

# Terms, Conditions and Warranty

The provisions set out in this document 'Terms, Conditions and Warranty' are accepted by and are binding upon the Customer upon request by the Customer for the supply of Goods or the commencement of professional Services by Xion Technology.

The document 'Schedule of Fees' forms part of these terms and conditions and a copy is supplied for acceptance by the Customer prior to commencement of works. Xion Technology reserves the right to change, update or alter these terms and conditions at any time without prior notice. An updated copy of the terms and conditions will be forwarded to the Customer, and a current copy will be made available online at [http://www.xiontechnology.com.au/Documentation/XionTech\\_T&C\\_ScheduleOfFees.pdf](http://www.xiontechnology.com.au/Documentation/XionTech_T&C_ScheduleOfFees.pdf)

**Payment:** Unless otherwise stated on the face hereof, all payments shall be due within fourteen (14) days of the date of invoice. On any amounts not paid when due, the Customer agrees to pay interest at the rate of 1.5% per month (18% per year) or, if such rate is in excess of the rate allowed by law, then the highest rate allowed by law. In addition, Customer agrees to pay all costs of collection, including a \$50 administration fee for issuance of Overdue Account Notifications (at 14 and 28 days overdue), costs of litigation and reasonable attorney's fees. The Customer agrees to provide notification including financial institution payment receipt to Xion Technology at the time of payment issuance by the Customer. In the event that late payment attracts additional fees and charges as caused by a third party the Customer agrees to pay such fees if the Customer did not provide sufficient notification to Xion Technology that payment had been made. Xion Technology reserves the right to obtain a security interest in the products sold to Customer, and in proceeds thereof, until payment is made in full by Customer. Customer agrees to execute financing statements and other instruments at Xion Technology's request. A \$45.00 collection fee will be charged for all dishonoured cheques.

**Price/Performance:** All pricing and equipment performance figures quoted herein are based on information available at the time of quotation. Any change requested by the Customer in equipment specifications, terms, availability, pricing or physical characteristics of product prior to supply of the equipment quoted may result in additional charges. In the event the Customer cancels this contract, or any portion thereof, the Customer shall pay to Xion Technology an amount equal to the sum of all direct material costs (including restock charges), all direct labour and related burden costs, along with a proportionate level of profit on all such costs associated with this contract unless expressly provided otherwise. The minimum cancellation fee due Xion Technology is an amount equal to thirty percent (30%) of the contract price at the time of cancellation. The minimum cancellation fee is effective thirty (30) days after receipt of authorization to proceed. Price quoted includes any taxes, if applicable.

**Service Cancellation:** In the event that a Customer must cancel, postpone or reschedule (change) a service appointment, the Customer must inform Xion Technology of the required change, and receive confirmation that Xion Technology has acknowledged receipt of the change, no less than two (2) hours prior to the scheduled and agreed appointment time. Failure to inform Xion Technology of the required change with adequate notice (being the minimum two (2) hours prior to scheduled appointment) will attract a minimum of one (1) hour fee at the usual consultancy rate applied to that Customer's account (plus any applicable loading for after-hours or overtime work, as laid out in the Schedule of Fees document).

**Quotations:** The prices quoted herein are valid for a period of five (5) days from the date of this quotation and with removal of all contingency. Any price change after this five day period shall be borne by the Customer.

## Warranty

**Service:** Xion Technology warrants that any work performed shall meet the requirements agreed, at the time, between Xion Technology and the Customer. This warranty is limited to only that work performed by Xion Technology.

**Equipment:** Xion Technology warrants that each item of equipment installed, supplied and or delivered hereunder shall, at the time of supply and for a period of twelve (12) months thereafter, be free from defects in materials or workmanship; and if any such item shall prove to be defective in material or workmanship under normal intended usage and maintenance during the warranty period, upon examination by Xion Technology, then Xion Technology shall repair or replace, at its sole option, such defective item at its own expense. The warranty on components not supplied by Xion Technology, but a part of the system, is limited to the warranty provided by the original manufacturer of said components to the extent, and only to the extent, that such original manufacturer actually honours such warranty.

