



Trading Terms and Conditions

effective 1st June 2019

Purchase of goods and services from Computus Australis are subject to the following terms and conditions. By purchasing or receiving goods or services from Computus Australis, you accept the following terms and conditions.

1. Definitions

In these terms and conditions (where not inconsistent with the context):

"Conditions" means these Terms and Conditions;

"Customer" means a person, firm or corporation, jointly and severally if there is more than one, acquiring goods or services from Computus Australis;

"goods" means goods supplied by Computus Australis to the Customer; and

"services" means services supplied by Computus Australis to the Customer.

2. Basis of Contract

2.1. Unless otherwise agreed by Computus Australis in writing, these Conditions apply exclusively to every contract for the sale of goods or services by Computus Australis to the Customer.

2.2. Any verbal quote provided by Computus Australis is given as a guide based on the limited information given by a customer. A verbal quote is intended to give the customer an estimate of the price, and is not an assurance that the product or service will be sold at that price.

2.3. Any written quotation provided by Computus Australis to the Customer is a guarantee that the goods or services will be provided at the quoted price and is valid for 7 days.

3. Charges and Payment

3.1. Payment for goods and services must be made by cash, cheque, debit card or credit card on or prior to the completion of the provision of goods or services unless the Customer has an approved credit account with Computus Australis.

3.2. Computus Australis reserves the right to apply a credit card surcharge to all invoices over \$200.00. The surcharge amount may change at any time and is based on the transaction fee charged in accordance with Computus Australis's Merchant Agreement with ANZ Bank.

3.2.1. 1.0% surcharge on Standard Domestic Transactions – Visa and MasterCard.

3.2.2. 2.5% surcharge on Premium Transactions including International, Corporate, Commercial and Platinum Visa and MasterCard.

3.3. All Computus Australis visits are chargeable and are charged in half hour units after the first hour. Any part thereof is chargeable at the same rate as a full half hour.

3.4. Call-out fees and/or travel fees may be applied at appropriate rates dependent on the Customer's suburb outside the Hawkesbury region.

4. Payment Default

4.1. If the Customer defaults in payment by the due date of any amount payable to Computus Australis, or if any cheque drawn by the Customer is dishonoured, then all money which would become payable by the Customer to Computus Australis at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Computus Australis may, without prejudice to any other remedy available:-

4.1.1. charge the Customer interest on any sum due at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 plus 4 per cent for the period from the due date until the date of payment in full;

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- 4.1.2. charge the Customer for all expenses and costs (including legal costs on a solicitor/own client basis and dishonoured cheque fees) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due;
- 4.1.3. cease or suspend for such period as Computus Australis thinks fit, supply of any further goods or services to the Customer;
- 4.1.4. by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by Computus Australis; without effect on the accrued rights of Computus Australis under any contract.

5. Passing of Property

- 5.1. Until full payment in cleared funds is received by Computus Australis for all goods supplied by it to the Customer, as well as all other amounts owing to Computus Australis by the Customer:-
 - 5.1.1. title and property in all goods remain vested in Computus Australis and do not pass to the Customer;
 - 5.1.2. Computus Australis may without notice, enter any premises where it suspects the goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of Computus Australis, and for this purpose the Customer irrevocably licences Computus Australis to enter such premises and also indemnifies Computus Australis from and against all costs, claims, demands or actions by any party arising from such action.

6. Risk and Insurance

The risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods will pass to the Customer immediately upon delivery of the goods to the premises nominated by the Customer.

7. Performance of contract

Any period or date for delivery of goods or provision of services stated by Computus Australis is intended as an estimate only and is not a contractual commitment. Computus Australis will use its best reasonable endeavours to meet any estimated dates for delivery of the goods or completion of the services.

8. Computus Australis Warranties

- 8.1. If Computus Australis is not able to diagnose the cause of any hardware or software problem, then no charge will apply to the Customer. Computus Australis does not warrant that it will be able to fix all problems, which it diagnoses.
- 8.2. All goods supplied are covered by the manufacturer's warranty. Services supplied shall be covered by warranty (for the same fault only) for a period of 7 days from the date of service.
- 8.3. Nothing in this clause 8 will be construed as a warranty or condition that the operation of the hardware or software will be uninterrupted or error free. Customer understands and accepts that hardware or software (and information technology and communications products generally), including the Customer's hardware or software, may have errors and may encounter unexpected problems, and accordingly Customer may experience downtime and errors in the use of the hardware or software. Without limiting the obligations set out in clause 9, Customer will put in place reasonable internal procedures and processes to enable it to minimise any inconvenience and any adverse financial impact of any such downtime or error.

9. Customer's Responsibilities

- 9.1. The Customer shall as a fundamental term of these Conditions back up all software and data that is stored on its computer's hard disk drive(s) and/or on any other storage devices it may have prior to the arrival of the Computus Australis technician. Computus Australis and/or its third party service provider shall not be responsible at any time for any loss, alteration or corruption of any such software, data or files.

10. Liability

- 10.1. All conditions, warranties, representations, indemnities and guarantees with respect to the software and/or the services, or other goods or services that may be provided by Computus Australis under these Conditions, that may otherwise be implied by statute, law, equity, trade custom, prior dealings between the Parties or otherwise (including, but not limited to, any implied warranty of merchantability, fitness for particular purpose, quiet enjoyment or non-infringement) are hereby expressly excluded.

