

ChalkPort – Software Product Terms and Conditions

1 INTERPRETATION

1.1 Definitions

In these Terms:

“Associates” means a party’s employees, agents, contractors, licensees and any other person or entity claiming through that party or acting under the authority or with the consent of that party and includes a Relative.

“Business Day” means a day which is not a Saturday, Sunday or public holiday in Brisbane, QLD Australia.

“Consumer Laws” means the *Competition and Consumer Act 2010*, the *Sale of Goods Act 1979* and any other State and Commonwealth laws which govern the supply of goods and services to consumers.

“Confidential Information” means the information listed in clause 9.1.

“CPQMS” means the collection of the Chalkport approved templates and precedents as amended from time to time.

“Free Smarter Data” means the free version of Smarter Data Professional available free online from the website described as: www.freesmarterdata.com

“Hosting Service” means our webhosting service which allows you to access your Products online via the user interface provided.

“Intellectual Property” has the meaning given to it in clause 11.1.

“Intellectual Property Rights” has the meaning given to it in clause 11.1(b).

“Learning Centre” means our Product named Learning Centre.

“Licensee” or “Licensees” means any person who accesses or utilises a Product via our Hosting Service under or pursuant to your authority or your user name and password (whether lawfully or unlawfully) and includes your Users.

“Login Page” means the individual website from which you may access your Product and which is separate to our Website.

“Membership” means the membership referred to in clause 3 of these Terms.

“Moral Right” means rights of integrity, rights of attribution and other rights of an analogous nature.

“Off-site Backup Server” means a server located in a location separate to the Primary Servers which holds backups of the Primary Servers data.

“Price List” means our list of fees and charges for our products and services as varied by us from time to time.

“Primary Servers” means a computer server which contains the Product data and is accessed real-time via our Hosting Service.

“Product” or “products” is a reference to a product or products available for purchase from us to which these Terms apply which presently are:

- a) Learn Centre;
- b) QMS Online; and
- c) Smarter Data Professional.

“Purchase Order” means the purchase order form found on our the Website for the purchase of Products.

“QMS Online” means our Product named QMS Online.

“Recurring Fees” means the yearly or monthly recurring fee for access to your Membership or Subscription Products as specified in your Purchase Order.

“Relative” means, in respect of a party:

- (a) a person who is a relative of the party by blood or marriage;
- (b) an entity in which the party or a relative of the party hold a controlling interest; and/or
- (c) a Related Entity of the party within the meaning of the *Corporations Act 2001 (Clth)*.

“Server” means a computer server for the collection and hosting of data.

“Sign-up Fee” means the initial one-off lump sum fee payable for purchase of a Membership or Subscription which covers, amongst other things, the initial release to you of the Intellectual Property contained in the Product/s and set-up costs of your Membership or Subscription.

“Smarter Data Professional” means our Product named Smarter Data Professional.

“Subscription” means the Subscription referred to in clause 4 of these Terms.

“Terms” means these Product Terms and Conditions

“URL” means universal resource locator commonly known as a website address.

“User” or “Users” means a person who signs up to an account with you and receives a user name and password for use of your Product such as students and teachers in the case of learning Products.

“Website” means our website found at this URL: www.chalkport.com

“Website Terms and Conditions” means the terms and conditions for use of the Website found at this URL: www.chalkport.com/termservice

1.2 Interpretation

In these Terms, except where the context otherwise requires:

- (a) “we, us, our” is a reference to ChalkPort Pty Ltd ACN 145 758 434 and its employees but does not include its agents, contractors and licensees unless specifically stated.
- (b) “you, your” is a reference to anyone reading these Terms other than us.
- (c) the singular includes the plural and vice versa, and a gender includes other genders;
- (d) another grammatical form of a defined word or expression has a corresponding meaning;
- (e) a reference to a clause, sub-clause, schedule or annexure is to a clause or sub-clause of, or schedule or annexure to, these Terms, and a reference to these Terms includes any schedule or annexure;
- (f) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (g) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (h) a reference to time is to Brisbane, Queensland, Australia time;
- (i) a reference to a party is to a party to these Terms, that is you and us, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (j) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

- (k) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re enactments or replacements of any of them;
- (l) a word or expression defined in the *Corporations Act 2001 (Clth)* has the meaning given to it in the *Corporations Act 2001 (Clth)*;
- (m) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (n) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (o) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (p) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these Terms or any part of it; and
- (q) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

2 TERMS

2.1 Terms

- (a) Your purchase of a Membership or Subscription or use of a Product is subject to and conditional upon these Terms.
- (b) By purchasing a Membership or Subscription to one or more of our Products from us you automatically agree to these Terms and that your use of that Product is subject to these Terms.

2.2 Variation of Terms

- (a) These Terms apply as varied by us for the duration of your Membership or Subscription.
- (b) We may vary these Terms at any time by posting a notice to that effect:
 - (i) for users of QMS Online, on your QMS update section of QMS Online;
 - (ii) for all other users, by posting a notice on the terms and conditions page of our Website,

which, upon posting by us, shall constitute notice to you under these Terms.

- (c) Subject to sub-clause (d) of this clause, a variation to these Terms will apply from the next renewal date of your Membership or Subscription or the date of purchase of any additional goods (including an updated CPQMS) or services (including an upgrade or a restoration from back-up request) from us in conjunction with the same Membership or Subscription, whichever is the earliest to occur.
- (d) A variation to these Terms which is:
 - (i) the correction of an typographical or manifest error;
 - (ii) the updating of policies and procedures where such variation does not substantially affect your rights;
 - (iii) a plan upgrade under clause 5.7;

(iv) a change to Membership or Subscription prices where your Membership or Subscription price is capable of increase under your Purchase Order; or

(v) a change to our Price List,

applies immediately from the moment the amended version of these Terms is up-loaded to the Website.

3 MEMBERSHIP

3.1 Membership Rights

If you purchase a Membership, the Membership includes the Products included in your Membership as listed in your Purchase Order.

3.2 Fees and Charges

(a) Access to the Products which are available to you pursuant to your Membership is subject to your payment of the Membership fees and charges shown on your Purchase Order.

(b) Your basic Membership fees and charges will consist of a Sign-up Fee and Recurring Fees which may be paid yearly or monthly as set out in your Purchase Order or as agreed with us from time to time.

(c) Any reference to refunds in these Terms is a reference to a refund of the Recurring Fees only.

(d) Additional fees and charges are payable depending on the services you require during your Membership. Most of these fees are set out in our Price List. If a fee is not contained in our Price List then you will be charged at the hourly rates contained in our Price List or, at our discretion, another reasonable amount reflective of the work involved.

