



## Live Communications – Terms and Conditions of Sale - IP Office Live powered by Avaya

Version 3.1 Terms and Conditions of Sale - IP Office Live powered By Avaya IP Office TM Terms and Conditions of Sale

### 1 Definitions

- 1.1** “Live Communications”, its successors and assigns or any person a Live Communications on behalf of and with the authority of Live Communications.
- 1.2** “Client” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3** “Goods” means all Goods or Services supplied by Live Communications to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4** “Charges” means the price payable for the Goods as agreed between Live Communications and the Client in accordance with clause 4 below.

### 2 Acceptance

- 2.1** These terms and conditions are meant to be read with Live Communication ‘Support Contract’. If there are any inconsistencies between the documents, then the terms and conditions contained in that document shall prevail.
- 2.2** The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for Goods or accepts Delivery.
- 2.3** These terms and conditions may only be amended with Live Communications consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Live Communications.

### 3 Change in Control

- 3.1** The Client shall give Live Communications not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Live Communications as a result of the Client’s failure to comply with this clause.

### 4 Charges and Payment

- 4.1** At Live Communication sole discretion the Charges shall be either: (a) as indicated on any invoice provided by Live Communications to the Client; or (b) Live Communication quoted price (subject to clauses 4.2, 9.2 and 9.3) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days. If a qty of users is agreed on the qty not invoiced will be subject to the term ‘on connection’ of said un invoiced users agreed on the contract. (e.g. 300 users agreed - 200 deployed and invoiced - 100 still require 36 months in agreement.)
- 4.2** Live Communications reserves the right to change the Charges if a variation to Live Communication quotation is requested. Any variation as a result of fluctuations in currency exchange rates will be charged for on the basis of Live Communication quotation and will be shown as variations on the invoice.
- 4.3** At Live Communication sole discretion, a non-refundable deposit of up to fifty percent (50%) shall be required prior to Live Communication order placement for the Goods.
- 4.4** Time for payment for the Goods being of the essence, the Charges will be payable by the Client on the date/s determined by Live Communications, which may be: (c) on Delivery, (d) on License Activation, (e) on Completion of Carrier provisioning, (f) by way of instalments in accordance with Live Communication payment schedule, as follows: 1. Order Value 2. Deposit 3. 2nd Payment 4. Final Payment 5. \$1,000 to \$50,000 6. 50% 7. 40% 8. 10% 9. \$51,000 to \$100,000 10. 40% 11. 50% 12. 10% 13. \$101,000 + 14. 30% 15. 60% 16. 10% (g) the date specified on any invoice or other form as being the date for payment; or (h) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by Live Communications.
- 4.5** Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to five percent (5%) of the Charges), or by any other method as agreed to between the Client and Live Communications.
- 4.6** Unless otherwise stated the Charges do not include GST. In addition to the Charges the Client must pay to Live Communications an amount equal to any GST Live Communications must pay for any supply by Live Communications under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Charges. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.

### 5 Agreement term

The commencement and service expiration date are detailed on the original service order form, notwithstanding any other condition contained in the Agreement between the Client and Live Communications, early termination is not available with the



Service. If You breach this clause, you must pay to Live Communications a termination fee that is calculated as 85% of the remaining payments.

## **6 Trade-In Items**

**6.1** Where Live Communications is accepting a trade-in, the Client warrants that they are the legal owner of the item(s) to be traded-in, and that there is no money owing on the item(s) prior to the Goods being installed. The Client also agrees to maintain full insurance cover for the item(s) until collection takes place.

**6.2** Where a value for the item(s) has been provided, it is a condition of this agreement that the trade-in shall be made up of the Goods specified on Live Communication invoice, quotation, or any other form provided to the Client, unless otherwise noted in writing within the same document.

**6.3** The Client warrants that item(s) being traded-in is in good condition and working order, and Live Communications reserves the right to alter the allowance for the trade-in if the description of the item(s) being traded-in or the quantities of the item(s) vary from those specified, or if the item(s) are found to be faulty and/or in poor condition.

