

Carrolls Business Solutions SYSPRO Sales and Implementation Terms and Conditions

Effective 01 January 2012

ABN: 16 046 990 097

Current Terms

The most current Terms can always be found at:

http://cbsau.com/TandC/CBS_SYSPRO_Sales_and_Implementation_Terms_and_Conditions.pdf

In reading these SYSPRO Sales and Implementation Terms and Conditions, as an individual and on behalf of a Business, Company or Organisation, the reader shall hereafter be referred to as "THE CLIENT". A "Project Definition" herein refers to a CBS SYSPRO Implementation Project Definition. Please review these SYSPRO Sales and Implementation Terms and Conditions carefully. By continuing to use CBS for Software Sales, Implementation, Training or Support, THE CLIENT agrees to the SYSPRO Sales and Implementation Terms and Conditions as set forth below.

- 1) These SYSPRO Sales and Implementation Terms and Conditions shall take precedence over any other oral or printed Terms or Conditions and in the case of any conflict between these SYSPRO Sales and Implementation Terms and Conditions and any other document that may exist, these SYSPRO Sales and Implementation Terms and Conditions shall prevail.
- 2) All the original rights, powers, exemptions and remedies of CBS shall remain in full force notwithstanding any neglect, forbearance or delay in the enforcement thereof. CBS shall not be deemed to have waived any term or condition herein unless such waiver shall be in writing under signature of CBS or an authorised officer thereof and any such waiver, unless the contrary shall be expressly stated, shall apply to and operate only in a particular transaction, dealing or matter.
- 3) All references to prices charged shall be those prices prescribed by CBS in your proposal (subject to the number of days the proposal is stated to be valid) or, if no proposal is provided, the amounts quoted by CBS in written correspondence with THE CLIENT. Recommended resale or retail prices appearing in any price list are recommended prices only and there is no obligation for CBS to comply with such recommendations. Unless otherwise advised by CBS in writing, prices do not include GST and other taxes (which if payable shall be to the customer's account). If a goods and services tax or similar value added tax ("GST") is levied in respect of any supply made under or in connection with these Terms of Trade, the amount payable for that supply will be increased by the rate of GST. All Australian clients will be invoiced in Australian dollars and all clients who are not registered to trade in Australia will be invoiced in Australian dollars.
- 4) CBS notes that any party acting with authority or perceived authority from THE CLIENT (i.e. Business partner, senior employee, Company liaison, etc.) will be understood to have authority to provide CBS with instructions unless THE CLIENT advises in writing to the contrary, and it is acknowledged that all instructions received are made collectively by all parties, and therefore CBS cannot be held responsible for any misunderstanding or actions performed on instructions provided by the mentioned party(ies).
- 5) Except at the discretion of CBS, a Project Definition for Services, Training or Support must be signed by both parties before Software and Services, Training or Support are provided.
- 6) All care is taken for any Service, Support or Training provided to THE CLIENT by CBS.
- 7) CBS SYSPRO Sales and Implementation Terms and Conditions are NOT NEGOTIABLE. CBS will accept suggestions for future revisions that will be assessed by CBS and/or CBS solicitors before implementation.

Definitions of CBS SYSPRO Sales and Implementation Terms and Conditions

- 8) BUSINESS DAY (Business Day) shall mean any day from Monday through Friday on any non-public holiday, determined by NSW State Law, between the Hours of 9.00am AEST (NSW) and 5.00pm AEST (NSW). Or Monday through Friday on any non-public holiday, determined by the current State Law, between the Hours of 9.00am and 5.00pm of the current time zone if on-site. Or if overseas the usual business hours and days prescribed for that country.
- 9) DISBURSEMENTS (Disbursements) shall mean any cost(s) incurred by CBS on behalf of THE CLIENT.
- 10) SOFTWARE (Software) shall mean any Software supplied by CBS to THE CLIENT.
- 11) GOODS (Goods) shall mean any Software, Material or Equipment supplied by CBS to THE CLIENT.
- 12) SERVICES (Services) shall mean any Professional Services provided by CBS to THE CLIENT.
- 13) SUPPORT (Support) shall mean any guidance or instruction provided by CBS to THE CLIENT.
- 14) TRAINING (Training) shall mean any information provided by or any teaching by CBS, by remote access, classroom style or on-site that increases, or has the potential to increase, knowledge and understanding by THE CLIENT.
- 15) TRAINING COURSE (Training Course) is a specific course run on a topic, or topics, via remote or class room style learning that falls outside a Project Definition of Support or Training to be provided to THE CLIENT for their place of Business.
- 16) BUG (Bug) shall mean a fault in the Software that prevents the Software from performing according to the Software's manual or the Developer's intent. A lack of a specific function shall not be deemed a Bug if the Software was not designed to perform that function.
- 17) BENEFITS (Benefits) shall mean any commission or discount or special that CBS Partners receive or are entitled to receive due to a valid CBS Partnership Agreement.