3.3 Renewal

(a) Your Membership is renewed automatically at the conclusion of its timeframe for the same period, unless terminated in writing by you at least 30 days before its expiry date.

4 SUBSCRIPTION

4.1 Individual Subscription

(a) Instead of purchasing the Membership, you may purchase Products individually via an individual Subscription for each Product.

(b) If you purchase a Subscription, the Subscription includes only the Product included in the Subscription as listed in your Purchase Order.

4.2 Fees and Charges

(a) Access to a Product under a Subscription is subject to your payment of the Subscription fees and charges shown on your Purchase Order.

(b) Your basic Subscription fees and charges will consist of a Sign-up Fee and Recurring Fees which may be paid yearly or monthly as set out in your Purchase Order or as agreed with us from time to time.

(c) Any reference to refunds in these Terms is a reference to a refund of the Recurring Fees only.

(d) Additional fees and charges are payable depending on the services you require during your Subscription. Most of these fees are set out in our Price List. If a fee is not contained in our Price List then you will be charged at the hourly rates contained in our Price List or if not appropriate at our discretion, another reasonable amount proportionate to the service required.

4.3 Renewal

- (a) Your Subscription is renewed automatically at the conclusion of its timeframe for the same period, unless terminated in writing by you at least 30 days before its expiry date.

5 PRODUCTS

5.1 Products Details

- (a) The Products and their specifications are set out on our Website.
- (b) Demonstrations of Products are available upon request prior to purchase.
- (c) By purchasing a Membership or Subscription you agree:
 - (i) that you have or were given the opportunity to view a demonstration of the Product;
 - (ii) that you have made your own enquiries regarding:
 - (A) the Product's specifications including the operating requirements of the Product;
 - (B) the merchantability and fitness for purpose of the Product; and
 - (iii) that you are satisfied that the Product meets your requirements and specifications; and
 - (iv) to these Terms including the warranty disclaimer contained in clause 14.1;

5.2 Future Products

- (a) We may from time to time introduce new Products to our product range. If we do so, the purchase of a Membership or Subscription for such Products will also be subject to these Terms unless stated otherwise in the Purchase Order.

5.3 Price List

- (a) The fees and charges for our products and services excluding the Membership and Subscription Sign-up Fee and Recurring Fees are set out in our Price List which is available from us by request. Membership and Subscription fees vary depending on customisation and we will provide a quote upon request.
- (b) The prices shown in your Purchase Order override our Price List to the extent of any inconsistency unless your Purchaser Order says otherwise or your Purchase Order is silent on a price in which case the prices shown in our Price List apply.
- (c) Where both a Purchase Order and the Price List are silent on a price or fee for a particular service then fees and charges will be based on our hourly rate contained in our Price List or if not appropriate at our discretion a reasonable fee proportionate to the service required.

5.4 Purchase Orders

- (a) In order to purchase a Membership or Subscription you are required to complete and submit to us a Purchase Order.
- (b) Certain purchases may be made by submitting an order online via our Website . Where a purchase is made online in this fashion the terms of the Purchase Order are those set out in the online order request, our Website and the Price List.
- (c) We may request modifications or conditions depending on your requirements. In the case that we request modifications or conditions the Purchase Order includes such conditions as agreed by the parties.
- (d) We may decline an online order if we cannot fill it or it contains requirements or conditions that we cannot comply with. In such case any monies received from us on account of the order will be immediately refunded.

(e) By submitting a Purchase Order you will be taken to have offered to purchase the Membership or Subscription the subject of your Purchase Order under these Terms.

(f) Your Purchase Order overrides these Terms to the extent of any inconsistency.

5.5 Product Delivery

(a) Your Product will be available to access from the Login Page, the URL of which we will give you once set-up of your Membership or Subscription is completed.

(b) As our Products require our Hosting Service to function, the operating files of the Product will remain stored on our Primary Servers for your access and will not be installed on your computer. Please refer to clause 6.1.

5.6 Product Use

(a) All Products must be used only for the purposes for which are intended to be used and not in any way that is illegal or likely to cause loss or damage to us or to others.

(b) You hereby indemnify us against any loss or damage including costs (on a solicitor and own client basis) of defending any claim or demand from any third party resulting from your use of a Product in breach of these Terms.

5.7 Plan Upgrades

(a) We may by notice to you upgrade a Product's data plan from that selected in the Purchase Order to the next available data plan as shown in the Product's specifications found on our Website if usage exceeds the limits of the selected plan. Any increase in price will be pursuant to our data plan prices contained in our Price List.

(b) Usage is deemed to exceed the limit of a plan where storage exceeds allocated hard drive space.

(c) If you are not satisfied with an upgrade we have made, you may terminate your Membership or individual Subscription under clause 12.4.

5.8 Transfer of Product Rights

(a) Your rights to a Product (that is your Membership or Subscription) may not be transferred or assigned or sublicensed to another person or entity except for the purpose of use of our Products by Users without our written consent.

(b) Any purported transfer, assignment or sublicense effected in breach of sub-clause (a) of this clause will be deemed void and will be treated as a breach of these Terms by you which will give us the right to immediately terminate your Membership or Subscription and all access to the Product the subject of the purported transfer, assignment or sublicense, which, in the case of a Membership, includes all Products included in the Membership.

(c) We will not unreasonably refuse consent to the transfer, assignment or sublicense of your rights to a Product pursuant to a Membership or Subscription where the transfer, assignment or sublicense is made pursuant to a sale of your business. We will not consent to a re-sale by you of your Membership or Subscription.

(d) You acknowledge that upon transfer, assignment or sublicense of your rights to a Product, the transferee, assignee or sublicensee will be able to have access to all data and information which is contained in the Product at the time or transfers, assignment or sublicense. It is your responsibility to delete any such information prior to the transfer, assignment or sublicense taking effect, we will not attend to this on your behalf.

5.9 Customisation

- (a) We provide customisation as an optional service to clients with needs that fall outside of the current scope of our Products.
- (b) Customisation is the improvement of, or creation of, additional features or functionality of a Product to meet the client's needs. It is not the creation of a separate product or software program.
- (c) We retain the rights to all Intellectual Property created as part of any customisation process.
- (d) We also reserve the right to refuse any customisation requests .
- (e) Additional fees are payable for customisation depending on the work required. A quote will be provided upon request.
- (f) Tampering and customisation of a Product by a client directly is strictly prohibited and will be considered a breach of these Terms and our Intellectual Property Rights.

6 HOSTING SERVICE

6.1 Hosting Service

- (a) Your Product will be held by us on Primary Servers and may be accessed by you and your Users real-time online via our Hosting Service.
- (b) Our Hosting Service allows you to connect to your Product online via the individual Login Page which we will provide to you when set-up of your Product/s is complete.
- (c) One individual administrator account with username and password will be provided to you that will give you access to the Product including certain modification rights. You may in turn create individual accounts with usernames and passwords for your Users. There is no limit on the amount of User accounts that you can create.

