

SPS Commerce Inc – General Terms and Conditions - Australia

1. GENERAL

1.1 Services

SPS Commerce, Inc. (“SPS”) will provide the products and services (“Products and Services”) at the prices, fees or charges or that otherwise become payable under the provisions of the Scope and Proposal Form or these General Terms and Conditions (collectively “Fees”), as set forth in the Scope and Proposal Document, change order, statement of work, or other written document used by SPS to offer products and services to the customer as named and described in the Scope (“Customer”) (“Scope”). The Scope and these General Terms and Conditions which apply to all orders are expressly incorporated into the contract and constitute the full agreement between the Customer and SPS (“Agreement”). The General Terms and Conditions shall govern the provision by or on behalf of SPS of all Products and Services. To the extent of a conflict between the terms of the Scope and this Agreement, the terms of the applicable Scope will be paramount. SPS hereby rejects the inclusion of any different or additional terms proposed by the Customer, without the prior written consent of SPS. Any software or documentation included in a Product or Service is supplied only under license and will at all times remain the sole and exclusive property of SPS.

If the Customer does not reply in writing to written notice from SPS, to the effect that the integrated fulfillment services specified in the applicable Scope are still to be completed, SPS will no longer be obligated to perform those Services after twelve (12) months from the date of the applicable Scope.

1.2 Nature and Scope of Products and Services

The tasks, timelines, data types, volumes and pricing contained within the Scope are SPS’s good faith estimates and are wholly reliant upon the Customer’s representations and descriptions of the nature and scope of the project as defined by or on behalf of Customer. In the event SPS determines that the representations and descriptions made by or on behalf of the Customer are materially inaccurate, a material change will be deemed to have occurred, and SPS will then be and remain entitled to adjust the nature of any Products or Services and any associated Fees, with any such modifications subject to Customer approval, which shall not be unreasonably withheld or delayed.

2. SERVICE LEVELS AND ESCALATION PROCESS

SPS shall provide the Products and Services in compliance with the service levels and escalation process set forth in the Service Level and Escalation Process document posted online at www.spscommerce.com/servicesandtech/terms-and-conditions.html.

3. CUSTOMER RESPONSIBILITIES

Customer is responsible for all activity occurring under Customer’s accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Customer’s use of the Products and Services, including those related to data privacy, international communications and the transmission of technical or personal data.

Customer shall be and remain solely responsible for protection of its transmission facilities, premises, equipment, the integrity of its data entered on the Products and Services, and its ID(s), password(s), user names and the like, or any other third party using the Products and Services through Customer, from all unauthorized access or use. Customer shall use reasonable measures, commensurate with accepted industry standards, for such protection.

Customer shall provide SPS with: (a) all documents and data in a format as specified by SPS; and (b) all reasonable assistance in the implementation and use of Products and Services.

All Customer requests for additional changes or deletion of a password must be in writing. Customer acknowledges that the internet, or any other wide-area communication network (“WAN”) that may be

utilized is not a secure or an error free network and that transmissions made on the internet or a WAN may not be completed, may be sent to an unintended recipient or may contain errors or omissions. The internet or WAN, or portions thereof, may also become inaccessible or inoperable, in whole or in part, at any time or from time to time.

Customer may not decompile, reverse engineer, modify, adapt, translate, prepare derivative works, disassemble or otherwise attempt to discover the source code of the Products or Services, nor will Customer allow, procure or authorize others to do any of the aforementioned.

Customer is not authorized to copy for publication and dissemination any materials accessed by means of the use of the Products and Services, if such materials are identified as proprietary, confidential or the intellectual property of SPS or of any third party. Customer will not delete any proprietary, confidential or intellectual property rights notices from printouts of materials which are electronically accessed.

All of the information on the Products and Services, including all text, graphics, software applications, videos and audio files and photos (collectively "Material") and all rights in the pages and screens displaying the pages, are owned by SPS or affiliated entities or their licensors, and are protected by copyright or other intellectual property laws under United States laws and all applicable foreign laws. Neither Customer nor any person acting on its behalf is permitted to copy, reproduce, distribute, publish, download, display, post, frame, disclose or transmit any Material in any form or by any means, including, but not limited to, electronic, mechanical, photocopying, recording, or otherwise, without the prior written consent of SPS or the copyright owner of that Material.