- 10.2.** Except to the extent specifically provided in these Conditions, Computus Australis's sole liability to Customer for any and all breaches of any term or terms of these Conditions, whether express or implied, shall be limited to:
- 10.2.1.** subject to sub-clauses 10.2.2, 10.2.3 and 10.2.4, the aggregate amount of the fees and charges paid by the Customer under these Conditions as at the date of the breach;
 - 10.2.2.** in relation to hardware if supplied to Customer as a consumer (as defined in the Trade Practices Act 1974):
 - a. the replacement of the hardware or the supply of equivalent hardware; or
 - b. payment of the cost of replacing the hardware or acquiring equivalent hardware; or
 - c. the repair of the hardware or payment of the cost of having the hardware repaired; and
 - 10.2.3.** in relation to software if supplied to Customer as a consumer (as defined in the Trade Practices Act 1974):
 - a. the replacement of the software or the supply of equivalent software; or
 - b. payment of the cost of replacing the software or acquiring equivalent software; or
 - c. the repair of the software or payment of the cost of having the software repaired; and
 - 10.2.4.** in relation to services if supplied to Customer as a consumer (as defined in the Trade Practices Act 1974):
 - a. the supplying of the services again; or
 - b. the payment of the cost of having the services supplied again, as in each case Computus Australis may elect.
- 10.3.** In no event will Computus Australis be liable to Customer or to any third party under or in connection with these Conditions or in respect of the use of (or failure or performance of) the hardware or software or the supply of the services for:
- 10.3.1.** malfunctions or failures caused directly or indirectly by:
 - a. any third party;
 - b. actions of Computus Australis that were expressly or impliedly authorised by Customer, or by Customer's employees or agents;
 - c. accident, misuse or abuse by anyone other than the Computus Australis;
 - d. alteration or modification of the hardware or software by anyone other than the Computus Australis;
 - e. products (including any hardware or software) not licensed or supplied by Computus Australis that are attached to or used with the hardware or software;
 - f. Customer's failure to provide a proper operating and working environment for the hardware or software;
 - g. damage during any movement, relocation or re-installation of the hardware or software;
 - h. power surge or failure,
 - i. acts of God or acts outside Computus Australis's control;
 - j. any other condition not arising under normal operating conditions; or
 - k. normal wear and tear; or
 - 10.3.2.** any loss or damage of any nature arising or caused directly or indirectly by any breach of the Customer's obligations or responsibilities set out in these Conditions.
- 10.4.** Any replacement of parts under warranty will be carried out at the premises nominated by Computus Australis. The cost and risk of transport of any defective part to the nominated premises is the responsibility of the Customer.

- 10.5.** In no event will Computus Australis be liable to Customer or to any third party under or in connection with these conditions or in respect of the use of (or failure or performance of) the hardware, software or the supply of the services for:
- 10.5.1.** any loss of profit, business interruption, loss of or damage to goodwill, and/or any expectation benefit;
 - 10.5.2.** Customer's liability to any third party; or
 - 10.5.3.** incidental, consequential, special, exemplary or punitive damages of any nature, howsoever arising or caused, including without limitation the breach of these Conditions or any expiration or termination of these Conditions, whether such liability is asserted on the basis of statute, contract, tort (including negligence or strict liability), equity or otherwise, even if Computus Australis has been advised of the possibility of such loss or damage.
- 10.6.** Computus Australis will not be liable for any loss or damage suffered by the Customer where Computus Australis has failed to meet any delivery date or cancels or suspends the supply of goods or services.
- 10.7.** Nothing contained in these Conditions excludes, restricts or modifies any:
- 10.7.1.** implied condition, warranty or other implied obligation in relation to these Conditions or the software and services where pursuant to applicable law to do so is unlawful or void; or
 - 10.7.2.** liability for fraud or deceit; or
 - 10.7.3.** liability for death or personal injury caused by the negligence of either Party.

11. Copyright and Licensing of Software

- 11.1.** Computus Australis will not be responsible to the Customer or any third party for any breach of any software licence in respect of software provided to Computus Australis by the Customer to be installed on a Customer's computer.
- 11.2.** The Customer hereby warrants that it has a valid licence in respect of such software and shall indemnify Computus Australis against any loss, damage, costs, harm or other expense whatsoever arising either directly or indirectly as a result of Computus Australis installing software at the request of the Customer.

12. Cancellation

- 12.1.** If, through circumstances beyond the control of Computus Australis, Computus Australis is unable to effect delivery or provision of goods or services, then Computus Australis may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.
- 12.2.** If the Customer gives less than 4 business hours notice to Computus Australis to cancel any request for on-site service, then Computus Australis may charge a cancellation fee of \$88 for the loss and damage caused.
- 12.3.** If the Customer gives less than 48 hours notice to Computus Australis to cancel any full-day booking, then Computus Australis may charge a cancellation fee equal to the quote for that full-day booking for the loss and damage caused.

13. Entire Agreement

- 13.1.** To the extent permitted by law, in relation to its subject matter, these Conditions:
 - 13.1.1.** embody and constitute the entire legal and contractual relationship of the Parties, including the entire terms agreed by the Parties; and
 - 13.1.2.** supersede, replace and terminate by mutual consent any prior written or oral representations, negotiations, understandings, agreements or contracts between the Parties.

14. Governing law

- 14.1.** This Agreement is governed by and must be construed according to the law applying in New South Wales. The Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of New South Wales.