6.2 Hosting: unlimited download

- (a) Download refers to downstream traffic from the Primary Servers.
- (b) There is no charge based upon the amount of download traffic as part of these Terms. You have unlimited downloads from ChalkPort servers. If you have other limits imposed by your Internet Service Provider, these limits are your responsibility.

6.3 Hosting: unlimited upload

- (a) Upload refers to the amount of traffic sent upstream to the Primary Servers.
- (b) There is no charge based upon the amount of upload traffic as part of these Terms. You have unlimited uploads to ChalkPort servers. If you have other limits imposed by your Internet Service Provider, these limits are your responsibility.

6.4 Use of Hosting Service

- (a) When you or a Licensee uses your Login Site for accessing a Product, such use is subject not only to these Terms but also to the same terms as our Website Terms and Conditions as far as can be applicable to the Login Site.
- (b) Your use or a Licensee's use of the Login Site means you or the Licensee accept the Website Terms and Conditions.
- (c) Notwithstanding the above, if any inconsistency exists between these Terms and the Website Terms and Conditions then these Terms prevail to the extent of such inconsistency.
- (d) You hereby agree to indemnify us and our employees, contractors, suppliers and agents against any loss or damage and costs of defending any claim by any third party arising from your use of or access to the Products via our

Hosting Service in breach of these Terms and to release and indemnify us and our employees, contractors, suppliers and agents against any loss or damage sustained by you as a result of the failure of our Hosting Services to provide continuous service.

- (e) You will defend and indemnify ChalkPort against any third-party claims to the extent that such claim alleges that your data or materials violate a patent, copyright, trademark, or trade secret and/or to the extent that your negligence, misconduct, violation of the law or misuse of the ChalkPort services or materials is relevant to the third-party claim. You will pay the claim defense costs, any settlement amounts that you negotiate, and any court awarded damages, including attorney's fees and defense-related expenses. If ChalkPort is notified of a third-party claim, ChalkPort will notify you in writing of the claim; and will cooperate with and allow you to control the defense and any related settlement.
- (f) ChalkPort will defend and indemnify you against any third-party claim to the extent that the data or materials provided by ChalkPort under these Terms and Conditions violate a copyright, trademark or trade secret provided that you notify ChalkPort of the claim in writing, cooperates with ChalkPort in the defense, and allows ChalkPort to solely control the defense or settlement of the claim. ChalkPort will pay the claim defense costs, any ChalkPort negotiated settlement amounts, and any court awarded damages. If such a claim appears likely, then ChalkPort may modify the data, procure the necessary rights, or replace it with the functional equivalent. If ChalkPort determines that none of these are reasonably available, then ChalkPort may terminate the applicable Service and refund any prepaid and unused fees. ChalkPort has no obligation for any claim arising from: use of Customer data or items not provided by ChalkPort.

6.5 User Data Collection and Storage

- (a) This clause is subject to clause 6.6.
- (b) Primary Servers:
 - (i) All system and operation files, data created on or uploaded to a Product whether by you, a Licensee or us, including the Product own operating files will be stored on Primary Servers.
 - (ii) Primary Servers will be located at a place or places of our discretion and may be owned either by us or by another company or entity that we have contracted to provide that service.
 - (iii) Primary Servers may hold more than just your data and at times (not always) Products will operate via a cloud, which consists of a collection of Primary Servers located throughout different locations each holding the same information which reduces the risk of downtime and loss of data.
- (c) Backup Policy:
 - (i) A backup refers to the saving of core data of the client's Product software, records and content, to another source to protect against the eventuality of complete data loss or instability. Restoration from backups requires a re-load of the last backed-up version of your Product and its contents. Upon restoration all progress and material created between the date the relevant backup was done and the date of restoration will be lost.

- (ii) We agree to maintain an Off-site Backup Server which will receive backups from the Primary Servers and to conduct regular backups. If you require us to reconstruct data from backups resulting from anything other than a malfunction or error in the Primary Servers which is not due to your usage then we reserve the right to charge an additional fee for that service.

6.6 Loss of User Data:

- (a) We undertake to use all reasonable efforts and put all reasonable measures in place to ensure data is:
 - (i) secure and safe from unauthorised access; and
 - (ii) stored and maintained in servers situated in a purpose-built building, area, room or storage unit which is protected from reasonable foreseeable risk of harm from fire, storm, flood, and the elements.

However we cannot guarantee and do not warrant that data will be at all times free from unauthorised access, harm or loss.

- (b) You agree that what you are paying for under your Membership or Subscription is the licence of Intellectual Property contained in our Products and the ability to access and utilise our Products via our Hosting Service. We are not a data storage service and do not accept liability for loss or damage resulting from loss of data howsoever occurring including any loss or damage resulting from downtimes to your business caused by loss of data.

6.7 Linux Operating System

- (a) Our Products and our Hosting Service operate on a Linux operating system platform.
- (b) Linux is an open source operating system for the use and management of computer hardware.
- (c) We will install Linux on the Primary Servers. We will perform Linux administrative duties as necessary on the Primary Servers to ensure its continued functionality including installing Linux updates as they are issued.

6.8 Security

- (a) We agree to monitor and respond to any security threats or unusual activity related to your Product as we become aware of them.
- (b) Our Products are underpinned by the Linux operating system which includes the firewall elements Netfilter and IP Tables. We agree to receive regular log event notification on your behalf and respond to any unusual or threatening activity associated with the Primary Servers.
- (c) We will encrypt the passwords of any Product accounts to provide additional security.
- (d) You are responsible for any misuse of your usernames and passwords to any secure environment relating to Products including any proprietary software or the ticketing system, even if the inappropriate activity was committed by a friend, family member, guest or employee. Therefore, you must take steps to ensure that others do not gain unauthorised access to these accounts.
- (e) You and your Licensees must not attempt to circumvent user authentication or security of any host, network or account in relation to the Products. Users who violate systems or network security may incur criminal or civil liability and the violation will be considered a breach of these Terms by you.

6.9 User Data Ownership and Use

- (a) Data you upload or enter into a Product via the Login Page remains your property. However, upon upload of that data you grant us an irrevocable,

perpetual, worldwide, non-exclusive, royalty-free, sublicensable and transferrable license to use such data as part of the services that we provide to you under these Terms and related purposes subject to the privacy provisions contained clause 10.

