

agileworx 

Agileworx Standard Terms of Trade

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2 DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Agreement, except where the contrary intention is expressed, the following definitions are used:

Commencement Date	the date on which the work is to commence or did commence or as specified in Schedule 1
Deliverable	any Developed Software or related Documentation to be supplied by Agileworx under this Agreement.
Developed Software	the Software developed by Agileworx for the Client as required by this Agreement, but does not include System Software or Third Party-licensed Software.
System software	System software includes operating system software, database management system software, system administration software, backup software, anti-virus software, internet browser software, office productivity tools (eg, Microsoft Word, Excel, PowerPoint, Project and Access), etc.
Third Party-licensed Software	Software in respect of which a third party owns the Intellectual Property Rights and as being Software to be licensed by the Client direct from the third party.

3 CONFIDENTIALITY AND COPYRIGHT

This document and its attachments are provided in strict commercial confidence. If you are the intended recipient of this document you must not disseminate, distribute or copy it to anyone outside your registered organisation.

If you have obtained this document by mistake, please notify Agileworx immediately by e-mail at simon@agileworx.digital.

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4 STANDARD TERMS OF TRADE

4.1 Projects

When Agileworx agrees to perform work, it will do so either on a Fixed Price or a Time and Materials basis. It may also agree to perform the work initially on a Time and Materials basis and, when details of the work are defined and agreed, and all unresolved issues have been resolved, to proceed on a Fixed Price basis.

4.2 Specification

A specification is a physical document that has been prepared by either the Client or Agileworx staff. It places agreed boundaries around both the scope of the work and the project required for delivering the work. A specification is only “agreed” when it has been physically signed by authorised officers from both organisations.

The specification defines in details what is included in the work and highlights any exclusions that Agileworx wish to bring to the Client’s attention. All other work unless explicitly stated should be treated as excluded from the scope of the project.

The specification will always state who is responsible for all “material” costs (e.g. equipment, special software licences, meals, travel and accommodation).

Any change or variation to the agreed specification must also be in writing and agreed by both parties in a similar manner.

4.3 Fixed Price Work

Agileworx will only agree to undertake work for a Fixed Price when there is an agreed specification. In this case, the specification is binding on both parties and the cost of performing any additional or previously unspecified work (including all Work that is not explicitly included in the specification) will be charged to the Client.

A Fixed Price project will almost always involve progress payments being made by the Client. At the start of the project, Agileworx will supply a Payment Schedule which will show the Deliverable milestone that each progress payment is tied to, the expected date and the amount of the progress payment.

4.4 Time and Materials Work

Performing work on a Time and Materials basis allows work to progress when there is a large amount of uncertainty on projects. This is typically the case during the early phases of a project when the project requirements are being defined.

Agileworx may agree to undertake work on Time and Materials basis and may provide an estimated amount of effort to complete this work. These estimates are not binding and are to be used for “budgeting purposes” only. All hours actually spent will be charged. If, during the course of Time and Materials work, Agileworx determines that the work will require substantially more effort than estimated, Agileworx will advise the Client who may then choose not to complete the work. In this case, all effort spent on the work will be charged to the Client. The minimum time chargeable for on-site work is two (2) hours.

4.5 Expenses

Unless explicitly included as a component of a Fixed Price quotation, all travel, accommodation and other out-of-pocket expenses reasonably incurred by Agileworx in performing the work will be added to the Client’s account subject to the prior written approval of the client.

4.6 Schedules

Agileworx will provide the Client with a schedule of milestones and associated Deliverables along with a Payment Schedule. The Client must inform Agileworx if the milestones and the Payment Schedule do not meet with their expectations/deadlines within ten (10) business days of the Schedules being supplied to Client.

The schedule(s) will outline any tasks that are the responsibility of the Client (e.g. user acceptance testing). The Client must inform Agileworx if they are unable to meet these commitments.

To meet the agreed milestones, the Client must ensure that they assign knowledgeable staff to work with Agileworx on the project.

Client Staff will be given sufficient time to respond to Agileworx requests in a timely manner.

