



General Terms and Conditions of Trade

Last revised: 1 July 2014

1. General

The following are Indigo's current terms of supply of goods and services. These terms are subject to change at Indigo's discretion at any time. Indigo will publish its latest terms of supply at its website: www.indigotech.com.au at least 30 days prior to the effective date of changed terms. It is the customer's responsibility to check for any changes before requesting any supplies from Indigo. Supplies will be made on terms which are applicable on the date a notice requesting a supply is deemed to have been received by Indigo pursuant to clause 19 below.

To the extent of any inconsistency, these terms will prevail over all prior arrangements between the customer and Indigo, unless these terms are waived in writing by Indigo or the customer and Indigo have entered into a "Care Pack" or "Data Back-Up Services" agreement.

2. Performance of Services

Indigo will perform all services which it agrees to perform in a courteous, proper, diligent and professional manner and will do so in compliance with the customer's specifications and all laws, customs and recommendations applicable to the provision of such services.

Indigo may appoint one or more subcontractors to perform part or all of the work which have been contracted to Indigo. If Indigo appoints a subcontractor, the work will be carried out at Indigo's risk and Indigo will remain responsible to the customer for work carried out by that subcontractor.

Alternatively, Indigo may, at its discretion, recommend to the customer that part or all of the work which has been contracted to Indigo be contracted instead to another service provider. Indigo will do so if for some unforeseeable reason, it is unable to carry out that work personally or subcontract that work to a subcontractor. A notice will be provided to the customer to advise of this recommendation. The customer must accept this recommendation or appoint its own service provider. The customer frees Indigo of all further obligations and liabilities in respect of work which is reassigned to another service provider pursuant to this clause.

The customer may appoint Indigo to act as its agent in dealings with a third party service provider which is appointed by the customer pursuant to this clause. If Indigo accepts this appointment, Indigo will charge an agency fee described in clause 6. The customer agrees to indemnify Indigo for all costs, losses, damages, expenses or liabilities whether directly or indirectly suffered or incurred by Indigo from its appointment as the customer's agent.

The customer shall provide Indigo and its sub-contractors with full and safe access to the customer's sites and to the customer's IT system at all reasonable times for the purpose of providing authorised services.

3. Supply of Goods

Indigo will source goods from its preferred suppliers so that the best and most cost-effective solutions may be obtained for the customer. At the customer's risk, the customer is free to engage other suppliers.

4. Requests for Supplies

If the customer makes a verbal or written request for supplies, the customer is deemed to have accepted the terms said to be applicable to the supply under clause 1 above.

Indigo will assess all such requests and subject to clause 2, will notify the customer if Indigo is unable or unwilling to perform any request or any part thereof.

Indigo may require a customer to submit its request for supplies in writing. If so, this requirement will not make void the customer's verbal request and its aforesaid agreement to accept Indigo's terms of supply.

Indigo provides all services to a customer under the customer's instructions. The customer is responsible for providing proper specifications of all work to be carried out by Indigo.

The customer must disclose all risks associated with work they instruct Indigo to complete which are reasonably known to the customer. Such risks must be disclosed before Indigo provides a quotation.

5. Quotations

Indigo may offer to supply quotations for supplies. Unless previously withdrawn, Indigo's quotations are open for acceptance within the period stated, or when no period is stated, within 7 days after that quotation's date if the quotation is for goods, and within 30 days after that quotation's date if the quotation is for services.

All quotations given by Indigo which rely on a third-party supplier may be withdrawn by written notice if that supplier is no longer able to supply as previously indicated. Indigo reserves the right to withdraw any quotation which had been given based on vague or incomplete specifications by the customer or which can be reasonably seen to have been either erroneously given by Indigo or which was given in good faith by Indigo, but due to unforeseen circumstances, an adjustment to the quotation needs to be made. Indigo will notify the customer in writing of all withdrawn quotations and if a customer had confirmed an order based on a quotation which has been subsequently withdrawn, the customer will not be compelled to accept the revised quotation if the revised quotation is higher than the original quotation by more than 10%.

If Indigo has not offered any quotation for the supply of goods, the customer must notify Indigo of its intention to engage another supplier within 7 days of Indigo's provision of advice as to what is required for completion of the customer's instructions.

Subject to this clause 5, the customer's cancellation or variation after confirmation of order will not be effective unless agreed to in writing by Indigo.

Unless otherwise stated, all prices quoted are exclusive of GST and in the case of goods, are exclusive of special packaging, cost of delivery, installation, Indigo's handling fee and agency fee, and discounts that may apply.

