

TERMS AND CONDITIONS

Incorporating SLA (Service Level Agreement)

All prices detailed in Elev8 Quotes or proposals are **exclusive** of GST and are valid for 14 days.

Conditions of Sale

Elev8 standard terms and conditions will apply as detailed below. Support Services are provided in accordance our SLA.

PAYMENT TERMS

The payment terms for this agreement are:

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| Supply of Product(s): | Software 100% payment on order If software is being leased or financed: A minimum deposit of \$2000 or the full software value, whichever is greater will be required. This deposit will be refunded on receipt of payment in full from the finance company. |
| Consultancy & Implementation | Installation and training will be arranged to suit the client wherever possible. |
| Services: | Charges will be invoiced as the work proceeds. Payment will be due 7 days from invoice. |
| Software Development: | Development work (modifications and programming) is generally based on estimates and are subject to a separate agreement specifying the work required, time schedules, cost estimates and other relevant matters. Specification: 50% on order, 50% on delivery Development: 50% on order, 50% on delivery |
| Support Agreements & Software License Renewals | 7 days from date of invoice or at 'commencement date' of the service agreement whichever is sooner |

Credit Facilities

In the event of Elev8 Australia Pty Ltd granting credit facilities to the Customer then:-

- (a) All accounts are to be settled in full within 7 working days of receipt of the Elev8 statement and/or weekly invoice. Credit facilities may only continue if payment is maintained in accordance with those agreed trading terms.
- (b) Should the Customer default in making any payment in accordance with the agreed trading terms, then all monies due to Elev8 shall immediately become due and payable. Elev8 shall be entitled to charge interest at the rate of 3% above the Commonwealth Bank Base Rate per annum on all undisputed overdue amounts from the due date for payment Agreed until the date of actual payment unless otherwise agreed.
- (c) Any reasonable expense and/or costs or disbursements incurred by Elev8 in recovering any outstanding monies including debt collection agency fees and legal costs shall be paid by the Customer.
- (d) It is expressly understood and agreed that this credit arrangement may reasonably be terminated at any time by Elev8. In that event, all monies owing to Elev8 will be immediately due and payable.
- (e) Elev8 may at any stage during the continuance of the credit arrangement reasonably impose as a condition precedent to the grant of further credit that the Customer give such security or additional security as Elev8 shall in its discretion think fit.
- (f) Elev8 shall be entitled to withhold support and/or services or further credit should any of the above occur.
- (g) Any queries with invoices must be raised to Elev8 within 7 days of issuing date

Scope of Solution and Services - CUSTOMER'S OBLIGATION

The customer is responsible for identifying what they regard as critical assumptions made throughout the course of our discussions and presentations regarding the solution proposed and the scope of the services Elev8 is providing. Your assumptions should be presented to Elev8 prior to or at the time the order is placed. Critical assumptions will be documented after the first Project Implementation Workshop, if deemed appropriate.

Implementation Services

The Implementation services outlined within this proposal are subject to a Project Implementation Workshop at which the timescales of the project and the responsibilities of Elev8 and the Customer will be agreed. Upon completion of the Project Implementation Workshop, the exact scope and level of services to be provided by Elev8 will be confirmed.

SLA - Service Level Agreement

Support/services can be provided outside of a current support contract; however it will be chargeable at the rates stated in the Elev8 terms and conditions. Hourly rate as quoted. All incoming calls are answered and monitored 7 Days a week 24 hours a day and relayed to Elev8 staff via SMS after the normal business hours specified below.

Elev8 Support Desk - Charter of Service

The purpose of this document is to set out the procedures and processes by which Elev8 Australia Pty Ltd will provide application support for software. Time to resolve problems will vary dependent on the severity and complexity of the problem. This Charter sets out our targets for any problems you may encounter.