4. PAYMENTS

4.1 Charges and Payment of Fees

Customer's obligation to pay all Fees in accordance with the provisions of this Agreement is an essential term of this Agreement. Customer shall pay all Fees to Customer's account in accordance with the terms in effect at the time a Fee becomes due and payable. Payments must be made in accordance with the monthly Fee schedule. Customer must provide SPS with valid credit card or payment information as a condition to signing this Agreement.

4.2 Payment Terms

Upfront Fees are due to be paid upon signature of the Scope. Upfront fees for additional Products or Services are due upon signature of any additional Scope and Proposal Form or other document that is intended to serve an analogous purpose.

The liability to pay Monthly Fees begins in the month of signature of Scope, with Due on Receipt terms. The liability to pay monthly Fees for additional Products or Services begin in the month the Scope for such Products or Services is signed, with Due on Receipt terms.

4.3 Billing

Customer agrees to provide SPS with complete and accurate billing and contact information. This information includes Customer's legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact ("Billing Contact"). Customer agrees to update this information within 30 days of any change to it. If the contact information Customer has provided is false or fraudulent, SPS reserves the right to terminate Customer's access to the Products or Services in addition to retaining the right to enforce any other legal remedies.

If Customer believes Customer's bill is incorrect, Customer must contact SPS in writing within 90 days of the date of the invoice containing the amount in question and the reasons for such belief, to be eligible to receive an adjustment or credit if and to the extent that such belief is proven to be correct.

4.4 Taxes

Customer shall be responsible for all taxes on Products or Services, exclusive of taxes based solely on SPS' net income. Customer will reimburse and indemnify SPS for all sales, use or excise taxes assessed by any taxing authority, whether such taxes are invoiced initially to Customer or assessed retroactively based upon audits by any governmental taxing authority.

4.5 Past Due Invoices and Suspension

Customers are invoiced on a monthly basis in accordance with Due on Receipt Terms. Balances for open invoices exceeding thirty (30) days are considered past due invoices. All past due invoices will accrue interest at the rate of 1 ½% per month or such lesser rate if required by law. SPS reserves the right to suspend or terminate this Agreement, the Customer's access to any or all Products or Services if any invoice to that Customer's account becomes a past due invoice. Customer will continue to be charged for Services during any period of suspension. If Customer or SPS initiates termination of this Agreement or any Services hereunder, Customer will remain obligated to pay the balance due on Customer's account computed in accordance with the Charges and Payment of Fees section above. Customer agrees that SPS may charge such unpaid fees and any interest accrued as stated above to the credit card on file or otherwise bill for such unpaid fees and accrued interest.

If Services are suspended by SPS for non-payment of fees owed, a reactivation fee of \$100.00 will be charged to Customer when Services are reinstated.

4.6 Collection Costs

Customer agrees to pay SPS for all costs of collection, including reasonable attorney's fees, incurred in the collection of any past due invoices.

5 WARRANTY

SPS warrants that all Services will be performed in accordance with industry standards and in a workmanlike and reasonably diligent manner consistent with professional standards of performance generally accepted within the industry to transmit and deliver the data furnished by the Customer in industry standard format. This warranty is given in lieu of all other expressed and implied warranties. SPS makes no other representations or warranties of any kind, including but not limited to any implied warranties of merchantability, non-infringement, data accuracy, quiet enjoyment, or fitness for a particular purpose. Customer acknowledges that the services may be subject to limitations, delays and other problems inherent in the use of the internet and electronic communications, and Customer agrees that none of SPS nor its suppliers is or will be responsible for any delays, delivery failures, errors, security breaches or other damage resulting from such problems. Customer is and will remain wholly responsible for taking appropriate precautions against damages to its operations, which could be caused by services defects, errors, interruptions, or malfunctions.

If data furnished by the Customer is lost, destroyed, or impaired ("Loss") through the sole negligence of SPS, then SPS' liability and Customer's sole remedy shall be limited to SPS either (i) to the extent reasonably possible, restoring the Loss in the Customer's data from SPS' archives if SPS is notified in writing of that Loss within sixty (60) days of the date of the occurrence of that Loss, or (ii) if SPS is notified of the Loss after the expiry of that sixty (60) day period, provide to Customer a credit for the Fees paid in connection with the transmission of the data that was the subject of that Loss.

Customer acknowledges that the remedies set forth above are the exclusive remedies for any breach of a representation or warranty.

