

Terms of Use

The following terms and conditions ("**Terms**") apply to the engagement by the Client of **Portalink Pty Limited ACN 609 202 557** ("**Us**", "**We**", or "**Our**") to perform the Services. The Contract for the Services is made up of the Summary of Services and these Terms. Your signature on either of these documents or acknowledgement by email or any electronic manner is acceptance of the Contract. Even if You do not sign or acknowledge any part of the Contract, if You provide instructions for Us to proceed with work in connection with the Services after receiving this Contract, accept any part of the Services, or pay any Fees for the Services, You are deemed to have accepted and agreed with this Contract.

1. (Services) We will carry out and provide the Services subject to this Contract.

2. (Eligibility) If You are accepting these Terms on behalf of a company, organisation, association or agency as its authorised legal representative, then You represent and warrant that You have the power and authority to bind such company, organisation, association or agency to these Terms.

3. (Your account) You are responsible for all of the activities that occur under Your account. You should carefully choose Your password and username and protect them from unauthorised use. Please let Us know immediately of any unauthorised use of Your account or any other breach of security. We are not liable for any loss if someone else uses Your password or account.

4. (Configuration and use) The Services includes reasonable assistance with portal maintenance (to the extent relevant and applicable to You and Your circumstances).

You are responsible for ensuring the initial and ongoing configuration of the Services meets Your needs and requirements. You acknowledge that the Services will be provided on the basis of such initial and ongoing configurations, and accordingly You accept that to the extent that Your configurations are inaccurate, incomplete or false, then the performance of the Services will be affected and We will not be responsible for such performance.

We must, if requested by You, promptly rectify any material errors, faults, defects or omissions in the Services at Our cost as soon as reasonably practicable.

You agree that We may from time to time upgrade or change the functionality and/or look and feel of the Services provided that such changes will not materially reduce or limit the Services.

5. (Prohibited uses) You must not:

- assign, transfer or sub-license the Services (or any part of them) to any person or encumber Your rights under this Contract;
- gain unauthorised access to any part of Our system, networks or servers;
- interfere with or disrupt any servers or networks connected to Our system or otherwise compromise the integrity or performance of the Services;
- disable or compromise any protection software or feature associated with the Service;
- intentionally use the Service to send or store any harmful code;
- commercially exploit the Services or make them available to any other person, whether for use or access, otherwise than as permitted under this Contract;
- reverse engineer any part of the Services or any system or offering provided by Us;
- create links to the Services or mirror the Services on any server or other device;
- do anything or use any feature of the Services in a manner that We reasonably determine is inappropriate or not intended by Us;
- use Our Intellectual Property for any purpose other than for the purposes set out in this Contract; or
- attempt to, or permit, any person to do or attempt to do any of the above.

6. (Data and Confidentiality) At all times You are responsible for updating and/or changing Your Data with respect to the Services. In addition, You must ensure that when You update or export Your Data using the Services, You may also update,

change and display the same Data online on Your relevant internal e-Catalogues, websites or portals.

You are responsible for determining and controlling what Suppliers You will deal with and what Data You select for export to integrated third-party endpoints, such as internal e-Catalogues, websites or portals.

We are not liable for the accuracy, integrity and reliability of any Client or Supplier Data. You warrant that Your Client Data will not infringe the Intellectual Property rights of any third party, and You indemnify Us for any loss that We may suffer if that is not true.

We will secure Your Data and not disclose Your Data to third parties except: (a) as specified in this Contract; or (b) where We have Your consent; or (c) to the extent that We are required to do so by Law. You agree that, when necessary to do so, We may disclose Your Data on a confidential basis to Our contractors, agents and related companies involved in providing You with the Services. We understand that Your Data is important to You so please see Our Security Statement in respect of the steps We take to protect and secure Your Data.

We use Amazon Web Services cloud infrastructure so please head to <http://aws.amazon.com/compliance/> for more information.

In respect of any information You provide to Us (**Information**), We agree not to disclose or use Your Information other than in Our dealings with You and in providing the Services. We will not sell Your Information but, when necessary, We may provide the Information to Our related companies on a confidential basis in order to administer and provide the Services. You warrant that all Information is complete, accurate and not misleading.