Confidentiality Statement

- 18) CBS acknowledges that in the course of the relationship created by embarking on a SYSPRO Implementation project a lot of information pertaining to Client s' business ("Confidential Information") may be disclosed to CBS. CBS agrees to treat all Confidential Information disclosed to it as strictly confidential and agrees:
 - a) not to disclose the Confidential Information to anyone or copy the Confidential Information without **Client s'** written consent;
 - b) not to use to the Confidential Information for any purpose other than what is reasonably contemplated under this agreement for the purpose of its performance;
 - c) to notify **Client** immediately on becoming aware or suspecting that an unauthorised disclosure or use of the Confidential Information has occurred or is likely to occur;
 - d) to take all reasonable precautions to ensure that its personnel do not disclose or make unauthorised use the Confidential Information;
 - e) on expiry or earlier termination of this agreement, to return to **Client** all documents or material containing or embodying the Confidential Information; and
 - f) if requested by **Client** , to ensure that its Personnel sign and deliver to **Client** a confidentiality agreement in substantially the same terms as this agreement.
- 18) THE CLIENT agrees that CBS may disclose information about THE CLIENT:
 - a) To any person who guarantees, or provides insurance, or provides any other credit Support, in relation to THE CLIENT obligations to CBS; and
 - b) To such persons as may be necessary or desirable to enable CBS to exercise any power, enforcement or attempted enforcement of CBS rights, remedies and powers under these SYSPRO Sales and Implementation Terms and Conditions

- 19) THE CLIENT agrees that CBS may from time to time obtain from the Bankers and professional advisors of THE CLIENT and/or third parties all information that CBS reasonably requires to trade with THE CLIENT and such persons are authorised to release that information.

Software and Hardware Requirements

- 21) Backup of Software data files is THE CLIENT'S responsibility.
- 22) THE CLIENT warrants that adequate backup procedures and the ability to recover operating Software, applications and Software data files are in place prior to Services, Support or Training being provided by CBS and acknowledge there is no, or will have no, claim against CBS for any loss or damage to data on THE CLIENT'S computer system or network.
- 23) THE CLIENT acknowledges that no claim can or will be made against CBS for any Hardware problems, errors, damages or faults that are, or may appear to be, due to actions performed by CBS from onsite or remote assistance.
- 24) All Software must be supervised and controlled in accordance with the Terms of the Software License Agreement with the developers, SYSPRO SOFTWARE PTY LTD (ACN 100 582 134) of Suite 1102, Level 11, 201 Miller Street, North Sydney NSW 2060 Australia (SYSPRO). THE CLIENT shall ensure that its employees, subcontractors or agents who have authorised access to the Software are made aware the Terms of such License and comply therewith. A copy of the SYSPRO Software License Agreement for SYSPRO can be requested if not already provided.
- 25) Licences are sold without installation, Training or Support of any kind and are as such an individual product that contains no Agreement between THE CLIENT and CBS. Implementation is separate from the Licence
- 26) THE CLIENT is responsible for all damages which result from the violation of copyright laws or illegal use.
- 27) CBS does not guarantee or warrant that Software will satisfy all of THE CLIENT'S requirements. It is THE CLIENT'S responsibility for determining whether Software will satisfy their requirements. A summary of the functionality of Software can be requested from CBS if not already provided.
- 28) CBS gives no performance warranties. CBS excludes, and expressly disclaims, all express and implied warranties of merchantability or fitness for purpose.
- 29) CBS does not warrant that the Software will be compatible in every operating environment. It is THE CLIENT'S responsibility to ascertain whether the Software is compatible with their operating environment. CBS expressly disclaims any representation, warranty or guarantee that the Software will function as intended while running in any particular device, computer, computer network or network file server or with other Hardware or Software.
- 30) Except for any limited warranty provided by the Software Developer," SYSPRO License Agreement", there are no other warranties, either expressed or implied, concerning the Software. THE CLIENT understands that the Software is licensed to THE CLIENT "as is" and that CBS shall not make any refunds for Software or Services.
- 31) It is THE CLIENT'S responsibility to ensure that their Software, Hardware and other computer infrastructure always meet the SYSPRO minimum system requirements and compatibility. These requirements are available from CBS on request.
- 32) It is THE CLIENT'S responsibility for the setup of the SYSPRO Software and any changes to the setup or location of the SYSPRO Software is at THE CLIENT'S own risk and Support for remote or on-site assistance regarding setup or modification to the SYSPRO Software may incur a Support charge.
- 33) THE CLIENT is responsible for the timely installation of all SYSPRO Software updates. Where necessary, requested and possible, CBS may attend THE CLIENT'S site, physically or by remote connection, to install these updates which will attract a Software Support charge.