6 LIMITATION OF LIABILITY

IN NO EVENT WILL SPS OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR SUBCONTRACTORS BE LIABLE FOR ANY FORM OF DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, CHARGEBACKS, LOSS OF USE OR LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL), OR OTHER DAMAGES RESULTING FROM OR IN CONNECTION WITH ANY PRODUCTS OR SERVICES PROVIDED TO CUSTOMER, UNDER ANY

THEORY OF TORT, CONTRACT, STRICT LIABILITY OR NEGLIGENCE, EVEN IF SPS OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR SUBCONTRACTORS HAVE BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OR FORESEEABILITY OF ANY SUCH DAMAGE.

This limitation of liability includes, but is not limited to, any damages (whether direct, indirect, special, incidental, consequential) caused by: (1) the integrity of the data supplied by Customer in Customer's transmission requests; (2) bar coding performed by third-party bar coding companies; or (3) fees, fines, or penalties assessed against Customer by any of Customer's trading partners for any reason, whether or not the fault of SPS.

7 DATA SECURITY AND PROTECTION

7.1 Customer Data

"Customer Data" means the EDI data transmitted by Customer to its trading partner through SPS. As between the Parties, Customer Data will be and remain the sole property of Customer. Neither SPS nor any of its subcontractors may possess or assert any lien or other right against or to Customer Data. Without limiting the generality of the foregoing, SPS shall restrict access to SPS resources to SPS personnel as necessary to perform SPS's obligations under this Agreement.

7.2 Data Security

SPS will establish and maintain safeguards against the unauthorized access or use, destruction, loss or alteration of Customer Data in the possession or control of SPS (or any of its subcontractors) which are no less rigorous than industry-standard measures and which are no less rigorous than those maintained by SPS for its own data of a similar nature.

8 TERM AND TERMINATION

This Agreement shall become effective as of the Date (as shown on the Scope) and shall remain in full force and effect until it is terminated by one of the parties pursuant to the provisions of this Agreement.

Subject to the terms of this Section 8, either party may terminate this Agreement and/or any portion of the Services effective at the end of any calendar month by providing written notice to the other no less than thirty (30) days before the termination date as stated in that notice ("Termination Date"). All licenses provided under this Agreement shall terminate on the Termination Date. Customer shall remain obligated to pay for any license fees and transaction fees that were due or had accrued, whether or not the subject of an invoice, prior to the Termination Date.

If at any time Customer is delinquent in payment or is otherwise non-compliant with its obligation to perform any of its obligations under this Agreement or the terms of use of any Product or Service, SPS may revoke and terminate any rights or licenses and suspend or terminate this Agreement and/or the provision of any Product or Service immediately and without prior notification.

9 MISCELLANEOUS

Both parties may delegate any or all of their duties under this Agreement, or any part or parts thereof, to subcontractors, subsidiaries or parent companies, provided that both parties will remain liable for the performance of their respective duties and obligations under this Agreement. Except in connection with the sale of significantly all of the stock or assets of Customer, Customer may not assign this Agreement or any of the rights under this Agreement without SPS' prior written consent, which may be withheld at the absolute discretion of SPS. Any attempt to do so prior to obtaining such consent will be void.

This Agreement may not be modified by Customer except in writing, signed by Customer and SPS. SPS reserves the right to amend the terms of this Agreement at any time upon thirty (30) days prior notice to the Customer.

Other than the obligation to make payments, neither party will be liable for its inability to perform to the extent caused by conditions beyond its reasonable control, including but not limited to: internet viruses, slowdowns or unavailability; environmental conditions at Customer's premises; Customer's third-party provider or other contractors; labor disputes; perils; or other hazards.

The provisions in this Agreement concerning proprietary rights, payment, disclaimers of warranty and liability, termination, governing law, and any other provision that by its nature should survive termination shall survive termination of this Agreement.

If any portion of this Agreement is held invalid, such invalidity shall not affect the remaining portions of this Agreement.

Failure or delay by either of Customer or SPS to exercise any right, power, privilege or remedy will not constitute a waiver or release thereof. Any provision contained herein that by its nature could reasonably be construed to survive expiration of this Agreement shall so survive.

This Agreement shall be governed by and construed according to the laws of the state of New South Wales, Australia and where applicable, the Commonwealth of Australia. The exclusive jurisdiction and venue for any litigation arising out of or related to this Agreement or any part thereof shall be, in the first instance, the courts of the jurisdiction of that State and where applicable on appeal, the Commonwealth of Australia.