The Services include functionality to allow You to export and/or print Your Data. You are solely responsible for exporting and/or printing Your Data for future use and backup purposes, and We recommend that You do so. For this reason and except as provided in this Contract, We will not be required to provide You with any Data unless We agree in writing to do so prior to the expiry or termination of this Contract.

We will use reasonable efforts to ensure that the Data is available to You. However, We will not be liable to You for any loss, damage or corruption to such Data or failure to store, make available or update such Data. You are solely responsible for exporting Data.

7. (Privacy) We will comply with Our Privacy Policy at www.portalink.com/Privacy in respect of

personal information of individuals We obtain in relation to Your use of the Services. You agree to comply with all Laws as to privacy (including the *Australian Privacy Principles* if applicable) in respect of Your use of the Services.

8. (Supplier dealings) In using the Services You will communicate, negotiate and generally deal with Suppliers. You agree to comply with all applicable Laws in Your use of the Services and Your dealings with Suppliers. We do not promote or endorse any Supplier with whom You deal with in using the Services or give any representation or warranty as to the solvency of any Supplier, or any product or service provided by any Supplier. You acknowledge and agree that You are solely responsible for selecting or agreeing to enter into any transaction, arrangement or agreement with a Supplier. We do not warrant the number of Suppliers (as applicable) who will from time to time be available by or through the Services or that all Suppliers will agree to use and be contactable by You over the Services. For the avoidance of doubt, this relates to the decision by Suppliers to use the Services and not the availability of the Services.

9. (Communications) You are responsible at all times for any communications You make using the Services. You agree that You will not send any unsolicited commercial Emails or electronic messages if the same are prohibited by any applicable Law (including the *Spam Act 2003*). You will ensure that the content of Your Emails do not:

- breach any legal obligations (including mandatory codes of conduct) applicable to any hosting agent We engage to host and provide the Services;
- infringe the Intellectual Property rights of any third party; or
- contain obscene, defamatory, libellous or threatening materials or which encourages criminal or illegal conduct.

10. (Hosting) The Services are provided via the internet, Email and other electronic communications. We will use reasonable efforts to ensure that the Services are available at all times, but We do not warrant that the supply of the Services will be provided or available on an uninterrupted basis. We cannot give such a warranty as the Services are provided over the internet and as such may be subject to matters outside of Our control. You agree that We will not be liable in the event that the Services are unavailable to You or Your Suppliers for any reason outside Our

direct control, including due to Us or Our hosting agents having server downtime (including in respect of malfunction, upgrades or preventative or remedial maintenance activities) or for other factors outside Our direct control which effect the internet, electronic hosting and emails. We will notify You in advance of any scheduled upgrades or maintenance activities and use reasonable endeavours to schedule these activities to minimise disruption.

11. (Our Intellectual Property rights)

Provided that You fully comply with this Contract, We grant You a non-exclusive, non-assignable, limited licence to use the Services (and such of our Technology and Content comprised in the Services) for the sole purpose of enabling You to enjoy the benefits of the Services as intended under this Contract. You acknowledge and agree that all Services (including all Intellectual Property rights in and to the Services, Technology and Content) are owned, and remain with, Us (or third party licensors as the case may be) and that other than the limited licence described above You do not have any rights or licence to use any or part of the Services, Technology and/or Content.

You must not modify, improve or enhance the whole or any part of the Services without Our prior consent. You must not (directly or indirectly, or otherwise allow or permit any person to) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code or underlying structure, ideas, or algorithms of, or found at or through the Services, including specifically the Content and the Technology.

You acknowledge that the name Portalink Pty Limited, Portalink and the Portalink logo (**Marks**) are trademarks of members of the Portalink corporate group, which We are part of. You are not authorized to use any of the Marks in any advertising, publicity or any other commercial manner without Our prior consent and Your use of the Services does not give You any title or ownership in the Marks. You agree that We, or Our licensors (as the case may be), own all Intellectual Property in any feedback or suggestions (whether they are implemented or not) You provide to Us in respect of the Services.

12. (Your Intellectual Property Rights)

Title to, and all Intellectual Property in and to all of Your Data is and remains Your property. We do not claim ownership of Your Data. You grant Us a non-exclusive, worldwide, royalty-free licence to use Your Data to the extent required by Us to provide You with the Services and to otherwise perform this Contract.

