

# Tecala Group Pty Ltd

## Trading Terms and Conditions

These terms and conditions apply to Services, Software, AI Agent Services, Automation Membership Services and Goods supplied by Tecala under all Order Forms agreed to between parties, except where a master service agreement or professional services agreement is in place. Each Order Form that is agreed by both parties will create a separate agreement between Tecala and the Customer.

### 1. Definitions and Interpretation

1.1 Unless inconsistent with context:

“**Agreement**” means these terms and conditions together with any applicable Order Form(s).

“**AI Agent Service**” means an interactive artificial intelligence agent service hosted by Tecala.

“**Australian Consumer Law**” means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended, from time to time.

“**Automation Membership**” means a monthly recurring allocation of time that may be used for application support and maintenance, as further described here: <https://tecala.com.au/automation-membership-services-terms-conditions>.

“**Background IP**” means any Intellectual Property, including any computer code or materials, developed or otherwise obtained independently of the efforts of a party under an Order Form or this Agreement.

“**Business Day**” means any day which is not a Saturday, Sunday or Public Holiday in the state of New South Wales, Australia.

“**Commencement Date**” means the date that is the earlier of: (i) the date the Customer accepts the Order Form in writing, online or by any other means notified by Tecala to the Customer; (ii) the date the Customer asks Tecala to begin supplying the Services, Software or Goods; or (iii) the date the Customer makes full or part payment of the fees.

“**Confidential Information**” means information belonging to a party which is disclosed to or observed by the receiving party in connection with this Agreement whether before, on or after the date of this Agreement and whether by the disclosing party or any other person and that: (i) is designated as such by the disclosing party; or (ii) is confidential or can reasonably be inferred to be confidential from the circumstances in which it is disclosed. It does not include information that: (i) is in or comes into the public domain, other than by disclosure in breach of this Agreement; (ii) was already in lawful possession of the receiving party; or (iii) was obtained from a third party without breach of confidentiality.

“**Customer**” means “Company” as identified in the relevant Tecala customer onboarding form or as set out in an Order Form.

“**Delivered Materials**” means any computer code or materials that Tecala leaves with the Customer at the conclusion of Tecala’s performance of the Services.

“**Goods**” means physical products supplied by Tecala under an Order Form.

“**GST**” means the GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999*.

“**Intellectual Property**” means any and all existing and future rights throughout the world conferred by statute, common law, equity or any corresponding law in relation to any copyright, designs, patents or trademarks, domain names, know-how, inventions, processes, trade secrets or confidential information, circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing, whether or not registered or registrable.

“**Order Form**” means the applicable proposal, quotation or similar document describing Tecala’s offer to the Customer for the supply of Services, Software or Goods and includes any documents attached to or referenced within such Order Form.

“**Representative**” means a director, employee, contractor or agent of a party to this Agreement.

“**Services**” means the professional services provided by Tecala under an Order Form.

“**Software**” means the software subscription licenses resold by Tecala (in its capacity as a reseller), under an Order Form.

“**Tecala**” means Tecala Group Pty Ltd (ABN 97 079 430 416).

“**Term**” means the Commencement Date until the date that is the earlier of: (i) the date set out in the Order Form; (ii) the applicable date the supply of the Services, Software or Goods are completed (as reasonably determined by Tecala); or (iii) the date on which this Agreement is terminated.

**1.2** All words importing the singular shall include the plural and vice versa and any one gender shall include each of the other genders, if applicable.

**1.3** Reference to a person includes a body corporate, firm, or partnership.

**1.4** Reference to a party includes the party's executors, administrators, successors and permitted assigns.

**1.5** Reference to dollars or \$ is to Australian Dollars, unless otherwise specified.

**1.6** “Including” and similar expressions are not words of limitation.

**1.7** Headings are for convenience only and shall not affect the interpretation of this Agreement.

**1.8** A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.

## **2. Confidential Information**

**2.1** The parties acknowledge that in the course of providing the Services, Software or Goods under this Agreement, the parties may disclose to the other party and receive Confidential Information belonging to the other.

**2.2** The parties agree that they will keep such information confidential and only use the Confidential Information for the purposes of performing under this Agreement.