- (b) Unless uploaded by you, all data on our Servers, including all images, illustrations, logos, designs, icons, photographs, forms, processes, templates, tools, audio files, video clips, and other materials that are found on the Servers or which are part of our Products are deemed Intellectual Property owned, controlled or licensed by us and are subject to the Intellectual Property provisions contained in clause 11.

6.10 Product Operation

- (a) Subject to sub-clauses (b) and (c) of this clause, we will attempt to make the Products available for access via our Hosting Service 24 hours per day, 7 days per week. However, we do not warrant that access to the Products will be available, will be uninterrupted or will be error-free, and we may discontinue or suspend operation of a Product, produce new versions or updates for Products and as part of that modify the Products' contents and functions at any time for any reason, in our sole discretion, with or without notice. We will attempt to post notices of changes on our Website, but cannot guarantee that we will always be able to do so.
- (b) If you are dissatisfied with a change we have made to a Product you may terminate your Membership or Subscription under clause 12.4.
- (c) Every year 26 hours are allocated for unplanned downtime.
- (d) Every year 26 hours are allocated for scheduled maintenance. We undertake will give you notice of scheduled maintenance times:
 - (i) for users of QMS Online, on your QMS update section of QMS Online;
 - (ii) for all other users, on the news update section of our Website.

6.11 System Disaster Recovery

- (a) We will take the following steps in the case of loss or corruption of system files or system data:
 - (i) Level 1 – Where a Product or specific system data is deleted but local (Primary Servers) backup is intact we will restore the software from the local copy. This takes on average approximately 10 minutes to complete, though may take longer for larger clients.
 - (ii) Level 2 – Where a Product or specific system data is deleted but local (Primary Servers) backup is missing or unusable we will transfer the latest backup 'tarball' from the Off-site Backup Server to the Primary Servers and restore the software in the same way as mentioned above. This takes on average approximately 20-30 minutes to complete, though may take longer for larger clients.
 - (iii) Level 3 – If a Primary Server is wiped or corrupted or becomes unusable, we will attend to these steps:
 - (A) Primary Server is reprovisioned from the hosting control panel. This is the equivalent of formatting and reinstalling and may take up to an hour (1hr)
 - (B) Applications are installed and software updater is run. For a local install, this takes about an hour (1hr)
 - (C) Website is restored from Off-site Backup Server backup (10-15mins)
 - (D) Support site is restored from Off-site Backup Server backup (10-15mins)

- (E) Products are restored from Off-site Backup Server backup (20-30mins per client folder, but can be as quick as 10mins for smaller ones)
 - (b) Without limiting the generality of clause 6.6, as Off-site Backup Server backups are conducted at regular intervals only the data contained in the last backup will be recovered. User data uploaded or created following the last backup but before loss or damage of the data may be lost completely. We do not accept responsibility for such loss irrespective of how it occurred even if due to our acts or omissions.
 - (c) We perform backups to attempt to ensure critical system files are not lost. We do not restore a file or data that any Licensee has accidentally deleted or modified unless the data relates to a critical system file. The backup restoration is for system emergency procedures only.
- 6.12 Assistance & Support
- (a) Email/ticket requests for technical support can be submitted at any time via our Website link for technical support. Responses to tickets can be expected within 48 hours of an email/ticket submission. An email request for assistance submitted after 12pm on any day is considered submitted at 10am the next Business Day.
 - (b) Phone requests for technical support can be submitted from 10am-5pm Monday to Friday. Responses to phone calls can be expected within 48 hours.
 - (c) Technical support relates specifically to issues resulting from software bugs and technical software malfunctions. Technical support does not cover maintenance of any online content, material or documents that you may upload to, create, add or edit inside the Product. It does not include issues related to user error, software unfamiliarity or other general user help issues. Whilst we are happy to provide general guidance and assistance on the use of our Products we reserve the right to charge a fee for work involving access to your Product to repair critical software data or functionality problems caused by you or a Licensee and we will not access your Product to repair user data and documents.
 - (d) We aim to provide solutions to all critical issues resulting in downtime in less than 24 hours but we do not guarantee this time frame of resolution.
 - (e) We agree to fix all bugs, technical malfunctions and functional errors reported to us, or found by us, for the duration of your Membership or Subscription at no additional charge.
- 6.13 Upgrades
- (a) Upgrades refer to programming code used to replace or improve the existing functions within a proprietary piece of software.
 - (b) We maintain and upgrade Product software functionality regularly. Upgrades and maintenance tasks occur approximately once every month. We will deliver and install these updates into your Product at no additional charge for the duration of your Membership or Subscription.
 - (c) This clause does not apply to Products other than Smarter Data Professional, Learning Centre and QMS Online or to any additional “plug-ins” or “modules” developed for use in conjunction with those Products.

7 CONSULTATIONS

7.1 Consultation Service

At your request and subject to payment of such additional fees quoted by us, we will undertake consultations and provide you with advice as to your requirements to meet any legislative and audit requirements of your business including whether there are any suggested changes that we recommend to the template forms and documents, checklists,

processes, systems and tools available from our Products or contained in CPQMS for use in your business.

7.2 Referral

We may from time to time recommend a third party for you to contact in relation to any advice and assistance. We do not endorse nor warrant the correctness of any advice received by any such third party.

8 BILLING & PAYMENT

8.1 Payment method

- (a) All payments to us must be made by one of our acceptable payment options as advised by us from time to time.
- (b) Subject to sub-clause (c) of this clause, all Membership and Subscription fees are due to be paid in advance by the first day of the commencement of the service period, unless otherwise agreed in writing. A late fee of 10% of invoice value may apply to payments after the due date.
- (c) If Membership or Product fees and charges include a monthly fee then you agree to payment of the monthly fee by way of direct debit and you agree to provide us with duly executed direct debit authority from your financial institution upon request. If this authority expires during your Membership period or you change bank accounts or financial institutions, then you agree to provide us with a replacement authority.
- (d) A dishonour fee of \$33 (inc. GST) will apply to any declined payments via direct debit and notification will be sent to you within 72 hours of the failed payment. This fee will be waived if you supply new billing information accompanied by a successful payment within three Business Days of delivery of our notice to you. Merchant services will automatically retry processing a failed payment four Business Days after the original payment. Additional dishonour fees will apply each time there is a failed payment until the account is rectified. Payments are not reprocessed if the response code indicates a problem with customer's details (eg. expired credit card).
- (e) All payments which are not of a recurring nature must be made within 7 days of delivery of an invoice by us.
- (f) We reserve the right to change the amount of any transaction fee charged to us by our banking institution for the processing of payments (including dishonour fees) in addition to any other fee payable to us including the dishonour fee/s referred to in sub-clause (d) of this clause.