13. (Third party Intellectual Property rights)

We warrant that the Services do not infringe any Intellectual Property rights of any third party. We indemnify You for any loss You incur in relation to any claim that Your use of the Services infringes the Intellectual Property rights of any third party.

You agree to comply with the following in respect of any claim or allegation that the Services infringe the Intellectual Property rights of a third party:

- You must inform Us as soon as You become aware of any allegation or claim that the Services infringe the Intellectual Property rights of any third party and provide all relevant materials to Us; and
- You grant Us the right to conduct the defence or resolution of such claims (We must give You notice of whether We will conduct the defence within 20 days of the date You give Us notice of the claim or allegation).

In any claim or action in respect to the Services infringing the Intellectual Property rights of a third party We may:

- procure for You a right to continue using the Services from the party bringing or succeeding in the claim;
- amend the Services so they no longer infringe the Intellectual Property rights of a third party (provided that such amendments will not materially reduce or limit the Services to You); and/or
- terminate the Services in full or in part, and in such circumstance, We will refund all unused Transaction Credits and on a pro rata basis, any remaining period of the License Fee.

14. (Publicity and Marketing)

Unless otherwise agreed in writing, You agree that We may make or release promotional or marketing material (whether in online or printed media) that refers to Your use of the Services. In that regard You grant to Us a non-exclusive right and limited licence to use Your name and such of Your trade marks solely for such marketing or publicity purposes.

For every Email sent via the Services, You agree that the Services may automatically add an identifying footer stating "Powered by Portalink Vendor Exchange" or a similar message as may be agreed with You.

15. (Monitoring)

We have no obligation to monitor the content provided by You or Your use of the

Services. However, We may monitor and remove any such content if We believe or it is alleged to breach this Contract.

16. (Additional Services) If the Summary of Services includes Additional Support Services (or other additional features) for integration and/or other training services (**Additional Services**), and We accept Your request to provide such Additional Services, this **clause 16** will apply.

The scope of the Additional Services We will provide and the Fees for the same are as set out in the Summary of Services or as otherwise agreed in writing. Any milestones agreed for the completion of all or any part of the Additional Services are estimates only and We will not be in breach of this Contract or liable to You for any loss or damage incurred as a result of Our failure to meet such milestones.

The parties may agree to add any Additional Services to Your Services at any time after commencement of this Contract. You acknowledge that We may change Our fees for Additional Services at any time. If We change the fees for the Additional Services, We will notify You prior to You purchasing any Additional Services.

If You require help from Our Technical Engineers, We will charge You the fee set out in the Summary of Services. We will provide You with a quote for a Technical Engineer to be agreed on by the parties.

In performing the Additional Services unless You give Us notice to the contrary, We will assume that all of Your employees, directors and officers who give Us instructions are authorized to do so when such instructions are accompanied by a purchase order or similar written instruction. We are not liable to You for any damage or loss suffered by You which results from Us following Your directions or specifications in performing the Additional Services.

If We need to perform the Additional Services on Your premises, You must (at no cost to Us):

- allow Our employees, agents and contractors to access Your premises (including the use of amenities, power, water and gas) at all reasonable times to perform the Additional Services; and
- provide Us with all necessary information and access to Your computer network and data so We can perform the Additional Services.

You warrant that Your premises are safe and comply with all applicable occupational health and safety Laws.

17. (Fees and payment) Your use of the Services is subject to the Fees payable by You, as set out in the Summary of Services or as otherwise agreed from time to time. You acknowledge that the continued availability the Services may be conditional upon continued payment of such Fees. Unless otherwise agreed, Fees must be paid at the times and in the manner set out in the Summary of Services.

Where applicable, You agree to pay all GST and other similar taxes imposed in connection with the supply of Services to You. You are responsible for all internet service provider fees, telecommunication and other charges required for Your connection to, or use of, the Services.

Unless otherwise specified in the Summary of Services, all Fees are in Australian dollars. The Fees (or any part of the Fees, but other than the License Fee which is varied by reference to CPI – see below) may only be varied by mutual agreement in writing.

