

SALES AGREEMENT

RECITALS:

- A. AM-Win is the owner of the intellectual property in the AM-WIN software.
- B. The User is desirous of being supplied AM-Win software based on the terms and conditions set out in the agreement.

THE PARTIES AGREE AND DECLARE AS FOLLOWS:

1. INTERPRETATION

1.1 In this agreement unless the context otherwise requires:

“**Day**” means a day on which banks are open for general banking in New South Wales;

“**Commencement Date**” means the date of this agreement;

“**Dispute**” means a dispute about the interpretation or performance of this agreement including but not limited to the exercise of any right or power or the performance of any obligation by a party under this agreement.

“**AM-Win Software**” means the computer program known as “AM-WIN” or “Am-Win.

“**Intellectual Property**” includes all rights conferred under statute, common law and equity in and in relation to patents and patentable rights, Computer Source Code, trademarks, trade names, designs, copyright, circuit layouts or confidential information;

“**Trade Mark,**” means a trade mark and logo for the names “AM-WIN” or “AM-WIN” or any combination of the words “AM-WIN” or “AM-WIN” with any words.

1.2 GENERAL

In this agreement, unless the context otherwise requires:

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or any legislative provision substituted for, and any subordinate legislation under, that legislation or legislative provision;
- (b) the singular includes the plural and vice versa;
- (c) a reference to an individual or person includes a corporation, firm, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (d) a reference to any gender means to all genders;
- (e) a reference to a recital, clause, schedule or annexure is to a recital, clause, schedule or annexure of or to this agreement;
- (f) a schedule or annexure forms part of this agreement;
- (g) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, notated, supplemented replaced from time to time;
- (h) a reference to any part of this agreement includes that parties’ executors, administrators, substitutes, successors and permitted assigns;

- (i) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (j) a reference to “**dollars**” or “**\$**” is to Australian currency;
- (k) a reference to bankruptcy or winding up includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration (as defined in the Corporation Law), being placed under official management, the appointment of an administration and the occurrence of anything analogous or having a substantially similar effect to any of those conditions or matters under the law of any applicable constitute any of those conditions or matters’ and
- (l) A reference to **related body corporate**” of a body corporate is to a body corporate, which is related to that body corporate within the meaning of section 50 of the Corporations Law.

1.3 Headings

In this agreement, headings are for convenience of reference only and do not affect interpretation.

1.4 Day

If the day on which any act, matter or thing is to be done under this agreement is not a Day, that act, matter or thing:

- (a) if it involves a payment other than a payment which is due on demand, must be done on the preceding Day; and
- (b) In all other cases, may be done on the next Day.

2. LICENCE OF AM-WIN SOFTWARE

2.1 AM-Win grants to User a non-transferable and exclusive license to use the AM-Win Software for the purposes of installing the software at customers’ premises.

2.2 User shall not copy, alter or modify the AM-Win Software or merge the AM-Win Software with other computer programs without the prior written consent of AM-Win. The AM-Win Software shall remain the property of AM-Win even if modified or altered by User and this agreement shall apply to the Am-Win Software as modified or altered.

2.3 User shall not reverse assemble or reverse compile or directly or indirectly allow or cause a third party to reverse assemble or reverse compile the whole or any part of the AM-Win Software.

2.4 User will be solely responsible for the use, supervision, management and control of the AM-WIN Software and will ensure that it is protected at all times from access, use or misuse, damage or destruction by any person not authorized by AM-Win.

2.5 AM-Win will at its own expense remedy any error or defect in the AM-WIN Software notified to it, however, AM-Win will not be liable to remedy any defect in the AM-Win Software if:

- (a) The defect does not result in significant reduction in the performance of the AM-Win Software;
- (b) The defect is the result of alterations or modifications not authorised by AM-Win;
- (c) The defect is the result of use of the AM-Win Software in combination with equipment or programs not authorised by AM-Win;

(d) The defect is the result of use of the AM-Win Software other than in an operating environment recommended by AM-Win; or

(e) The defect is the result of the failure of User to meet its obligations under the agreement.