Basic Support Desk Service

Elev8 will provide a support service between 7am and 7pm WST Monday to Friday plus after hours support, excluding Public Holidays. During these hours we will provide the following service:

1. Enquiries related to supply of information, advice and basic guidance relevant to applications.
2. Software Data Recovery (where possible) should Database corruption occur due to a software failure.
3. Provision of program fixes where these can be provided by support personnel.
4. To liaise with the customer where assistance is required to re-produce a software fault.

Support Procedures

Software support issues are raised with Elev8 through our remote, on-line or telephone systems. The following procedures will be adhered to:

1. Support issue logged through either our on-line or telephone system and a priority code associated with it.
2. A support executive will be appointed to the log, and the executive will contact the client within the response timescales detailed later in this document.
3. The support executive will then make a judgment as to whether the issue is covered by the support criteria detailed above. If the executive judges that the work is outside the bounds of reasonable "software support" the client will be informed of the potential charges if the executive continues.
4. The support executive will continue to resolve the issue in an efficient and timely manner
5. Calls will only be received from an approved representative of the customer.

Service Levels

Grade Description

1. The failure of the system is preventing your Company from operating at its normal service levels
2. The system is still useable, but the fault is preventing your Company from operating at one or more of its service levels
3. The system is useable, but the fault is causing varying degrees of inconvenience
4. There is little or no operational impact, but the problem is inconvenient nonetheless
5. A change is required to the software to accommodate one or more of your Company's service levels

Help Desk

Each call to our support desk is logged in our internal system, you will be required to provide the following information:

1. Your company name, site reference, contact telephone number and contact name
2. The priority of the call as described above
3. As full a description of the problem as can be provided at that time

Elev8 Responsibilities

1. The member of support staff assigned to your call will initially attempt to provide a solution or work around. If this is not possible they or a Senior Technician will make further analysis of the call.
2. If further investigation is required, we may request further information from you and establish whether the problem was caused by system error or user error. If possible a data fix will be provided or the error will be passed on to a member of the Programming Staff.
3. Some problems may require remote access to your system using either Logmein Rescue, or where possible, an alternative method of remote access. This could include VPN or RAS connection. This allows us to diagnose the problem on your system and provide any necessary data fixes where applicable. It is a condition of this Support Charter that remote access is available to Elev8 personnel.

4. Where a program change or fix is required this will be accommodated in the next version of the software.
5. Elev8 will attempt to provide solutions as follows:
 - a. Priority 1 calls, within 2 working hours
 - b. Priority 2 calls, within 8 working hours
 - c. Priority 3 calls, within 3 working days
 - d. Priority 4 calls, on merit
 - e. Priority 5 calls, as programming schedule allows

Customer Responsibilities

1. You shall initially attempt to provide a solution to the problem yourselves and where necessary reproduce the problem.
2. You will be responsible for operating of the Software according to the guidelines established during your System Training.
3. You shall undertake to ensure that all staff, information and appropriate system and communication resources are available to assist Elev8 in the problem resolution.
4. Where a temporary fix is provided the customer shall test the software within five working days, or the call will be deemed as Closed.
5. You shall ensure all backups have completed successfully and that the data can be restored if necessary.
6. NOTE: Any system changes by the customer in supplied software must be thoroughly tested by the client in a test environment and signed off before implementation into a live environment. Failure to adhere to this procedure may leave the client liable to any and all charges from Elev8 in investigation and correction of any possible system issues.
7. NOTE: Any customer changes made to supplied software performed on an environment without proper consideration and or testing that results in the software acting incorrectly or further causes data damage or loss, may leave the client liable to any and all charges from Elev8 in investigation and correction of any possible system issues
8. NOTE: Any Elev8 staff services incurred in the implementation/installation/configuration of software upgrades issued from the various software authors from time to time will be charged separately and not be included in this SLA.