## **7 Carrier Liaison**

**7.1** Where Live Communications submits an order form on behalf of the Client for the connection, or alteration, of lines or services, the Client agrees that Live Communications shall not be liable for any delays or errors; and further that such a delay or error shall not constitute a reason for withholding any payments which would otherwise be due.

**7.2** The Client also acknowledges that under no circumstances is any connection, rental or other carrier fees included in the order, unless specified in writing.

**7.3** Live Communications reserves the right to terminate any line orders, and transfer the responsibility back to the Client, in the event the Client is rejected for finance and/or cancels the order.

## **8 Delivery**

**8.1** Delivery of the Goods ("Delivery") is taken to occur at the time that: (i) the Client or the Client's nominated carrier takes possession of the Goods at Live Communication address; or (j) Live Communications (or Live Communication nominated carrier) delivers the Goods to the Client's nominated address, even if the Client is not present at the address.

**8.2** At Live Communication sole discretion, the cost of Delivery is either included in, or in addition to, the Charges.

**8.3** The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. In the event that the Client is unable to take Delivery as arranged then Live Communications shall be entitled to charge a reasonable fee for redelivery and/or storage.

**8.4** Live Communications may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

**8.5** Delivery to a third party nominated by the Client is deemed to be Delivery to the Client for the purposes of this agreement.

**8.6** The Client shall take Delivery notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that: (k) such discrepancy in quantity shall not exceed five percent (5%); and (l) the Charges shall be adjusted pro rata to the discrepancy.

**8.7** Any time or date given by Live Communications to the Client is an estimate only. The Client must still accept Delivery even if late and Live Communications will not be liable for any loss or damage incurred by the Client as a result of the Delivery being late.

## **9 Installation of the Goods**

**9.1** The Client acknowledges that, during the installation process, there is likely to be disruption to the Client's normal telephone service. The Client agrees that Live Communications shall, in no way, be liable for any loss or damage suffered as a result of this.

**9.2** The applicable Services shall be specified in the "Installation Description", and any amendments must be made in writing. Services requested by the Client, which is not part of Live Communication quotation will be charged at Live Communication normal rates. Where it is found that the Services cannot reasonably be carried out for the calculated Charges due to: (m) unforeseen problems with the running of cables or the use of existing cabling; or (n) an unexpected change in the condition or structure of the installation site, health, safety or regulatory reasons; then Live Communications reserves the right to re-quote the installation job. Version 2.2 Terms and Conditions of Sale - Powered By Avaya IP Office

**9.3** Where there is an unavoidable delay which is not the fault of Live Communications, and which prevents the Services from being completed for more than seven (7) days, then the Client agrees to pay Live Communications any amounts remaining due for Services carried out up to that point.

**9.4** In the event that the installation needs to be postponed due to incomplete data collection, a rescheduling fee of shall be applicable. Note that data collection needs to be completed and returned a minimum of ten (10) days prior to installation to avoid having the installation rescheduled.

## **10 Post-Installation Services**



**10.1** Live Communications will, where possible, get a representative of the Client to sign Live Communication 'Work Order'. In instances where the site contact is not available to sign the form, this does not remove the obligation by the Client to pay invoice/s relating to the Services completed.

## **11 Risk**

**11.1** Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.

**11.2** If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, Live Communications is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Live Communications is sufficient evidence of Live Communication rights to receive the insurance proceeds without the need for any person dealing with Live Communications to make further enquiries.

**11.3** If the Client Requests Live Communications to leave Goods outside Live Communication premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.

## **12 Title**

**12.1** Live Communications and the Client agree that ownership of the Goods shall not pass until: (o) the Client has paid Live Communications all amounts owing to Live Communications; and (p) the Client has met all its other obligations due by the Client to Live Communications in respect of all contracts between Live Communications and the Client.

**12.2** Receipt by Live Communications of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then Live Communication ownership and rights in relation to the Goods, and this agreement, shall continue.

