



Terms and Conditions of Trade

OneQode Group

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Terms and Conditions of Trade

1 Terms

- 1.1 **OneQode-Customer Terms.** These Terms, together with any Credit Application, Credit Agreement, Guarantor Terms, each Order whether accepted or not, create these Terms between OneQode and the Customer for any Work which is not otherwise covered by a separate agreement with us.
- 1.2 **Order Integration.** The provision or acceptance of an Order will not form a separate agreement and any additional terms contained in any document (including amendments) provided by the Customer will not form part of these Terms, unless agreed to in writing by OneQode.
- 1.3 **Scope of Terms.** These Terms applies to all Goods and Work that OneQode provides to, or which are accepted by, a Customer (or its authorised representative) which is either:
 - (a) provided under an Order which references these Terms; or
 - (b) not subject to another contract or document between the parties which was initially provided by OneQode.For clarity, where the parties have signed other documents which originated with OneQode, those documents shall apply to the extent of any inconsistency between these Terms and those documents.
- 1.4 **Customer's Acceptance of Terms.** If, at any time, the Customer requests or accepts a Quote or Order or pays any deposit or any other monies in relation to a Quote or Order, then the Customer is deemed to have read, understood and accepted these Terms.
- 1.5 **Continuing Agreement.**
 - (a) OneQode reserves the right to update, amend, or change any terms of the Terms at their discretion. By accepting OneQode's services and receiving the Work, you agree to the current terms and conditions, as well as any future updates or changes to the Terms as published on the Website.

- (b) You are responsible for regularly checking the terms and ensuring compliance. If you are not satisfied or unable to comply with the terms, you must notify OneQode immediately. If OneQode determines that you are in violation of any terms, they reserve the right to terminate the agreement in accordance with clause 17.

2 Services

2.1 Quotes.

- (a) A Quote or indication of a price issued by OneQode is an invitation to treat, not a contractual offer.
- (b) A Quote is valid for 30 days from the date of issue by OneQode.
- (c) OneQode reserves the right to cancel or modify a Quote at any time before the Customer has accepted a Quote.
- (d) Accepted Quotes will be considered Orders following acceptance by the Customer in writing.
- (e) An Order may only be cancelled in accordance with these Terms.

2.2 Suitability.

- (a) OneQode makes no representation or warranty as to the suitability of the Work for the Customer's purposes. It is the Customer's responsibility to satisfy itself as to such suitability.
- (b) Where Customer has provided a quote or order to OneQode for the provision of services or goods, OneQode will not be bound by such a document until it has consented to same in writing.

3 Services

3.1 Goods Generally.

- (a) This clause applies where the Customer acquires Goods from OneQode or there is otherwise Goods at a Location and the Customer has not paid in full for the Goods.

- (b) The Customer acknowledges that as between the Customer and OneQode, OneQode owns the Goods, and the Customer holds it as bailee only. OneQode reclaims title to all unsold Goods, even if the Customer goes into liquidation or becomes bankrupt prior to paying in full.
- (c) Except as agreed in writing by OneQode, the Customer may not assign, sub-let, charge, mortgage, pledge or create any form of Security Interest over, or otherwise deal with the Goods in any way.

3.2 **Obligations.**

The Customer must:

- (a) not alter, modify, tamper with, damage or repair the Goods in any way without OneQode's prior written consent; and
- (b) not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Goods.

4 Supply of Work and Goods

- 4.1 **Services.** OneQode will provide Work subject to these Terms.
- 4.2 **Performance.** OneQode will make reasonable commercial efforts to provide the Work within the timeframes set out in an Order, if any.
- 4.3 **Service Limitations.** OneQode will use commercially reasonable efforts in providing the Work, however other than as set out in these Terms, to the fullest extent permitted at law, OneQode does not warrant or guarantee the Work will be uninterrupted or error free, and OneQode doesn't take any responsibility for faults, delays, or interruptions to the Work caused by any:
 - (a) misuse or error;
 - (b) Customer staff or equipment;
 - (c) delays, action, operation, inaction, or failure of any third party service, employees, or equipment; or
 - (d) Unforeseen Event.