6. Fees and Disbursements

Fees for services which are supplied directly by Indigo are charged at the rates described in Schedule 1.

All services are carried out during Indigo's standard operating hours of 8:30AM to 5:00PM Monday to Friday excluding public holidays. After hours support arrangements are available upon request and attract higher rates according to Schedule 1.

Fees for services which are sub-contracted by Indigo are charged at a rate equal to the sum of the sub-contractor's agreed rate and a margin for Indigo. Indigo will advise the customer of such fees if they exceed Indigo's standard ad-hoc service rate detailed in Schedule 1.

Indigo charges its agency fee at its standard ad-hoc service rate detailed in Schedule 1. A handling fee will apply to all goods which are purchased by the customer from a third party supplier where Indigo acts as a mere facilitator or as an agent of the customer.

In relation to the supply of or possible supply of goods where a margin is not made by Indigo, all time spent by Indigo in consulting and gathering quotes may be billable at Indigo's discretion in accordance with Indigo's standard ad-hoc service rate detailed in Schedule 1. This clause may apply even if a quotation has not been accepted by the customer.

Fees for travel time and downtime associated with services rendered away from Indigo's premises are billable in accordance with Indigo's rates detailed in Schedule 1. The customer will be billed a minimum of 8 hours per day when travel by flight is required.

All reasonable third party expenses incurred by Indigo as a consequence of executing a customer's instructions, including expenses for travel, accommodation, third-party consultants and support tools ("disbursements") are payable by the customer.

7. Discounts

At Indigo's discretion, discounts may be offered to customers who commit to significant projects on the following terms, unless otherwise stated:

- discounts apply only to services which are personally provided by Indigo;
- discounts do not apply to goods sold by Indigo, personally or otherwise;
- discounts are forfeited if a customer's account remains unpaid 7 days after an account reminder is issued; and
- a discount may be deducted from the current invoiced amount or from the next invoiced amount.

8. Payment Terms

Unless credit has been provided or unless otherwise stated in writing:

- all invoices for goods and disbursements are payable within 7 days of the date an invoice is deemed to have been received by the customer pursuant to clause 19;
- all invoices for services rendered by Indigo are payable within 14 days of the date an invoice is deemed to have been received by the customer pursuant to clause 19; and
- unless otherwise agreed, if Indigo acts as the customer's agent, the contractor's fees are payable in full to Indigo prior to the contractor's stipulated due date for payment of such fees. Indigo will provide the customer with a copy of the contractor's invoice without delay following its receipt of that invoice.

Indigo may require a deposit on confirmation of an order.

Unless credit has been provided or unless otherwise stated in writing, Indigo may charge interest on all amounts not paid by the due date at the rate described in Schedule 1. Interest will be calculated daily on that part of the invoiced amount which remains owing and will be capitalised monthly until full payment is made. Indigo may also charge the administrative and recovery fees described in Schedule 1. Late payment of any invoice may, at Indigo's sole discretion, result in forfeiture of agreed discounts and the suspension of services.

If credit is provided for any amount which is payable by the customer to Indigo, the provision of such credit must be confirmed by Indigo in writing, and such confirmation will, if applicable, stipulate the interest and installment payments which are to be paid by the customer.

Allowance to the customer of time to pay, will not constitute a waiver by Indigo of any of these terms nor be construed as Indigo granting a credit facility to the customer. No credit facility will be granted to the customer unless confirmed in writing by Indigo.

Indigo strictly enforces payment terms.

9. Delivery of Goods

All delivery times made known to the customer are estimates only and Indigo will not be liable for any claim or cost resulting from late delivery or non-delivery of goods which is beyond Indigo's reasonable control.

The customer waives all claims (if any) for shortage of goods delivered or damaged prior to or during the course of delivery, if Indigo is not notified in writing within 7 days from the date of receipt of goods by the customer.

10. Title, Risk and Security Interest

Title in goods that are supplied by Indigo will not pass to the customer until all amounts which are payable for the goods are paid in full. Risk in such goods will pass to the customer immediately upon delivery or collection.

In respect of goods supplied by Indigo, if the customer fails to pay in full the invoiced amount for these goods, Indigo has the right (without prejudice to any other rights and remedies it may have) to recover, remove and/or resell the goods free from any claims by the customer. The customer will indemnify Indigo against any costs, claims, damages or losses suffered by Indigo or a third party as a result of the customer's inability to pay all invoiced amounts for the goods, and which is in respect of any damage to the goods whilst the goods are in the customer's possession. If the Customer has not paid all invoiced amounts for such goods but sells or otherwise disposes of the goods or any part of them, the monies received in respect of the disposal will be held on trust by the customer for Indigo and is payable immediately to Indigo.