**2.3** A party may only disclose Confidential Information with the prior written approval of the other party or where the disclosure is:

**2.3.1** to Representatives of the party to the extent the Representatives need to know the Confidential Information in order to perform a function in connection with this Agreement. Each party must ensure that its Representatives comply with the terms of this Section 2;

**2.3.2** to any legal, accounting or professional advisor in order for it to provide advice in relation to matters arising under or in connection with this Agreement;

**2.3.3** required by a court, a binding directive of a governmental or administrative authority, or to comply with any applicable law; or

**2.3.4** required by virtue of the law or regulations that govern a relevant stock exchange.

**2.4** The obligation to keep Confidential Information confidential in accordance with this Agreement survives the termination of this Agreement.

**2.5** Neither party may make any public comment about the existence, content, or objectives of this Agreement.

**2.6** Each party acknowledges that damages may not be a sufficient remedy for any breach of its obligations of confidentiality under this Section, and each party is entitled to seek specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the other party, in addition to any other remedies available at law.

## **3. Services**

**3.1** Tecala shall use commercially reasonable efforts to provide Services to the Customer as requested and agreed to by the parties in an Order Form. The Customer shall provide full and timely cooperation with Tecala's performance of the Services and shall take any and all actions reasonably necessary or convenient to enable Tecala to perform the Services in an effective and efficient manner. Performance of the Services shall be contingent upon the assumptions and responsibilities specified in the Order Form.

**3.2** The Services will be provided between 8:30 am and 5:30 pm AEST on Business Days, unless otherwise specified in the Order Form.

**3.3** The Services will be provided at the location specified in the Order Form, or if no location is specified, at the location Tecala deems most appropriate ("the Site"). The Customer is responsible for:

**3.3.1** ensuring the availability, safety, and suitability of the Site to enable Tecala to efficiently provide the Services; and

**3.3.2** providing the necessary power, connectivity and telecommunications services to enable Tecala to provide the Services.

**3.4** Unless otherwise specified, the Customer will evaluate the Delivered Materials for compliance with the requirements of the Order Form. In the event the Customer fails to submit a written rejection notice to Tecala within ten (10) Business Days after the Delivered Materials are delivered, the Delivered Materials shall be deemed accepted. The Customer shall not unreasonably withhold its acceptance of any Delivered Materials.

#### **4. Software, AI Agent Services and Automation Membership Services**

**4.1** Any Software supplied by Tecala to the Customer is subject to the terms and conditions of the applicable license or service agreement relating to the Software. The Customer agrees to use such Software in accordance with the terms and conditions of that license or service agreement and acknowledges that Tecala gives no warranty in relation to the Software.

**4.2** The Customer indemnifies Tecala against any damage, loss, costs, or expenses (including legal expenses on an indemnity basis) incurred by Tecala arising from the Customer's breach of any license agreement relating to Software supplied by Tecala. Tecala must take reasonable steps to mitigate its loss.

**4.3** In addition the applicable terms in this Agreement, any AI Agent Service(s) ordered from Tecala will also be subject to the terms and conditions at: <https://tecala.com.au/ai-agent-service-terms-and-conditions>.

**4.4** In addition the applicable terms in this Agreement, any Automation Membership Services ordered from Tecala will also be subject to the terms and conditions at: <https://tecala.com.au/automation-membership-services-terms-conditions>.

#### **5. Goods (applies to procurement of physical products)**

**5.1** The Goods to be supplied by Tecala are limited to those specified in the Order Form. Any additional Goods requested or required by the Customer shall be quoted separately and shall be supplied under a separate agreement.

**5.2** Times for delivery quoted by Tecala or specified in the Order Form are estimates only, and Tecala shall be under no liability whatsoever, nor shall the Customer be relieved of any obligation to accept or pay for the Goods, by reason of any delay in delivery.

**5.3** Acknowledgement by the Customer or the Customer's agent that the Goods were delivered is conclusive proof of delivery by Tecala.

**5.4** Unless stated otherwise, the Customer is responsible for all delivery costs (including freight and insurance).

**5.5** Risk of loss, damage, or deterioration to the Goods will pass to the Customer:

**5.5.1** if Tecala is responsible for delivery, upon delivery of the Goods to the agreed delivery location; or

**5.5.2** if Customer is responsible for collection or delivery, upon collection or dispatch from Tecala's warehouse or dispatch point.

**5.6** Until payment in full is received by Tecala:

**5.6.1** All legal and equitable title in the Goods remains with Tecala; and

**5.6.2** The Customer is in possession of the Goods solely as bailee for Tecala.

**5.7** Where the Customer fails to make payment for Goods, Tecala may, without prejudice to any of its other rights and remedies and at its absolute discretion:

**5.7.1** Recover and/or re-sell the Goods and enter upon the Customer's premises for that purpose; and

**5.7.2** Terminate this Agreement.

**5.8** The Customer grants to Tecala or its nominee an irrevocable license to enter upon the Customer's premises for the purposes of clause 5.7.1.