Software Development

1. If you require a software change to be made, your request must be submitted using the 'Request for Change' form.
2. The 'Request for Change' form must be completed and returned to Elev8 who will, on acceptance produce an 'Acceptance for Change' acknowledgement.
3. Elev8 reserves the right to charge for any and all software changes outside of the originally agreed specification drawn up at time of initial system order.
4. All Software Changes must be paid for on issue of a signed 'Final Acceptance' form (under item 6 below).
5. Elev8 will make all necessary efforts to ensure the software change is tested internally prior to release to you.
6. You will be responsible for final software testing on your own system. Once both parties are satisfied the change is working correctly a 'Final Acceptance' form is signed by you.
7. If no response is received within 21 days, Elev8 will deem the change as Accepted.
8. Request for change will only be received from an approved representative of the Customer.

Complaints Procedure

In the unlikely event that you are dissatisfied with the service you have received from our support department then you have the right to make a formal complaint. Your complaint should be made in writing and faxed to 08 9453 7499 or by email to admin@elev8australia.com. Your complaint will be dealt with by the Elev8 Product Manager (or his assistant in his absence) and will be acknowledged within 1 working day of receipt. You will receive a formal reply to your complaint within 2 working days. In the event that you remain unsatisfied then your complaint will be escalated to a Director of the company.

Customer Feedback

Elev8 welcome any and all feedback on software and services, this should be addressed to your Account Manager. Project or Consultancy meetings can be arranged and are charged at our normal daily rate, contact your Account Manager for further details. We would recommend at least one meeting per year as an opportunity for you to ensure that you are utilizing your system at its best.

If you feel that any element of this Service Charter is not being maintained then, please contact your Account Manager, should this not resolve your query then please ask for a Director.

Development Terms

To ensure that all Elev8 software development activities meet our clients' expectations, we have implemented the following guidelines:

Specifications

- All development activities must have written specifications produced by Elev8 staff, signed and agreed to by the customer. Development of the software itself cannot commence until this specification has been accepted by the customer.
- Software specifications include a section on testing requirements. This ensures that the software acceptance criteria are defined from the outset.
- Requests to change the specifications are required in writing. These may impact on the quoted fee, particularly if development has already commenced.

Professional Skills

- Elev8 only employ professional software developers skilled at creating software applications which conform to documented specifications.

Project Acceptance and Warranty

- All software developed by Elev8 must be tested on clients systems in accordance with the test criteria appearing in the specification. Any changes required to meet these criteria will be performed at no charge to the customer.
- Any additional changes required in the first 30 days following acceptance will be billed at 50% of Elev8s standard hourly rate.
- Any additional changes required more than 30 days after acceptance will be billed at Elev8s standard hourly rate.

TERMS & CONDITIONS OF SALE

1. DEFINITIONS AND EFFECT OF CONDITIONS

(a) The 'Company' means Elev8 Australia Pty Ltd (ABN 31 110 360 757) The "Conditions" means the standard terms and conditions set out in this document. The "Contract" means the contract between the Company and the Customer to which these conditions apply. The "Customer" means any person, firm or company receiving Goods and/or Services from the Company under this Contract; The "Goods" and "Services" mean, respectively, those Goods and Services identified in the Company's quotation or acknowledgement of order relating to this Contract; "Relevant Period" means the period when any project, contract or business arrangement between the parties remains current (or until it expires or is expressly terminated) and the period of six months thereafter. **Delivery means when the software has been installed and the software license unlocks codes are applied to the software rendering it operative and usable by the customer.**

(b) These Conditions shall apply to and be incorporated into every Contract between the Company and the Customer under which the Company supplies Goods or Services to the Customer unless otherwise agreed between the parties.

(c) These Conditions shall govern the Contract for the supply of Goods or Services by the Company to the exclusion of any other terms and conditions of the Customer and may not be varied without the written consent of a Director of the Company.

(d) The Company's employees or agents are not authorized to make any representations concerning Goods or Services unless confirmed by the Company in writing. In entering into this Contract, the Customer acknowledges that it does not rely on and waives any claim for breach

of any such representations which are not so confirmed. The provisions of this clause shall not apply in the case of fraud. Any advice or recommendation (excluding service calls) given by the Company or its employees or agents to the Customer or its employees or agents as to the application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer's own risk.