The customer accepts all risks of loss and damage resulting from any bailment of the customer's goods by Indigo.

The retention of title by Indigo described in this clause constitutes a registrable security interest under section 12 of the *Personal Property Securities Act 2009* (Cth) on goods supplied by Indigo to the customer. This security interest is held by Indigo to secure full payment by the customer for goods supplied under these terms. At the request of Indigo, the customer must promptly assist Indigo by doing everything that is necessary for the registration of the security interest described herein, in the manner prescribed by the *Personal Property Securities Act 2009* (Cth). If required by Indigo, the Customer will bear: (1) the registration cost, and (2) any other associated cost (eg reasonable legal cost and any applicable stamp duty) of the security interest described herein.

11. Warranties

Indigo warrants that it will carry out its services for the customer with due care and skill, and all goods and materials supplied in connection with those services are reasonably fit for the purpose for which they were supplied. This warranty will not apply if:

- the customer has not fully complied with its obligations under these General Terms and Conditions of Trade;
- the customer did not make clear what is required;

- the customer insisted on having the service carried out in a particular way or that a particular equipment, software or some other good or material be used against advice to the contrary by Indigo;
- the customer insisted on having the service carried out in a particular way or that a particular equipment, software or some other good or material be used and the customer does not like the result;
- defects have not arisen solely from faulty materials or workmanship or design (for example, corruption by viruses, spyware, operator misuse, error or negligence, the unanticipated effects of any third party software);
- the goods or products of services have not been used in a way which is consistent with the purpose for which they were sold;
- the goods or products of services have been modified, damaged or inadequately or incorrectly serviced in any way;
- accessories or software of any kind used by the customer have not been installed or approved by Indigo and such accessories or software are the cause of the defect; or
- the defective goods, products of services or parts have not been promptly returned free of cost to Indigo, if it is impractical for Indigo to carry out an inspection or repairs at the customer's premises.

This warranty is not a warranty that the services rendered or the goods, materials or products of services supplied will accord with the customer's own expectations.

Unless specified otherwise, Indigo's liability for goods, products of services or services supplied personally by Indigo is limited to making good any defects by repairing the defects or, at Indigo's option, by replacing the goods, within a period not exceeding 12 months after the goods, products of services or services have been delivered or collected.

Indigo must be notified in writing of any warranty claim. That notification must provide as much information as possible regarding the fault in the goods or service and circumstances in which the fault occurred.

Indigo will have no liability whatsoever for goods or services supplied directly by another provider (other than a sub-contractor of Indigo) or by the customer. It is the customer's responsibility to make all claims with such providers, regardless of whether such claims constitute warranty claims or not. Indigo may, at its discretion, act as the customer's agent in making such claims.

Except as stated above and to the maximum extent permitted by law, Indigo gives no warranty in relation to goods and services that are supplied personally by Indigo. Indigo will have no liability whatsoever to any party for any consequential loss, injury, damages or expenses suffered directly or indirectly by the customer or any of the customer's workers, agents or contractors in connection with the goods or services.

12. Return of Goods

Indigo will only accept returned goods which it has agreed in writing to accept. All returned goods are to be forwarded to Indigo's current address described at its website.

13. Delivery of Services

All delivery times made known to the customer are estimates only and Indigo will not be liable for any claim or cost resulting from late delivery or non-delivery of services which is beyond Indigo's reasonable control.

14. Acceptance Testing

Whilst Indigo will endeavour to ensure that all work completed will comply with the customer's specifications, the customer will be responsible for acceptance testing of all work completed by Indigo to ensure that the work completed is of appropriate quality and is suitable for that work's intended purposes. The customer will complete acceptance testing within 7 days of notification by Indigo that work is ready for acceptance testing, or if no such notification is provided, within 7 days of the customer's receipt of a project report which indicates that the project has been completed ("acceptance period"); and must notify Indigo whether the completed work is acceptable by the end of the acceptance period. If the customer fails to notify Indigo whether the completed work is acceptable to the customer by the end of the acceptance period, the customer will be deemed to have accepted the completed work.

If the customer rejects the work completed by Indigo, it must notify Indigo of this rejection and provide a detailed description of the reasons for the rejection. Depending on the nature of the work, the customer will allow Indigo reasonable time to correct any defect or non-compliance of the customer's specifications. Indigo will correct the defect or non-compliance (if any) and will re-submit the work for acceptance testing by the customer.

