & Conditions

1. Price and Payment

The Price for Services supplied by Bigfish Technology is provided to the client before work is started.

Unless otherwise stated, the Price for Products supplied by Bigfish Technology is specified in Bigfish Technology's accepted quotation to the Customer.

For all purchases of Products or where cleared funds have not been received, the Price must be paid in full within fourteen (7) days of the invoice date. The Price for Consulting and all other Services must be paid in full within fourteen (7) days of the invoice date.

Invoices not paid by the due date may incur an additional account keeping and interest fee of \$33 (including GST) per period of 14 days that the invoice is overdue.

In the event of Bigfish Technology having to engage an agent to collect overdue amounts, all fees and charges associated with the recovery of overdue amounts will be charged to the Customer. All payments made by the Customer shall be first allocated to such fees and charges and then to the overdue amount.

2. Passing of risk and title

Risk of damage to or loss of the Products supplied passes to the Customer at the time they are delivered. Ownership of the Products supplied to the Customer will only transfer upon payment of all accounts owing to Bigfish Technology in full in cleared funds. In the event that any monies are due and payable to Bigfish Technology, ownership of the Products supplied will not transfer, notwithstanding that those Products may have been affixed to or incorporated with other materials or goods. The Customer consents to Bigfish

Technology, their agents and contractors, entering upon any land of the Customer or of any third party where these goods are located and repossessing the same.

3. Product warranty

Product is supplied by Bigfish Technology only with the warranty provided by the manufacturer. Bigfish Technology does not warrant that the operation of Products will be uninterrupted or error free or that the Products are in any way fit for purpose or use. All warranties for goods and or services that Bigfish Technology sells are provided by the manufacturer or service provider and are not provided by Bigfish Technology.

4. Services

Bigfish Technology may subcontract or use agents to provide Services to the Customer.

5. Limitation of Liability

Bigfish Technology's liability to the Customer is limited, and will not exceed the value of the Products or Services, the subject of the claim, supplied to and paid for by the Customer. The Customer releases Bigfish Technology from and indemnifies and must continue to indemnify Bigfish Technology against all and any liability to the Customer or any third party for any incidental, indirect, consequential, special, punitive or exemplary damages whatsoever and for any loss of profit or loss of data.

To the extent which Bigfish Technology is legally entitled to do so, Bigfish Technology's liability for breach of contract, negligence, or in any other manner, shall, at the option of Bigfish Technology, be limited to one of the following:

- a) the supplying of the Service supplied and/or Product again; or
- b) the payment of the cost of having the Service and/or Product supplied again.

Bigfish Technology can and will not accept responsibility for any loss of profit or data in relation to hardware, software, systems or setups that were not recommended, sold, setup, or configured initially by Bigfish Technology.

6. Privacy

Bigfish Technology understands that the privacy of our Customers – both individuals and businesses – is an important right. Bigfish Technology only requests and collects personal and business information if it is necessary for the provision of Services and Products to Customers. Bigfish Technology only uses personal and business information for the primary purpose for which it is collected unless in exceptional circumstances where authorised by law. Bigfish Technology does not sell or trade personal information, or allow third parties to use that personal information for their own purposes.

7. Guarantee

Where the Customer is a body corporate, in consideration of Bigfish Technology providing the Products and Services to the Customer, the Guarantors jointly and severally guarantee for themselves and their respective executors heirs and assigns due and punctual payment by the Customer to Bigfish Technology of all monies which are due and payable. The Guarantors further agree that on demand, they will immediately pay or satisfy, at the direction of Bigfish Technology, any amount certified by Bigfish Technology as due or payable under these Terms and Conditions. This guarantee shall be a continuing guarantee.

8. General

Bigfish Technology warrants that it has good title to all the Products it sells.

Bigfish Technology is not liable for failure or delay in fulfilling its obligations due to any causes beyond its control.