**5.9** Where the Customer sells the Goods supplied to it by Tecala and fails to make payment in full in accordance with Tecala's payment terms, the proceeds of such sale will be deemed to be held on trust in favour of Tecala, and the Customer agrees to supply Tecala with the names of all parties receiving such Goods.

## **6. Payment**

**6.1** Tecala will invoice the Customer for Services, Software or Goods provided or supplied by Tecala based on the fees payable and invoicing schedule or principle reflected in the Order Form.

**6.2** The Customer will pay to Tecala the amount of each invoice within fourteen (14) days from the date of invoice, or as otherwise agreed in writing between the parties. Time for payment is of the essence.

**6.3** Unless stated otherwise, prices are exclusive of GST, taxes, duties, and charges (including bank fees), which shall be paid by the Customer.

**6.4** Where the Customer fails to make payment or otherwise breaches any term of this Agreement, Tecala may, without prejudice to any of its other rights and remedies and at its absolute discretion:

**6.4.1** Withhold the delivery of Services, Software or Goods;

**6.4.2** Charge interest on all amounts outstanding from the due date until the date of payment at the rate of 1.5% per month. The Customer shall pay all costs which may be incurred, including reasonable attorneys' fees, in the event Tecala must collect fees due under this Agreement through a collection agency or court action.

## **7. Intellectual Property**

**7.1** All rights in "Background IP" shall remain the sole property of that party.

**7.2** Unless otherwise expressly agreed in writing, all Intellectual Property rights arising in connection with this Agreement shall belong to Tecala. Nothing in this clause 7.2, entitles Tecala to an ownership position in Customer's data or the Customer's Confidential Information.

**7.3** During the performance of the Services, each party grants to the other party (and its contractors, as necessary) a temporary, non-exclusive license to use, reproduce, and modify any of its Background IP provided to the other party solely for the performance of such Services.

**7.4** Upon payment in full, Tecala grants to the Customer a non-exclusive, perpetual, fully paid-up license to use, reproduce, and modify (if applicable) Tecala's Background IP and the Delivered Materials, in the form delivered to the Customer, solely for the Customer's internal business operations. The Customer's license to Tecala's Background IP and Delivered Materials is conditioned upon the Customer's compliance with the terms of this Agreement and the applicable Order Form. The perpetual license applies only to the Background IP that Tecala leaves with the Customer at the conclusion of Tecala's performance of the Services.

**7.5** The Customer acknowledges that in supplying the Services, Software or Goods, Tecala may supply or use materials licensed by a third party. The Customer agrees that rights in such materials remain with the third party, and such materials are supplied subject to and may only be used in accordance with the third party's license agreement.

## **8. Indemnification.**

**8.1** Subject to the terms specified herein, Tecala will defend, indemnify and hold the Customer harmless against any claims that the Delivered Materials, excluding any information or other materials provided by the Customer, as provided as part of the

Services and as used by the Customer according to this Agreement and the applicable Order Form, infringes a third party's Intellectual Property rights.

**8.2** Subject to the terms specified herein, the Customer will defend, indemnify and hold Tecala and its licensors harmless against any claims or actions by any third party (including any of the Customer's customers) in connection with:

**8.2.1** any content, data, or materials created, generated, modified or distributed by the Customer using the Services, Software, Goods or Delivered Materials provided by Tecala; and

**8.2.2** any infringement relating to the Services provided by Tecala, by the Customer (or any of the Customer's customers and personnel) of the Intellectual Property rights of a third party,

except with respect to matters which are covered by Tecala's indemnification obligations as provided above.

**8.3** If any action shall be brought against either party in respect to which indemnity may be sought from the other pursuant to the provisions of this Section, the indemnified party shall promptly notify the indemnifying party in writing, not later than 30 days after the indemnified party receives notice of the claim, specifying the nature of the action and the total monetary amount sought or other such relief as is sought therein. The indemnified party shall cooperate with the indemnifying party in all reasonable respects in connection with the defense of any such action. The indemnifying party will have sole control over the defense and settlement of the action.

**8.4** If Tecala believes or it is determined that the Delivered Materials may violate a third party's Intellectual Property rights, Tecala may choose in its discretion to: (a) modify the Delivered Materials to be non-infringing; (b) obtain a license for the Customer to allow for continued use of the Delivered Materials; or (c) terminate the license for the Delivered Materials and require its return from the Company, and refund the fees the Company paid to Tecala for the applicable Delivered Materials.