- 34) Other updates, installs or changes to operating systems, application Software, Hardware and other computer infrastructure can and may cause problems with SYSPRO and other Software settings.
- 35) THE CLIENT acknowledges sole responsibility for and agrees to release CBS of any responsibility in maintaining operating systems, application Software, Hardware and other computer infrastructure. CBS recommends before any changes are made on a computer or network that SYSPRO Software is deployed on, CBS are notified for clarification, which may incur a Support charge.
- 36) THE CLIENT acknowledges they are responsible for diagnosing whether faults are caused by Hardware or Software and that if CBS is requested to investigate and diagnose faults in order to advise THE CLIENT of corrective action the Service and Support charges will be applicable.
- 37) Services, Support or Training may not be available for older versions of the Software, at CBS sole discretion.

Remote Access

- 38) THE CLIENT gives permission where possible and necessary for CBS to use remote access to server or client computers. CBS will use a remote session between CBS and a computer or computers on THE CLIENT'S network to complete Services detailed in a valid Project Definition. CBS may have partial or full unrestricted access to gain further access on such computer or computers on the network as well as THE CLIENT'S content on the network. THE CLIENT understands that CBS will then be able to transfer files with or without additional authorisation, and at all times keeping within the CBS Confidentiality Statement, which forms part of these SYSPRO Sales and Implementation Terms and Conditions. Although CBS cannot guarantee that the provision of CBS remote access technical Support will resolve the issue, CBS will make exceptional efforts to perform Support Services in a professional manner.

Statement of Capabilities

- 40) CBS consultants are SYSPRO Software specialists and may not at their discretion provide any information on, or Support of, any Software other than SYSPRO they are also not qualified to and do not provide legal, accounting or bookkeeping advice or Support. Hardware and operating system support is generally provided by a different team from CBS's managed services division

Services, Support, Training

- 41) Pricing for SYSPRO Software DOES NOT include Software installation, system setup and configuration, Training, implementation Services, any other Software, Hardware, wiring etc.
- 42) CBS offers Services, Support and Training based on time and materials and is subject to the availability of Consultants. To provide efficient and effective Services, CBS may assign Services, Support or Training to CBS approved sub-contractors for some of its obligations hereunder.
- 43) CBS does not take responsibility for any misunderstanding or comprehension issues. Support or Training DOES NOT include any examination or evaluation of THE CLIENT. It is THE CLIENT'S responsibility to learn, question and clarify during the course of Services, Support or Training. Any additional questions, queries or Support provided after the Services or Training is completed will be charged at the current Hourly rate deemed by the CBS Price List.
- 44) CBS can and will provide, where requested and possible, SYSPRO Software Support to either THE CLIENT or Technical Support of THE CLIENT. Such Support can be ad-hock and charged per the CBS price list provided from time to time or based on a tiered Support agreement which may be purchased.

