



# Terms of Business

## About nsquared

**nsquared** is a leading edge custom software solutions provider. We believe that the software industry has a lot to answer for and we're here to answer. We believe software should look as good, and be as easy to use, as it is technically excellent. We believe software should perform as it was designed to: - software should work first time, every time, all the time: *exactly* as it was designed to do. Software solutions should provide real value: - you should know what your required investment is up front; software should make life easier; and software should provide solid returns both in terms of financial investment, and customer loyalty. The solutions we craft and deliver reflect who we are and what we believe.

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## This Agreement

1. This Terms of Business Document sets out how we operate so that you know what to expect from us, and what we expect from you.
2. The Terms in This Agreement are general in nature and are intended to openly communicate N Squared Solutions Pty Ltd's (**nsquared**, "us", "we") professional relationship with you and your business ("You"; "you"; "Your"; "your").
3. We can be flexible based on your individual needs and situation, however, unless otherwise indicated by you in writing, in accepting any written proposal, plan or quotation issued to you by **nsquared**, you agree to be bound by the Terms stipulated within This Agreement.
4. The terms within This Agreement supersede any terms previously published by **nsquared**.

## Definitions

### "Solutions"

Solutions include any of the website, software, hardware or other associated services that nsquared agrees to develop, maintain, operate or change for you.

### "Statement of Work" (SOW)

SOW means the document entitled "Statement of Work" that we provide to you detailing the agreed project requirements; delivery milestones, payment milestones and the project fee amount. If you decide to engage us, you will sign the SOW and return it to let us know that you agree with its contents.

### "Purchase Order" (PO)

PO means the document detailing the products and or services that you'd like us to supply. The PO will also indicate the fees that you agree to pay. It constitutes a legal offer to buy our products and or services, and once accepted by us indicates that you want us to start work on your project and agree to pay the relevant fees.

### "AUD"

AUD means Australian Dollar currency.

### "FTP"

FTP means the standard network protocol known as *File Transfer Protocol* that is used to copy a file from one host to another over a TCP/IP-based network, such as the Internet.

### "GST"

GST means the broad sales tax known in Australia as the Goods and Services Tax "

### "HTML"

HTML means the predominant mark up language for web pages known as *Hypertext Markup Language*.

### "IDE"

IDE means the software development application known as *Integrated Development Environment* or *Integrated Design environment*.

### "PC"

PC means Personal Computer

### "ROI"

ROI means Return on Investment

### "SSH"

SSH means the network protocol known as *Secure Shell* that allows data to be exchanged by using a secure channel between two networked devices.

### "SSL"

SSL means the communications protocol known as *Secure Sockets Layer*

### "SMS"

SMS means *Short Messaging Service*: - the text communication service component of mobile communication systems.

### "UAT"

UAT means the process known as *User Acceptance Testing*.



## Types of Work

1. The types of work **nsquared** may perform for you will generally be either Project Based Work or Auxiliary Work.
2. Project-Based Work generally means new development work, but also encompasses major enhancement or upgrade works to software, and Consulting.
3. Auxiliary Work includes minor works such as:
  - a. General consulting
  - b. Software development & programming (minor works)
  - c. Maintenance and Support
  - d. Website content updates & administration
  - e. Application performance tuning
  - f. User training & preparation of training material
  - g. Documentation

## Requests for Work

A Request for Work is a request made by you or an authorised member of your staff to **nsquared** relating to:

- a. Project-Based Work; or
- b. a change to be made to a Solution; or
- c. an issue to be resolved relating to a Solution; or
- d. Auxiliary Work

## Engagement Process

1. To investigate and or secure **nsquared's** services, you may either:
  - a. Send an initial email requesting the work to [enquiries@nsquaredsolutions.com](mailto:enquiries@nsquaredsolutions.com), or a designated nsquared consultant; or
  - b. Request the work via telephone
2. Once the request is received, **nsquared** will contact you to confirm your needs prior to sending you a Statement of Work (SOW) that identifies the project requirements, milestone timelines and payment milestones.
3. **nsquared** prioritises and schedules Work once it has received the relevant signed SOW, Purchase Order (PO), and where required, Commencement payment.
4. We will not schedule or commence Work without receipt of the relevant SOW, PO and Commencement Payment.