2.6 Except as set out in this agreement, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any other way to the AM-Win Software are excluded. Without limiting the generality of the proceeding sentence, AM-Win shall not be under any liability to User in respect of any loss or damage (including special, incidental, indirect or consequential loss of damage or for loss of profit, revenue or data) however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the AM-Win Software.

If, for technical or other reasons, User is prompted to accept a license agreement during the process of installing or downloading the AM-Win Software, by clicking an “I Accept” button, User shall be deemed merely to confirm the terms and conditions of this Agreement. If User or another authorised representative of your Company demonstrate that User has already entered into a valid written license agreement with AM-Win regarding this Software (prior to your receipt of the accompanying CD containing the AM-Win Software), then the terms and conditions of such license agreement shall continue to be effective. Subject to the foregoing, this Agreement and the specifications regarding price, the maximum number of Computers, number of physical locations, specific modules, users or CPU's (or gigabytes) for which license fees have been paid and software upgrade agreements taken constitute the entire agreement between User and AM-Win and supersede any prior and contemporaneous agreement, representation or understanding regarding the subject matter of this Agreement.

3. DEPOSIT AND PAYMENTS

The User agrees to pay to AM-WIN or its authorised agent, a non-refundable deposit of the amount shown in “Appendices” of this agreement. The user further agrees to pay any subsequent non-refundable payments as set out in “Appendices” of this agreement.

AM-WIN or its authorised agent, shall provide the User with a receipt within fifteen (15) days of the payment of the said deposit and any subsequent payments.

At the discretion of ASIMS, the user may be charged a credit card fee of 2% for the use of MasterCard or Visa card. In the event that a credit card is used by the user for any payments relating to the sale of the AM-Win software including but not limited to installation, training and support services, the user agrees not to utilise the chargeback facility available to them as a result of using a credit card.

4. USER RESTRICTIONS.

User may copy AM-Win Software for backup purposes, provided that you reproduce all copyright and other proprietary notices that are on the original copy of the AM-Win Software.

5. SUBSCRIPTION / MAINTENANCE RENEWAL.

User has no right to download, install or use Product Updates, unless you purchase an annual Software Upgrade Agreement from AM-Win at the then current fees. AM-Win reserves the right, from time to time, to change the terms and conditions applicable to the Software Upgrade Agreement, including fees, and to charge additional fees for technical support outside the country where you purchased the Am-Win Software. “Product Updates” are subsequent versions of the AM-Win Software that contain bug fixes and minor enhancements (excluding new products or major enhancements as reasonably determined by AM-Win). “Major Product Updates” are designated by a change in the version number to the left of the decimal point and are usually issued once per year. Additional upgrades may be released as a result of government legislative changes and requirements by other official bodies.

6. PRODUCT SUPPORT.

AM-Win and ASIMS is only obligated to provide Maintenance for any version of the AM-Win Software until the earlier of:

- (i) eighteen (18) months from that version’s release or
- (ii) the release of a second subsequent Major Product Update (for example, until the release of version 9 if You have version 7).

HOTLINE SUPPORT to the customer is provided as long as the customer is currently up to date with their annual or monthly Software Maintenance Agreement charges and excludes public holidays and the Christmas - New Year holiday period. Outside these hours help is available on a best endeavour basis. The customer may use telephone Hotline Support on the nominated hotline numbers during the hours of 9.00am and 5.00pm EST on weekdays and will normally receive a response to their call within the following periods.

1. Four working hours for calls whereby the user is not able to access the data or AM-Win program or any associated programs written by AM-Win Software as a result of data corruption or program error.
2. Six working hours for calls that involve a significant restriction of the use of the software, an error restricting access to certain records as opposed to the data as a whole or a program fault which causes data to be recorded incorrectly. Issues of an urgent nature that requires same day attention to rectify software issues, data errors or system bugs.
3. Two working days for calls that are of a general nature requiring help on how to use certain functionality of the software, calls whereby the customer is able to use a workaround or calls where the customers have not received training on the areas for which the call relates to. Any non-urgent enquiries or general support calls.

While we specify the times above, we expect that in most cases response times will be much quicker.