We will issue You with an electronic tax invoice for the Fees. You must pay Our invoice within 30 days of the date of Our invoice or as per the agreed payment terms.

You must not deduct from Our Fees any set off, counterclaim or other sum unless We agree in writing. We may, at Our option, apply money received from You against any money then due by You to Us.

You agree that You are liable to pay for each correctly prepared and submitted invoice in full when the invoice is due. You must notify Us immediately if any invoice is in dispute.

We may impose interest on any late payment. Interest will be calculated at two percentage points above Westpac's indicator rate from time to time. That interest will accrue and be recoverable from day to day.

18. (Transaction Credits) You must pay the Transaction Fees (if any) set out in the Summary of Services to purchase Transaction Credits. A Transaction Credit will be used for each transaction that is exported from the Service to Your system (such as Advance Shipping Notifications, Invoices and Credit Notes). For clarity a 'transaction' does not include the export of Supplier Data to Your system.

19. (Term and renewal) The term of this Contract commences on the date this Contract is executed by You (**Commencement Date**) and continues for 12 months from that date or until such other date that is agreed in writing between the parties (**Initial Term**).

At the end of the Initial Term and each subsequent term, this Contract will be automatically renewed for successive renewal periods of 12 months each (**Renewal Term/s**), unless You give Us written notice at least three months before the end of the then current term that You do not want this Contract renewed, in which case this Contract will automatically terminate at the end of the then current term.

Unless otherwise specified in the Summary of Services, the License Fee is payable annually. The License Fee for the Services for the Initial Term is stated in the Summary of Services. The License Fee for any Renewal Term will be adjusted at the commencement of each Renewal Term (**Review Date**) in accordance with any rise in the CPI, by applying the following formula:

$$\text{NAF} = \text{OAF} \times \frac{\text{Current CPI}}{\text{Previous CPI}}$$

Where:

- **NAF** is the new License Fee, payable after the Review Date.
- **OAF** is the License Fee payable immediately before the Review Date.
- **Current CPI** means the latest CPI for the Quarter ending immediately before a Review Date (or such earlier date that We are required to advise You of the new License Fee).
- **Previous CPI** means the CPI for the Quarter ending immediately before the previous Review Date, or if there is no previous Review Date, the Commencement Date.
- **Quarter** means each period of three months ending on 31 March, 30 June, 30 September and 31 December.

We will advise You of the new License Fee at least four months before the relevant Review Date. The License Fee will not decrease after a review to CPI, so in the event the above formula results in a decrease, then the License Fee will remain the same. You must pay the revised License Fee before the start of any Renewal Term.

20. (Termination without cause) You may terminate this Contract by giving Us written notice by emailing Your Portalink Account Manager or Our customer support staff, and such termination will only take effect at the later of: (a) the end of three months after We receive the notice of termination; or (b) the end of the Initial Term, unless We agree otherwise. On such a termination, You are not entitled to any refunds for any Fees paid and You must pay all Fees for the period up to termination.

We may terminate this Contract no earlier than the end of the Initial Term without cause with at least three months' notice to You, and upon such termination We will refund You any Fees paid in advance (pro-rated to the date of termination) and all Transaction Fees in respect of any unused Transaction Credits.

21. (Termination for cause) A party (**Innocent Party**) may terminate this Contract or suspend the Services immediately by notice to the other Party (**Defaulting Party**) if:

- the Defaulting Party is in breach of any term of the Contract and such breach is not remedied within 14 days after receiving notice from the Innocent Party; or
- the Defaulting Party becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration.

If You validly terminate this Contract under this clause, upon such termination We will refund You any Fees paid in advance (pro-rated to the date of termination) and all Transaction Fees in respect of any unused Transaction Credits.

22. (Effect of termination) Termination does not affect a party's rights or remedies existing before termination or arising from termination. On termination of this Contract for any reason, any licence granted to You to use the Services (including the Intellectual Property in and to the Services) under this Contract ceases and You must immediately cease using the Services.

You agree that We may delete Your Data on the expiry or termination of this Contract. Notwithstanding this, following termination or expiry of this Contract, We may permit in good faith:

- Suppliers who have received Client Data from You to continue to use that Data to allow those Suppliers to maintain historical data for use in future purchase order management reports; and/or

- You to continue to use and access Supplier Data to allow You to maintain historical data for use in future purchase order management reports.