Xion Technology disclaims any other warranty, express or implied, including implied warranties of merchantability or fitness for a particular purpose relating to any other service, equipment or software supplied by any other third party, at any time before or after the work performed or equipment supplied specifically by Xion Technology.

**Assignment:** Customer may not assign its rights or obligations hereunder without the express prior written consent of Xion Technology. Without such consent, all warranties and liability are only extended to the original Customer; no warranty other than those provided and honoured by product manufacturers (at their discretion), are or will be honoured by Xion Technology to third party recipients of equipment beyond the original Customer.

THIS LIMITED WARRANTY COVERS NORMAL USE. XION TECHNOLOGY DOES NOT WARRANT AND IS NOT RESPONSIBLE FOR DAMAGES CAUSED BY VARIATIONS IN ELECTRICITY SUPPLY, MISUSE, ABUSE, ACCIDENTS, VIRUSES, UNAUTHORIZED SERVICE OR PARTS, OR THE COMBINATION OF XION TECHNOLOGY SUPPLIED PRODUCTS WITH OTHER PRODUCTS. THIS LIMITED WARRANTY DOES NOT COVER SOFTWARE OR NON-XION TECHNOLOGY SUPPLIED PRODUCTS. ANY WARRANTY APPLICABLE TO SOFTWARE OR NON-XION TECHNOLOGY SUPPLIED PRODUCTS IS PROVIDED BY THE ORIGINAL MANUFACTURER TO THE EXTENT THAT SUCH ORIGINAL MANUFACTURER HONOURS SUCH WARRANTY.

**Disclaimer of Warranties; Limitation of Liability.** EXCEPT FOR THE WARRANTIES EXPRESSED IN THIS AGREEMENT, XION TECHNOLOGY DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER APPLICABLE LAW. THE TERM OF ANY IMPLIED WARRANTIES THAT CANNOT BE DISCLAIMED ARE LIMITED TO THE TERM OF THIS AGREEMENT. XION TECHNOLOGY'S AND YOUR MAXIMUM LIABILITY TO THE OTHER IS LIMITED TO THE PURCHASE PRICE YOU PAID FOR PRODUCTS OR SERVICES PLUS INTEREST AS ALLOWED BY LAW. NEITHER YOU NOR XION TECHNOLOGY IS LIABLE TO THE OTHER IF YOU OR IT ARE UNABLE TO PERFORM DUE TO EVENTS YOU OR IT ARE NOT ABLE TO CONTROL, OR FOR PROPERTY DAMAGE, PERSONAL INJURY, LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, LOST DATA OR OTHER CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, OTHER THAN THOSE DAMAGES THAT ARE INCAPABLE OF LIMITATION, EXCLUSION OR RESTRICTION UNDER APPLICABLE LAW.

This sale is subject to the terms and conditions stated herein, which are in lieu of and replace any and all terms and conditions set forth in any documents issued by Customer, including, without limitation, purchase orders and specifications. In case of conflict between the terms and conditions stated here and those on the face hereof, those on the face hereof shall control. ANY ADDITIONAL, DIFFERENT OR CONFLICTING TERMS AND CONDITIONS ON ANY SUCH DOCUMENT ISSUED BY CUSTOMER AT ANY TIME ARE HEREBY OBJECTED TO BY XION TECHNOLOGY, AND ANY SUCH DOCUMENT SHALL BE WHOLLY INAPPLICABLE TO ANY SALE MADE HEREUNDER AND SHALL NOT BE BINDING IN ANY WAY ON XION TECHNOLOGY. CUSTOMER'S REMEDIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ANY OTHER REMEDIES AVAILABLE TO CUSTOMER, WHETHER PROVIDED AT LAW, EQUITY OR OTHERWISE.

# Schedule of Fees

As of the 1<sup>st</sup> of July 2011:

<b>Uncontracted consultation rate:</b>	\$120 / hour + GST	or	\$132 / hour inclusive
<b>10 hour per month (monthly contract) rate:</b>	\$110 / hour + GST	or	\$121 / hour inclusive
<b>10 hour per month (annual contract) rate:</b>	\$100 / hour + GST	or	\$110 / hour inclusive

## **On-site Service Calls**

A minimum of one hour at the applicable rate will apply to all on-site service calls and consultation meetings. After this initial hour accounts will be billed in 15 minute blocks (rounded up).