Client staff will meet with Agileworx team members on an on-going basis to:

- a. Review project progress
- b. Refine Developed Software requirements
- c. Review and accept each of the agreed project Deliverables

4.7 Training

Training will be included only where the Client has requested it.

If the Client requires additional training, it will be charged in half day or full day sessions. Documentation, if required, is at additional cost. If documentation has not been specifically estimated or quoted, it will not be supplied. All documentation development and reproduction costs (including additions, deletions and revisions) are to the Client's account.

4.8 Confidential Information

Agileworx staff treats all information from Clients as being “Commercial-in-Confidence”.

Confidential Information of any nature that either party discloses to the other party regarding any aspect of their business shall be defined clearly in writing prior to it being made known to the other party. Once Confidential Information is disclosed it will be treated in strict confidence. Information so obtained shall not be divulged, furnished or made accessible to third parties without the written permission of the original party except where required to do so by law.

4.9 Intellectual Property and Transfer of Rights

- a. Each party will retain its pre-existing Intellectual Property and nothing in this agreement assigns or transfers the pre-existing Intellectual Property of one party to the other. Neither party may assert or bring any claim for ownership of any or all of the other party’s pre-existing Intellectual Property.
- b. Agileworx agrees that, immediately upon payment for any Deliverable Client owns the Deliverables. Agileworx assigns to Client all existing and future Intellectual Property subsisting in and to any Deliverables (including any Deliverables which have been jointly created, developed or brought into existence by Client and Agileworx). In this clause Intellectual Property means all industrial and intellectual property rights of any kind including copyright, trademarks, design, moral rights and other proprietary rights. For the purposes of this agreement, Deliverables means any work or material created or developed by or on behalf of Agileworx for the Client under this agreement.
- c. To the extent that any pre-existing Intellectual Property of Agileworx is incorporated into the Deliverables, Agileworx grants to Client a perpetual, royalty-free license to use such pre-existing IPR as part of the Deliverables for Client, including for the purpose of further developing the Deliverables.
- d. Subject to clause 4.9 (a) Client grants to Agileworx for the term, a revocable, non-transferable, non-exclusive and royalty-free licence to use such of Client’s pre-existing Intellectual Property as may be necessary (and only to the extent necessary) to perform the Services and other obligations of Agileworx required by this agreement.
- e. Agileworx must not, and must ensure that its personnel will not, use any of the pre-existing Intellectual Property of Client to provide any Services (including any services that are the same as or similar to the Services) to any person other than Client or any of its Related Bodies Corporate.

4.10 Acceptance

Acceptance of services and/or the Developed Software provided by Agileworx on a Fixed Price basis will be based on the most recent version of the agreed specification. In the absence of a specification or specific acceptance criteria, payment made against a milestone achievement-based invoice will constitute acceptance of the work performed covered by that invoice.

The Client may choose to perform acceptance testing against an agreed acceptance test plan incorporating acceptance criteria, at its own cost.

It is the Client's responsibility to perform sufficient testing of the Developed Software prior to and during the warranty period so as to identify defects with the Developed Software, the services supplied by Agileworx and all of the Deliverables produced by Agileworx.

Where service or product is delivered in part or in full and no formal acceptance, testing or feedback is given by Client to Agileworx within 30 working days of delivery, then they are deemed to have been accepted in full.

Any service or product used in a live environment prior to any formal Client acceptance testing is deemed to have been accepted.

4.11 Third Party-licensed and System Software Licensing

Unless explicitly included as a component of a Fixed Price quotation, the provision of all Third Party-licensed & System Software will be charged to the Client's account.

4.12 Defects

A defect is defined as any situation where the Developed Software or its supporting documentation does not conform to the latest, agreed specification.

4.13 Warranty on Developed Software

Agileworx will provide a thirty (30) day warranty on all Fixed Price work. This warranty period commences upon acceptance, or when the Developed Software is used in a live environment, whichever is the earlier (i.e., if the Client chooses to 'go live' with the Developed Software before an acceptance test has been performed or completed, then the Developed Software will be deemed to have been accepted and the warranty period will commence at the 'go live' date).

The planned start date for the warranty period will be communicated to the Client well in advance of it starting, usually as an activity on the project schedule.

