

## **END USER LICENCE – TERMS & CONDITIONS**

### **Important Information**

Each End User acknowledges and agrees that they have read and understand these terms and conditions. By continuing to use the Software, the Products or any other item of Jacques Property, each End User agrees to be bound by and to act at all times in accordance with each of these terms and conditions.

### **1. Ownership**

1.1. Jacques is the exclusive owner of the Jacques Property.

1.2. The End User acknowledges and agrees, except to the extent permitted by the Licence granted under these terms and conditions:

- (a) It has no proprietary rights whatsoever in the Jacques Property, including but not limited to as a consequence of the granting of the Licence; and
- (b) Exclusive ownership of the Jacques Property will remain vested in Jacques at all times.

### **2. Grant of licence**

2.1. Subject to the End User's compliance with these terms and conditions at all time, Jacques grants each End User a limited Licence to use the Jacques Property in connection with the Products.

2.2. Any End User who uses the Products or the Jacques Property is deemed to accept the grant of the Licence on the terms set out in this document.

2.3. In accepting the grant of the Licence, the End User irrevocably and unconditionally acknowledges and agrees that:

- (a) the End User must only use the Software in object code form solely in connection with the use of the Products in the conduct of the End User's legitimate commercial or personal activities;
- (b) upon acceptance by Jacques of an order made by the End User for the purchase or supply of Products (Product Order), the End User is only entitled to install or otherwise use the Software to the extent and in the manner specified in the Product Order;
- (c) the End User must not make any copies of any item of Jacques Property, other than additional copies of the Jacques Property for genuine back-up or archival purposes only; and
- (d) subject to any applicable law or the prior written consent of Jacques, the End User (or any associate or related party of the End User) must not at any time:
  - (i) sublicense, reproduce, distribute, market, sell, transfer, disclose or otherwise similarly deal with any item of Jacques Property;
  - (ii) translate, modify, disassemble or reverse-engineer any Product or Software;
  - (iii) create derivative works based on any Product or Software;
  - (iv) obtain possession of any source code or other technical material relating to the Software;
  - (v) use any item of the Jacques Property in a manner which may directly or indirectly commercially exploit that item of Jacques Property; or
  - (vi) remove, alter or obscure any copyright notice, proprietary legend, notice of intellectual property ownership or similar information or imagery contained on any of the Jacques Property.

- 2.4. Without limiting any other right or remedy available to Jacques under these terms and conditions or any other agreement or arrangement between Jacques and the End User, Jacques may immediately revoke the Licence upon a breach by the End User of any of the obligations in clause 2.3.
- 2.5. At all times prior to and during the use of the Software, the End User must ensure that it has established and continues to maintain a Suitable Software Environment for the use and operation of the Software. The End User acknowledges that Jacques is under no obligation whatsoever to provide or otherwise make available any additional products, software (including third party software) or other property to ensure that a Suitable Software Environment is maintained in accordance with this clause. Jacques may terminate these terms and conditions and revoke the Licence in the event that it has reasonable grounds to suspect that a Suitable Software Environment is not maintained by the End User.
- 2.6. Each End User acknowledges and agrees that these terms and conditions are in addition to, and not in substitution for, any other terms and conditions that may apply to or govern the supply of Jacques Property or other related goods and services from Jacques to the End User, including but not limited to the Standard Terms and Conditions. These terms and conditions do not affect the full force and effect of the Standard Terms and Conditions.
- 2.7. If any Products or Jacques Property are provided to End Users through a third party (including but not limited to a subcontractor to Jacques or a reseller of Jacques Property or Products), that third party irrevocably acknowledges and agrees that:
- (a) the End User will be made aware of the terms and conditions of this Licence; and
  - (b) it guarantees to Jacques the End User's due and punctual performance of, and compliance with, its obligations under the Licence, and agrees that it will be responsible for any breach by the End User of the terms of the Licence as if such breach was committed by the third party itself.

### **3. Proprietary rights and information**

- 3.1. The End User agrees to maintain the confidentiality of the Confidential Information by, at all times, exercising necessary care and precaution and taking all steps reasonably required to prevent disclosure of the Confidential Information to any third party.
- 3.2. Without limiting clause 3.1, the End User agrees not to disclose, divulge, distribute, publish, transmit or transfer the Confidential Information to any third party, or otherwise use the Confidential Information for any purpose other than for a purpose expressly authorised under these terms and conditions.
- 3.3. The parties acknowledge that the terms of the Licence do not extend to a right of the End User, nor any obligation of Jacques, to provide any updates or upgrades to any applicable Products. The provision of any updates or upgrades to the End User is at the sole discretion of Jacques.
- 3.4. The End User's obligations under this clause 3 survive termination of any agreement or arrangement between Jacques and the End User in relation to the purchase or supply of any Jacques Property.