## What you pay for

1. In a nutshell, you pay for delivery of the solution you define to us, and we subsequently define in the SOW.
  - a. In most cases the work we deliver will be supplied to you with an installer on a USB Flash Drive.
  - b. We warrant that it will work on the first and every subsequent use for it's life-time subject to our "**Warranty, Indemnity and Limitation of Liability**" Section.
2. When we provide you with a quote for your project, that quote is a fixed price quote for delivery of your solution as requested by you. Unless otherwise advised within the SOW, we will not ask you to pay more than the flat fee quoted.
3. In some cases, when we know that things cannot be clearly defined, we'll advise you of any contingency amounts that may be come applicable and this will be documented in the SOW.
4. In all cases you'll always be aware of the maximum costs for which you are liable prior to commencement of the work.



### Project Based Work

1. Prior to commencing any Project-Based Work, **nsquared** will need to understand your business requirements, the project's functional requirements and the any desired milestones.
2. **nsquared** will always offer the first consultation free of charge so to determine if we're the most suitable supplier for you, and also to provide an estimate for the work. All subsequent scoping work is billable.
3. Should **nsquared** be awarded the project and charged with the responsibility for delivery of your Solution, the cost of performing any subsequent scoping work may be credited to you for use toward the overall cost of delivery of the relevant Solution.
4. **nsquared's** rates will always be based on current competitive market prices.

### Quotations

1. All prices stated in any written proposal, plan or quotation issued by nsquared to you are quoted in the local currency (unless otherwise stated), and are valid for fourteen (14) calendar days from issue.
2. All prices supplied to you are subject to the terms of This Agreement and are stated exclusive of GST, unless otherwise indicated.

### Payment Terms

1. By engaging **nsquared** you agree to meet nsquared's payment terms.
2. For packaged software, software licenses or hardware that **nsquared** procures on your behalf, full payment from you is required prior to nsquared placing an order for the software, license or hardware.
3. For project-based work, our payment terms are strictly 7 calendar days from the date of invoice.
  - a. Invoice dates align with the payment milestone dates on the confirmed SOW.
  - b. Any commencement payment must be received before the project work will be confirmed as booked.
4. Late payments will incur charges in addition to the quoted project fees. Late payment charges will be equal to 10% of the total unpaid project value as at the time of invoice for every 7 calendar-day period (or part thereof) that the payment remains in arrears.
5. Where an invoice is overdue for more than one 7-day calendar period, **nsquared** reserves the right to stop work on the corresponding project until the invoice is paid in full.
6. Where Maintenance & Support fees are payable, **nsquared** will invoice for these services as per the relevant Maintenance and Support Agreement that you have in place with nsquared.
7. Where you are required to perform User Acceptance Testing ("UAT") activities for a defined scope of work, unless otherwise agreed between you and nsquared, **nsquared** will invoice for any or all outstanding moneys owed for that scope of work at 21 calendar days after UAT formally commences, or at your completion of UAT activities, whichever occurs first.

### Payment Method

1. Unless otherwise agreed between you and **nsquared** in writing, **nsquared** accepts payment by Direct Deposit for all invoices.
2. Direct Deposit details are provided with each invoice.



## Intellectual Property and Copyright

1. **nsquared** will transfer all intellectual property rights, including copyright, to you on receiving full payment for any Solution provided by **nsquared**, except where the Solution contains nsquared's own intellectual property (IP).
2. Where the solution contains **nsquared's** own IP, **nsquared** will continue to own all of the intellectual property, including copyright, in the Solution's programming code and databases, and grant you a license to use the intellectual property.
3. Where **nsquared** grants you a license to use its intellectual property, unless otherwise agreed in writing, the license shall be non-exclusive and governed by the following restrictions:
  - a) You agree to use the intellectual property solely for purposes internal to your business and you shall not attempt to resell or redistribute the intellectual property or any derivative works for any reason; and
  - b) You agree not to attempt to decipher, decompile, disassemble or reverse engineer any of the intellectual property for any reason.
4. All Intellectual Property rights and Copyright contained in any text, photos, graphics, illustrations, documents and other electronic computer files ("Content") entered into **nsquared** products by you, shall always remain the sole property of you.
5. For the life of any web-based Solution containing **nsquared's** own intellectual property, you shall allow **nsquared** to display up to two (2) HTML links that link back to the **nsquared** website on publicly visible areas of your web-based Solution.