An extended warranty period can be negotiated for an extra fee.

No warranty applies to work performed on a Time and Materials basis.

Agileworx and its suppliers disclaim all other warranties, either express or implied, including, but not limited to implied warranties or merchantability and fitness for a particular purpose, with regard to the Developed Software, the accompanying written materials and any accompanying hardware.

Warranty means repair by Agileworx of all Defects identified by the parties during the Warranty Period without cost to the Client, even if the repair continues after the Warranty Period. Warranty does not include any support.

During the warranty period, if Agileworx is requested to perform any work that is not in the nature of repairing a defect or included as part of the agreed specification, then the time spent performing this work will be charged to the Client's account.

Each defect is treated on a case-by-case basis.

When a project is undertaken to extend the functionality of an existing Developed Software, the warranty only applies to defects within the scope of the project. If defects are reported that existed in the previous version of the Developed Software then these will not be fixed free of charge.

4.14 Support

Agileworx is able to provide various Support options to a client based on a separately negotiated agreement. Support normally commences on the same date as the warranty period commences.

4.15 Maintenance

Agileworx may be able to provide various Software Maintenance options for associated Third Party-licensed software to a client based on a separately negotiated agreement. Third Party-licensed Software Maintenance normally commences as specified within the Software License Agreement.

4.16 General obligations of the parties

The parties must, at all times:

- a. act reasonably in performing their obligations and exercising their rights under this Agreement;
- b. diligently perform their respective obligations under this Agreement; and
- c. work together in a collaborative manner.

4.17 Client's Obligations

It is the Client's obligation to:

- a. Operate the delivered Developed Software according to the instructions given by Agileworx.
- b. Notifying Agileworx of any suspected defects in a timely manner.
- c. You must:
 - i. Comply with all laws and guidelines concerning your use of the Services
 - ii. Notify us immediately of any change to your details, and
 - iii. Contact Agileworx immediately if there is a problem with the Services

4.18 Service of Notices

It shall be sufficient to serve all notices by facsimile, standard, certified or registered post as well as any form of electronic mail to the other party's last known address as listed in Schedule A.

4.19 Disputes

Any disagreement, dispute or other action relating to the adequacy of the services or Developed Software provided by Agileworx or either party's compliance with the conditions of this agreement will be:

- a. First, discussed in person at the time the matter becomes apparent.
- b. Be declared in writing making specific reference to relevant parts of prior jointly signed agreements, undertakings and/or the most recent version of the agreed specification and any acceptance criteria.

- c. Then a fourteen (14) day notice period be given to the other party to resolve the matter as described above.
- d. If the matter is unable to be resolved then an independent mediator (as agreed by both parties or appointed by an appropriate registered mediation authority) to facilitate resolution of the matter with costs being shared equally by both parties.
- e. And failing this be adjudicated exclusively by a court of competent jurisdiction in Sydney, New South Wales, Australia.

4.20 Term and Termination

The Agreement may be terminated by the Client if Agileworx breaches the terms and conditions of the Agreement and fails to remedy the breach within thirty (30) days of being asked to do so.

Agileworx can permanently end the Agreement if the Client breaches any term or condition of the Agreement involving the payment of money and fails to remedy the breach within thirty (30) days of being asked to do so.

Agileworx will permanently end the Agreement by notice to the Client, (without prior written consent) if Agileworx is legally obliged to do so upon request from a government agency.

If the Service ends as a result of the Client's decision to terminate the Agreement, or as a result of a breach of these Terms and Conditions:

- a. Agileworx's rights, in respect of the Client's unfulfilled obligations, under the Agreement at that time, continue.
- b. All hardware, software and any associated intellectual properties referred to in this Agreement, required to deliver the Services, remains the property of Agileworx.
- c. The Client must pay to Agileworx:
 - i. All costs and expenses incurred in ending the Agreement
 - ii. All outstanding accounts at that time
 - iii. The Exit Fees (unless the client terminates the Agreement because Agileworx breaches the terms and conditions or the Term expires)

4.21 Suspension of the Services

Agileworx may temporarily suspend the Agreement if the Client breaches any term or condition of the Agreement involving the payment of money and the Client fails to remedy the breach within fourteen (14) days of being asked to do so.

