Open Concepts (VIC) Pty Ltd (ACN 130 429 248) ("Open Concepts")

Trading as Root Software (www.rootsoftware.com and www.tectite.com)
PO Box 784 Rye, Victoria, Australia, 3941.

TERMS & CONDITIONS

1. Definitions

In these Terms & Conditions:

'*Agreement*' means any agreement or contract entered into for the provision of software and/or services by Open Concepts to the Customer;

"*GST*" means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act* 1999 as amended;

'*Copyright Licence*' means the licence to use the Copyright Material granted by Open Concepts to the Customer;

'*Copyright Material*' means any copyright work produced by Open Concepts in the provision of the software or services;

'*Customer*' means a person, firm or corporation, jointly and severally if there is more than one obtaining the software and services;

"*Software*" means software licences, support services software and instructions, including but is not limited to re-sold software, free software provided without charge for marketing purposes and software created in accordance with customer specifications;

"*Intellectual Property*" means all copyright, trade marks, designs, specifications, confidential information, (whether registrable or not) owned or licensed by Open Concepts in respect of the software and services;

'*Services*' means the provision by Open Concepts to the Customer of any services including without limitation, consulting services (technical, software design and programming services), software training, software support services, subscription and hosting services;

'*Terms*' means these Terms & Conditions of Supply for Open Concepts;

2. Basis of Agreement

2.1 Unless otherwise agreed by Open Concepts in writing, the Terms apply exclusively to every contract for the sale of software and services by Open Concepts to the Customer and cannot be varied or replaced by any other condition, including the Customer's terms and conditions of purchase (if any).

2.2 The descriptions, illustrations and performance specifications of software in a quotation, catalogues, prices in the Price List and other advertising material do not form part of this Agreement.

2.3 Any written quotation provided by Open Concepts to the Customer concerning the proposed supply of software and services is:

   (a) valid for 30 days;

   (b) an invitation to treat only;

   (c) subject to the Customer offering to enter into an Agreement and accepting these Terms.

2.4 The Terms may include additional terms in Open Concepts' quotation, which are not inconsistent with the Terms.

2.5 The Agreement is accepted by Open Concepts when Open Concepts confirms its acceptance of an offer from the Customer in writing or electronic means or provides the Customer with the Software or Services.

2.6 Open Concepts in its absolute discretion may refuse to accept any offer.

2.7 It is the Customer's responsibility to provide Open Concepts with its specific requirements in relation to the Software and Services.

2.8 Open Concepts may vary or amend these Terms by notice in writing to the Customer at any time. Any variations or amendments will apply to orders made by the Customer after the date of notice.

2.9 Terms in this agreement operate in conjunction with terms in the software licence agreement provided with specific software.

3 Pricing

3.1 Unless otherwise stated, prices quoted, whether in a price list, by written quotation or verbally, for the supply of software and services, excludes GST and any other taxes or duties imposed on or in relation to the software and services. In addition to payment of the price of software and services, the Customer must pay any GST and any other taxes or duties imposed on the software and services.

3.2 If the Customer requests any variation to the Agreement, Open Concepts may increase the price to account for the variation.

3.3 Where there is any change in the costs incurred by Open Concepts in relation to the software or services, Open Concepts may vary its price for the software or services in order to take account of any such change, by notifying the Customer.

4. Payment

4.1 Unless otherwise agreed in writing:

   (a) Payment of 50% of the estimated cost of the software or services is required before Open Concepts will provide software or commence any work;

   (b) Payment of the balance for the software and/or services must be made within 14 days from the date from which Open Concepts' invoice is raised; and

   (c) Open Concepts reserves the right to require payment in full on delivery of the software or completion of the services.

4.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.3 Payment terms may be revoked or amended at the sole discretion of Open Concepts immediately upon giving written notice to the Customer.

5. Payment Default

5.1 If the Customer defaults in payment by the due date of any amount payable to Open Concepts, then all money which would become payable by the Customer to Open Concepts at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Open Concepts may, without prejudice to any other remedy available to it:

   (a) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983 (Vic)* plus 2 per cent for the period from the due date until the date of payment in full;

   (b) charge the Customer for, and the Customer must indemnify Open Concepts from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Conditions or to recover any software;

   (c) cease or suspend for such period as Open Concepts thinks fit, supply of any further software or services to the Customer;

   (d) by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by Open Concepts;

without effect on the accrued rights of Open Concepts under any contract.

5.2 Clauses 5.1(c) and (d) may also be relied upon, at the option of Open Concepts:

   (a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or

   (b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

5.3 In the event that payment in full is not received by Open Concepts for the software or services, then the licence pursuant to clause 11 is cancelled.

6. Retention of Title

6.1 Until full payment in cleared funds is received by Open Concepts for all software and services supplied by it to the Customer, as well as all other amounts owing to Open Concepts by the Customer:

   (a) title and property in all software and services remain vested in Open Concepts and do not pass to the Customer;

   (b) the Customer must hold the software as fiduciary bailee and agent for Open Concepts;

   (c) the Customer is required to hold the proceeds of any sale of the software on trust for Open Concepts in a separate account however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee; and

   (d) Open Concepts may without notice, enter any premises where it suspects the software may be and remove them, notwithstanding that they may have been attached to other software or hardware not the property of Open Concepts, and for this purpose the Customer irrevocably licences Open

Concepts to enter such premises and also indemnifies Open Concepts from and against all costs, claims, demands or actions by any party arising from such action.