8.2 Goods and Services Tax

- (a) For the purpose of these Terms "GST" means the goods and services tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and all other terms used in these Terms relating to GST have the meaning given to them in that Act.
- (b) The parties acknowledge that GST shall be payable in respect of a supply made under these Terms.
- (c) Where GST becomes payable in respect of a supply made under these Terms we shall recover the GST from you by increasing the consideration payable by you to us by an amount equal to that which we are obliged to remit to the Commonwealth Government as GST on the supply and that amount shall be recoverable from you as part of the monies payable to us under these Terms.
- (d) We will issue to you a valid GST tax invoice in respect of any taxable supply made under these Terms which attracts GST. If for any reason we have not provided you with a tax invoice by the due date for payment you must proceed to make the payment and we will provide you with a tax invoice within 28 days of the payment being made as required by law.

9 CONFIDENTIALITY & PRIVACY

9.1 Confidential Information

"Confidential Information" means any information whether written or unwritten and if written whether in hard copy or electronic format:

- (a) regarding the business or affairs (including financial position, technical information, internal management, policies, techniques and strategies) of a party to these Terms or its related entities;
- (b) regarding the customers, suppliers, employees, contractors and agents of, or other persons doing business with, a party to these Terms or its related entities;
- (c) in your case, your data or the data of any Users inputted or uploaded to a Product;
- (d) regarding the terms and conditions of these Terms, including the contents of any Purchase Order or the commercial arrangements between the parties;
- (e) which contains or is the subject of Intellectual Property Rights;
- (f) which is by its nature confidential or which is designated as confidential by a party; or
- (g) which the other party knows, or ought to know, is confidential, excluding marketing and promotional material.

9.2 Disclosure

- (a) Subject to sub-clause (c) of this clause, both parties agree to treat all Confidential Information strictly confidential and not to disclose such information to anyone other than:
 - (i) with the consent of the other party;
 - (ii) as required by law; or
 - (iii) to any financial or legal adviser provided that adviser covenants in writing to keep such information confidential; or
 - (iv) to any employee, agent or contractor which has need of the Confidentiality Information in order to provide their services provided that employee, agent or contractor covenants in writing to keep such information confidential;
- (b) Subject to sub-clause (c) of this clause, both parties must take, or cause to be taken, reasonable precautions necessary to maintain secrecy and confidentiality and to prevent disclosure.
- (c) You agree that we may use data inputted by you in Smarter Data Professional for the purpose of grouping such data with the data of other Smarter Data Professional clients in order to offer the benchmarking function of Smarter Data Professional which is also available free of charge via Free Smarter Data. We warrant that the use of such data in this way does not in any way disclose your identity or personal details.

9.3 Return of Confidential Information

Subject to sub-clause (b) of this clause, you agree to return to us, within 7 days of the termination of your Membership or Subscription, any of our Confidential Information which is in your possession to us and that we request in writing for you to return.

9.4 Survival

You agree that the terms of this clause 9 will survive termination of your Membership or Subscription.

10 PRIVACY POLICY

10.1 Privacy Policy

- (a) We support the 'National Privacy Principles for the Fair Handling of Personal Information' for the collection, access, storage and use of personal information which we obtain as part of our services to you.
- (b) So that we can provide services to you, we may ask for personal details such as your name, address, telephone number, email address or credit card and banking details for the purchase of goods and services online. Privacy law requires us to collect personal information about you only from you if it is reasonable and practical to do so. We have measures in place to ensure protection of your personal information from unauthorised access, loss, misuse, disclosure or alteration. These measures depend on the type of information and how it is collected and stored. You have no obligation to provide any information requested by us but we may require you to provide this information as a condition of providing you with your requested goods and services.
- (c) The personal information that we ask for is generally used to provide goods or services to you. We may also use your personal information in other ways to provide you with superior service. This may include using your personal information to advise you of new products and services. You have the right to tell us if you do not want this to occur. Where possible, we try to ensure that our disclosure of information to other organisations is in a way which does not personally identify individuals.
- (d) If you wish to access your personal information please write to us at Privacy Officer, ChalkPort Pty Ltd, PO Box 702, Everton Park, Queensland 4053, Australia or email us at admin@chalkport.com.au. Before we provide you with access to your personal information we will require proof of your identity. We reserve the right to charge a fee for providing information which requires a substantial effort on our part.
- (e) More information about privacy law and the National Privacy Principles is available from the Federal Privacy Commissioner at <http://www.privacy.gov.au/>

11 INTELLECTUAL PROPERTY

11.1 Intellectual Property

- (a) "Intellectual Property" means any information or property which is the subject of Intellectual Property Rights and includes but is not limited to:
 - (i) all inventions, patents, trademarks, know how, logos, designs, trade secrets regarding our business and our Products;
 - (ii) all our content and material appearing on our Website including logos, designs as well as general information and content;
 - (iii) all data on our Servers or made available through our Products or CPQMS including images, illustrations, logos, designs, icons, photographs, audio, video clips, forms, templates, checklists and processes and written and other materials that are found on the Servers which were not created or uploaded by you or your Licensees;
 - (iv) any other proprietary rights or forms of intellectual property and information confidential to us; and
 - (v) any alterations, additions or amendments to our Intellectual Property.
- (b) "Intellectual Property Rights" means all our intellectual property rights both in Australia and throughout the world, for the duration of those rights, and includes:

- (i) any patent, trade mark (whether registered or common law), copyright (including future copyright), Moral Rights, registered design or other design right, eligible layout right (as defined in the *Circuit Layouts Act 1989 (Clth)*) and any corresponding or similar property or right under the laws of any jurisdiction;
 - (ii) any rights in respect of any invention, discovery, trade secret, know-how, concept, idea, information, data, algorithm or formula; and
 - (iii) any applications for registration of, or right to use, anything referred to in sub-clauses (a) or (b) of this definition.
 - (c) You acknowledge that our Website, the Login Page and these Terms contain our Intellectual Property. In addition, the Website contains information, software and other content provided by third parties that is protected by copyright, trademark or other proprietary rights of such parties.
 - (d) All Intellectual Property inherent in, and related to, our technology, products and services belongs to us and all software discs, information and other material supplied to you upon purchase of a Product other than marketing or promotional material remains our property.
 - (e) You agree to take all reasonable steps to protect our Intellectual Property and Intellectual Property Rights from use or abuse by others and to use any of our Intellectual Property subject to the provisions of clause 11.2.
 - (f) ChalkPort recognises that material created by you and uploaded to the software may be your Intellectual Property, as defined in Clause 11.1(a)-(e), and agrees to treat any such material with the same regard as you are expected to treat ChalkPort Intellectual Property.
- 11.2 Prohibited Activities
- (a) You are granted a non-exclusive, non-transferable license to use the content in our Website, Products and CPQMS, provided that you:
 - (i) in so far as it relates to the content of our Website, only utilize the content for your own personal, non-commercial use;
 - (ii) in so far as it relates to the content of our Products or CPQMS, only utilise the content for your business pursuant to which you purchased the Membership or Subscription of the Product; and
 - (iii) do not breach the provisions of sub-clause (b) of this clause.