Agileworx may immediately suspend the Agreement by notice to the Client if Agileworx is legally obliged to do so upon request from a government agency.

4.22 Permissions

Prior to Agileworx's acceptance of the Client's Application, the Client must provide Agileworx with all information relevant to the assessment of the Client's credit rating. The Client will permit Agileworx to receive and disclose information or documents about the Client's personal particulars and affairs

(including credit worthiness, credit history and credit capacity and any unlisted telephone number and address) from or to: credit providers and credit reporting agencies for all purposes permitted by

the Privacy Act 1988; law enforcement agencies; and any subcontractors for purposes connected with the Services.

4.23 Assignment of Agreement

Either party's rights under this Agreement may only be assigned, after prior written notice and acceptance by the other party to a subsidiary or related body corporate. Such acceptance to not be unreasonably withheld. Assigning these rights transfers all rights and obligations as agreed under this Agreement.

4.24 Miscellaneous

Any person signing the Agreement or any specification on the Client's behalf warrants that they have full power and authority to the Client in respect of the Agreement or specification.

4.25 Cancellations

If any Time and Materials work is cancelled after approval to proceed has been received, Agileworx will charge the Client for all effort and out-of-pocket expenses incurred up to the time at which it was cancelled.

If any Fixed Price work is cancelled after approval to proceed has been received, Agileworx will charge the Client a proportion of the quoted Fixed Price based on the effort and out-of-pocket expenses incurred up to the time at which it was cancelled.

4.26 Credit Terms

Unless otherwise agreed, credit terms are strictly thirty (14) days. Agileworx reserves the right to discontinue work where credit terms are not met as well as take legal action for any outstanding debt.

During the Term, the Client agrees to pay the amounts specified in the Payment Schedule

- a. Agileworx will send an invoice in an approved form for GST purposes setting out the Fees due for the Services provided
- b. The Client will pay the Fees regardless of whether it is the Client or the Client's Clients who use the Service
- c. The Client will be solely responsible to pay or reimburse Agileworx for the full amount shown in the invoice
- d. The Client will pay all invoices by the Due Date or, if the Client elects, to pay by direct debit, Agileworx will debit the nominated account for the amount of the invoice by the Due Date.

If the Client does not pay an invoice by the Due Date the Client agrees that:

- a. Agileworx may charge a daily interest from the Due Date until the date on which payment is received. Interest will be capitalised monthly and will be payable at the rate which is two per cent (2%) per annum above the overdraft reference rate quoted by Agileworx's principal bankers on the first day of the applicable month

- b. The Client will be liable for all reasonable collection costs (including any legal fees) Agileworx may incur to collect the amount outstanding

If the Client, in good faith, disputes an amount in an invoice, the Client must notify Agileworx in writing within fourteen (14) days setting out reasons for the dispute and the amount in dispute.

4.27 Solicitation of Staff

Solicitation of either party's employees or contractors by the other party is prohibited. Both the Client and Agileworx warrants that should they solicit an employee or contractor from the other party, thereby breaching this prohibition, they will pay liquidated damages to the other party of an amount of fifty per cent (50%) of the annual salary (including all commissions, bonuses and benefits) expected to be paid to the employee in the new position.

4.28 General Liability

In no event shall Agileworx or its suppliers be liable for any accidental, consequential, incidental or indirect damages of any kind (including without limitation, damages for loss of business profits, business interruption, loss of business information or other pecuniary loss) arising out of the use or of the inability to use the Developed Software. In no event shall Agileworx's liability for any claims whether in contract, tort or other theory of liability exceed the purchase price of the products, services or work contracted, unless such limitation of liability is otherwise prohibited by law.