- 45) CBS shall take all reasonable steps to respond to THE CLIENT'S requests, in a timely fashion. Responses to requests are treated in primarily chronological order, however, Paid SUPPORT AGREEMENTS TAKE PRIORITY OVER ANY AD-HOC SUPPORT OR TRAINING. In determining the priority of the request CBS take into account how quickly the task needs to be completed, and how important that request is to THE CLIENT'S Business. Requests can be addressed earlier or delayed at CBS discretion. Unless covered by a Paid SUPPORT AGREEMENT CBS cannot guarantee response times. Response time means the time that it takes to respond to a request by THE CLIENT. It does not mean the time that it takes to resolve an issue, although all due diligence shall be exercised to do so.
- 46) Any Service, Support or Training provided by CBS or any external independent specialists approved by CBS, in regard to the setup or management of any General Ledger Accounts, cost centers, pricing and GST, Financial reports or any other financial data MUST BE SUPERVISED by THE CLIENT and preferably THE CLIENT'S accountant, bookkeeper or manager experienced in THE CLIENT'S financial data. THE CLIENT acknowledges they completely understand the Statement of Capabilities within these SYSPRO Sales and Implementation Terms and Conditions and that CBS is NOT QUALIFIED TO AND DOES NOT PROVIDE legal, accounting or bookkeeping advice or Support. THE CLIENT acknowledges that any errors in setup or consequential errors due to setup are entirely their own and CBS or any external independent specialists approved by CBS shall not be held liable for such errors.
- 47) THE CLIENT has the primary responsibility for managing Services, Support or Training provided by CBS. CBS shall take all reasonable steps to perform assigned Tasks and Services but does not guarantee meeting deadlines, be they imposed or implied.
- 48) THE CLIENT understands and acknowledges their responsibility is to ensure that the appropriate employees / contractors are available when required by CBS.
- 49) On-site Training is HIGHLY recommended to be in a closed (non open plan) location where attendees will not be interrupted by phones, messages or work for the duration of the Training. On-site Training is provided for only eight (8) Hours per day including lunch break. CBS acknowledges that this is not always possible and if Training is not conducted in this manner THE CLIENT acknowledges that CBS shall not be held liable for further Training. Further or repeat Training can be purchased from CBS if required.
- 50) THE CLIENT has five (5) Business Days from the completion of any Training or consulting activity to raise any disputes in writing, otherwise such is considered terminated and finalised and THE CLIENT has no ground for dispute. Disputes are dealt with priority over any other Services, Support or Training for THE CLIENT, within a Project Definition or not.

Physical Delivery of Goods, Risk, Ownership and Title

- 51) The legal and beneficial ownership of any Goods supplied by CBS remains with CBS until all Goods have been paid for in full. The risk in any Goods supplied passes to THE CLIENT on delivery.
- 52) Intellectual property shall remain in ownership by CBS and is non-transferable unless CBS chooses to pass ownership by written consent.
- 53) Any development including but not limited to scripted functions, additional modules, custom reports, or interfaces between SYSPRO Software and other Software programs that are requested by THE CLIENT and are accepted by CBS shall be specified and developed on a time and materials basis only. Ownership of scripted functions, additional modules, custom reports, or interfaces between SYSPRO Software and other Software programs remains with CBS and THE CLIENT is granted non-exclusive use of them.
- 54) It is agreed by the parties that CBS shall not provide Training or Support for THE CLIENT to develop their own scripted functions, additional modules, custom reports, or interfaces between

SYSPRO Software and other Software programs within the context of installation and implementation. Such Training or Support is provided at the sole discretion of CBS.

Support Agreements

55) CBS has a support agreement that all customers will need to sign. This agreement details the coverage and level of support that you will receive. There are three levels: Bronze, Silver and Gold. Each level has increasing levels of support with the Bronze level being free and Silver and Gold requiring a monthly fee. The support agreement sets out all the terms and fees.

Below are the major items covered by each level.

Bronze level support

- All communication via the CBS Help Desk
- NO contact with consultants directly
- No Service level agreement
- 10 min free support per issue
- On-site or on-line support chargeable
- Silver and Gold support customers get priority

Silver level support

- All communication via the CBS Help Desk
- Can be assigned to a consultant
- Service level agreement
- 20 min support per issue included
- On line support included in the 20 min
- Advice on new or different procedures for processing or setting up transactions.
- Assistance and advice on changing any of the setup options within the Product

Gold level support

- All communication via the CBS Help Desk
- Can be assigned to a dedicated consultant
- Service level agreement
- 30 min support per issue included
- On line support included in the 30 min
- Advice on new or different procedures for processing or setting up transactions.
- Assistance and advice on changing any of the setup options within the Product

Other support options available

- Pre-paid hours
- Project rates
- Casual rates
- Complete Managed IT Services ranging from ad-hoc support to a fully outsourced IT department