These Terms and Conditions constitute the entire agreement between Bigfish Technology and the Customer. These Terms and Conditions supersede any previous communications, representations or agreements between Bigfish Technology and the Customer, whether oral or written. The Customer's purchase of Products or Services will constitute the Customer's acceptance of these Terms and Conditions.

If any term or provision contained in these Terms and Conditions is determined to be illegal or unenforceable, the validity or enforceability of the remainder of these Terms and Conditions will remain in full force and effect.

These Terms and Conditions are governed by the law of the State of Victoria.

9. Poaching of Bigfish Technology Employees & Contractors

No customer of Bigfish Technology may, for a period of

six months, or

three months, or

one month

following the last service or product provided by Bigfish Technology may for any reason directly or indirectly:

- hire or induce, or attempt to hire or induce, any personnel of Bigfish Technology to leave the employ of Bigfish Technology
- solicit the business of any current employee of Bigfish Technology; or

Section 2: Quotation Purchase Order Terms & Conditions:

1. All errors and omissions are excluded
2. Payment (cleared funds) of order is required before goods can be shipped or collected
3. Configuration and freight charges are not included unless otherwise stated
4. Due to currency changes, the pricing offered is valid for a period of 1 day (some exceptions apply)
5. The pricing specified on quotations is not combinable with any other offer
6. Items ordered can not be returned
7. All warranties are provided by the manufacturer (not Bigfish Technology Pty Ltd)
8. Items quoted could be withdrawn by the vendor at any time
9. By confirming a quotation for commencement (either via phone, return fax, eMail, in person) and/or submitting a purchase order, you are agreeing to pay for the goods or service on the purchase order and or to the commencement of the quoted this service for the full service period

Section 3: Wireless Services Terms & Conditions

1. Bigfish Technology wireless services (Provided through Clear Networks) must be connected to a suitable Network Point – we recommend the use of a router/firewall.
2. Payment for 1st month broadband and installation is due with order
3. All monthly payments are invoiced in advance and must be paid on due date. Excess charges are invoiced at the end of a calendar month in arrears
4. All Sales are subject to Bigfish Technology's General Terms and Conditions, Acceptable Usage Policy
5. All Bigfish Technology equipment remains the property of Bigfish Technology including Subscriber Unit, Surge Protector, reflector, power-supply, and associated components
6. Customer can upgrade to higher tier during the term of the agreement. A reduction of monthly commitment is not permitted
7. All offerings are a a bundled offering and can not be separated
8. Any late payments may incur a late collection charge including interest at 1.5% per month
9. All information in this quotations is strictly confidential
10. Non standard installations may require more equipment, hence incur additional cost
11. Initial payments and all ongoing monthly payments to be paid by direct debit into Bigfish Technology Account

Section 4. Maintenance and Support Contract Conditions

1. All prices are shown exclusive of the Australian Government's Goods and Service Tax which is compulsorily charged on all goods and services provided by Bigfish Technology
2. Our standard Terms and Conditions that apply to all goods and services provided by Bigfish Technology can be found online at www.bigfishtech.com.au/policy
3. All support plans are charged automatically on the 1st (or next business day) of each month via direct debit or credit card
4. All support plans are contracted for a fixed period and are automatically renewed at the end of each period. A contract can be cancelled prior to automatic renewal with 14 days written notice
5. Additional time required outside of allocated time is charged at standard hourly or part there of rate
6. "Response" refers to recognising and initiating action plans to a formally submitted request. Work will subsequently commence at the earliest possible time. Under normal circumstances remote work will commence within the response time frame
7. A separate contract is required for each separate business, computer network or account/customer
8. For platinum plans, if your dedicated technician is not available you have the choice of waiting for them to become available or for a different technician. If a different technician is provided they will be aware of your computer and network setup so that they can support you promptly
9. Mission Critical means a majority of the business is unable to operate a core business function that is required for the business to operate
10. Contracted support plan onsite bookings occur at a fixed time each and can only be changed to a different mutually agreeable time with 14 days written notice
11. Where possible clients are asked to make a conscious effort to use client access to submit support requests