## Confidential Information

1. Confidential Information means information that:
  - a. Is by its nature confidential; or
  - b. Is designated by you or **nsquared** as confidential; or
  - c. You or nsquared know or ought to know is confidential;
2. Confidential information includes without limitation all correspondence (written or otherwise) between your business and **nsquared** including information about Solutions, projects, customers, employees, agents, research, property, policies and operations which is made available or which becomes known during your engagement with nsquared, but does not include information that:
  - a. was in the public domain at the time of its provision; or
  - b. became part of the public domain after its provision, unless that information entered the public domain through an unauthorised disclosure by a person to whom the Confidential Information has been disclosed.
3. **nsquared** will ensure that it maintains confidentiality on all information provided by you to nsquared. **nsquared** will not disclose any such information without your prior written approval.
4. You will not disclose Confidential Information to a third party without **nsquared's** prior written approval.
5. This includes Confidential Information contained within proposals, plans, quotations, emails and or any other correspondence that nsquared issues to you from time to time, written or otherwise. In certain circumstances, a non-disclosure agreement may need to be signed. For the avoidance of doubt, information contained in **nsquared** supplied proposals and SOWs is Confidential Information. Furthermore, they and their entire contents and inclusions remain the property of **nsquared** at all times, whether or not they are accepted by you.
6. **nsquared** agrees to comply with the principles contained in the Privacy Act 1988 (Commonwealth).



## Warranty, Indemnity and Limitation of Liability

All **nsquared** software Solutions are supported with the **nsquared Zero-Defect Guarantee™**.

The **nsquared Zero Defect Guarantee™** warrants that the software as supplied to you by **nsquared** will:

1. Be as defined by you in the SOW, and / or any refinements requested formally by you and agreed by both you and **nsquared** during the build process;
2. Function (as defined above) on the first and every subsequent use for the lifetime of the product, providing that it is not:
  - a. Altered by you, or any person or entity related to you
  - b. Installed on a device or devices for which it was not designed
3. Where the product as delivered to you does not meet the above conditions, and therefore contains genuine bugs or errors, **nsquared** shall provide appropriate resources to ensure that the software meets the agreed functional requirements at minimal disruption and at no further cost to you. The definition of what a genuine software bug or error is shall be and remain at **nsquared's** discretion.
4. Where software bugs or errors directly related to the software Solution are notified, **nsquared** will endeavour to resolve the issue within 10 working days of you notifying **nsquared** of the issue in writing.
  - a. You shall be informed in advance of the expected time frame to rectify a software bug or error, and the impact on the functioning of the software Solution (if any). Refer to Section 'Requests To Work' for information on how to engage **nsquared** during Warranty Periods.
5. Where FTP, Telnet, SSH or any other privilege is granted to you enabling file based access to the Solutions, **nsquared** accepts no responsibility or liability for any direct or indirect issues or losses which may arise. The granting of such access shall void any warranty that would have otherwise been attributable to those areas where access was granted.
6. Other than Warranty Periods, **nsquared** and its suppliers expressly disclaim all warranties of any kind including but not limited to implied warranties of merchantability and fitness for a particular purpose.
7. Under no circumstances (including but not limited to any act or omission on the part of **nsquared**) will **nsquared** or its affiliates be liable for any indirect, incidental, special or consequential damages or loss of profits whatsoever which result from any loss of data or use or access of, or any inability to use or access, or any operational error within goods or services we provide to you. Additionally, you agree to indemnify **nsquared** and hold **nsquared** indemnified from and against any and all actions, liabilities, claims, costs and expenses (including reasonable legal costs and expenses) arising out of any willful, unlawful or negligent act, inaction, omission or breach of This Agreement by you.
8. Any indemnity given under This Agreement survives termination (including as a result of expiry of This Agreement) and applies to claims that may have occurred but are not notified during the term of any relationship you may have with **nsquared**.
9. To the fullest extent permitted by law, **nsquared's** liability for breach of any implied warranty or condition, which cannot be excluded, is limited at the discretion of **nsquared** to the following:
  - a. In the case of services supplied or offered by **nsquared**:
    - i. the supply of the services again; or
    - ii. the payment of the cost of having services supplied again;
  - b. In the case of goods supplied or offered by **nsquared**:
    - i. the replacement of the goods or the supply of equivalent goods; or
    - ii. the repair of such goods; or
    - iii. the payment of the cost of replacing the goods or acquiring equivalent goods; or
    - iv. the payment of the cost of having the goods repaired.