Statement of Calculations

- 56) All Training and Support time including but not limited to, phone, email, remote access or on-site, is chargeable and invoiced accordingly unless covered by a Support Agreement
- 57) CBS reserves the right to change prices at any time without prior notification, except for fees for Services in a valid Project Definition in which CBS reserves the right to change prices with thirty (30) days prior notice.
- 58) All fees are calculated based on a Business Day. All other times are considered after Hours. After Hours Service, Support or Training may be provided at the discretion of CBS.
- 59) All charges of fees set out are exclusive of GST or any other taxes and based on the CBS Price List.
- 60) All Services, Support and Training are charged for on the basis of time taken for administration, preparation, research and actions required for task completion.
- 61) If Service, Support or Training Hours exceed allocated time estimates then CBS reserves the right to charge on an Hourly rate, except in the case that a Business Day has finished, in which case CBS will charge an After Hours rate.
- 62) THE CLIENT will pay for Service time if CBS has presented itself to commence Services at pre-arranged times, but where THE CLIENT, its employees or agents have caused delays by appropriate staff not being available or in the readiness of the site or readiness of computer equipment with which Services are to be applied.
- 63) All time will be charged for in units of fifteen (15) minutes. Where the time taken is not an exact multiple of fifteen (15) minutes, the time will be rounded up to the next multiple of fifteen (15) minutes.

Travel and Accommodation Terms

64) CALLOUT Time

Sydney Metro Area – 1 Hour travel per site visit

Country NSW – By Car-- actual travel time will be charged.

– By Air-- time measured from 1 hr. before time of departure from Sydney airport to arrival on site or accommodation and from departure from the site or accommodation to arrival at Sydney Airport

Interstate – Time measured from 1 hr. before time of departure from Sydney airport to arrival on site or accommodation and from departure from the site or accommodation to arrival at Sydney Airport. If travel to ACT is by car mileage is measured from our Castle Hill office to site or accommodation and from site or accommodation to our Castle Hill office.

International – Time measured from 3 hrs. before departure time from Sydney Airport to arrival at the overseas accommodation or site office and departure from the accommodation or site office to arrival at Sydney Airport after customs clearance.

65) EXPENSES

- a) **Airfares** – Airfares will be recovered at cost. Every attempt will be made to book the cheapest economy airfare available travelling to the site with a fully flexible fare return.
- b) **Accommodation and subsistence** – Recovery of accommodation and meals, internet connections and any other reasonable incurred expenses.

- c) **Travelling** – Taxis, Car Hire, Fuel, Parking, Tolls will be recovered at cost.
- d) **Mileage** on the use of a private vehicle instead of a taxi at the ATO accepted rate (currently 75 cents / KM).
- e) **Any other sundry expenses** – Recovered at cost as agreed by **Client**

66) ON CALL Rate

If we are required to be “on call” to come on site for any reason the rate charged for that time will be 25% of the onsite rate that would be charged. This is due and payable even if we are not required on site. Should we be required on site then the usual rate as specified above will be charged.

Invoicing and Payments

67) The fees charged to the **Client** from CBS for the telephone/e-mail and on-site support services will be the amounts reflected in the support schedule. Fees charged to **Client** from CBS for ad-hoc support services will be CBS current support rates at the time that it renders the support services to **Client**.

68) **Client** shall effect payment of CBS fees in respect of :-

- a) the telephone/e-mail support services within 14 (fourteen) days from the date of each of CBS invoices;
- b) product sales (including hardware sales and software licensing) **at time of order** unless prior arrangements have been made with CBS management. A maximum of 7 (seven) days will be extended for product sales;
- c) the on-site support services within 14 (fourteen) days from the date of each of CBS invoices;
- d) any expenses incurred in providing the on-site services within 7 (seven) days from the date of each of CBS invoices
- e) the ad-hoc support services within 14 (fourteen) days from the date of CBS invoices;

or as otherwise agreed to in writing between CBS and **Client** and recorded in the support schedule.

69) if **Client** fails to pay CBS' fees in accordance with the provisions of this agreement CBS shall be entitled, without prejudice to its rights in terms of this agreement and in terms of law, to:-

- a) Immediately suspend the support services until **Client** pays the total outstanding fees. **Client** acknowledges that it will have no claims of whatever nature against CBS in respect of the suspension of the support services in terms of this clause; or
- b) Cancel this agreement and claim any damages that it may have suffered.

70) CBS is under no obligation to supply Goods and Services on credit to THE CLIENT.

71) THE CLIENT will pay for the cost of all Disbursements incurred during any agreed Service, Support or Training. To ensure that CBS has sufficient funds to meet the cost(s) of Disbursements as they are incurred, THE CLIENT will be notified of amounts needed to be paid to CBS or CBS will provide details for THE CLIENT to pay Disbursements directly.