In respect of work that has been accepted by the customer, the customer shall indemnify and hold harmless Indigo from all claims, losses, damages and costs arising either directly or indirectly from the customer's or any third-parties' use, operation or possession of any work completed by Indigo for the customer. Irrespective of this release and indemnity, Indigo will maintain professional indemnity and public liability insurance for at least \$1M at all times.

15. Confidentiality

Subject to the terms of this clause, each party agrees to keep all confidential information disclosed by the other party confidential. Each party must not use any confidential information disclosed by the other party for any purpose other than the purpose for which it was disclosed.

Unless otherwise explicitly agreed, Indigo reserves the right to:

- disclose any information required to orient new staff or external consultants for the purposes of working on the customer's project;
- publish a short article in Indigo's website or other marketing material describing the customer and a brief description of the commissioned project which does not disclose any sensitive material;
- carry out a credit check on the customer and refer any protracted debts to a debt recovery agent and/or credit reporting service;
- share information within the group of related companies, solicitors, auditors, insurers and advisors; and
- disclose any information required by law.

Document templates, network diagrams and other work generated by Indigo are commercially sensitive material which are subject to this clause. All intellectual property rights generated therein and the media in which such material are stored remain the property of Indigo. The customer must maintain the confidentiality of all such material unless: (a) the material was commissioned and paid for with the express purpose of enabling the customer to gather quotes from external suppliers and is marked accordingly; or (b) the customer has written permission from Indigo to disclose the confidential information.

16. Assignment

Subject to clause 2, neither party may assign its rights and obligations under an agreement between the parties without the consent of the other party.

A change in the ownership structure or management structure of a party which has the effect of changing the person or persons in effective control of that party will be deemed an assignment by that party for the purposes of any agreement between the parties.

17. Fair Usage

Indigo may, at its discretion, offer to the customer usage of certain services and equipment on terms to be agreed upon.

The customer will be liable for any damage to loaned equipment and for any losses incurred by Indigo due to unreasonable or unauthorised usage of services and equipment offered to the customer.

18. Indemnity

Subject to the preceding terms, each party must at all times, indemnify the other party and keep the other party indemnified from and against:

- all costs, losses, damages, expenses or liabilities whether directly or indirectly suffered or incurred by the other party; and
- any liability in respect of any claim, demand, action, proceeding brought or threatened to be brought (including all costs and expenses which the other party may suffer or incur in disputing any such claim, demand, action or proceeding), against the other party,

in respect of, in relation to or in connection with: a breach by the first party of its agreement with the other party; or any wilful, unlawful or negligent act or omission by the first party.

19. Notices

Any notice to be given by one party to the other must be signed by the party giving the notice or by one of its duly authorized officers. The notice may be faxed to the intended recipient's facsimile number or e-mailed to the intended recipient's e-mail address. The notice shall be deemed to have been received by the intended recipient upon receipt by the sender of a successful facsimile transmission answerback or in the case of e-mail, on the day of transmission provided that the sender can give evidence of transmission and the intended recipient does not give evidence of non-receipt.

20. Governing Law

Despite any contrary rule or implication of law, all contracts between the customer and Indigo shall be deemed to be made in South Australia, pursuant to South Australian laws. Any dispute resolution procedure will take place in South Australia.

21. Force Majeure

A party will not be liable for its inability to perform obligations under these terms if its inability to do so is a direct consequence of an act of God, national emergency, war, prohibitive government regulations, labour dispute, act of terrorism or any other cause beyond that party's reasonable control. If such a force majeure event occurs, the party suffering it will notify the other party of the occurrence and expected duration of that event. The party

suffering the force majeure event must use all reasonable endeavours to perform its obligations under these terms. If a force majeure event renders performance of an agreement between Indigo and the customer impossible for a continuous period of at least 3 months, either party may by notice to the other terminate their agreement. A termination pursuant to this clause will not prejudice the parties' rights or remedies which arose prior to the termination.

22. Termination

Without prejudice to any right or remedy which a party ("the non-defaulting party") has, the non-defaulting party may at its discretion immediately terminate the agreement by notice to the other party ("the defaulting party") if:

- the defaulting party breaches a term of the agreement and if the breach is capable of remedy, fails to remedy the breach within 14 days of receiving a notice from the non-defaulting party specifying the breach and requiring it to be remedied;
- the defaulting party is presumed insolvent within the meaning of section 459C(2) of the *Corporations Act 2001*, is placed into liquidation, has an administrator or a receiver or manager appointed or a mortgagee takes possession of any substantial assets of the defaulting party or if any proceedings are issued or an event occurs intended to lead to any of those consequences or if any other action relating to insolvent debtors occurs in relation to the defaulting party or if the defaulting party ceases to carry on its existing business;
- any final judgement is entered against the defaulting party for a sum of not less than \$20,000 and is not satisfied by the defaulting party within 14 days of being entered; or
- the defaulting party commits a serious criminal offence.