- 4.4 **Out-of-Scope Services.** Upon request by the Customer, OneQode may, at its discretion, provide Out-of-Scope Services. Unless stated elsewhere, OneQode will charge the Default Rate for any Out-of-Scope Services it provides.
- 4.5 **Right to Sub-Contract.** The Customer acknowledges that OneQode may use sub-contractors to deliver the Goods and agrees to continually indemnify and hold harmless OneQode and its Representatives, from any losses caused by the sub-contractor.
- 4.6 **Unavailable Material.** The Customer acknowledges that the Goods advertised by OneQode whether in print or on the Website may be derived from products or services provided by third party suppliers. Some products or services may not be available to OneQode at the time the Customer accepts a Quote, which may result in a delay in the Work and OneQode accepts no Liability for such delays.
- 4.7 **Instructions, Equipment and Materials.** The Customer must:
 - (a) give OneQode clear instructions regarding the scope and specifications of the Work and respond promptly to any questions OneQode has promptly;
 - (b) provide any materials or documents necessary for OneQode to perform the Work; and
 - (c) respond in a timely manner if we bring an issue to your attention in relation to your software, equipment, data or network that affects the Work.
- 4.8 **Warranties.** The Customer guarantees and shall continue to guarantee that it and its representatives have all necessary licences and legal right(s) to allow OneQode to provide the Work, and that providing the Work based on the Customer's directions won't contravene any applicable laws.

5 Referred Work or Goods

- 5.1 **Referral to Third Party Providers.** As part of performing the Work, OneQode may refer the Customer to third party suppliers who can perform work or supply goods directly to the Customer (**Preferred Supplier**). Where the Customer engages a Preferred Supplier to perform work or supply goods, it acknowledges and agrees that:
 - (a) the involvement of OneQode is as referrer only, and unless expressly agreed otherwise in writing, OneQode will provide no other services to the Customer;

- (b) OneQode makes no guarantees or warranties in respect of the services, work or goods supplied by the Preferred Supplier;
- (c) even where OneQode is involved further in relation to work or goods provided by the Preferred Supplier, the Preferred Supplier shall remain solely responsible for all work or goods it provides; and
- (d) where the Customer has a Claim in relation to the actions, work or goods of the Preferred Supplier under an engagement with them, its sole and exclusive warranty is to pursue the Preferred Supplier.

5.2 Release and Indemnity.

- (a) Where the Customer interacts with, engages or otherwise has dealings with a Preferred Supplier, it expressly releases, indemnifies and warrants that it will hold OneQode harmless from any Claim, Liability, damages or actions resulting from the Customer's dealings with the Preferred Supplier.
- (b) Where the Customer is advised that, as a term of the Preferred Supplier's services, OneQode is required to assume Liability for the Preferred Supplier, the Customer warrants that it will not make any Claim against the Preferred Supplier and will cease any Claim that is currently on foot.

6 Delivery

6.1 **Delivery Schedule.** OneQode will use reasonable commercial efforts to supply the Work to the Customer as stipulated in an Order.

6.2 **Delivery.** Where the Order includes delivery for Goods:

- (a) OneQode will use reasonable commercial efforts to deliver Goods to the Location as set out in the Order or at the time agreed between the parties;
- (b) OneQode reserves the right to deliver the Goods in multiple deliveries; and
- (c) Delivery of Goods will be deemed to have taken place when the Goods arrives at the Location.

6.3 **OneQode's Delay in Delivery.** OneQode will notify the Customer at the earliest practicable date if it believes that the delivery of Goods will be delayed and will advise the Customer of the new estimated delivery date when known.

6.4 **Customer's Delay or Prevention of Delivery.** If OneQode is unable to deliver the Goods because of an act or omission of the Customer, including a failure of the Customer to fulfil its obligations under these Terms:

- (a) the risk in the Goods will pass to the Customer;
- (b) the Goods will be deemed to have been delivered;
- (c) the Customer may retain any non-refundable deposit; and
- (d) OneQode may store the Goods until actual delivery is possible and the Customer will be liable for all related costs and expenses.

7 Goods

7.1 Fault in Goods.

- (a) Subject to clause 12, if the Customer, acting reasonably, finds the Goods to be faulty, OneQode agrees to rectify said fault within a reasonable time at OneQode's expense.
- (b) Minor deviations from the Goods description will not entitle the Customer to reject the Goods and if any fault is caused by the Customer's direction to change the Goods, the rectification shall be at the Customer's expense.
- (c) Nothing in this clause affect the Customer's rights for any alleged failure of guarantee under Consumer Law.

7.2 Installing the Goods.

- (a) Where OneQode is required to perform Work at the Customer's Location, the Customer agrees to provide OneQode with access to the Location, equipment and other facilities and services as are reasonably required to perform the Work.
- (b) While at the Customer's Location, OneQode and its Representatives will:
 - (i) comply with the Location's security and site regulations;
 - (ii) observe all occupation health and safety requirements; and
 - (iii) perform the Work in accordance with any relevant safety standards which it observes.