(e) Any error or omission in any sales literature or other document or information relating to the Goods or Services or the Contract issued by the Company shall be subject to correction without any liability (unless material) on the part of the Company.

2. SERVICES

(a) The Customer shall at its own expense supply the Company with all necessary documents, data, materials or other information relating to the Services, within sufficient time to enable the Company to provide the Services in accordance with the Contract. The Customer shall ensure the accuracy of all such documents, data, materials or other information.

(b) The Company may at any time with written notice to the Customer make any changes to the Services which are necessary to comply with any statutory requirements and which do not materially affect the nature or quality of the Services. The Company may make changes to the Services which materially affect the nature or quality of the Services with the prior written consent of the Customer.

3. ORDERS

(a) The Customer shall be responsible for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving the Company all necessary information in relation to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

(b) The quantity, quality and description of and any specification for the Goods shall be those set out in the Company's quotation or acknowledgement of order. Changes to specification may be made without notice to make the Goods conform to any applicable statutory requirements.

4. DELIVERY

(a) Any delivery dates quoted whether verbally or otherwise are estimates only and time shall be of the essence in relation to them.

(b) delivery shall mean the successful installation of software or definable portions as agreed between the parties.

5. FRUSTRATION ETC. (FORCE MAJEURE)

Clause Removed 17th July 2009

6. PRICE

(a) Unless otherwise stated any prices quoted by the Company are exclusive of any taxes for which the Customer shall be additionally liable. Prices are also exclusive of the Company's travel, hotel and other out of pocket expenses incurred in the provision of the Goods and/or Services, which will be charged to the Customer and be payable within 30 days of the Company's invoice date after approval by the customer in advance of incurring these costs.

(b) Prices quoted are those current at the time of quotation and will be the price payable by the Customer except where specific fixed price arrangements have been agreed in writing in advance.

(c) Where agreed call offs are not adhered to by the Customer, the Company reserves the right to reasonably amend the price structure in accordance with the quantities delivered,

7. PAYMENT

SCHEDULE

- (a) Payment is required by the Company in advance of delivery of the Goods or performance of the Services unless otherwise agreed in writing by the Company. Where credit terms are granted, payment shall be due strictly in accordance with the terms stated in these terms,
- (b) The Company reserves the right to suspend deliveries where payment is not received in accordance with any alternative terms of payment agreed in writing,
- (c) Where payment is not made in accordance with the terms of clause 7(a) hereof the Customer may be required to pay interest on any undisputed **unpaid** amounts from the due date until payment in full, calculated at 3% above the Commonwealth Bank's base rate per annum for the time being in force calculated on a daily basis unless agreed otherwise between the parties
- (d) No cash or other discount is allowed unless agreed in writing by the Company.

8. PASSING AND RESERVATION OF TITLE

- (a) The risk in the Goods shall pass to the Customer on delivery being the successful delivery of the software.
- (b) Property in Goods supplied under the Contract will pass to the Customer when the Goods the subject of this Contract and all other goods the subject of any other contract between the Company and the Customer which have been delivered to the Customer but not paid for in full, have been paid for in full,
- (c) The Customer's right to possession of the Goods shall cease if he does anything or fails to do anything which would entitle an administrator or administrative receiver or any third party to take possession of any assets or entitle any person to present a petition for winding up of the Customer.

9. SOFTWARE

- (a) Where the Goods include software, on successful implementation, the Customer shall enter into a license for those Goods on such terms as the Company shall require, including payment of any license fees in accordance with the quote provided. Software license agreement cannot be altered. The agreement is extracted from the software install routine and is accepted by the "click" on screen at install time. Inspire software license agreement.
- (b) If requested, the Company will provide consultancy services in relation to the software, on such terms (including as to payment) as shall be agreed between the Company and the Customer.