### **4. Services**

- 4.1. The End User may request services be performed by Jacques by submitting a request for services to Jacques (Service Request). Jacques is not obliged to accept a Service Request. Jacques may perform the services requested in a Service Request (Services), provided they have the requisite skills and resources to reasonably deliver the Services. The End User acknowledges

and agrees that Jacques is entitled to invoice the End User for additional fees or amounts for the Services.

4.2. Where Jacques accepts a Service Request, Jacques' obligation to deliver the Services are subject to:

- (a) the End User complying with all of its obligations under these terms and conditions and any other agreement or arrangement between Jacques and the End User (or any associate or related party of the End User); and
- (b) the parties, acting reasonably, agreeing to a mutually agreeable implementation plan in respect of the Services.

4.3. In the event that a Service Request is cancelled by the End User at some stage during the delivery of the Services, the End User may be required to pay to Jacques a cancellation fee not exceeding 25% of the total fees that would have been paid or payable to Jacques where the Services were able to be fully performed and the Service Request not cancelled. The parties acknowledge that the cancellation fee will be in addition to, and not in substitution for, any fees that may be invoiced by Jacques for any component of the Services that have been performed prior to the cancellation.

## **5. Support**

5.1. Subject to Jacques receiving payment of any applicable fees payable by the End User in relation to its obligations under any agreement or arrangement between Jacques and the End User, Jacques agrees to use reasonable endeavours to provide the End User with, where applicable:

- (a) firmware upgrades;
- (b) bug fixes; and
- (c) cyclical software upgrades.

5.2. Jacques may charge the End User a reasonable fee where the End User requests new or supplementary functionality or capabilities in relation to any of the Jacques Property that may be offered from time to time.

## **6. Verification**

6.1. Upon receiving a request from Jacques to do so, the End User must provide Jacques with a signed confirmation (in a form reasonably required by Jacques) to the effect that all items of Jacques Property are being used pursuant to these terms and conditions and any other relevant agreement or arrangement between Jacques and the End User (Verification Statement).

6.2. Where a Verification Statement is not received by Jacques within 3 business days of receiving a request to do so, or where Jacques is not satisfied with the Verification Statement (acting reasonably) or otherwise has reason to suspect that an item of Jacques Property is not being used in accordance with these terms and conditions, the End User must do all acts necessary to allow Jacques, or a nominee of Jacques, to review all relevant records and attend and inspect the End User's premises to verify compliance with these terms and conditions.

## **7. Limitation of liability**

7.1. In this clause 7:

- (a) ACL means the Australian Consumer Law set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth) as given effect under Part XI of the Competition and Consumer Act 2010 (Cth); and
- (b) Consumer means a consumer within the meaning of section 3 of the ACL.

- 7.2. To the extent that the End User acquires goods or services from Jacques as a Consumer, the End User may have certain rights and remedies (including, without limitation, consumer guarantee rights) that cannot be excluded, restricted or modified by agreement.
- 7.3. Nothing in clause 5 or this clause 7 operates to exclude, restrict or modify the application of any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability, implied or conferred under the Australian Consumer Law or any other statute, the exclusion, restriction or modification of which would:
- (a) contravene that statute; and
  - (b) cause any term of these terms and conditions to be void; (Non-excludable Obligation).
- 7.4. Except in relation to Non-excludable Obligations or where otherwise provided otherwise in these terms and conditions, all conditions, warranties, guarantees, rights, remedies, liabilities or other terms implied or conferred by statute, custom, or the general law that impose any liability or obligation on Jacques are expressly excluded under these terms and conditions.
- 7.5. Except in relation to Non-excludable Obligations, Jacques' liability to the End User arising directly or indirectly under or in connection with these terms and conditions or the performance or non-performance of these terms and conditions and whether arising under any indemnity, statute, in tort (for negligence or otherwise), or on any other basis in law or equity is limited as follows:
- (a) Jacques will have no liability whatsoever to the End User for any loss, harm, damage, cost or expense (including legal fees) in the nature of special, indirect or consequential loss or damage (including, without limitation, economic loss, loss of contract, loss of profit or revenue, loss of opportunity, loss of production, production stoppage or loss of data); and
  - (b) the aggregate of Jacques' liability to the End User is otherwise limited to an amount not exceeding any amount paid by the End User (including but not limited to in relation to any Service Order) under these terms and conditions or any other agreement or arrangement between Jacques and the End User (or any associate or related party of the End User).
- 7.6. In relation to Non-excludable Obligations, Jacques' liability to the End User for a failure to comply with any Non-excludable Obligation is limited to:
- (a) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and
  - (b) in the case of goods, the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.