8 Calculation of Fees for the Work or Goods

8.1 Payment.

- (a) OneQode will invoice the Customer and Customer will pay the amount due on the invoice in accordance with the Payment Terms as set out in an Order.
- (b) OneQode reserves the right to issue the Customer with more than one invoice for any given Quote or Order where there is a logical division of the Goods or Work performed.

8.2 Usual Payment Terms.

- (a) For all standard Orders and unless otherwise stipulated, OneQode will invoice Customer on the terms set out in an Order.
- (b) Unless the parties agree otherwise, Work shall be invoiced as follows:
 - (i) 40% of the total Work amount prior to starting the Work (**Deposit**);
 - (ii) remaining 60% of the total Work amount at the completion of the Work.
- (c) OneQode reserves the right to indefinitely postpone commencing any Work until it receives payment of the required Deposit from Customer. Customer acknowledges and agrees that OneQode can refuse to undertake the Work until it receives said payment.

8.3 Cancellation Fees.

Where Customer informs OneQode that it wants to cancel the Work after it has already accepted a Quote and paid the Deposit, OneQode reserves the right, at its absolute discretion and without any Liability to Customer, to:

- (a) keep some or all of the Deposit as compensation for its time and material expenditure to that juncture; and
- (b) to invoice Customer for any expenses incurred by OneQode for the 72-hour period following the cancellation, including (but not limited to) wages, equipment hire and licenses.

8.4 **Taxes, Charges and Duties.** The Customer is responsible for paying all government taxes, charges and duties of any kind incurred in or in connection with OneQode's provision of credit, or supply of Goods. Such charges include without limitation all stamp duties, goods and services tax, financial institution duties, and any other charges or duties of a similar kind.

8.5 **Failure to Pay.** If the Customer fails to pay OneQode any amount under these Terms by the due date for payment, OneQode may immediately do any or all of the following, without any Liability, until all overdue fees are paid:

- (a) charge the Customer an overdue fee by applying an amount equal to 5% above the Reserve Bank of Australia cash rate to the overdue amount, compounded daily;
- (b) terminate these Terms without any obligation to refund the Customer any money in respect of the cancellation, even if the contractual term of these Terms has not expired;
- (c) initiate proceedings against the Customer to recover the overdue amount (despite any dispute resolution clause in these Terms); and
- (d) recover all costs in relation to any action taken against the Customer to recover overdue amounts, including but not limited to legal costs and outlays on a full indemnity basis.

9 Security Interest

9.1 **Security Interest.**

- (a) In contemplation of the risk involved in providing Customer a Credit Account or other Work, OneQode may require that you offer up Collateral for it to secure an interest over.
- (b) Customer acknowledges that, where OneQode does require Collateral, these Terms will be considered a Security Agreement for the purposes of the PPS Act and Customer irrevocably consents to OneQode registering its Security Interest on the PPSR.
- (c) In order to secure the Customer's obligations under these Terms, including any obligation to pay any amount to OneQode (including in relation to a Credit Account), the Customer:

- (i) grants to OneQode a Security Interest in respect of all goods sold, supplied, leased, bailed or otherwise provided or made available to the Customer by OneQode and any proceeds thereof;
- (ii) consents to OneQode perfecting such Security Interest by registration on the PPSR, including as a Purchase Money Security Interest; and
- (iii) undertakes to OneQode to do all things reasonably necessary or required by OneQode to assist OneQode in perfecting the registration of the Security Interest on the PPSR; and
- (iv) waives, to the extent permitted by the PPS Act, its right to receive any notice of a verification statement or any other notice OneQode would otherwise be required to give under the PPS Act.

9.2 **Dealing with Secured Collateral.** In relation to any Collateral for which OneQode has a Security Interest under this agreement, Customer agrees and warrants that it:

- (a) has full right and title in any Collateral;
- (b) will disclose any and all encumbrances over Collateral as soon as possible;
- (c) will not allow any other encumbrances over the Collateral without OneQode's express permission; and
- (d) will not sell, dispose of, grant a license or lease, give control to another, part with possession, allow the value to be reduced, commingle, or deal with the Collateral in any way which could be harmful to OneQode interests in the Collateral without OneQode's express permission.

9.3 **Enforcement.** If Chapter 4 of the PPS Act would otherwise apply to the enforcement of these Terms, Customer agrees that the following provisions of the PPS Act will not apply to the enforcement of these Terms:

- (a) section 95 (notice of removal of accession), to the extent that it requires OneQode to give a notice to Customer;
- (b) subsection 121(4) (enforcement of liquid assets — notice to grantor);
- (c) section 130 (notice of disposal), to the extent that it requires OneQode to give a notice to Customer;

- (d) paragraph 132(3)(d) (contents of statement of account after disposal);
- (e) subsection 132(4) (statement of account if no disposal);
- (f) section 135 (notice of retention);
- (g) section 142 (redemption of collateral); and
- (h) section 143 (reinstatement of security agreement).