72) THE CLIENT is responsible for reimbursing CBS for any additional out of pocket expenses not already listed.

71) CBS reserves the right to invoice for any ex-gratia work at the current CBS Hourly rate.

72) Full payment of invoices for quoted or unquoted Software, including Software Licenses, is required in advance and before delivery of Software, including Software Licenses.

73) Late payment shall constitute a default, and THE CLIENT shall pay default interest on overdue amounts from the date the payment falls due to the actual date of payment at CBS overdraft rate plus five percent (5%) per annum and CBS may at its option suspend its supply of Services,

Support or Training until the overdue amounts are paid in full. Such termination is without prejudice to the rights of either party.

- 74) CBS reserves the right to consider and accept a repayment schedule as proposed by THE CLIENT.
- 75) Failure to satisfy any outstanding debts within thirty (30) days will be subject to Court proceedings.
- 76) All costs incurred in the recovery of debt including such proceedings will be borne by THE CLIENT.
- 77) CBS will apportion payments to outstanding accounts as CBS thinks fit.
- 78) If at any time CBS deems the credit of THE CLIENT to be unsatisfactory, it may require THE CLIENT to provide, at their cost, security for payment and/or CBS may suspend performance of its obligations until satisfaction of security is provided.
- 79) Payments can be made by cash, cheque, direct deposit or PayPal. Any payments made by PayPal will be subject to their terms and conditions as advised on the PayPal Australia website www.PayPal.com.au

Default and Termination of Agreements

- 80) THE CLIENT may terminate an Implementation Project at any time by written confirmation and CBS will deem such termination valid once confirmation is received and written acknowledgment of such termination is delivered from CBS to THE CLIENT. All outstanding invoices are due within invoice dates. All Services, Support or Training provided before acknowledgement of such termination but not yet invoiced will be done so immediately and as such are still payable to CBS in accordance with these SYSPRO Sales and Implementation Terms and Conditions. No refunds will be given for Services, Support or Training paid for but not just completed by CBS.
- 81) An Implementation Project may be immediately terminated by CBS in the event THE CLIENT is in breach of any of the SYSPRO Terms and Conditions herein without any further liability whatsoever on the part of CBS.
- 82) An Implementation Project may be immediately terminated by CBS on written notice to THE CLIENT, if of the following events occurs:
 - a) Default means, if THE CLIENT:
 - i) Does not Pay CBS within its payment terms
 - ii) Goes into bankruptcy, or enter into any composition or arrangement with creditors.
 - iii) Where THE CLIENT as a Business, Company or Organisation does any act which would render it liable to be liquidated or if a resolution is passed or proceedings commenced for the liquidation of THE CLIENT or if a receiver is appointed in respect of all or any assets of THE CLIENT.
- 83) Termination of an Implementation Project shall not relieve THE CLIENT of its obligations to pay all money owed to CBS on any account whatsoever. Such money shall be payable immediately.
- 84) Termination of an Implementation Project shall not relieve THE CLIENT from liability arising from any accidental breach of the SYSPRO Sales and Implementation Terms and Conditions herein.
- 85) Upon the termination of an Implementation Project in the event of default by THE CLIENT all rights of THE CLIENT granted by such shall terminate and THE CLIENT will not be entitled to receive any rebate or refund of the whole or any part of the money paid pursuant to such and THE CLIENT shall return any Goods remaining unpaid (meaning licensed Software and equipment) to CBS.
- 86) Project Definitions can also be terminated for any one of the following;
 - a) The Services of such Agreement have been completed to CBS satisfaction. Once Services, Support or Training is complete & any raised disputes resolved, the Project Definition is terminated.