## **Overdue Account Notifications**

\$50 per Overdue Account Notification. After two Overdue Account Notifications Xion Technology reserves the right to employ the services of debt collectors and legal representatives to recover outstanding accounts at the expense of the debtor.

## **Reports and Quotations**

Reports prepared by Xion Technology are billed at the applicable rate for the account.

Quotations for custom designed PCs and Notebooks incur a \$100 standard fee (deducted from the total if client proceeds). Quotes for simple items may or may not be charged to the client, at the discretion of Xion Technology.

Quotes for complex projects will be billed at the standard rate. A proportion of the quotation fee may or may not be deducted from the final invoice, at the discretion of Xion Technology.

## **Appointment Cancellation**

Where an appointment has been made and the client needs to cancel the appointment, a minimum of two hours' notice must be given to Xion Technology prior to the agreed time or a fee for one hour will be incurred.

## **After Hours Service Rates**

8am – 6pm week days – standard rate

6pm – 12am week days and 8am – 6pm weekends & public holidays – 1.5x standard rate

12am – 8am week days and 6pm – 12am weekends & public holidays – 2x standard rate

12am – 8am weekends and public holidays – 3x standard rate

## *Overdue Account Notifications*

Overdue Account Notifications will be issued for any accounts overdue more than 14 days (four weeks from issue date). This notice will incur an additional fee of \$50 in addition to the outstanding account total. After a further two weeks a second notice will be issued, also attracting a \$50 fee. Continued failure to settle the account or contact Xion Technology to arrange payment will lead to the employment of debt recovery services, resulting in additional costs to the debtor. Any client experiencing difficulty in payment of accounts must contact Xion Technology at the earliest convenience to make alternative payment arrangements in order to avoid accrual of additional fees and charges. Clients are required to submit remittance advice including traceable payment receipt to Xion Technology upon payment issuance, as Overdue Account fees issued as a result of delays to payment caused by a third party (such as the post or financial institution) cannot be withdrawn.

## *Reports and Quotations*

Reports prepared by Xion Technology to advise or report to clients are billable at the standard rate for the account in question. Where physical media are required for the publishing and delivery of a report those items will also be billed.

Quotes for custom designed PCs and notebooks will attract a set fee of \$100. If the client chooses to go ahead with the quote, this amount will be deducted from the final invoice total. If the client chooses not to proceed they will be billed the Quotation Fee. Simple items may or may not be billed to the client as a function of the time required to research and compile the quote, at the discretion of Xion Technology.

Complex quotes requiring extensive research and reporting to the Client will be billed at the standard rate for that account congruent to the time utilised by the Consultant on the account. A proportion of the quotation fee may be deducted from the final invoice at the discretion of Xion Technology if the client chooses to proceed with the quoted works.

## *Appointment Cancellation*

Where an appointment has been made for a meeting or work to be performed and the client needs to cancel or reschedule the appointment, a minimum of two hours' notice must be given to Xion Technology prior to the agreed time of the appointment or a fee for one hour at the applicable rate for the account will be incurred.

## *After Hours Service & Overtime*

Normal fees apply for work performed between the hours of 8am to 6pm week days. Between 6pm and 12am week days and 8am to 6pm on weekends and public holidays, all rates are increased by a multiple of 1.5. Between 12am and 8am week days and 6pm to 12am on weekends and public holidays, rates are increased by a multiple of 2. Work performed between the hours of 12am and 8am on weekends will be billed by a multiple of 3x the standard rate for that account. In addition, normal fees shall only apply for work performed within a single ten (10) hour block period. After this initial ten hour block, a minimum of six hours must elapse before further work can be performed for the same Customer at the standard rate. Otherwise, all work beyond the primary 10 hour block will be billed at 1.5 times the applicable rate. This rate is cumulative with other rate increases such as After Hours Service.