10 Account and Credit

10.1 Ability to Pay.

- (a) In performing Work and providing Goods under these Terms, OneQode may provide Customer with access to a Credit Account. In order to provide Customer with access to a Credit Account, Customer must:
 - (i) complete the Credit Account request form attached to the initial Quote;
 - (ii) provide OneQode with any evidence it requests which demonstrates that Customer is able to satisfy its payment obligations to OneQode at all times; and
 - (iii) comply with the terms listed on that request form and this clause 10.
- (b) Prior to providing Customer access to a Credit Account, and for the term of these Terms, OneQode reserves the right to:
 - (i) check Customer's credit history with institutions of our choosing;
 - (ii) enquire with Customer about confidential business matters such as cash flow, expenses and projected revenue; and
 - (iii) take all other actions OneQode deems reasonably necessary to satisfy ourselves that Customer will discharge its payment obligations under these Terms.
- (c) OneQode may refuse to execute, suspend or terminate these Terms at its complete discretion where Customer fails to comply with OneQode's requests under this clause 10.1.

10.2 Credit Agreement.

- (a) Customer may obtain Work and Goods under these Terms up to the amount of its credit limit. The credit limit is stipulated in Customer's Credit Agreement. If the Customer does not have a Credit Agreement, it shall not be afforded any of the benefits of a Credit Account and must pay all invoices if and when they fall due.
- (b) The Customer must comply with all terms, payment periods and requirements of any Credit Agreement it enters into with OneQode for a Credit Account.
- (c) OneQode reserves the right to suspend the provision of Goods or Work on credit and may (in our discretion) suspend/terminate the Credit Agreement and/or Credit Account entirely if the Customer:
 - (i) breaches any term of these Terms;
 - (ii) breaches any term of the Credit Agreement;
 - (iii) does not make payments on the Customer's Credit Account within the period stipulated; or
 - (iv) exceeds the credit limit.
- (d) The Customer expressly releases and discharges OneQode from any Liability to Customer for the suspension or termination of a Credit Account and/or Credit Agreement under clause 10.2(c).
- (e) Customer acknowledges that the provision of a Credit Account is a privilege provided entirely at the discretion of OneQode, and that the Customer has no inherent or continuing right to such a privilege. The Customer agrees that OneQode may revoke its Credit Account at any time without the need for prior notice.
- (f) OneQode may update, amend or vary any of the terms on which it provides a Credit Account at its complete discretion. The Customer's continued use of the Credit Account is considered acceptance of all terms and conditions which relate to the provision of that account.
- (g) Where Customer does not agree with any updated terms and conditions as they relate to a Credit Account, its sole and exclusive remedy is to cease usage of the Credit Account altogether.

- (h) Customer indemnifies OneQode for any failure to comply with the Credit Agreement and/or misuse of its Credit Account, including any legal costs, Consequential Loss or other damages which flow from that breach.
- (i) Customer acknowledges and agrees that OneQode may charge interest and other fees on the Credit Account, fees for which will initially be set out in the relevant Credit Agreement. OneQode may update these fees at any time, and will notify the Customer of changes in relation to same within a commercially reasonable timeframe.

11 Default by Customer

11.1 Default by Customer.

If the Customer:

- (a) fails to pay any amount on time;
- (b) gives OneQode incorrect or misleading information in relation to the Credit Application;
- (c) commits an act of bankruptcy;
- (d) undergoes an Insolvency Event; or
- (e) breaches any term of these Terms, and fails to remedy that breach within 10 Business Days,

then the Customer shall be in default of the Terms.

11.2 Rights.

If the Customer is in default, then subject to any law (including requirements as to notice), OneQode shall have the right to:

- (a) demand immediate payment of all monies owed by the Customer to OneQode, whether due for payment or not;
- (b) recover from the Customer all Goods it has supplied to the Customer, whether paid for or not;
- (c) re-sell or otherwise dispose of the Goods so recovered without reference to the Customer and apply the net proceeds to the Customer's debt to OneQode;

- (d) immediately cancel any agreement, including any Order in effect with the Customer without any obligation to refund the Customer any money in respect of the cancellation; and
- (e) enforce any Security Interests against the Customer.

11.3 Recovery. In order to effect recovery of the Goods in accordance with this clause, the servants or agents of OneQode may:

- (a) enter the Customer's Location (or any location under the control of the Customer or the Customer's agent if the Goods are stored at other locations); and
- (b) use any reasonable force to effect recovery without Liability for trespass or any resulting damage.

