



Software for the Moving and Storage Industry

## **MOVEWARE PTY LTD STANDARD TERMS AND CONDITIONS**

### **Copyright Notice**

Moveware Pty Ltd, ACN 137 684 461, (MW) supplies all software on the terms set out below. All copyrights, trade names, brand names and any intellectual property in the software are owned by MW and shall remain the property of MW absolutely and exclusively. This also applies to all programs, whether in object code or source code format and further extends to any accompanying documentation.

### **License Notice**

The program known as "Moveware" contains proprietary information that is the property of MW. As a user of the system you own a licence to use this system for a pre defined number of workstations or users. The Moveware licence allows you to run the software in an agreed location and to make backup copies of that system solely for the purpose of securing your data. You may not decompile, disassemble, reverse engineer, copy, transfer or otherwise use the software except for valid backup purposes. You may not sell, sub-licence, rent, loan, lease or otherwise transfer or licence to another party to use without the express consent of MW. You must provide all necessary precautions to prevent employees or other parties from taking copies of the system for any use whatsoever except for valid backups. You are responsible for ensuring that the backups are not removed and used by competitors or staff for any purpose whatsoever.

### **License Term**

The Term of this Agreement shall remain in effect for twelve (12) months. Thereafter, it shall automatically be renewed for additional twelve (12) month terms. Either party may terminate this Agreement at any time upon providing ninety (90) days prior written notice to the other party.

### **Trading Terms**

Moveware software will be installed on a time and materials basis at our published rates. The installation process includes the physical installation of the software onto the customer's computers, testing and acceptance procedures. If any work is required or MW staff are retained or delayed unnecessarily as the result of third party actions or omissions then MW is entitled to invoice this time to the Customer. Any actions by the Customer for claims of any losses involved by third party actions or omissions will be a matter only between the Customer and the third party.

Moveware standard payment terms are as follows:

#### *Software supplied on an annual service basis*

Software: Annual License: License Fees quarterly in advance

Implementation: 50% paid as a deposit with the balance paid on completion of the implementation.

Maintenance: Included in Annual License Fees

#### *Software Purchased*

Software: 75% of the software and first years annual maintenance cost in advance. The balance on the completion of the implementation

Software Maintenance: Maintenance fees annually in advance

Implementation: Implementation charges are payable on completion of the implementation.

#### *Support Charges*

Support charges are payable 30 days after Invoice date.

Third party software can be installed and configured on your network at your request. The installation and materials will be charged on a time and material basis at our published rates unless a valid, current fixed cost quote exists for that work. MW cannot guarantee the performance or suitability of any third party software.

All Engineering work provided as an adjunct to a standard installation of Moveware or requested adhoc by the Customer will be charged on a time and materials basis at our published rates unless a valid, current fixed cost quote exists for that work.



Software for the Moving and Storage Industry

The Customer acknowledges that the requested dates will be agreed as far as possible. Once the dates are finalized, the Customer acknowledges that any decision or request by the Customer to cancel, change or suspend the training or implementation process, shall entitle MW to charge for any costs associated with the changing, rescheduling or cancellation of the committed schedule.

### **Warranties**

Moveware is supplied and installed free from known material errors and defects. The performance of Moveware is covered by maintenance and support. Hardware supplied by MW is subject to the manufacturer's warranty only.

### **Maintenance**

MW requires the Customer to take out Maintenance for Moveware.

Maintenance of Moveware provides the Customer with the availability of the latest product version (upgrade) upon request for a media and electronic documentation at no charge. Maintenance also provides the Customer with access to Technical Support, which includes:

- Help desk support for Moveware users to assist them in the correct usage of the software and to help in identifying problems and their causes.
- Availability of technical specialists
- Submittal of service requests via: Telephone (normal hours), E-mail or Web
- Available product patches
- Bug fixes, reporting and tracking
- Remote diagnosis of technical problems
- Comprehensive support in multiple vendor environments
- Problem escalation done by Technical Support and then to Development as necessary
- Migration path information

If faults or problems are identified that are issues with the general use of the software then we will action them as part of maintenance. Maintenance does not include re-entering any data that may be lost or corrupt. Issues that are not covered under Maintenance are categorised as Moveware Support. The installation of the latest product version or upgrade on a customer's computers is also categorised as Moveware Support.

In order for MW to remotely access and maintain Moveware a broadband Internet connection to the Moveware Server is required. Additionally remote access management software is needed, for example Microsoft Terminal Server. These products are to be supplied by Customer at its expense. The Maintenance fee is charged annually in advance and is based on the list price of the software.

### **Moveware Support**

Moveware Support is charged on a time and materials basis at our published support rates. MW reserves the right to charge for travel time and direct costs associated with travel to and from a company's premises. Emergency and out of hours support is also available where practicable, however MW will be entitled to charge an additional amount to the standard support rate as well as a minimum time period.

### **Limitation of Liability**

MW shall supply all software and services with all due care and skill. **MW** shall re-supply all software and services which are not supplied with all due care and skill provided that Customer notifies MW of same in writing within a reasonable time of the supply of same. This remedy shall be Customer's sole and exclusive remedy for breach of this agreement or any other cause of action against MW.

To the maximum extent permitted by law, any conditions or warranties imposed or implied by law are hereby excluded. Where legislation implies any condition or warranty and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or the exercise of or liability under such term, such term shall be deemed to be included. However, the liability of MW for any breach of such term shall be limited, at the option of MW, to any one or more of the following: if the breach related to goods: the replacement of the goods or the supply of equivalent goods; the repair of



Software for the Moving and Storage Industry

such goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; and if the breach relates to services the supplying of the services again; or the payment of the cost of having the services supplied again.

To the maximum extent permitted by law and except as expressly provided to the contrary in this agreement, MW shall not be under any liability (contractual, tortious or otherwise) to Customer in respect of any loss or damage (including, without limitation, consequential loss or damage) howsoever caused, which may be suffered or incurred or which may arise directly or indirectly in respect to the supply of goods or services pursuant to this agreement or the act, failure or omission of MV.

#### **Representations**

You acknowledge that (a) this document constitutes the entire agreement between the parties; (b) Any prior arrangements, agreements, representations or undertakings are superseded and that (c) no promise, representation, warranty or undertaking has been made or given by MW to any person or company on its behalf in relation to the profitability of or any other consequences or benefits to be obtained from the delivery or use of Moveware and any accompanying hardware, software, manuals or written materials.

#### **Applicable Law**

The courts of Victoria, Australia have exclusive jurisdiction over matters arising out of this agreement and both you and MW hereby agree to submit to the exclusive jurisdiction of the courts of the state. Any proceedings commenced in a Federal Court shall be commenced in Victoria.