Response Time is defined as the time between receipt of the call and the time that an ASIMS Team member begins working on the problem. Due to the wide diversity of problems that can occur, and the methods needed to resolve them, response time IS NOT defined as the time between the receipt of a call and problem resolution.

We do not offer telephone support during public holidays, weekends or outside of usual business hours. We also have certain times throughout the year during which support is either unavailable or diminished due to national conferences and staff training events or some events such as Christmas parties. Customers will be notified of these times via email. We usually close for 7 – 8 business days over the Christmas / New Year period at which time general support is not available.

During times when support is not readily available, our staff regularly check emails and will offer assistance for urgent and severe issues as soon as possible if the issue is emailed to us.

Customers not on a valid support agreement will be charged at a rate of \$66 + GST per 15 minutes. In all cases response for non-support contract holders will be within 2 working days.

Certain times of year most commonly around the end of Financial year and early in the new financial year during the months of June and July, we often experience unusual high call volumes and as such response times during this period may be longer. In the event that a support staff is not able to respond in the required time, it is recommended that the customer call again to ensure quicker support is provided. Customers calling for a second or subsequent time will be given higher priority. Response times rely on the client accepting a response by any available support representative even if that particular representative is not fully familiar with the problem or the specific module in question. If the client wishes to speak with a specific support representative then response times may be considerably longer.

It is the user's responsibility to backup their data and to ensure that the backup is operating correctly, the backup data is valid and the backup data is safely stored. If the user does not have recent and valid backups then this will greatly reduce the ability for either AM-Win or ASIMS to support the customer.

Support is only available for products supplied by, written by or manufactured by either AM-Win software or ASIMS.

REMOTE TEAMVIEWER SUPPORT – Minor data recovery or manipulation is included within the Hotline support agreement if you have the following software loaded onto your computer 'Team Viewer QS' (can be installed through Hotline support) and have access to high speed internet & telephone line for the computer. Any major corrections (more than 15 minutes per issue) will incur additional charges for labour time plus data repairs.

ONSITE SUPPORT - Customers under agreement will receive priority in assigning support staff- if on-site support is requested or required. Such on-site assistance is entirely at the discretion of ASIMS and will be charged out at the usual site service call out fee, our standard hourly rate plus travelling time (plus any other extra expenses, if any).

EXPIRED SUPPORT CONTRACT - Where your agreement has expired and Hotline support has continued to support you for hotline & remote support you agree that you will then go onto the casual support rate as above. If your payment has been received late for your support agreement the payment will be backdated to the day your agreement expired.

7. CONFIDENTIALITY.

User acknowledges that the AM-Win Software and the related product serial or activation number(s) constitute valuable trade secrets and confidential information of AM-Win. User agrees not to make available or disclose the AM-Win Software to any third party, except (if you represent a Company) to employees or independent consultants who are bound by industry standard non-disclosure obligations.

User shall treat as confidential information, which comes into its possession, pursuant to or as a result of, or in the performance of this agreement, whether such information relates to the sales, marketing or technical operations of AM-Win or the clientele of AM-Win or a distributor of AM-Win.

User shall not, without AM-Win's prior consent in writing, copy or cause to be copied or disclose any details of AM-Win's confidential information to a third party. Dealer may only make use of such details to the extent necessary to distribute the AM-Win Software pursuant to this Agreement.

User's obligations under this clause shall survive the termination of this Agreement.

8. OWNERSHIP.

User acknowledges that the AM-Win Software is licensed, not sold, and that no title to the AM-Win Software or any intellectual property therein is transferred to User and all title and ownership rights to the AM-Win Software will remain the exclusive property of Am-Win (or its licensors). You do not acquire any rights to the AM-Win Software except as expressly set forth in this Agreement.

9. REVERSE ENGINEERING.

To the extent legally permissible, User agrees that you will not attempt to rent, lease, sub-license, loan, auction, deal in, modify, create derivative works of, adapt, merge, translate, reverse compile, de-compile, or disassemble the AM-Win Software, in whole or in part, use the AM-Win Software to provide services to third parties, or authorize others to do any of the foregoing.