**8.5** Tecala has no obligation to indemnify, defend or hold the Customer harmless: (a) if the Services or Delivered Materials thereunder are altered or modified by anyone other than Tecala, or used outside the scope of use identified in this Agreement or the applicable Order Form; (b) to the extent that an infringement claim is based upon any software, design, specification, instruction, data or other material not furnished by Tecala; or (c) to the extent an infringement claim is based upon the combination of the Services or Delivered Materials thereunder with any products or services not provided to the Customer by Tecala.

**8.6** This Section provides the parties' exclusive remedies and liabilities for any claim or damages involving indemnification.

## **9. Insurance**

Tecala will during this Agreement and for 12 months after its termination maintain cyber insurance, product and public liability insurance and professional indemnity insurance with an insurer authorised by the Australian Prudential Regulation Authority or its successor. Tecala will provide a certificate of currency within 7 days after the Customer's written request.

## **10. Data and IT Security**

**10.1** Each party will maintain IT security measures (such as cyber security controls, disaster recovery and business continuity planning, and cyber security and awareness training) which are considered a reasonable industry standard in Australia in connection with this Agreement. If a party is required by law to maintain a particular IT security standard or certification, the other party will take reasonable steps to assist the party with its compliance. Each party will promptly notify the other party of material details about cyber security incidents that may affect the other party. This includes but is not limited to the compromise of corporate emails, the compromise of data owned or processed by the other party and the compromise of the credentials for the information systems either owned or licensed by the other party. Each party will take reasonable steps to assist with any cyber security incident.

**10.2** The parties will comply with the Privacy Act 1988 (Cth), including the Australian Privacy Principles.

This will include measures that addresses:

**10.2.1** how information is processed by each party;

**10.2.2** how a party shares data with a third party such as any sub-processors;

**10.2.3** how data is classified by a party; and

**10.2.4** prevent unauthorised access, alteration or loss of Personal Data.

**10.3** Each party must not disclose to any third party, the existence or circumstances surrounding any data breach without obtaining the other party's prior written consent, to the extent permitted by applicable laws.

## **11. Warranties**

**11.1** Tecala represents and warrants that the Services will be performed in a good, workmanlike manner in accordance with generally accepted industry standards. To the extent permitted by law, these warranties are exclusive and Tecala expressly disclaims any express or implied warranties or conditions, including warranties or conditions of merchantability, correspondence with sample or description, title, non-infringement, quality, and fitness for a particular purpose.

**11.2** Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer the Customer with rights, warranties, guarantees and remedies relating to the supply of the Goods and Services by Tecala to the Customer which cannot be excluded, restricted or modified (**Consumer Law Rights**). To the extent that the Customer maintains Consumer Law Rights at law, nothing in this Agreement excludes those Consumer Law Rights.

**11.3** In case of a breach of the warranty in clause 11.1 or in respect of any failure by Tecala to comply with relevant Consumer Law Rights, Tecala's liability under such warranties and conditions is limited at Tecala's option to:

**11.2.1** In the case of Goods:

- (i) the replacement of Goods or resupply of equivalent Goods;
- (ii) the repair of Goods; or
- (iii) return of the Goods and a refund of the price paid for the Goods.

**11.2.2** In the case of Services:

- (i) the rectification of any deficiencies in the Services;
- (ii) the application of a discount to that proportion of the invoiced amount which relates to the deficiency in the Services; or
- (iii) if Tecala cannot substantially correct such breach, Tecala may terminate the relevant Order Form and refund to the Customer any fees paid for the deficient Services.

**11.3** The Customer warrants that it has taken appropriate measures to preserve its data and agrees that Tecala shall not be liable for data loss in any circumstances.

**11.4** Where Software and Goods are manufactured or produced by a third party, the Customer agrees that any warranty provided by the third party is the Customer's sole and exclusive warranty in relation to those Software and Goods.

## **12. Liability**

**12.1** The total liability of either party under this Agreement (whether based on contract, tort, statute, or otherwise) is limited in aggregate to the amount actually paid by the Customer to Tecala under the applicable Order Form.

**12.2** Notwithstanding clause 12.1, for a breach of confidentiality, a breach of a party's Intellectual Property rights, or any indemnities provided, the total liability of either party is limited in aggregate to the amount which is recoverable under its applicable insurance policies.

**12.3** Under no circumstances will either party be liable for any incidental, indirect, special, exemplary, or consequential loss or damage, including but not limited to loss of use, profit, revenue, goodwill, or data, however caused.