In doing so, you acquire no right, title or interest in any of our Intellectual Property, except to the extent covered by these Terms and the Website Terms and Conditions.
 - (b) Subject to the following subclauses of this clause, you are expressly prohibited from:
 - (i) copying, reproducing, re-framing, hyperlinking, republishing, uploading, posting, transmitting or retransmitting, or distributing whether for profit or not, any of our Intellectual Property in any way, except to the extent permitted under these Terms.
 - (ii) sublicensing or reselling the Products, in whole or in part;
 - (iii) using or allowing any third parties to use the Products for to the purpose of compiling, enhancing, verifying, supplementing, adding to any other compilation of information, or reselling access to it or information from it;

- (iv) using the Products in any way or as part of a service or product not specifically authorised in these Terms or offering it through any third party;
- (v) disassembling, decompiling, reverse engineering, modifying or otherwise altering the Products or any part of the Products or their content, or any software used in the delivery of the Product services;
- (vi) using information extracted from our Website or the Products to compile or create any similar products, or software,

save that the above prohibitions do not prevent you from creating documents from our Products.

- (c) You are permitted to alter as you wish the contents of CPQMS which are given to you for use in your business as the basis of your templates and precedents. However, such use is subject to clause 11.3.
- (d) Any use of the Products not expressly authorised in these Terms is strictly prohibited without our prior written consent, which consent may be withheld in our sole discretion.
- (e) If we are engaged to re-create or alter your material such as transferring your print learning materials into an online format then, to the extent that you owned the intellectual property in the original material, you will also own the intellectual property inherent in the end product we create.
- (f) If we are engaged to re-create or alter any of our martial or Products whether pursuant to any customisation request or otherwise, then we retain the Intellectual Property inherent in the end product we create.
- (g) You may use reports generated from the Products for your clients or customers, provided that any report furnished to a client or customer shows your name and does not appear to be issued or created by us.
- (h) We may from time to time require you to use warranty or liability disclaimers in information that you provide to third parties generated from our Products or that contains content from our Products or our Website.

11.3 Forms and Templates

Without in any way limiting the foregoing, you specifically acknowledge that all template forms and documents, checklists, processes, systems and tools and other information which is contained in our Products and/or CPQMS and made available to you for use as part of your business:

- (a) are part of our Intellectual Property;
- (b) are the subject of copyright and may be the subject of additional Intellectual Property Rights;
- (c) you may only use them as part of your own business pursuant to which you purchased the Membership or Subscription of the subject Product; and
- (d) you are not permitted to distribute them whether for profit or not and whether in their existing form or amended or re-modelled by you or any of your Associates to anyone other than for use as part of your business pursuant to which you have purchased the Membership or Subscription of the subject Product without our prior written consent which may be granted or refused at our discretion and on such conditions as we see fit.

11.4 Survival

You agree that the terms of this clause 11 will survive termination of your Membership or Subscription.

12 BREACH AND TERMINATION

12.1 Application

These Terms are effective and apply to your use of any of our Products and services as amended in a way permitted under these Terms until your Membership or Subscription is terminated under these Terms.

12.2 Indemnity

- (a) You hereby agree to release us and our Associates from and indemnify us and our Associates against all liability, loss, damage, costs (including legal costs on a solicitor and own client basis) resulting from:
- (i) your breach or a Licensee's breach of these Terms;
 - (ii) your use or a Licensee's use of or access to the Website or a Product via our Website or the Login Page; and
 - (iii) your use or a Licensee's use of our Confidential Information or our Intellectual Property; and
 - (iv) any loss of your or a Licensee's data stored in our Products,
- including but not limited to any claim action or demand by any third party against us or which includes us as a party resulting therefrom.

12.3 Associates

- (a) You acknowledge that "you" in these Terms includes your Associates.
- (b) You must ensure that your Associates comply with these Terms as though they were named as you in these Terms. Any action or inaction, breach or default by your Associates of these Terms shall be deemed an action, inaction, breach or default by you.
- (c) For the purpose of clause 12.2, you agree to take all reasonable measures to ensure your Licensees abide by these Terms and, when using our Hosting Service, the Website Terms and Conditions. You agree that we may require your Licensees to acknowledge in writing or electronic form that they will comply with these Terms and our Website Terms and Conditions prior to commencing use of our Products via our Hosting Service. However, this does not derogate from your obligation to take reasonable measures as stated above.

12.4 Termination by you

You may terminate your Membership or Subscription:

- (a) during the first 6 months following acquisition of the Membership or Subscription only if we breach these Terms and do not remedy the breach within a reasonable time after you give us written notice requesting us to do so; or
- (b) for any reason at any time after the first 6 months following acquisition of the Membership or Subscription by at least 30 days written notice to us.

12.5 Termination by us

We may terminate your Membership or Subscription:

- (a) immediately and without further notice, if you breach these Terms, we have given you notice of the breach and you did not remedy that beach within 7 days;
- (b) immediately upon notice to you, if we become aware that you or one of your Licensees has:
 - (i) breached the confidentiality provisions of these Terms under clause 9;
 - (ii) breached the Intellectual Property provisions of these Terms under clause 11;
 - (iii) purported to transfer, assign or sublicense your Membership or Subscription in breach of clause 5.8;
 - (iv) hacked or caused a security breach to any of our Servers;

- (v) conducted any type of illegal activity via our Website;
 - (vi) conducted any activity via our Website which is in any way harmful to us or other subscribers;
 - (vii) acted in any other manner which, on reasonable grounds, we believe that your continued use of any of our Products is harmful to our business or reputation;
- (c) on 30 days notice to you, in the event that we cease to offer our technology and the Products in future.

12.6 Refusal to renew

Without limiting our rights under clause 12.5, we may also elect not to renew your Membership or Subscription if:

- (a) you have committed more than 3 breaches of these Terms during the period of 12 months prior to the scheduled date for renewal;
- (b) you are at the time of renewal presently in breach of these Terms and did not remedy that breach within 7 days of us giving you notice do to so; or
- (c) we have genuine and reasonable concerns that your continued use of our Products will lead to us wanting to terminate your Membership or Subscription in the near future.

12.7 Suspension

In addition to our rights under clause 12.5, we may also, at our discretion, instead or prior to termination of your Membership or Subscription, suspend your access to one or more Product until a breach of which we have given you notice has been remedied.