7. Performance of Agreement

7.1 Any period or date for delivery of software or provision of services stated by Open Concepts is intended as an estimate only and is not a contractual commitment. Open Concepts will use its reasonable endeavours to meet any estimated dates for delivery of the software or completion of the services but will in no circumstances whatsoever be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

8. Cancellation

8.1 If, through circumstances beyond the control of Open Concepts, Open Concepts is unable to effect delivery or provision of software or services, then Open Concepts may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.

8.2 No purported cancellation or suspension of an order or any part thereof by the Customer is binding on Open Concepts after that order has been accepted.

8.3 Open Concepts, in its absolute discretion may review, alter or terminate the Customer's credit limit or payment terms without notice.

8.4 If the Customer cancels the order after acceptance by Open Concepts, then Open Concepts will be entitled to damages for breach of contract.

9. Intellectual Property

Except for contracts involving the specific writing of software for the Customer by Open Concepts where intellectual property rights are authorised to be transferred to the Customer:

9.1 The Customer acknowledges that it has no proprietary right or interest in Open Concepts' Intellectual Property. The Customer must not at any time create, sell, manufacture or process any software using or taking advantage of the Intellectual Property.

9.2 Open Concepts warrants that it is the owner of, or is legally entitled to use, any source code or Intellectual Property that it uses in the development of the software and services.

9.3 The Customer warrants that, where it provides intellectual property for use by Open Concepts, it is legally entitled to do so.

9.4 The Customer indemnifies and agrees to keep Open Concepts indemnified against all liability, losses or expenses incurred by Open Concepts in relation to, or in any way directly or indirectly connected with, any breach of any intellectual property rights in relation to any intellectual property provided by the Customer for the supply of the software and services.

9.5 Any Intellectual Property provided to the Customer by Open Concepts in connection with the software and services remains the exclusive property of Open Concepts and must be returned to Open Concepts on demand and must not be copied or communicated to any third party without the express written consent of Open Concepts.

10. Ownership of Copyright

10.1 Ownership of copyright in the Copyright Material will remain vested in Open Concepts.

10.2 Where by virtue of the Copyright Act 1968, or other Act of any Federal or State Parliament copyright in the Copyright Material would vest in the Customer, the Customer hereby assigns such copyright to Open Concepts.

11. Grant of Licence

11.1 Subject to this Agreement, Open Concepts hereby grants to the Customer a limited licence to use the Copyright Material for the intended purpose.

11.2 The Licence is limited to the use by the Customer of such software and services as have been supplied by Open Concepts.

11.3 The Customer must not in any way modify, rewrite, or alter the Copyright Material in any way, or use the Copyright Material in an unauthorised manner or for an unauthorised purposes unless with the written permission of Open Concepts.

12. Indemnity

12.1 The Customer shall be solely responsible for and shall hold Open Concepts fully indemnified against any loss or damage arising from or in connection with the provision of the software or services, including without limitation any action for infringement of copyright or trademark brought by any third party against Open Concepts or the Customer in relation to the software.

13. Liability

13.1 The Customer must review and approve all software functionality and the performance of services before commencement. Alterations or changes required by the customer after commencement are the responsibility of the Customer, and the Customer agrees to pay Open Concepts for the alterations or changes.

13.2 Except as specifically set out herein, or contained in any warranty statement provided with the software or services, any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the software or services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.

13.3 Replacement of the software or re-supply of the services is the absolute limit of Open Concepts' liability howsoever arising under or in connection with the sale, use of, storage or any other dealings with the software or services by the Customer or any third party.

13.4 Open Concepts is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.

13.5 Open Concepts will not be liable for any loss or damage suffered by the Customer where Open Concepts has failed to deliver software or services or fails to meet any delivery date or cancels or suspends the supply of software or services, or suspends or cancels the Copyright Licence.

13.5 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of software or supply of services which cannot be excluded, restricted or modified.

14. Miscellaneous

14.1 The law of Victoria from time to time governs the Terms and the parties agree to the non-exclusive jurisdiction of the courts of Victoria Australia, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.

14.2 Failure by Open Concepts to enforce any of these Terms shall not be construed as a waiver of any of Open Concepts' rights.

14.3 If any of the Terms are unenforceable it shall be read down so as to be enforceable or, if it cannot be so read down, the term shall be severed from these Terms without affecting the enforceability of the remaining terms.

14.4 A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by email and facsimile are deemed received on the email server or facsimile machine confirming transmission.

15. Privacy

15.1 Open Concepts is bound by the *Privacy Act 1988* and takes steps to ensure that all personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed and transferred in accordance with the National Privacy Principles. Such information may be accessed by request to Open Concepts in accordance with the *Privacy Act*.

15.2 Open Concepts requires that the Customer comply with the National Privacy Principles in connection with any personal information supplied to it by Open Concepts in connection with this Agreement.

16. Dispute resolution

16.1 In the event that there is any dispute, parties must attempt to resolve disputes pursuant to the mediation procedure recommended by the Law Institute of Victoria (LIV) in Australia.

16.2 If mediation is unsuccessful, parties must proceed to arbitration pursuant to the procedure recommended by the Australian Dispute Resolution Centre.