**12.3** It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 12.1: (q) the Client is only a bailee of the Goods and must return the Goods to Live Communications on request. (r) the Client holds the benefit of the Client's insurance of the Goods on trust for Live Communications and must pay to Live Communications the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed. (s) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Live Communications and must pay or deliver the proceeds to Live Communications on demand. (t) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Live Communications and must sell, dispose of or return the resulting product to Live Communications as it so directs. (u) the Client irrevocably authorises Live Communications to enter any premises where Live Communications believes the Goods are kept and recover possession of the Goods. (v) Live Communications may recover possession of any Goods in transit whether or not Delivery has occurred. (w) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Live Communications. (x) Live Communications may commence proceedings to recover the Charges notwithstanding that ownership of the Goods has not passed to the Client.

## **13 Personal Property Securities Act 2009 ("PPSA")**

**13.1** In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

**13.2** Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to Live Communications for Services – that have previously been supplied and that will be supplied in the future by Live Communications to the Client.

**13.3** The Client undertakes to: (y) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Live Communications may reasonably require to; (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register; (ii) register any other document required to be registered by the PPSA; or (iii) correct a defect in a statement referred to in clause

**13.3(y)(i) or 13.3(y)(ii);** Version 2.2 Terms and Conditions of Sale - Powered By Avaya IP Office (z) indemnify, and upon demand reimburse, Live Communications for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby; (aa) not register a financing change statement in respect of a security interest without the prior written consent of Live Communications; (bb) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Live Communications; (cc) immediately advise Live Communications of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

**13.4** Live Communications and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

**13.5** The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.



**13.6** The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

**13.7** Unless otherwise agreed to in writing by Live Communications, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

**13.8** The Client must unconditionally ratify any actions taken by Live Communications under clauses 13.3 to 13.5. **13.9** Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

#### **14 Security and Charge**

**14.1** In consideration of Live Communications agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

**14.2** The Client indemnifies Live Communications from and against all Live Communication costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Live Communication rights under this clause.

**14.3** The Client irrevocably appoints Live Communications and each director of Live Communications as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.

#### **15 Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**

**15.1** The Client must inspect the Goods on Delivery and must within seven (7) days of such time notify Live Communications in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Live Communications to inspect the Goods.

**15.2** Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions ("Non-Excluded Guarantees").

**15.3** Live Communications acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

**15.4** Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Live Communications makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Live Communication liability in respect of these warranties is limited to the fullest extent permitted by law.

**15.5** If the Client is a consumer within the meaning of the CCA, Live Communication liability is limited to the extent permitted by Live Communications on 64A of Schedule 2.

**15.6** If Live Communications is required to replace the Goods under this clause or the CCA, but is unable to do so, Live Communications may refund any money the Client has paid for the Goods.

**15.7** If the Client is not a consumer within the meaning of the CCA, Live Communication liability for any defect or damage in the Goods is:

- limited to the value of any express warranty or warranty card provided to the Client by Live Communications at Live Communication sole discretion;
- limited to any warranty to which Live Communications is entitled, if Live Communications did not manufacture the Goods;
- otherwise negated absolutely.

**15.8** Subject to this clause 155, returns will only be accepted provided that:

- the Client has complied with the provisions of clause 15.1; and
- Live Communications has agreed that the Goods are defective; and
- the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
- the Goods are returned in as close a condition to that in which they were delivered as is possible.

**15.9** Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, Live Communications shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- the Client failing to properly maintain or store the Goods;
- the Client misuse (e.g. using the Goods for any purpose other than that for which they were designed) or user error;
- the Client continuing the use of the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- the Client's negligence and/or failing to follow any instructions or guidelines provided by Live Communications;
- fair wear and tear, any accident, or act of God (including water, fire, lightning or other such events);
- power surges, power cuts, electrical or electro-magnetic interference, problems with exchange lines or services which are not caused by the Goods, pest infestation;



➤ services carried out on, to or which effects the Goods, and which is carried out by any party other than an employee or nominated service agent of Live Communications;

➤ faults/defects in, or failure/malfunction of, third party equipment which is connected to the Goods.

**15.10** Live Communications may in its absolute discretion accept non-defective Goods for return in which case Live Communications may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.

**15.11** Notwithstanding anything contained in this clause if Live Communications is required by a law to accept a return then Live Communications will only accept a return on the conditions imposed by that law.