## **8. Termination and revocation of Licence**

- 8.1. These terms and conditions are immediately effective and binding on the End User as soon as the End User uses any Jacques Product.
- 8.2. Where Jacques has reasonable grounds to believe that the End User has acted in a manner inconsistent with these terms and conditions, Jacques may immediately revoke the Licence, as well as take any other action permitted or contemplated under any other document or agreement between Jacques and the End User (or any associate or related party of the End User).
- 8.3. Upon revocation of the Licence, the End User must return all Confidential Information, as well as any Jacques Property (including but not limited to any Software and Documents) upon receiving a direction to do so by Jacques. Jacques may direct the End User to destroy any specified Confidential Information and/or Jacques Property in lieu of returning those items, and may require the End User to provide written certification in relation to their destruction.
- 8.4. The End User acknowledges that it is aware that a breach of these terms and conditions may result in Jacques suffering damage, for which damages may not be an adequate remedy.

## 9. Defined terms and miscellaneous

### 9.1. Defined terms

In these terms and conditions:

**Confidential Information** means all of confidential information owned or created by Jacques, irrespective of its form or medium and whether or not it comes into existence before, on or after the receipt of these terms and conditions by the End User, and includes:

- (a) all information of, used by or related to a party or its transactions, operations and affairs, including all past, current and prospective financial, accounting, marketing, trading, technical and business information, trade secrets, know how, technology and operating procedures, customer and supplier lists, data bases, source codes, methodologies, manuals, artwork and advertising manuals; and
- (b) all other information directly or indirectly relating to a party's Intellectual Property Rights or business activities or is otherwise treated by that party as confidential or is commercially sensitive and valuable to that party, including but not limited to business plans or concepts, technologies, software (including the Software and the Source Code Materials), hardware, database structures, and data sources; and
- (c) the contents of any Document.

**Derived Information** means notes, memos, reports, calculations, conclusions or summaries or other material derived or produced partly or wholly from any of the Confidential Information and any or all computer records (including data, copies, models, reproductions and recordings) derived or produced partly or wholly from any of the Confidential Information.

**Documents** includes any document owned, prepared or published by Jacques including but not limited to any manual or other documentation provided in relation to any Product or Software.

**End User** means:

- (a) any subcontractor, reseller or retailer of the Software, the Products or any other item of Jacques Property; and
- (b) any person that uses or continues to use the Software, the Products or any other item of Jacques Property (whether that person has acquired the Software, the Products or any other item of Jacques Property directly from Jacques or from another party), and includes, non-exhaustively, retail customers, business customers and their respective employees, officers, agents and representatives.

**Intellectual Property Rights** means all intellectual property rights, including but not limited to:

- (a) any intellectual property rights associated with the Software or the Products;
- (b) the Source Code Materials;
- (c) patents, copyright, rights in circuit layouts, registered and unregistered trademarks, designs, software, codes and programming; and
- (d) any application or right to apply for registration of any of the rights referred to in sub-clauses (a) to (c) above.

**Jacques Property** means each of:

- (a) the Software;
- (b) the Documents; and
- (c) all Intellectual Property Rights associated with the Products, the Software and the Documents.

**Licence** means a limited, non-exclusive, non-transferable, revocable licence to use the Jacques Property and/or the Products for the End User's legitimate commercial or personal use, subject to these terms and conditions.

**Products** means any products supplied by Jacques directly or indirectly to the End User from time to time.

**Software** means any software owned or created by Jacques that is made available for use by the End User, including the Source Code Materials and any improvements, enhancements, modifications or developments of the software.

**Source Code Materials** means the compilable source code of the Software as current from time to time, and all other information, software and documents necessary to enable a party to understand the program logic of, and to maintain, the Software.

**Standard Terms and Conditions** means Jacques' standard terms and conditions applicable to the supply of goods and services to End Users, including any related document or document referred to in those standard terms and conditions, each as amended from time to time.

**Suitable Software Environment** means a computing environment independently procured, prepared and maintained by the End User for the use and operation of the Software, which must meet any minimum system requirements reasonably requested by Jacques from time to time.

## **9.2. Miscellaneous**

- (a) A term or part of a term of these terms and conditions that is illegal or unenforceable may be severed from these terms and conditions and the remaining terms or parts of the term of these terms and conditions continue in force.
- (b) Jacques does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy by Jacques does not prevent another or further exercise of that or another right, power or remedy.