23. (Client service) A Portalink Account Manager will look after the Services for You and be Your point of call. You acknowledge that this person may change from time to time. We will notify You when there has been a change of person.

24. (Implementation Process and Resource Plan) We aim to reach Our targets as set out in the Implementation Process and Resource Plan (if any). We will use all reasonable endeavours to perform in accordance with this process and plan.

Where there has been any delay to the Implementation Process and Resource Plan, the Portalink Account Manager will notify You and provide You with up-to-date targets.

25. (Insurance) We will effect and maintain the following insurance policies:

- public and products liability insurance for the insured amount of \$20 million for any one occurrence;
- professional indemnity insurance for the insured amount of \$5 million for any one occurrence; and
- workers compensation insurance (for the insured amount as required by Law),

(each an **Insurance Policy**). We will produce evidence of each Insurance Policy if requested by You. Each Insurance Policy will be effected by Us prior to commencing work under this Contract and be maintained until 3 years after completing all of Our obligations under this Contract, and be with a reputable and substantial insurer.

26. (Warranties) Subject to this Contract, We warrant that the Services will have the functionality, specifications, and/or performance as described in the Summary of Services and be fit for the purposes stated in the Summary of Services. We also warrant that We have the necessary professional skill, expertise and experience to perform Our obligations under this Contract, and We will perform Our obligations under this Contract in compliance with this Contract, applicable Laws, and with due care, skill and diligence.

As the Services are provided over the internet, We will use Our best endeavours to ensure, but cannot and do not make any warranty or representation, that:

- the use of the Services will be secure, timely or error free;
- the Services will operate in combination with other hardware, software or system (unless You have notified Us of such hardware, software, or systems, prior to commencement of this Contract);
- the Services will meet Your requirements, be suitable for Your needs or as to the results You may obtain from using the Services (unless You have notified Us of such requirements, needs, or results, prior to the Commencement Date); or
- any stored Data will be accurate or reliable.

To the maximum extent permitted by Law, We disclaim and exclude all warranties, conditions and guarantees, implied or imposed by Law or trade custom or usage.

27. (Limitation of liability) Under no circumstances will either party be liable to the other for any economic, consequential, contingent, special or indirect damages resulting from the loss of business, revenue or profit with respect to claims arising in connection to this Contract, including any act or omission by Us or You in performing the Services or for a breach of contract or for negligence.

You agree that the Services are not goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption. To the extent permitted by Law, Our maximum liability to You under this Contract is limited to (as We may decide):

- in the case of goods, (i) the replacement of the goods or the supply of equivalent goods or the repair of the goods, or (ii) the payment of the cost of replacing the goods or of acquiring equivalent goods or of the cost of having the goods repaired; and
- in the case of services, the supplying of the services again or the payment of the cost of having the services supplied again.

In any event and to the extent permitted by Law, Our aggregate liability to You for any breach of this Contract and/or for any claim or proceedings in respect of any failure, negligence, act, omission or other thing done in connection with this Contract is limited to an amount equal to the total Fees You have paid Us under this Contract in the 12 months immediately preceding the event giving rise to such a claim. You agree that this is a genuine pre-estimate of the likely loss and damage You may suffer in respect of the above matters.

Where a party suffers any damages, loss, costs and expenses as the result partly of the other party's own fault and partly of its fault then any damages which it, under this Contract or at law, is able to recover from the other party are to be reduced to such extent as the court thinks just and equitable having regard to its own contribution to the overall fault for such damages.

Notwithstanding the above, any exclusion or limitation of liability in this Contract does not apply to limit or exclude any liability of either party for:

- fraud or criminal conduct;
- deliberate or intentional breach of this Contract;
- breaches of any obligations in connection with confidentiality;
- breaches of any obligation or warranty in connection with Intellectual Property rights; or
- personal injury, death, or property damage.

28. (Variation) This Contract may only be varied by agreement in writing signed by the parties. Any revisions or additions You request in relation to the Services must be agreed in writing by Us, and are subject to any conditions We may require.