## **16 Intellectual Property**

**16.1** Where Live Communications has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Live Communications, and shall only be used by the Client at Live Communication discretion.

**16.2** The Client warrants that all designs, specifications or instructions given to Live Communications will not cause Live Communications to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Live Communications against any action taken by a third party against Live Communications in respect of any such infringement.

**16.3** The Client agrees that Live Communications may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods Which Live Communications has created for the Client.

## **17 Default and Consequences of Default**

**17.1** Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Live Communication sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

**17.2** If the Client owes Live Communications any money the Client shall indemnify Live Communications from and against all costs and disbursements incurred by Live Communications in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Live Communication contract default fee, and bank dishonour fees).

**17.3** Without prejudice to any other remedies Live Communications may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions, and has failed to rectify such breach after having been provided with seven (7) days' notice in writing of such breach, Live Communications may suspend or terminate the supply of Goods to the Client. Live Communications will not be liable to the Client for any loss or damage the Client suffers because Live Communications has exercised its rights under this clause.

**17.4** Without prejudice to Live Communication other remedies at law Live Communications shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Live Communications shall, whether or not due for payment, become immediately payable if:

- any money payable to Live Communications becomes overdue, or in Live Communication opinion the Client will be unable to make a payment when it falls due;
- the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## **18 Privacy Act 1988**

**18.1** The Client agrees for Live Communications to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by Live Communications.

**18.2** The Client agrees that Live Communications may exchange information about the Client with those credit providers and with related body corporates for the following purposes:

- to assess an application by the Client; and/or
- to notify other credit providers of a default by the Client; and/or
- to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.

**18.3** The Client consents to Live Communications being given a consumer credit report to collect overdue payment on commercial credit.

**18.4** The Client agrees that personal credit information provided may be used and retained by Live Communications for the following purposes (and for other agreed purposes or required by):



- the provision of Goods; and/or
- analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
- processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- enabling the collection of amounts outstanding in relation to the Goods.

**18.5** Live Communications may give information about the Client to a CRB for the following purposes:

- to obtain a consumer credit report;
- allow the CRB to create or maintain a credit information file about the Client including credit history.

**18.6** The information given to the CRB may include:

- personal information as outlined in 18.1 above;
- name of the credit provider and that Live Communications is a current credit provider to the Client;
- whether the credit provider is a licensee;
- type of consumer credit;
- details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Live Communications has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- information that, in the opinion of Live Communications, the Client has committed a serious credit infringement;
- advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

**18.7** The Client shall have the right to request (by e-mail) from Live Communications:

- a copy of the information about the Client retained by Live Communications and the right to request that Live Communications correct any incorrect information; and
- that Live Communications does not disclose any personal information about the Client for the purpose of direct marketing.

**18.8** Live Communications will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.

**18.9** The Client can make a privacy complaint by contacting Live Communications via e-mail. Live Communications will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

## **19 General**

**19.1** The failure by Live Communications to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Live Communication right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

**19.2** These terms and conditions and any contract to which they apply shall be governed by the laws of QLD, the state in which Live Communications has its principal place of business and are subject to the jurisdiction of the Downing Centre Local Court in that state.

**19.3** Nothing in this agreement shall be construed as a guarantee of uninterrupted operation of the Goods. Subject to clause 155, Live Communications shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Live Communications of these terms and conditions (alternatively Live Communication liability shall be limited to damages which under no circumstances shall exceed the Charges).

**19.4** The Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by Live Communications nor to withhold payment of any invoice because part of that invoice is in dispute.

**19.5** Live Communications may license or sub-contract all or any part of its rights and obligations without the Client's consent. However, the Client may not assign this agreement without the prior written permission of Live Communications, which shall not be unreasonably withheld.

**19.6** The Client agrees that Live Communications may amend these terms and conditions at any time. If Live Communications makes a change to these terms and conditions, then that change will take effect from the date on which Live Communications notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Live Communications to provide Goods to the Client.

**19.7** Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party (including, but not limited to, non-availability of parts). The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent, and that this agreement creates binding and valid legal obligations on it.