10. LIMITED WARRANTY.

AM-Win warrants that, upon initial delivery of the AM-Win Software and for thirty (30) days thereafter, the Am-Win Software will perform in substantial accordance with the applicable documentation, including updates thereto, "ReadMe" files and release notes available on-line ("Limited Warranty"). Any implied warranties relating to the AM-Win Software that cannot be effectively disclaimed shall be limited to thirty (30) days.

11. CUSTOMER REMEDIES.

If the AM-Win Software does not conform to the Limited Warranty in Section 10 above, AM-Win's entire liability and User's sole remedy shall be, at AM-Win's option, for AM-Win to:

- (a) use commercially reasonable efforts to correct the error; or
- (b) to help User to work around or avoid the error; provided that you notify AM-Win of your claim under the Limited Warranty within the 30-day warranty period. The Limited Warranty does not apply to any error caused by accident, abuse, misapplication or any problem or error in the operating system software with which the AM-Win Software is designed to operate. Any replacement AM-Win Software will be warranted for the remainder of the original Limited Warranty period.

12. FIT FOR PURPOSE.

The AM-Win Software is an off the shelf product and it is in no way implied that the product is or will be customised to suit the user's specific business requirements or business processes. The user acknowledges that they have been provided with or have obtained sufficient information by way of documentation, recommendations, viewing of the product, use of the product and/or any other method in order to make an informed decision regarding the suitability of the product for their business and circumstances. While AM-Win is designed to suit certain industry sectors we do not warrant or guarantee that it will provide the user with features or functionality specific to the user's requirement or operate in a manner expected by the user. Unless otherwise documented, neither AM-Win nor ASIMS will or is responsible for, doing any analysis of your business or business processing requirements.

13. USER CAPABILITIES.

Neither AM-Win nor ASIMS is liable or responsible in any way to assess or determine the ability either physically, mentally or in any other capacity, the ability of the user to use the AM-Win software.

14. NO OTHER WARRANTIES.

AM-Win does not warrant that the AM-Win Software is error free or that use of the AM-Win software will keep your network or computer systems free from all viruses or other malicious code. Except for the limited warranty in paragraph 10 and to the extent permitted by applicable law, AM-Win disclaims all other warranties with respect to the software, either express or implied, including but not limited to implied warranties of merchantability, fitness for a particular purpose, and non-infringement of third party rights.

15. ERROR IN CALCULATIONS.

Notwithstanding paragraph 14, the user accepts that due to the complexity of the taxation system, the range of discount options available in the AM-Win software and the complexity of the pricing structures available, that it is the user's responsibility to ensure that their customers are being invoiced at the correct prices and that any errors in calculations within the AM-Win Software will be reported to AM-Win to be rectified according to paragraph 11. The user further accepts that AM-Win will not be liable in any way for any losses or damages as a result of any errors in calculations that may result in the user's customers being invoiced incorrectly.

16. SEVERABILITY.

If a court or other competent tribunal in any jurisdiction finds any provision of this Agreement invalid, such invalidity shall not affect the remaining provisions of the Agreement, which shall remain in full force and effect.

17. LIMITATION OF LIABILITY; CONSEQUENTIAL DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW.

In no event shall AM-Win, ASIMS or its suppliers be liable to User for any consequential, special, incidental or indirect damages of any kind arising out of this Agreement or the delivery, performance or use of the AM-Win Software, even if AM-Win has been advised of the possibility of such damages and regardless of the nature of the cause of action or theory asserted.

In no event will AM-Win's or ASIMS liability for any claim, whether in contract, tort, or any other theory of liability, exceed the license fee paid or payable by you except in cases of death or personal injury whereby its liability shall be unlimited.

18. CONSUMER PROTECTION.

Some jurisdictions do not allow certain limitations, so the above limitations and disclaimers of warranties and liabilities may not fully apply to you. You may have additional rights and remedies that may vary from jurisdiction to jurisdiction. Such potential rights or remedies, if any, shall not be affected by this agreement.