Warranty, Guarantee, Liability

- 87) CBS will not be held liable for any changes in the Software in future updates.
- 88) CBS does not warrant that the Software will be compatible in every operating environment. It is THE CLIENT'S responsibility to ascertain whether the Software is compatible with their operating environment. CBS expressly disclaims any representation, warranty or guarantee that the Product will function as intended while running in any particular device, computer, computer network or network file server or with any other Hardware or Software.
- 89) CBS does not warrant that SYSPRO Software is free of "Bugs" or is error free. CBS shall not be responsible to THE CLIENT for costs or damages incurred as a result of any such "Bugs", errors or defects. The existence of such errors shall not constitute a breach of any Project Definition. Fixes for any "Bugs" are provided as Software Updates by the Software Developer, SYSPRO.
- 90) Except for any limited warranty provided by the Software Developer, there are no other warranties, either expressed or implied, concerning the Software. THE CLIENT understands that the Software is licensed to THE CLIENT "as is" and that CBS shall not make any refunds for Software, including Software Licenses, Services, Support or Training.
- 91) The parties agree for any breach or default by CBS, even for a breach of condition or fundamental term or for a fundamental breach, THE CLIENT'S exclusive remedy shall be payment by CBS of THE CLIENT direct damages to a maximum amount equal to the amount paid by THE CLIENT to CBS for the Services, Support and Training specified in the related and still valid Project Definition, and THE CLIENT agrees to release CBS from any other claim in respect to the provision of Services, Support or Training, including but not without limitation to system damage, loss of any kind including but not limited to data, privacy, revenue, profits, use or other economic advantage.
- 92) To the extent allowed by law, CBS disclaims all liability, whether in contract or tort, for any loss or damage arising from THE CLIENT'S use of Software provided by CBS. Such disclaimer applies to direct, indirect, special and consequential damages including loss of profit, Business revenue, goodwill, loss of production, loss of product, losses resulting from down-time of THE CLIENT domain or e-mail system, losses resulting from system crashes, loss of data or e-mails, or failure to achieve anticipated savings or efficiencies
- 93) CBS liability in respect of the provision of Services, Support or Training will be limited to an amount equal to the amount paid by THE CLIENT to CBS for the Services, Support and Training specified in the related and still valid Project Definition, and THE CLIENT agrees to release CBS from any other claim in respect to the provision of Services, Support or Training, including but not without limitation to system damage, loss of any kind including but not limited to data, privacy, revenue, profits, use or other economic advantage.
- 94) It is agreed by the parties that in no event shall CBS nor any of its employees and licensors shall be liable for: delay, damage, loss, injury, failure, downtime, breakdown, economic loss, consequential damages, consequential loss or any other form of damages or loss whatsoever, that THE CLIENT may suffer as a consequence by the Service, Support, Training or Software, including but not limited to indirect, incidental, special or consequential damages, or damages for loss of profits, loss of savings, revenue or data incurred by THE CLIENT.
- 95) In no event shall CBS be liable where:
 - a) the defect or failure of Goods is due to or resulting from damage, misuse, negligent maintenance or care from THE CLIENT or THE CLIENT fails to follow care instructions for Goods
 - b) any delay, damage, loss, injury, failure or breakdown that THE CLIENT may suffer is from a consequence of any defect or deficiency in the Software, including any delay, damage, loss, injury, failure or breakdown to other programs and equipment
 - c) any general, special, indirect, or consequential damages, including but not limited to, loss of Business, loss of operations, loss of profits, loss or corruption of information, data or

records, re- procurement costs, statute penalties or loss of use from any cause whatsoever where the illegal use or copying of Software is present.

- 96) THE CLIENT Neither party will be liable for any failure to perform or delay in performing its obligations under this agreement due to strikes, riots, wars, flood, fire, act of God or other event beyond the reasonable control of that party (each an "Event"). If an Event causes CBS to fail to perform or delay performing any of its obligations under this agreement, it must immediately give THE CLIENT written notice of the Event and must use all reasonable endeavours to minimise its effect.
- 97) Some jurisdictions do not allow the exclusion of certain implied warranties or Conditions, so the above exclusions may not apply to THE CLIENT. These SYSPRO Sales and Implementation Terms and Conditions do not exclude any implied warranties or Conditions that may not under applicable law be excluded. These SYSPRO Sales and Implementation Terms and Conditions give THE CLIENT specific legal rights, and in addition to any other legal rights that THE CLIENT may have under the laws of their jurisdiction. These SYSPRO Sales and Implementation Terms and Conditions do not affect the statutory rights of THE CLIENT.
- 98) CBS shall not be held liable for any promises or guarantees made by THE PARTNER for the capability of the SYSPRO Software or Services, Support or Training that CBS is unable to complete.
- 99) CBS shall not be held liable for any Services, Support or Training provided by THE PARTNER or outside consultant on behalf of CBS.