### Your Usage Responsibilities

1. You agree to use the Solutions for lawful purposes only.
2. You agree to use the Solutions only for the purposes that you divulged to nsquared, and never to use them to cause or do harm to any human, other living creature, or the environment of the Earth.
3. Unless otherwise explicitly stated by nsquared in writing, you are the sole owner and are wholly responsible for all Content howsoever uploaded or input into any of the Solutions.
4. It is your responsibility to ensure that all Content entered into the Solutions is free from computer viruses, spyware, malware or other harmful electronic computer programs and complies with all applicable legislations, regulations, by-laws, ordinances or codes of conduct within the legal jurisdiction applicable to you.
5. You agree not to use the Solutions to upload or input Content which is illegal, false, misleading or deceptive, abusive, sexually explicit, defamatory, obscene or otherwise objectionable or invasive of another's right of privacy.
6. You agree to be restricted to the usage, access and computing resource constraints applicable to the Solution or license you have purchased.

### Business Hours

1. Generally, **nsquared** operates within the normal NSW business hours of 9:00AM to 5:30PM Monday to Friday (excluding public holidays).
2. Where you have a Maintenance and Support Agreement in place with **nsquared**, those services will be scheduled during normal NSW Business Hours.
3. At your specific request, **nsquared** may perform work outside of Business Hours. All such requests are subject to **nsquared's** availability and will attract a 25% surcharge on all base hourly rates.

### What nsquared Provides

1. **nsquared** will generally supply all the tools and equipment required to perform work, including properly configured laptops and PCs, IDEs, Internet connections, software tools, utilities etc.
2. Where tools or equipment are required to perform work specific to your business, the procurement of those are subject to the terms stated within Section 'Procurement.'

### Severance of Relationship

1. If, for any reason, you decide to discontinue your relationship with **nsquared**, you may do so at any time.
2. On receipt of 30 days written notice stating your intent to terminate your relationship with nsquared, we shall cease any and all Project-Based Work, Auxiliary Work or Maintenance & Support. At this time, nsquared will issue a final invoice.
3. You agree to pay for any and all work performed by **nsquared** up until that point and all outstanding moneys shall become due as per Section 'Payment Terms.'
4. Should **nsquared** wish to discontinue the relationship, we shall provide no less than 90 days written notice to you.

### Future Changes

1. **nsquared** reserves the right to change these terms at any time by publishing an updated version of this statement at this website location: <http://nsquaredsolutions.com>.
2. **nsquared** will endeavour to advise you of any updates, however the amended statement will apply whether or not we have given specific notice of any change.
3. The terms of any custom-made agreement that may exist between you and **nsquared** supersede This Agreement should it state that it does so.



## Procurement

### *Packaged Software, Software Licenses, Hardware and External Suppliers*

1. At Your request, we may research, evaluate or procure packaged software, software licenses, hardware or external services from our various suppliers, or any supplier you care to nominate, for a standard mark-up of 20% on our cost price. This mark-up covers the time, effort and intellectual property involved in procuring the product or service on your behalf.
2. In the event that **nsquared** is awarded the management, installation, setup or configuration of that packaged software, software license, hardware or external service, and subject to nsquared performing further work, we reserve the right to reduce the standard mark-up to nil. Generally, any rebates received from our suppliers shall be passed on to you.

### *Tools, Equipment and Licenses*

1. Should we, in the course of our work, require unique tools, equipment or software licenses to perform tasks for you, you shall purchase these. Where nsquared sees fit, we may occasionally purchase such items ourselves. In either case, the purchaser shall retain full ownership of any tools, equipment or software license that they purchase.

## Applicable Law

This Agreement is governed by the laws of the state of New South Wales, Australia except where they are superseded or rendered subservient by Federal laws. You irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of New South Wales, and waive any objection to legal action being brought in those courts on the grounds of venue or inconvenient forum.

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## Agreement

As an authorised representative of the entity named below, I agree to be bound by the Terms of Business as outlined in this document.

First Name \_\_\_\_\_ Family Name: \_\_\_\_\_

Position: \_\_\_\_\_

Full Entity Name \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_