12.8 Right to delete content

You agree that we may access your Product at any time to delete data or content uploaded by you or a Licensee which is in any way offensive, defamatory or harmful to others including any pornographic or explicit material and you agree that we may charge a fee for this service.

12.9 New Accounts for Cancelled Entities

If we terminate your Membership or Subscription you agree not to sign up or submit a Purchase Order with us again under the same or different name or e-mail address, unless you receive express written permission from us. You agree that we may refuse to sell a Membership or Product including a Software Product to you under those circumstances.

12.10 Consequences of Termination

- (a) If your Membership or Subscription is terminated by us, you agree that we may cut off or sever all access by you and any of your Licensees to the use of the Products via the Website including by deleting all user names and passwords pertaining to your Membership or Subscription;
- (b) If termination of your Membership or Subscription occurs because:
 - (i) you have terminated your Membership or Subscription under clause 12.4 because we have committed a breach of these Terms which you gave us written notice of and we did not remedy that breach within a reasonable time of receiving your notice; or
 - (ii) you have terminated your Membership or Subscription under clause 6.10(b); or
 - (iii) we terminated your Membership or Subscription under clause 12.5(c), then we will refund to you the balance of your Membership or Subscription for the unexpired residue of your Membership or Subscription period on written request being made by you. If termination occurs for any other reason, you agree that there will be no refunds given.

- (c) Termination of a Membership or Subscription is without prejudice to the parties' rights regarding any monies owing to either party or any breaches of these Terms which occurred prior to termination and we may sue or take action against you to recover any damage or loss incurred by us pursuant to clause 12.2.

12.11 Damages for infringement of intellectual property rights

- (a) In the event of a breach of these Terms by you which amounts to an infringement of our Intellectual Property Rights, including but not limited to:
 - (i) a breach of the confidentiality provisions of these Terms under clause 9;
 - (ii) a breach the Intellectual Property provisions of these Terms under clause 11;
 - (iii) a purported to transfer, assignment or sublicense your Membership or Subscription in breach of clause 5.8,

then, despite any other rights available to us, you must immediately pay to us the sum of \$10,000 as initial base liquidated damages.

- (b) It is agreed that the amount referred to in clause 12.11(a) represents a reasonable and genuine pre-estimate of the base loss likely to be suffered by us as a result of any of the breaches referred to in clause 12.11(a) which includes the cost (on a solicitor and own client basis) of liaising with you and any third party to recover ownership of any disseminated information and ensure discontinuance of any intellectual property infringement and to make any necessary public announcements or advertising to rectify any damage to our business. You undertake not to assert that it constitutes a penalty or is otherwise unenforceable.
- (c) It is further agreed that the amount referred to in clause 12.11(a) is not prescriptive of the damages or remedies that we may be able to claim and we reserve the right to sue for such additional damages or remedies as are available to us depending on the particular circumstances of the breach.

12.12 Powers

Our powers, rights and remedies provided under these Terms are not exclusive of any powers, rights and remedies provided at law or in equity.

13 DISPUTE RESOLUTION

13.1 Dispute Resolution Process

- (a) Subject to clause 13.2 before any legal proceedings are commenced pursuant or in relation to these Terms, the parties must promptly enter into good faith negotiations pursuant to this clause and to engage in the mediation process pursuant to sub-clause (d) of this clause to attempt to resolve any disputes arising under these Terms.
- (b) A dispute will be regarded as having arisen on the date that a party gives the other written notice identifying the dispute.
- (c) In the first instance any dispute will be referred to the chief executive officer or his nominees of both parties to seek a mutual resolution of the dispute.
- (d) The parties agree that any dispute which cannot be satisfactorily resolved by the parties themselves within 14 days of the dispute arising will be referred to a process of non-binding mediation to be conducted by a person and in accordance with guidelines to be agreed by the parties provided that if the parties fail to agree on who should be the mediator or how the mediation should be conducted they will request the Institute of Arbitrators and Mediators Australia to recommend a suitable mediator who will conduct the mediation in accordance with the guidelines and procedures of the Institute of Arbitrators and

Mediators Australia and the parties will seek to complete the mediation within 28 days of the matter being referred to mediation.

13.2 Injunctive Action

Nothing in this clause will prevent a party from seeking urgent interlocutory relief.

13.3 Continued Service

Subject to our rights under clause 12, notwithstanding the existence of a dispute we will at all times continue to perform these Terms and to provide the services and both parties must continue to comply with the other requirements of these Terms.

14 LIMITATION OF LIABILITY

14.1 Warranty Disclaimer

(a) To the fullest extent permissible by law, we provide our Products on an "AS IS" basis without guarantee other than as contained in these Terms.

(b) In addition to the foregoing provisions of these Terms and to the fullest extent permissible by law, we do not warrant or guarantee the accuracy, completeness, adequacy or currency of any information contained in or extracted from the Products or CPQMS; nor that the Products or CPQMS will include information or data meeting your requirements, or those of your customers or clients; nor that its operation will be error-free or without interruption.

(c) In particular, we do not warrant that the template forms and precedents, processes and systems contained in our Products or CPQMS will meet your audit requirements pursuant to any laws applicable to your business unless you engage us and pay our additional fees of providing you with an assistance and advice to that effect. Further, we do not endorse or warrant the correctness and accuracy of any advice provided to you by any third party that we may from time to time refer you to obtain any such assistance and advice.

(d) Except as stated in these Terms and to the fullest extent permissible by law, we expressly disclaim all warranties and conditions of any kind, express or implied including without limitation implied warranties of title, non-infringement, merchantability, fitness for purpose and informational content.

14.2 Risk

(a) You use our Products and the information contained within or supplied with our Products (such as CPQMS) at your own risk.

(b) Each of your Licensees uses our Products and the information contained within or supplied with our Products (such as CPQMS) at their own risk.

14.3 Your warranties

In addition to any other warranty contained in these Terms, you warrant that:

(a) you have the necessary contractual ability to enter into any transaction with us pursuant to these Terms and that in doing so (including in using any of our Products) you will not be in breach of any agreement or arrangement that you have entered into with any third party or any law policy or regulation that you are required to comply with; and

(b) you and your Licensees will use our Products in accordance with these Terms.

14.4 Consumer Laws

Nothing in these Terms affects the application of the Consumer Laws in so far as they cannot be excluded.

14.5 Limitation of Liability

(a) To the extent permissible by law, in no event shall our total liability to you for all damages, losses and costs, under any cause of action, whether in contract, tort

(including but not limited to negligence) or otherwise, exceed the total amount paid by you, if any, to us for accessing the Product for the 12 months prior to the date on which the cause of the claim arose.