**12.4** A party's liability to the other party under this Agreement is diminished to the extent that the other party's acts or omissions (or those of a third party) contribute to or cause the loss or liability.

### **13. Non-Solicitation**

**13.1** During the Term and 12 months after the Term, the Customer shall not, directly or indirectly, solicit, induce, or cause any employee of Tecala whom the Customer was introduced to as part of the Services to leave the present employment of Tecala or become employed by the Customer.

**13.2** During the Term and 12 months after the Term, Tecala shall not, directly or indirectly, solicit, induce, or cause any employee of the Customer whom Tecala was introduced to as part of the Services to leave the present employment of the Customer or become employed by Tecala.

**13.3** The parties agree that any general advertisement or announcement regarding employment opportunities at a party which are not directed at the other party's employees shall not be considered a breach of this Section.

### **14. Term and Termination**

**14.1** This Agreement will operate for the Term.

**14.2** Either party may, at its election, upon at least thirty (30) days' prior written notice, terminate this Agreement and any Order Form; provided, however, that such termination shall not affect in any way any right or claim of any party hereto incurred or accruing prior to the date of termination.

**14.3** This Agreement will terminate immediately upon written notice by a party ("**Non-Defaulting Party**") if: the other party ("**Defaulting Party**") breaches a material term of this Agreement and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party

**14.4** Termination of this Agreement does not relieve the Customer from its obligation to pay for Services, Software or Goods supplied to it by Tecala.

**14.5** Anything herein to the contrary notwithstanding, the provisions of Sections 1-15 shall survive such termination.

### **15. General**

**15.1** The relationship between the Customer and Tecala is that of principal and contractor. Nothing in this Agreement shall be taken as establishing a relationship of employment, agency, joint venture, or partnership.

**15.2** This Agreement may only be varied by written agreement signed by an authorised representative of both parties.

**15.3** Neither party will be liable for any delay or failure to perform their respective obligations under this Agreement if such delay or failure is caused or contributed to by any event or circumstance which is beyond a party's reasonable control.

**15.4** This Agreement, together with the applicable Order Form(s), constitutes the complete agreement for the Services, Software or Goods provided or supplied to the Customer, and supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such matters. The terms of this Agreement and any corresponding Order Forms shall supersede the terms contained in any purchase order or other non-Tecala ordering document or correspondence, regardless of when such document is received or whether Tecala signs it. No terms in such documents shall apply to Tecala or the Services, Software or Goods provided.

**15.5** Neither party may assign the whole or any part of this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld or delayed.

**15.6** Terms of contract:

**15.6.1** By executing an Order a contract is formed between the Customer and Tecala comprising of:

- (a) this Agreement;
- (b) the Order; and
- (c) any schedules, attachment or annexures to the Order

**15.6.2** Unless explicitly agreed otherwise in an Order Form, in the event of any inconsistency between this Agreement and any of the terms in those documents listed in clause 15.6.1, this Agreement shall take precedence. Any error or omission in an Order Form shall be subject to correction without liability to Tecala.

**15.7** Delay or failure by a party to exercise any right or partial right under this Agreement shall not be deemed to constitute a waiver of such right or any other rights. Consent by a party to a breach of a term of this Agreement shall not constitute consent to any subsequent breach.

**15.8** If any term of this Agreement is found to be unenforceable, the remainder shall remain in full force and effect.

**15.9** This Agreement shall be governed by the laws of New South Wales, Australia, and the Customer consents to exclusive jurisdiction and venue in the courts located there. The Customer waives all defences of lack of personal jurisdiction and forum non-conveniens. Process may be served on either party in the manner authorized by applicable law or court rule. In any action to enforce or interpret this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs, and other expenses.

**15.10** A Party may not commence court proceedings relating to any dispute arising from, or in connection with, this Agreement ("**Dispute**") without first meeting a representative of the other party within 10 Business Days of notifying that other party of the Dispute. If the parties cannot resolve the Dispute at that meeting, either party may refer the Dispute to mediation administered by the Australian Disputes Centre.

**15.11** This Agreement may be executed using an Electronic Signature. The Parties acknowledge and agree that if a Party executes this Agreement using an Electronic Signature, then the Party is taken to have entered into this Agreement in electronic form and the Electronic Signature is deemed to be an original execution of the Agreement by the Party. "Electronic Signature" means an electronic method of signing that identifies the person and indicates their intention to sign this Agreement which may include software programs such as Adobe e-Sign software.