Dispute Resolution

- 99) A party will as soon as reasonably practical give the other party notice of any dispute arising between them.
- 100) Claims and disputes, outside of disputes resulting from a letter of notification, against CBS including any breach or default by CBS must be made within ten (10) Business Days.
- 101) If there is a dispute, the parties to the dispute will attempt to resolve the dispute within a maximum of ten (10) Business Days of receiving notice of the dispute.
- 102) If, following the dispute resolution process, the parties do not resolve the dispute, then the parties will attempt to settle their dispute by mediation. Either party may initiate mediation by giving written notice to the other party. Such mediation process will not, unless otherwise agreed by the parties, extend beyond a period of ten (10) Business Days following the appointment of a mediator. If the parties cannot agree on a mediator within a maximum of three (3) Business Days of the notice, then each party shall appoint one mediator and these two mediators will then appoint a third mediator.
- 103) If, either party fails to appoint a mediator within three (3) Business Days after the other has appointed its mediator, then the party who has appointed an arbitrator may serve notice to the defaulting party that the defaulting party has defaulted on its right to appointment. On service of such notice, the party who has already appointed a mediator will be entitled to appoint that mediator as the sole mediator in the dispute.
- 104) Any mediator:
 - a) will be suitably qualified for such purpose in matters relevant to the dispute;
 - b) will be as independent from either party as possible;
 - c) will not be an ex-employee of either party; and
 - d) will not have entered into significant contracts or arrangements with either party
- 105) Any mediation will be by majority decision of the mediators.
- 106) Pending resolution of any dispute, the parties will continue to perform their obligations in any valid Project Definition which are not directly at issue in the dispute.

Health and Safety

- 107) In Accordance with Work Cover requirements, all CBS staff shall be provided with a SMOKE FREE Environment at all times.
- 108) CBS will carry workplace related insurance for their employees and fulfill their requirements under the Health and Safety in Employment regulations.
- 109) THE CLIENT will inform CBS of situations where THE CLIENT, its agents or employees have made the building site or premises unsafe (as determined by hazard identification under the Health and Safety in Employment regulations).
- 110) CBS will conform to THE CLIENT'S Health and Safety in Employment policy for the site or premises, in order to secure against accident or unlawful entry.

Notices

- 111) Any notice required to be given by THE CLIENT must be delivered to CBS office at Unit 6 10 Gladstone Road, Castle Hill NSW 2154, Australia; given by email support@cbsau.com or by registered letter.

Legal and Employment

- 112) These SYSPRO Sales and Implementation Terms and Conditions shall be governed by the laws of New South Wales, Australia and constitutes the complete and exclusive statement between CBS and THE CLIENT and no statement or representation not contained in these SYSPRO Sales and Implementation Terms and Conditions shall be binding on CBS as a warranty or otherwise. All legal dealings will be held in and are under the CBS office Unit 6 10 Gladstone Road, Castle Hill NSW 2154, Australia.
- 113) Any disputes between CBS and THE CLIENT will be under the jurisdiction of the laws of the state of New South Wales, Australia (or under the jurisdiction of the federal courts of Australia, where applicable)..
- 114) THE CLIENT agrees that they will not entice or procure employees or contractors of CBS to work for any other Business, Company or Organisation including THE CLIENT'S own Business, Company or Organisation. If an CBS employee or contractor does become employed by THE CLIENT'S own Business, Company or Organisation, THE CLIENT specifically acknowledge that these people were introduced by CBS and that an introduction fee, equivalent to one half of their past twelve month wages will be paid to CBS.

Disclaimer

- 115) CBS as a third party supplier provides SYSPRO as a Software Package and holds no responsibility for any misconception of performance based on that product. Reliance on information, material, advice, or recommended resources, received from CBS, shall be at THE CLIENT'S sole risk, and CBS assumes no responsibility for any errors, omissions, or damages arising from the use of CBS, the SYSPRO Software or any other Service, Support, Training, Goods or Software provided by CBS or on behalf of CBS.
- 116) Users of any information, material, advice or recommended resources, are encouraged to confirm information received with other sources, and to seek local qualified advice if embarking on any actions that could carry personal, corporate, financial or Organisational liabilities.

General

- 117) These SYSPRO Sales and Implementation Terms and Conditions remain the property of CBS and may not be disclosed or copied.

118) Signed acceptance of a Project Definition, or Giving CBS instructions to work after receiving these SYSPRO Sales and Implementation Terms and Conditions, or Reading these SYSPRO Sales and Implementation Terms and Conditions is THE CLIENT'S acceptance to adhere to these SYSPRO Sales and Implementation Terms and Conditions.