- (b) Without limiting the scope of sub-clause (a) of this clause, insofar as goods and services supplied by us are not of a kind ordinarily acquired for personal, domestic or household consumption, the liability for breach of a condition or warranty, implied into these Terms by the Consumer Laws is limited (in so far as is permitted by those Consumer Laws):
 - (i) in the case of physical goods, to the lowest of the following:
 - (A) the refund of the price paid by you for the goods or the issue of a credit note for such amount;
 - (B) the replacement of the goods or the supply of equivalent goods;
 - (C) the repair of the goods;
 - (D) the payment of the cost of replacing the goods or acquiring equivalent goods; or
 - (E) the payment of the costs of having the goods repaired.
 - (ii) in the case of services, to the lowest of the following:
 - (A) the supplying of the services again; or
 - (B) the payment of the cost of having the services supplied again.
- (c) We will not be responsible to you for any decision made by you or action taken by you in reliance upon any content in the Products or CPQMS without prior consultation with us.
- (d) We will not be liable for any claims by you, any third parties, nor for any other losses of any kind or character that result from the use of, or the inability to use, our Products or CPQMS unless the claim or loss arises directly from our negligence and in such case to the maximum extent provided in sub-clause (a) and (b) of this clause.

15 GENERAL

15.1 Non-merger

None of the terms or conditions of these Terms, nor any act, matter or thing done under or by virtue of, or in connection with these Terms will operate as a merger of any of the rights and remedies of the parties in or under these Terms or otherwise. All such rights and remedies of the parties will continue in full force and effect.

15.2 Statutes not to abrogate Agreement

Unless application is mandatory by law, no statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority, present or future, will apply to these Terms so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to the parties under these Terms.

15.3 Severability and survival of covenants

If any provision of these Terms is, or at any time becomes, prohibited by, or unlawful under, any applicable law, regulation or other condition actually applied or otherwise becomes void or unenforceable, it will be severed from these Terms and rendered ineffective so far as is possible without modifying the remaining provisions of these Terms. The remaining provisions will, to the extent permitted by the relevant law, regulation or other condition, continue in full force and effect.

15.4 Prohibition on oral amendments

Neither these Terms nor any provision of these Terms may be amended, modified, waived, discharged or terminated orally. All amendments must be in writing.

15.5 No waiver

Time is of the essence of these Terms. Neither party will be taken to have waived any right under these Terms unless such waiver is in writing.

15.6 Notices

Any notice or other communication of any nature that must be given, served or made under or in connection with these Terms:

- (a) must be in writing in order to be valid;
- (b) is sufficient if executed by the party giving, serving or making the same or on its behalf by any attorney, director, secretary, other duly authorised officer or solicitor of such party;
- (c) will be deemed to have been duly given, served or made in relation to a person if it is delivered or posted by prepaid post to the address, or sent by facsimile to the number of that person, or sent by email to the email address of that party set out in clause 12.10 or as notified in writing by that party to the other party from time to time;
- (d) will be deemed to be given, served or made:
 - (i) (in the case of prepaid post) on the third day after the date of posting;
 - (ii) (in the case of facsimile or email) on receipt of a transmission report confirming successful transmission; and
 - (iii) (in the case of delivery by hand) on delivery.

15.7 Addresses for Notices

The parties addresses for notices shall be as follows:

Us: Att: ChalkPort Pty Ltd
 Address: PO Box 429, Kenmore QLD 4053
 Facsimile: 07 3303 8445
 Email: info@chalkport.com

You: As set out in your Purchase Order.

15.8 Governing law and submission to jurisdiction

These Terms will be governed by the laws of Queensland, and the parties submit to the non-exclusive jurisdiction of the Courts of Queensland.

Chalkport - Terms and Conditions for Purchase of CPQMS

1. TERMS

These are the terms for purchase of the ChalkPort approved collection of template documents (herein referred to as the "CPQMS") produced by ChalkPort Pty Ltd ACN 145 758 434 ("ChalkPort"). By accepting these terms you agree that your purchase of CPQMS is subject to these terms.

2. PRODUCT PROVIDED AS IS

CPQMS consists of a collection of forms and precedents prepared by ChalkPort to comply with most administrative requirements of business for which CPQMS is intended. CPQMS is provided in an "as is where is" condition. ChalkPort does not accept liability for any problems or issues you may experience in downloading, copying, cutting and pasting or modifying CPQMS content which are due to your own computer, computer programs or operating system or your internet browser or connection. ChalkPort also does not accept liability for any misuse of CPQMS.

ChalkPort endeavours to ensure that the content of CPQMS is up-to-date with the relevant legislative requirements for the businesses for which use of CPQMS is intended but Chalkport does not warrant that CPQMS is compliant with all legislative requirements of all businesses nor that it does not contain errors or inaccuracies. It is your responsibility to ensure that CPQMS meets your legislative and operational requirements. Samples of the content of CPQMS are available on-line on our website. All warranties as to fitness for purpose and other requirements are, to the extent permissible by law, excluded from these terms for purchase of CPQMS. No refunds will be issued to customers who find CPQMS to be unsuitable for their particular business.

3. USE OF PRODUCT

You acknowledge that CPQMS is being purchased by you for the purpose of use in your own business only. Whilst you may modify the content of CPQMS to your needs to suit your business you are not permitted to commercially distribute the content of CPQMS whether for a fee or for a payment and whether in its existing form or modified in any way. For the purpose of this requirement "you" includes any related or unrelated entity to whom you give a copy of the contents of, or allow access to, CPQMS for amendment or reproduction for whatever purpose. Distribution of the content of CPQMS in whole or in part to another person or entity (whether related to you or not) for the purpose of modifying the content at your request may only be made if that person or entity agrees in writing not to distribute the content in its original or any modified version to any other person or entity.

Your right to use and modify the content of CPQMS for your business does not apply to any of ChalkPort's logos, trademarks, banners and other ChalkPort own related content which may be contained in CPQMS. Use in any way shape or form by you of any such content for any reason is strictly prohibited.

You acknowledge that the content of CPQMS is protected by copyright and/or other intellectual property rights and any use of CPQMS in breach of these terms will be deemed an infringement of copyright and/or such other intellectual property rights that exist. You agree to indemnify ChalkPort against any loss or damage which ChalkPort may suffer as a result of your breach of these terms. However, you also agree that damages may not be a sufficient or appropriate remedy in relation to any breach of ChalkPort's intellectual property rights and accordingly you agree that ChalkPort may request an injunction or such other order for any Court of competent jurisdiction to prevent you from committing or continuing to commit any act that would result in an infringement of ChalkPort's intellectual property rights.