11.4 OneQode's Set-Off Rights.

- (a) OneQode, after having demanded payment of any amount overdue in accordance with this clause 11, may apply any payment paid by the Customer, against:
 - (i) OneQode's costs and disbursements in recovering the amount due;
 - (ii) any interest accrued; and/or
 - (iii) the amount overdue.
- (b) OneQode may at any time set-off any amount the Customer owes to OneQode against any amount OneQode may then owe to the Customer.

12 Warranty

12.1 Warranty Period.

- (a) OneQode warrants that the Goods will be free from defects in materials and workmanship on the same terms and condition including the period of warranty as the warranties provided by the manufacturer of the Goods (**Goods Warranty Period**).
- (b) OneQode warrants that the Work will be free from defects in material and workmanship for a period of 30 days from delivery (**Work Warranty Period**).

- (c) OneQode reserves the right to inspect and test the product/s for the purpose of determining the extent of any defect and the validity of any claim made under this warranty. All defective parts/products replaced by OneQode under this warranty will be deemed to be the property of OneQode.
- (d) This warranty will not apply if the Goods are rendered faulty by a factor other than a defect in materials and workmanship. Such factors include but are not limited to:
 - (i) damage through misuse (including failure to maintain, service or use with proper care), neglect, accident or ordinary wear and tear (including deterioration of parts and accessories); and
 - (ii) use for a purpose for which the Goods was not sold or designed.
- (e) OneQode does not provide warranties for goods or work supplied by a Preferred Supplier unless expressly agreed in writing. All warranties for Preferred Supplier goods or work are the responsibility of the Preferred Supplier.

12.2 **Unsafe.**

- (a) If Goods become unsafe due to use during the Goods Warranty Period, for a reason that is not caused by the Customer, the Customer must:
 - (i) immediately stop using the Goods and notify OneQode;
 - (ii) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Goods;
 - (iii) take all steps necessary to prevent any further damage to the Goods itself; and
 - (iv) not repair or attempt to repair the Goods without OneQode's written consent.
- (b) Upon receiving notice of such a safety issue, OneQode shall take reasonable steps to repair or replace the Goods as soon as reasonably possible.

12.3 **Making a Warranty Claim.** To make a warranty claim, the Customer must contact OneQode using the email address hello@oneqode.com or as the email address listed on the Website (and failing any email being listed, through any other contact methods found on the Website).

13 Liability

13.1 Consumer Law.

- (a) The Customer acknowledges and agrees that it is acquiring the Work or Goods and otherwise entering into and acquiring goods or services under these Terms for commercial purposes and not for domestic, personal or household use.
- (b) If the Customer is a consumer within the meaning of the Consumer Law, there are certain rights (such as the consumer guarantees implied by the Consumer Law), which cannot by law be excluded (**Non-Excludable Condition**). This clause is subject to those Non-Excludable Conditions.

13.2 Exclusion and Warranty.

Subject to the application of any applicable Non-Excludable Condition and to the maximum extent permitted by law, OneQode:

- (a) excludes from these Terms all guarantees, conditions and warranties that might but for this clause be implied into these Terms;
- (b) exclude all Liability to the Customer for any costs, expenses, losses and damages suffered or incurred directly or indirectly by the Customer in connection with this agreement, whether that Liability arises in contract, tort or under statute; and
- (c) shall in no circumstance be liable to Customer or to any third party for any Consequential Loss;

and the Customer warrants to OneQode, as a condition of engaging OneQode to perform Work or Goods under any Order, that it acknowledges, understands and agrees to the above terms.

13.3 Limitation.

If OneQode's Liability under these Terms cannot be lawfully excluded, to the maximum extent permitted by law, OneQode's Liability for breach of any Non-Excludable Condition is limited:

- (a) in the case of goods, to (at OneQode's option) the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; or
- (b) in the case of services, to (at OneQode's option) the supplying of the services again; or the payment of the cost of having the services supplied again.

14 Indemnity

14.1 **Customer Indemnity.** The Customer indemnifies OneQode and OneQode's Representative against all Liability arising from Claims for:

- (a) any harm to, claim or action by a third party arising directly or indirectly from the Customer's use of the Goods;
- (b) any personal injury or death arising directly or indirectly out of the Customer's conduct;
- (c) any damage to property arising directly or indirectly out of the Customer's conduct;
- (d) any negligent or unlawful act or omission by the Customer in connection with the Goods;
- (e) OneQode or a third party's reliance on a misleading representation made by the Customer;
- (f) a contract in force between the Customer and a third party connected with the Work or Goods;
- (g) OneQode being obligated to correct data upon request by a person in accordance with Privacy Law;
- (h) and failure to honour its warranties under these Terms, including the warranties made in clause 13;
- (i) any complaints process initiated by a person under Privacy Law; or
- (j) any other cost incurred by the OneQode as a result of a person pursuing rights conferred upon them by Privacy Law.