10. DRAWINGS ETC

- (a) All drawings, plans descriptive weights dimensions and the descriptions and illustrations contained in the sales literature and price list are approximate only and shall not form part of this Contract. In addition, drawings, plans and technical documents issued either before or after the making of this Contract for the use or information of the Customer and such other information as may be supplied to the Customer including specifications shall not at any time be copied, reproduced or communicated to any third party without the Company's prior written consent which must not be unreasonably withheld or delayed. For the purposes of this clause, the Company acknowledges that the Customer may from time to time be required to communicate information of the type described above to third parties to enable those third parties to effectively provide services or products to the Customer that interact with the Goods and Services.

11. SUPPORT AND MAINTENANCE

- (a) If the Company will provide software support and hardware maintenance to the Customer in respect of any services supplied (where applicable) on terms included in this quote.

12. LIMITATIONS OF LIABILITY

- (a) The Company will assign the benefit of any available third party manufacturer's warranty in respect of any Goods to the Customer,
- (b) The Company warrants that the Services will be performed with due care and skill.
- (c) In relation to any Goods, the Company warrants that the Services have statutory compliance.
- (d) The Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in materials and workmanship.
- (e) The warranty in clause 12 (d) is given by the Company subject to the following conditions:
 - (i) The Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design, configuration or specification supplied by the Customer;
 - (ii) The Company will be under no liability in respect of any defect arising from fair wear and tear, willful damage, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing) misuse, or alteration or repair of the Goods without the Company's written approval;
 - (iii) The Company shall be under no liability if the total price for the Goods has not been paid by the due date for payment unless other arrangements have been made or unless there is a legitimate dispute in respect of the unpaid amount;
 - (iv) The above warranty does not extend to parts, material or equipment not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company and be assigned to the Customer.
- (g) Where any valid claim in respect of the Goods or Services which is based on any defect in the quality or condition of the Goods or Services or their failure to meet specification is notified to the Company in accordance with these

Conditions, the Company shall be entitled to replace the Goods (or the part in question) or re-perform the Services free of charge or, at the Company's sole discretion, refund to the Customer the price of the Goods or Services (or a proportionate part of the price).

(g) In the event that the Customer returns Goods under the terms of an applicable warranty and the defect or error is found not to be within the terms of that warranty, the Customer shall pay the Company's then applicable current fees for the examination and return of the Goods, but the Company shall have no other liability to the Customer.

13. LIMITATIONS OF LIABILITY

(a) The liability of the Company for loss or damage (including but not limited to direct loss of profit, business, contracts or goodwill) and in respect of loss of or damage to the tangible property of the Customer arising out of the Contract shall be subject to a **total limit equal to the total amount paid by the Customer to the Company for all Goods and Services**

(b) **The above limitation of liability does not apply to liability for death or personal injury caused willfully or negligently by the Company, or to liability of the Company under clause 16(b) below.**

14. Intentionally Blank

15. RETURNED GOODS AND CANCELLATIONS

(a) The Customer shall not return Goods or cancel orders without the Company's previous written consent which will not be unreasonably withheld.

(b) The Company reserves the right to invoice confirmed bookings for Project Managers Services which are subsequently cancelled by the Customer. Notice of cancellation must be made by e-mail to your **Account Manager, with a copy to sales@elev8australia.com. The Customer will be issued with an e-mailed acknowledgment of receipt of the notice of cancellation as quickly as reasonably possible. During the implementation the Project Manager will be called to supply the reference code.** The amount invoiced shall be determined by the notice period given for the cancellation; 1-3 days @ 100% of the charge for Services, 4-7 days @ 50% of the charge for Services, 8 -14 days @ 25% of the charge for Services. No charge will be made where a cancellation notice of 15 days or more is given. Periods shall be calculated from the date the Company actually receives the notice and all cancellation charges are subject to applicable taxes.

16. COPYRIGHT, PATENTS, TRADEMARKS AND INTELLECTUAL PROPERTY RIGHTS

(a) The Customer acknowledges that all trademarks, trade names, copyrights, patents and other intellectual property rights used in relation to or connected with the Goods or Services are and shall remain the exclusive property of the Company (or its third party licensors). Save that the provisions of this clause shall not apply to any documents, data, plans or other materials provided by the Customer to the Company for the purpose of providing the Services or used in or in connection with the software.