29. (Force majeure) A party is not liable for failure to perform this Contract (other than a payment obligation) to the extent and for so long as its performance is prevented or delayed because of circumstances outside the party's direct control and without fault or negligence by that party (**Force Majeure Event**), but only if that party: (a) immediately gives written notice to the other party; and (b) does everything reasonable to remedy the cause quickly. Where a Force Majeure Event continues for more than 3 months either party may by notice immediately terminate this Contract.

30. (Relationship) You agree that We are a contractor independent of Your control and that nothing in this Contract will give rise to any fiduciary, agency, trust, employment or other relationship recognised at Law or in equity as giving rise to forms of specific rights and obligations. We are free to work with any other third party for reward during the term.

31. (Subcontracting and personnel) You agree that We may engage third parties and/or subcontract to any person to perform all or part of Our obligations under this Contract, and may engage or employ any staff or personnel to carry out all or part of the Services, without seeking Your consent or approval.

32. (Special Conditions and inconsistencies)

The parties agree to comply with the Special Conditions (if any). If there is any inconsistency between these Terms, the Special Conditions, and the Summary of Services, the provisions prevail to the extent of the inconsistency in the following order of priority: (a) the Special Conditions; (b) the Summary of Services; and (c) these Terms.

33. (Exclusion of implied terms) To the maximum extent permitted by Law, and except as expressly provided in this Contract, all terms or conditions implied by law regarding the carrying out of the Services under this Contract are excluded.

34. (Severability) If and to the extent any provision of this Contract is void, voidable or unenforceable, such provision will be severed from this Contract and will not affect the continued operation of the remaining terms of this Contract.

35. (Assignment) We may assign Our rights or obligations under this Contract at any time by notice in writing to You. You may only assign Your rights or obligations under this Contract with Our prior written consent, which must not be unreasonably withheld.

36. (Governing Law) This Contract shall be governed by the laws of South Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of South Australia.

37. (Entire agreement) This Contract constitutes the entire agreement between the parties and supersedes any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this Contract, whether verbally or in writing.

38. (Notices) Any notice given under or in connection with this Contract (**Notice**):

- must be in writing and signed by a person duly authorised by the sender;
- must be addressed and delivered to the intended recipient by hand, by prepaid post, by fax or by email at the address, fax number or email address last notified by the intended recipient to the sender.

Any Notice is taken to be given and made:

- in the case of hand delivery, when delivered;
- in the case of delivery by post, three business days after the date of posting (if posted to an address in the same country) or seven business

days after the date of posting (if posted to an address in another country);

- in the case of a fax, on the day and at the time it is sent, provided that the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice; and
- in the case of an email, on the day and at the time that the recipient confirms the email is received.

39. (Disputes) A party must not commence court proceedings or arbitration relating to any dispute arising from this Contract without first complying with this clause, except where a party seeks urgent interlocutory relief or where the dispute relates to compliance with this clause. A party claiming that a dispute has arisen under this Contract must give written notice of the details of the dispute to the other party. Each party that has given or received notice of the dispute under this clause must use its best endeavours to resolve the dispute. If within 20 business days of receipt of notice the parties to the dispute do not resolve the dispute, the parties must mediate the dispute in accordance with the Australian Disputes Centre Guidelines for Commercial Mediation current at the date of the dispute notice. Those Guidelines are incorporated into this Contract. Where there is any inconsistency between those Guidelines and this Contract, this Contract prevails.

40. (Waiver) Waiver of any power or right under this Contract: (a) must be in writing signed by the party entitled to the benefit of that power or right; and (b) is effective only to the extent set out in that written waiver.

41. (Costs) Each party must bear their own costs in relation to the negotiation, preparation and execution of this Contract.

42. (Rules of interpretation) In this Contract, unless the context otherwise requires:

- headings do not affect interpretation;
- a clause is a clause of this Contract;
- singular includes plural and plural includes singular;
- 'including', or similar words, does not limit what else might be included;
- reference to a person includes a corporation, joint venture, association, government body, firm, and any other entity;

- reference to a party includes that party's personal representatives, successors and permitted assigns;
- reference to a thing includes a part of that thing;
- reference to a document is to that document as amended or varied;
- conduct includes any act, omission, representation, statement or undertaking whether or not in writing;
- 'writing', 'written' and 'in writing' include any mode of representing or reproducing words in a visible form;
- any legislation includes any subordinate legislation and amendments; and
- another grammatical form of a defined expression has a corresponding meaning.