4.29 Limitation on Warranties

- a. This is a services engagement. Agileworx warrants that it will perform services hereunder with due care and skill in a professional manner.
- b. To the extent permitted by law, and subject to section (c) hereafter, the express warranties in this agreement shall be in lieu of, and Agileworx excludes all, other representations, conditions and /or warranties, express or implied, including any warranties in respect of the services which might otherwise be implied by international convention, statute or general law into this agreement.
- c. Nothing in this Agreement will operate so as to exclude, restrict or modify Agileworx's liability for any breach of any warranty, representation, condition or any term implied by the Competition and Consumer Act 2010 or any relevant state or territory legislation.
- d. Where Agileworx is liable for a breach of any warranty or condition implied by the Competition and Consumer Act 2010 (or equivalent warranties and conditions in state or territory legislation) in respect of Services or Deliverables, Agileworx's liability is limited (where permitted by the applicable legislation) to: (i) in the case of services, the cost of having the services supplied again; and (ii) in the case of goods, the lowest of the costs of replacing the goods, acquiring the equivalent goods or having the goods repaired, whichever Agileworx in its absolute discretion, elects.

4.30 Limitation on Damages

- a. To the full extent permitted by law, in no event shall either party nor their respective employees, officers and directors be liable for any loss of profits, lost management time, savings, contracts, revenue, invest, goodwill, data, or penalties, fines or for consequential, special, indirect, or exemplary damages, costs, expenses, or losses.

- b. To the full extent permitted by law the Client agrees that Agileworx, its employees, officers and directors shall not be liable to the Client for any actions, damages, claims, liabilities, costs expenses, or losses in any way arising out of or relating to the services performed hereunder for an aggregate amount in excess of the fees paid by the Client to Agileworx in performing the Services. No terms of this Agreement shall benefit or create any right or cause of action in or on behalf of any person or entity other than the Client and Agileworx.
- c. Agileworx's liability in contract, tort, negligence, strict liability or by statute or otherwise under or in connection with this Agreement will be reduced to the extent, if any, to which the Client contributed to the loss or damage suffered as if apportionment of damages in the case of contributory negligence applied to a claim based on a breach of contractual or other duty. The Client must use best endeavours to mitigate all loss.
- d. The provisions of this Section shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss, whether in contract, statute, tort (including, without limitation, negligence), or otherwise, and even if such actions, damages, claims, liabilities, costs, expenses or losses has been previously notified by the Client to Agileworx, and even where such actions, damages, claims, liabilities, expenses or losses are caused by the negligence of Agileworx, its servants, agents or contractors.

4.31 Force Majeure

Neither party shall be required to perform any term, covenant, or condition of this Agreement so long as such performance is delayed or prevented by force majeure, which shall mean any acts of God, wars, governmental laws, orders, requirements or actions, enemy or hostile governmental actions, strikes, lockouts, labour or employment difficulties, civil commotions, fires, floods, accidents or breakdowns, or any other casualties or conditions which are beyond the reasonable control of either party and not due to the fault or negligence of such party.

If, as a result of any of these conditions, either party fails to perform any obligations specified in this Agreement and gives written notice of same to the other party within ten (10) days of their occurrence, then such failure shall not be deemed a breach or default; and the applicable time periods in which to perform shall be extended, but only to the extent and for the period such condition exists.

4.32 Costs

Each party must pay its own costs of negotiating, preparing and executing this Agreement.

4.33 Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

4.34 No merger

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

4.35 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

4.36 Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

4.37 Waiver

Waiver of any provision of or right under this Agreement:

- a. must be in writing signed by the party entitled to the benefit of that provision or right;
and
- b. is effective only to the extent set out in any written waiver.

4.38 Relationship

- a. The parties must not represent themselves, and must ensure that their Personnel and subcontractors do not represent themselves, as being Personnel of, or a partner of, the other party, or as otherwise able to bind or represent the other party.
- b. This Agreement does not create a relationship of employment, agency or partnership between the parties.

4.39 Governing law and jurisdiction

This Agreement is governed by the law of the New South Wales and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

SCHEDULE 1 - AGREEMENT DETAILS

Item number	Description	Details
1.	Agileworx Details	Agileworx 19 Ritchie Street, Cobbitty NSW 2570
2.	Agileworx Representative	Simon Crowell
3.	Client Details	TBC
4.	Client Representative	TBC
5.	Commencement Date	TBC
6.	Address for notices	Agileworx: Simon Crowell Agileworx 19 Ritchie Street, Cobbitty NSW 2570 Client: TBC