23. Miscellaneous

Indigo may send unsolicited e-mails to a customer where it believes that the customer may benefit from the information provided. A customer's request not to receive any such information will always be honoured.

24. Dispute Resolution

The parties must follow the following procedure to try to resolve disputes arising under their agreement or any claimed breach of their agreement.

The complainant must tell the respondent in writing:

- the nature of the dispute; and
- what outcome the complainant wants; and
- what action the complainant thinks will settle the dispute.

The parties must then try to agree on how to resolve the dispute.

If the parties cannot agree within 14 days following the notification described above, the parties will refer the matter to a mediator. If the parties cannot agree on a mediator, any party may ask the President of the Law Society of South Australia from time to time (or his nominee) to appoint a mediator. The mediator may decide on the time and place for mediation. The parties must attend the mediation and try to resolve the dispute. The parties are equally liable for the costs of mediation, unless they agree otherwise. The parties must pay for their own costs of attending the mediation. All discussions for the purpose of mediation are without prejudice. In the event that the dispute is not resolved within 14 days of the appointment of a mediator, or any other period agreed by the parties in writing, the mediation ceases. The role of the mediator is to assist in negotiating a

resolution of the dispute. The mediator may not make a decision that is binding on a party unless that party's representative has so agreed in writing.

If the parties are unable to resolve the dispute through mediation, they must refer the dispute to arbitration in accordance with the *Commercial Arbitration and Industrial Referral Agreements Act 1984 (SA)* for the conduct of commercial arbitrations by one arbitrator chosen by the parties or if they cannot agree, by the Institute of Arbitrators and Mediators Australia. Each party must bear its own costs of complying with this clause unless a binding decision of the arbitrator states otherwise.

A party may apply to court for urgent injunctive relief. Otherwise, a party will not commence court proceedings in connection with any dispute under or in relation to the agreement between Indigo and the customer unless the above procedure for dispute resolution has been complied with.

25. Interpretation

- A. "confidential information" means any financial or other business information pertaining to Indigo, its suppliers or the customer in any form disclosed to the other party. Such information includes, but is not limited to the identity of clients or suppliers, research and development information, business plans, strategies, internal processes and documents, ideas, concepts and information concerning intellectual property.
- B. "GST" means Goods and Services Tax imposed by *A New Tax System (Goods and Services Tax) 1999*.
- C. "intellectual property" or "IP" means all intellectual property rights at any time protected, conferred or recognised by any statute or common law in Australia or elsewhere in the world and whether registered or unregistered, including copyright, trade marks, patents, patentable inventions, design rights, know how and rights in circuit layouts, software codes, documents, specifications and details of functionality.

Schedule 1 - Schedule of Rates

The following are the standard fees and charges charged by Indigo commencing the 1st August 2014. Indigo reserves the right to change these fees and charges subject to Indigo's general terms of trade. All prices quoted in this schedule are exclusive of GST.

1. Standard Hourly Rates

	Description	Rate	Billable Increment	Minimum Billable
Rate 1	Standard rate	\$140.00/hour	0.5 hours	0.5 hours
Rate 2	Specialist rate	\$180.00/hour	0.5 hours	0.5 hours
Rate 3	Discount rate	\$105.00/hour	0.5 hours	0.5 hours
Rate 4	Premium rate	1.5x loading	0.5 hours	0.5 hours

Rate 2 applies to senior level work, such as project management or specialist engineering and design.

Rate 3 applies only applies to special case clients, such as charity organisations.

Rate 4 loading applies to after-hours project work and ad-hoc emergency call out jobs. The loading applies to whichever base rate (Rate 1, 2 or 3) is applicable for the work being performed.

2. Additional Charges

	Description	Additional Charge
Handling Fee	Applies to all goods purchased where Indigo acts as a mere facilitator	5% of the invoiced amount

3. Overdue Accounts

Indigo strictly enforces payment terms. Administrative fees, recovery fees and interest payments may be charged if accounts remain unpaid after an initial reminder. Please refer to clause 8.

	Description	Charge
Administrative fee	Added to all customer accounts upon failure to pay overdue accounts within 14 days of an initial reminder.	\$60
Recovery fee and interest	Apply to accounts more than 30 days overdue.	1% per month plus recovery fees (typically 15% of total monies collected)