14.2 **Conditions of Indemnity.**

- (a) OneQode may make a claim under indemnities in these Terms in relation to a cost before having incurred the cost, or before making a payment in relation to the cost.

- (b) The indemnities in these Terms shall be in addition to any damages for breach of contract to which OneQode may be entitled. Nothing in the indemnities in these Terms will be construed so as to prevent OneQode from claiming damages in relation to the Customer's breach of any term of these Terms.
- (c) Each indemnity in these Terms is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of these Terms for whatever reason.

15 Intellectual Property

15.1 Intellectual Property Rights.

- (a) Unless otherwise agreed, each party retains ownership of all Intellectual Property rights in material owned or created by that party independently of these Terms. No Intellectual Property is assigned or transferred by way of these Terms.
- (b) The parties agree that all Intellectual Property rights in:
 - (i) the Work and any other material, Goods, methods or content developed by us under these Terms; and/or
 - (ii) any improvements, modifications or enhancements to the Goods, and any other material developed by us in the course of providing the Work,(collectively, the **Work IP**)will vest in and are owned by OneQode upon creation, even if based on the Customer's new feature request or user feedback.
- (c) Without limiting the Customer's rights at law, and subject to any conflicting rights granted by these Terms, the Customer must not, without OneQode's written consent:
 - (i) sell, sublicense, rent, lease, lend, modify, alter, translate, reproduce, transmit, distribute, publicly display, publicly perform, publish, adapt, or edit any part of the Work IP;
 - (ii) combine or incorporate the Work IP in any aspect of the Customer's business without OneQode's consent in writing;

- (iii) copy the Work IP, in whole or in part, except to incorporate the Work IP into hard or soft copy documents for training or internal communication purposes;
- (iv) use the Work IP in any way which is not in accordance with the specifications and these Terms;
- (v) use the Work IP for any unlawful purpose; or
- (vi) authorise any other party to do any of the acts listed above.

15.2 **Third Party Material.** We may use third party materials where needed to provide the Work. Use of third party materials may be subject to creative commons or open source licensing terms, or any third party licensing terms as notified by us to you.

16 Dispute Resolution

16.1 Dispute Resolution Process.

- (a) Subject to clause 16.1(f) any dispute which arises between the parties in connection with this agreement (**Dispute**) must be dealt with in accordance with the requirements of this clause 16, before either party will be entitled to commence proceedings against the other party in respect of the Dispute.
- (b) The party claiming that a Dispute has arisen (**Complainant**) must give the other party a written notice setting out a detailed explanation of the nature of the Dispute; and what action the Complainant thinks will resolve the Dispute (**Dispute Notice**).
- (c) Within 10 Business Days of the Dispute Notice being received by the other party, a nominated senior executive of each party must meet in Brisbane, Queensland (or as otherwise agreed between the parties), act in good faith and use best efforts to resolve the Dispute at that meeting, or such subsequent meetings as may be reasonably required.
- (d) If the Dispute is not resolved pursuant to clause 16.1(c) within 30 days of the Dispute Notice being received by the other party, the parties agree to attend a privately held mediation with a mediator appointed by the law society of the jurisdiction defined in clause 18.9 and request that they provide a mediator.
- (e) The cost of mediation shall be shared equally between the parties.

- (f) If the Dispute is not resolved within a further 30 days pursuant to clause 16.1(d) then either party may commence proceedings against the other party in respect of the Dispute.
- (g) Nothing in this clause 16 prevents a party from seeking urgent injunctive or similar relief from a court.

16.2 **Dispute Resolution Does Not Apply to Debts.** The dispute resolution procedure set out in this clause 16 shall not apply in any instance where OneQode seeks to enforce a debt in connection with these Terms.

17 Termination by OneQode

17.1 **Termination.** OneQode may terminate any Order, Work or these Terms immediately by written notice to the Customer if the Customer:

- (a) is in material breach of these Terms;
- (b) is in default for more than 10 days;
- (c) experiences a Change of Control;
- (d) convicted of any crime or unlawful act; or
- (e) experiences a change in its Creditworthiness.