43. (Definitions) In these Terms, unless the context otherwise requires:

"Additional Services" means any additional services provided by Portalink for the Services as set out in **clause 16**;

"Client" means the person or company specified as the client or relevant organisation obtaining the Services in the Summary of Services;

"Client Data" means the data and information You provide on or by using or configuring the Services to enable the Services to be provided to You;

"Content" includes any text, figures, graphics, logos, photos, sounds, videos, data, reports, materials, information and documentation We provide to You from time to time in respect of or by the Services;

"Contract" means, in relation to the Services, these Terms and the Summary of Services;

"CPI" means Consumer Price Index (All Groups) Sydney Index Number published by the Australian Bureau of Statistics;

"Data" means Client Data and Supplier Data;

"Email" has the meaning given to electronic message in the *Spam Act 2003* (Cth) or any other electronic message which is sent via the Services;

"Fees" means the fees payable to Us for the Services as set out in the Summary of Services including, the Implementation Fee, License Fee, Transaction Fee, fees for Additional Services (if any), or other amounts set out in the Summary of Services as fees or amounts payable to Us;

“Implementation Process and Resource Plan” means the action plan of services provided by Us (if any) set out under that (or a substantially similar) heading in the Summary of Services;

“Implementation Fee” means the fee with that or a similar name (such as ‘Once Off Implementation Fee’) as set out in the Summary of Services (if any);

“Intellectual Property” means all intellectual property rights, title and interest (whether registered or not, and whether able to be registered or not) including rights to apply to registration, renewal or extension in anything including: (a) copyrights (including in development and performance documentation, manual engineering documentation and price lists); (b) computer program material (including in computer software, source code, computer object code, algorithms, formulas, diagrams, plans, drawing techniques, data, data structures, logical ideas, concepts, processes); (c) all patent, design rights, inventions or eligible layout rights (registered or unregistered) and any applications for the same; and (d) trademarks, know how, trade secrets, concepts or brands or service marks;

“Laws” means all applicable laws (general law, statute and equity) and mandatory standards which are in force in Australia during the term of this Contract (particularly those affecting the promotion, sale, supply of the products and competition laws);

“License Fee” means the fee with that or a similar name (such as ‘Recurring Annual License Fee’) as set out in the Summary of Services;

“Portalink Account Manager” means the person who will work with You and identified in the Summary of Services;

“Security Statement” means Our Security Statement set out in the Summary of Services and at www.portalink.com in respect of the steps We take to protect Your Data;

“Services” means the online supply chain management solutions and features identified in the Summary of Services (current and any future versions), and accessible through a website browser interface and encompassing certain features and functions such as a browser interface, data encryption, transmission, access, hosting and storage functionality, and such Content and Technology that We may provide under this Contract in relation to the Services;

“Special Conditions” means the additional terms negotiated between Us and the Client as set out in the Summary of Services (if any);

“Summary of Services” means the document with that name (as varied from time to time) that sets out the Services that We have agreed to provide You, the commercial details for the Client and the Fees;

“Suppliers” means Your suppliers (or vendors) of goods and/or services (retail, wholesale or otherwise) and any other third party from whom You purchase or acquire goods or services using or through the Services;

“Supplier Data” means all data and information provided by a Supplier to You through or in relation to their use of the Services;

“Technical Engineers” means the software architects and developers who are employed directly or indirectly by Portalink to design and develop the Services;

“Technology” means such of Our proprietary or licensed technology (including software programs, hardware and applications) used in providing the Services as set out in the Summary of Services.

“Transaction Credit” means a credit purchased by You to enable You to complete a transaction that is exported from the Services to Your system (such as Advance Shipping Notifications, Invoices and Credit Notes);

“Transaction Fee” means the fee with that or a similar name as set out in the Summary of Services (if any);

“We”, “Us” and “Our” means Portalink Pty Limited ACN 609 202 557; and

“You” and “Your” means the Client.