19. PRODUCT UPDATES.

Product Updates shall be treated as AM-Win Software and governed by the terms and conditions of this Agreement, unless AM-Win specifies different terms and conditions in connection with their delivery, download, or installation. Product Updates provided hereunder will replace or patch previously licensed copies of the Software, but will not increase the authorised number of Computers, Users or CPUs (or gigabytes). Nothing in this Agreement will prevent AM-Win from offering any modified version of the AM-Win Software or other products as a new product for additional consideration.

20. COMPATIBILITY.

It is the User's responsibility to ensure that any and all third party hardware and/or software (not provided by Am-Win or its agents) is compatible with AM-Win Software. The user recognises that AM-Win Software has compatibility issues with products including but not limited to "Norton Anti Virus" and other Norton utilities and Microsoft Security Essentials along with some older computers, printers or scanners. It is also the User's responsibility to ensure that any and all internet and network installations and/or services (not provided by AM-Win or its agents) are compatible with the AM-Win software. Furthermore, it is the User's responsibility to ensure that the speed and capacity of any and all hardware, network devices, network installations, internet services and all other products and services (not provided by AM-Win or its agents) is at a level satisfactory to the user for the use of the AM-Win software.

21. DATA CONVERSIONS.

If the sale of Am-Win software includes the provision for data conversion, the data to be converted unless otherwise specified will consist of Masterfile data including customers, suppliers and stock. AM-Win and ASIMS holds no responsibility for the quality or usability of the converted data and it is the users' responsibility to ensure the accuracy of the converted data. AM-Win or ASIMS will convert the data again free of charge if the converted data is not accurate and the inaccuracy is due to the data conversion and not the data provided by the user. Unless otherwise agreed in writing, the user must supply the data to be converted in a standard comma separated values (CSV) file. If the data needs to be reconverted due to the users' error or the requirement for the data conversion changes or the user did not supply sufficient information regarding the data conversion then the client will be charged additional fees for the data conversion at our standard hourly rate. Data conversion costs are provided as an estimate only. The user may incur additional charges in the event that the data is to be converted in an unusual manner, the data to be converted is larger in volume than originally indicated, more than one data set is to be converted or the data conversion was estimated without full access to the data which is to be converted.

22. GOVERNING LAW.

This Agreement and any dispute arising out of or in connection with this Agreement shall be governed by the laws of New South Wales.

23. NON-ASSIGNABILITY.

You may not assign any right under this Agreement to any party, including any affiliate, without the prior written consent of AM-Win. Any purported assignment by User shall be null and void. For consent to assign licenses to affiliates, User must advise AM-Win prior to any such assignment. For the avoidance of doubt User understands that any such assignment to an affiliate may be subject to the additional fees as set out in clause 2 if the assignment is outside the country of purchase.

24. AUDIT.

At AM-Win's written request, but not more frequently than annually, User shall provide AM-Win with a document signed by an authorised representative verifying the number of Computers, Users or CPUs (or gigabytes) for which the software is being used. Upon reasonable notice and during regular business hours, Am-Win shall have the right to audit and have use of the Am-Win Software. If the audit or signed verification reveals unlicensed Computers, Users or CPUs (or gigabytes), User shall, within thirty (30) days of notice, pay to AM-Win the then-current license fees due for such unlicensed Users.

25. BACK-UP.

For as long as User uses the AM-Win Software, User will regularly back-up your computer system(s) data on a separate media. User acknowledges that any failure to do so may significantly decrease your ability to mitigate any harm or damage arising from any problem or error in the Am-Win Software. It is the user's responsibility to ensure the validity, accuracy and safety of all backups.

26. COMPLIANCE WITH ALL LAWS, EXPORT CONTROL.

Both parties shall comply with all applicable laws including but not limited to the export control laws of Australia. You shall not export nor re-export the AM-Win Software or any confidential information related thereto without the appropriate Australian and foreign government licenses, and User are responsible for any violation of such export control laws. By breaking the seal on the accompanying CD package or using the serial number/activation code, you accept AM-Win's offer to license the software under these terms and conditions.

27. GENERAL

If you wish to contact AM-Win for any reason, please write to AM-Win Software Pty Ltd, Suites 4-7, 204 Queen St, St Marys NSW 2760 or email: kevin@asims.com.au or Telephone: (02) 9833-2100 or Fax: (02) 9833-7900.

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