17.2 **Termination not to affect obligation to pay.** Termination of any Order, Work or these Terms shall not affect the Customer's obligation to pay any outstanding amounts or other amounts in relation to Goods or the Work already performed, and where such performance is completed partially by OneQode, the Customer shall be obliged to pay OneQode no less than the expenses OneQode incurred for said partial performance.

18 General

18.1 **Confidentiality.**

- (a) A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information.
- (b) A party will not be in breach of this confidentiality clause in circumstances where it is legally compelled to disclose the other party's Confidential Information.

- (c) Each party will take all reasonable and necessary steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of these Terms, do not make public or disclose the other party's Confidential Information.
- (d) Notwithstanding any other provision of this clause 18, a party may disclose these Terms (other than confidential information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.

18.2 Communications.

- (a) Communications must be in writing.
- (b) Either party may serve any communication on the other party by sending it to that party's email address. A communication by email will be taken to have been received by the addressee at the earlier of the time stated in a read receipt sent by the recipient's computer or when the message has been delivered to the email address of the addressee
- (c) If delivery is made after 5:00pm on a Business Day, it must be treated as received on the next Business Day.
- (d) For the purposes of the *Electronic Transactions Act 1999* (Cth), the *Electronic Transactions (Queensland) Act 2001* (Qld) and section 127 of the *Corporations Act 2001* (Cth), the parties agree to send, receive and execute notices and documents electronically, and agree that any document signed electronically will be binding with the same effect as a physical signature.

18.3 Inconsistency with other documents. If the terms of the Terms are inconsistent with any other document between the parties, the terms of the Terms shall prevail to the extent of the inconsistency.

18.4 Counterparts. A document which requires signing between the parties may be executed in any number of counterparts including where they are exchanged by facsimile or by email containing that document as an unalterable attachment. All counterparts together will be taken to constitute one instrument.

18.5 Reliance. Neither party has entered into any agreement in reliance on or as a result of any representation, promise, statement, conduct or inducement by the other otherwise than as set out in these Terms.

18.6 **Relationship of the Parties.** The relationship of the parties does not form a joint venture, partnership or agency, or create any form of employment relationship.

18.7 **Severability.** Any clause of the Terms, which is invalid or unenforceable, is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of the Terms.

18.8 **No waiver except in writing.** No part of the Terms will be deemed waived and no breach excused unless such waiver or consent is provided expressly and in writing.

18.9 **Governing law.** The laws of Queensland, Australia govern the Terms, and each party hereby submits to the exclusive jurisdiction of the courts there.

18.10 **Amendment.** The Terms may only be amended in writing by OneQode.

18.11 **Assignment.**

- (a) The Customer shall not assign, novate or otherwise transfer any of its rights or obligations under the Terms without the prior written consent of OneQode.
- (b) OneQode may assign, novate or otherwise transfer any of its rights or obligations under any contract arising from the Terms to a third party without notice to, or the prior consent of the Customer, but if OneQode requires, the Customer will sign any documents to give effect to an assignment, novation or transfer by OneQode under this clause.

18.12 **Unforeseen Event.**

- (a) The obligations of the parties under the Terms are suspended to the extent that any occurrences or conditions beyond a party's control, including but not limited to acts of terrorism, acts of God, war strikes, civil disorder, disasters or changes to government regulations (**Unforeseen Event**) affects them, as long as the Unforeseen Event continues. However, if an Unforeseen Event continues for more than 40 Business Days, OneQode may terminate the Terms by notice in writing to the Customer of not less than 10 Business Days.
- (b) The occurrence of an Unforeseen Event does not suspend the obligation of the Customer to pay any money due under the Terms.
- (c) A party claiming an Unforeseen Event must use their best efforts to remove, overcome or minimise the effects of that Unforeseen Event as quickly as possible.

19 Definitions and Interpretation

19.1 **Definitions.** The following definitions apply in these Terms:

Business Days means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in the jurisdiction specified in clause 18.9.

Change of Control means for a company, a change in:

- (a) control of the composition of the board of directors of the company;
- (b) control of more than half the voting rights attaching to shares in the company; or
- (c) control of more than half the issued shares of the company;

Claim means a claim, demand, remedy, suit, injury, damage, loss, cost, Liability, action, proceeding, right of action, claim for compensation or reimbursement or Liability incurred by or to be made or recovered by or against a person, however arising and whether:

Collateral takes its meaning from section 10 of the PPS Act.

Communication means any written communication (including each notice, consent, approval, request and demand) under or in connection with these Terms.

Confidential Information means information that is by its nature confidential, including but not limited to all spoken, written or electronically stored information belonging to or relating to either party and includes without limitation: any kind of technical, financial or business information; details of employees, suppliers, or customers; material developed under this Agreement; and Intellectual Property, concepts, know-how and trade secrets, but excludes information in the public domain (other than by default under this Agreement) or information independently known to the other party.