(b)) The Company agrees to indemnify the Customer against all liabilities costs, damage, damages and expenses which the Customer may incur as a result of the Goods or Services infringing any copyright, patent or other intellectual property or proprietary right of a third party

17. ASSIGNMENT AND SUB-CONTRACTING

The Company reserves the right to assign, sub-contract or otherwise transfer any of its rights or obligations under this Contract which will be approved in writing by the customer prior to assignment, such approval not being unreasonably withheld. The provisions of this clause shall not, for the avoidance of doubt, apply to the Customer.

18. PERSONNEL

Each party covenants with the other that it will not (whether directly or indirectly) for the Relevant Period, induce or attempt to induce any employee of the other party to leave his or her employment or any agent or contractor working for the other party to cease working for that party and will not employ or receive services from any employee, agent or contractor or former employee or agent of or contractor to the other party during such period. If, with the prior written agreement of the other party or otherwise, a party employs or hires any employee of the other party during the term of this Agreement, or for a six month period following its termination, the hiring party shall pay to other party a fee equivalent to six months of the employee's final basic pay received whilst in the employment of the other party.

19. CONSTRUCTION AND USE

The Company shall not be responsible for adapting or modifying any Goods to conform to statutory requirements not current at the time of the acceptance of order.

20. HEADINGS AND INVALIDITY

(a) The headings of these Conditions are for convenience, only and shall have no effect on the interpretation thereof.

(b) If any provision of this Contract is held by a court or other competent body to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

21. TERMINATION

(a) Either party ("First Party") may terminate this Contract immediately if the other party ("Second Party") commits a material breach of any term of this Contract and which (in the case of a breach capable of being remedied) has not been remedied within 14 days of a written request. Any termination of this Contract shall be without prejudice to any of the First Party's other rights or remedies.

(b) This sub-clause applies if the Second Party makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or an encumbrance takes possession of or a receiver is appointed over any of the property or assets of the Second Party, or the Second Party ceases or threatens to cease to carry on business or the First Party reasonably apprehends that any of the above events is about to occur in relation to the Second Party and notifies the Second Party accordingly. If this sub-clause applies then, without prejudice to any other right of remedy available to the First Party, the First Party shall be entitled to cancel the Contract or suspend any further deliveries under it without any liability to the First Party and if the Goods have been delivered or Services performed but not paid for, the price should become immediately due and payable, notwithstanding any previous agreement or arrangement to the contrary.

22. WAIVER

No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision of this Contract.

23. TELECOMMUNICATIONS

If the Customer intends to use Goods in conjunction with a telecommunications network, it shall be responsible for obtaining the consent of the owner of the network for such connection, paying all charges from time to time levied by the owner for such connection to the network and at all times complying with such technical and other regulations as the owner shall impose as condition of connection to the network. The Company shall not be liable for any loss or damage resulting from the acts or omissions of the owner of the network or the breach by the Customer of its obligations under this clause.

24. ENTIRE AGREEMENT

These Conditions and the Contract constitute the entire agreement and understanding of the parties and supersedes all prior written or oral agreements, representations, understandings or arrangements between them relating to the subject matter of these Conditions and the Contract. Neither party shall be entitled to rely on any agreement, representation, understanding or arrangement which is not expressed in these Conditions or the Contract. The provisions of this clause shall not apply in the case of fraud.

25. LAW AND JURISDICTION

(a) This Contract will be governed by the Laws of the Western Australia.

(b) The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Contract promptly through negotiations between their respective senior executives who have authority to settle the same. If the matter is not resolved through negotiation, the parties will attempt in good faith to resolve the dispute or claim through mutually agreed arbitrator. If the matter has not been resolved by an arbitrator procedure within 21 days of the initiation of such procedure (or such other period as the parties may agree) or if either party will not or ceases to participate in an arbitration procedure, the dispute shall be referred to the exclusive jurisdiction of the Courts of Western Australia.