Consequential Loss means loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of Goods (other than the cost of repair), loss of opportunity or expectation loss, and any other form of consequential, special, indirect, punitive or exemplary loss or damages.

Consumer Law means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Credit Account means an account with us in which OneQode allows Customer to accrue debt to us for Work rendered under these Terms without the need for immediate payment of those debts.

Credit Agreement means a contract or form which details specific terms for a Credit Account and falls under these Terms, generally by way of a credit application form.

Credit Application means an application by the Customer for OneQode to issue them with credit.

Creditworthiness means the valuation process performed by OneQode to determine the likelihood of the Customer defaulting on its debt obligations:

- (a) ascertained or unascertained;
- (b) immediate, future or contingent; and
- (c) subject of a dispute, litigation, arbitration, mediation, conciliation or administrative proceedings.

Customer, you or your means the individual or company listed on a Quote, Order or Credit Application with us as the other party (and all of the Customer's associated/authorised representatives).

Default Rates means the rate set out in the Order for personnel who provide the Work, or as OneQode otherwise publishes (for example, on its Website) from time to time.

Goods mean any items supplied to the Customer by OneQode pursuant to the Order, but excludes any goods produced or provided by a Preferred Supplier.

Guarantor Terms means a guarantor agreement signed by the Customer, or a director or Representative of the Customer, usually in connection with a Credit Application.

Insolvency Event means in respect of a party (the Insolvent), the appointment of an administrator, a receiver or receiver and manager in respect of the Insolvent, an application to a court or an order for the winding up of the Insolvent, or where anything analogous or having a substantially similar effect to any of the preceding events occurs.

Intellectual Property means all intellectual property rights, patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, source and object code, products, programs, technology, hardware, data, database rights, rights in confidential information (including know-how, trade secrets and marketing secrets), improvements, machines, techniques, methods, and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Liability means any liability (whether actual or prospective), loss, damage, cost or expense of any description, including legal fees on a solicitor and own client basis.

Location means the geographical location where the Goods are to be delivered or any location at which the Goods are stored, installed or kept by the Customer after delivery.

OneQode, us, our, we means OneQode Pty Ltd and/or any of our Related Bodies Corporate, as the case may be.

Order means the agreed statement of work which sets out the Goods to be acquired, quantity levels, prices, installation process, delivery dates and Payment Terms, and specifies that these Terms applies to it.

Out-of-Scope Services means Work not specified in an Order which the Customer requires performed.

Payment Terms means the terms and conditions in relation to the amount payable in respect of an Order provided by OneQode to the Customer, including all costs, charges and expenses reasonably and properly incurred by OneQode.

PPS Act means the *Personal Property Securities Act 2009* (Cth).

PPSR means the Personal Property Securities Register established under the PPS Act.

Privacy Law means:

- (a) the *Privacy Act 1988* (Cth); and
- (b) any other law that governs the use, disclosure or management of data or information relating to persons.

Purchase Money Security Interest has the meaning defined under the PPS Act.

Quote means the estimated price provided by OneQode to the Customer in relation to a statement of work concerning the Goods to be acquired, quantity levels, proposed delivery dates and Payment Terms.

Related Bodies Corporate has the meaning given to it in the *Corporations Act 2001* (Cth).

Representative includes an employee, agent, officer, director, auditor, advisor, researcher, partner, consultant, contractor, sub-contractor or related entity of that person or of a related body corporate of that person.

Security Interest has the meaning defined under the PPS Act.

Terms means the legally binding agreement comprising of these terms and conditions, any associated terms and any Order.

Website means the website <https://www.oneqode.com>.

Work means any services performed by OneQode, including those which involve the Goods.

19.2 **Interpretation.** The following rules apply in interpreting these Terms, except where the context makes it clear that a rule is not intended to apply:

- (a) Headings are for convenience only, and do not affect interpretation.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to:

- (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.
- (ii) a party to these Terms or to any other document or agreement includes a permitted substitute or a permitted assign of that party.
- (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (iv) these Terms includes the agreement recorded by these Terms and by any document incorporated in this document by attachment or by reference.
- (v) dollars or \$ is to an amount in Australian currency.
- (vi) information is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- (vii) a representative of OneQode is to an employee, officer, agent or subcontractor of OneQode; and
- (viii) anything (including a right, obligation or concept) includes each part of it.

19.3 **Multiple Parties.** If a party to these Terms is made up of more than one person, or a term is used in these Terms to refer to more than one party:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.