

## COMMERCIAL WARRANTY POLICY

**JMS Tech Newcastle**

**ABN:** 82 423 623 805

**Address:** 20/70 Hanbury Street, Mayfield, NSW, 2304

**Phone:** +61 416 665 227 – **Email:** mateo@jmstech.com.au

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This policy sets out the additional benefits offered by JMS Tech Newcastle and applies together with, and **not in substitution for**, the non-excludable consumer rights and guarantees under the *Australian Consumer Law (ACL)*.

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### 1. Definitions

- **Consumer:** a person or business that acquires services or goods from JMS Tech Newcastle as a “consumer” under the ACL (includes certain business contracts up to \$100,000).
  - **Business customer:** a customer who does not meet the ACL definition of “consumer”.
  - **Service:** any diagnosis, repair, installation or technical intervention provided by JMS Tech Newcastle.
  - **Diagnosis:** the analysis phase to identify the cause of the incident. **A Diagnosis is considered formulated when JMS Tech Newcastle reasonably identifies the cause and delivers an Action Plan.**
  - **Action Plan:** the set of recommendations or technical steps proposed to resolve the issue.
  - **Repair:** carrying out tasks or replacing components to restore proper operation.
  - **Commercial warranty:** an additional benefit granted by JMS Tech Newcastle (including **re-attendance** with no labour charge for 30 days) that is in addition to rights and guarantees that cannot be excluded under the ACL.
  - **Major failure / Minor failure:** have the meaning given by the ACL for the purpose of applicable remedies.
  - **Service Completion:** the time when JMS Tech Newcastle informs the customer that the contracted work has been completed (via record, email or invoice).
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### 2. Scope of application

This policy applies to all services (remote, **on-site** and in-workshop) provided by JMS Tech Newcastle within Australia, with a focus on customers located in New South Wales.

The benefits set out in this policy constitute a **commercial warranty** (*warranty against defects*) and **are in addition to** the non-excludable rights and remedies that consumers have under the *Australian Consumer Law* (ACL). Nothing in this document limits or replaces those rights.

**Mandatory ACL notice (where goods are supplied with services):**

*Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:*

- *to cancel your service contract with us; and*
- *to a refund for the unused portion, or to compensation for its reduced value.*

*You are also entitled to choose a refund or replacement for major failures with goods.*

*If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion.*

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**3. “No diagnosis, no charge (30 min)” (*initial diagnosis*)**

**Commercial benefit applicable only to the initial diagnostic. This is not a legal guarantee of outcome.**

- **Exemption (30 min):** No diagnostic fee will be charged if, after **30 minutes** of diagnosis (remote, **on-site** or in-workshop), **no Diagnosis** (reasonable identification of cause **and** an Action Plan) has been formulated **and** the **Customer chooses to stop at that time**.
- **Continuation rule:** *Exemption valid only if you stop after 30 minutes without a diagnosis.* If the customer chooses to **continue** and a Diagnosis is subsequently made, **all time** spent (including the first 30 minutes) will be billed.
- **Limits/Exclusions:** The exemption does **not** apply where:
  - (i) the Customer does not provide required access/credentials/permission/information;
  - (ii) the issue is intermittent or not reproducible during the session;
  - (iii) the outcome depends on third parties (e.g., ISP/manufacture) and a report/Action Plan is provided;
  - (iv) the Customer stops **before** 30 minutes or refuses necessary tests/instructions;
  - (v) **advanced procedures** or **temporary parts** are used with prior authorisation;
  - (vi) safety conditions or **pre-existing damage** prevent diagnosis.The exemption does **not** cover travel, after-hours surcharges, tolls/parking or other pre-agreed additional costs and **applies once per incident**.
- **Documentation:** To invoke the exemption, the Customer must request it at the time of invoicing. JMS Tech Newcastle will document the diagnostic attempt (observations and tests) for both parties' records.

- **Price transparency: All prices will clearly indicate whether they include GST.**
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## **4. Charging for diagnoses and repairs**

### **4.1 Diagnostic rates**

Diagnostic services are charged at a **flat base rate**, depending on the delivery method:

- **Remote diagnosis:** Per-session base rate.
- **On-site or workshop diagnosis:** Per-visit base rate.

The “No diagnosis, no charge (30 min)” benefit applies only to the initial diagnostic phase. The current price list is available on our website or upon request. Before commencing any service, the applicable rate will be confirmed.

### **4.2 Repairs and additional services**

- Physical repairs, parts replacement, data recovery or other additional services will be billed at the **current standard rates** (flat fee or hourly), with the customer’s prior authorisation.
- The cost of parts or materials will be quoted and billed separately. Parts are covered by the **manufacturer’s/supplier’s warranty**, in accordance with the ACL.

### **4.3 Additional charges**

- Charges may apply for **travel, parking, tolls**, or work requested **outside standard business hours**.
- Any additional cost will be **communicated and approved** by the customer **before** the service is provided.

### **4.4 Scope of the “No diagnosis, no charge (30 min)” benefit**

- The benefit does **not** waive payment of:
  - **Travel** costs;
  - **Additional services/tests** requested by the customer;
  - Diagnostic time **after** the covered phase.
- If the customer stops work before an authorised repair is completed, the **actual time worked** up to that point will be billed, subject to the applicable **minimum**.
- The **Continuation rule** in Clause 3 applies: if you continue and a Diagnosis is later made, **all** time is chargeable.

### **4.5 Price list and minimum charges**

- JMS Tech Newcastle maintains an **up-to-date price list** for all service types (minimum charges, hourly rates, urgency surcharges and special rates).
- Available on our website and on request **before** engagement.
- Minimum charges and applicable rates will be **confirmed** to the customer **before** service and will form part of the agreed service terms.
- The price list will **clearly indicate** whether amounts **include GST** and any **applicable surcharge**.

#### 4.6 Rate updates

- Current rates may be updated **prospectively** for **future** work, without affecting quotes already accepted by the customer.

#### 4.7 Technical Conditions Surcharge

If adverse technical conditions are present (e.g., extremely slow internet, failing hardware), a **25% surcharge** may apply to the base diagnostic or service rate. This will be communicated and agreed before continuing.

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### 5) Satisfaction and re-attendance guarantee (commercial warranty)

This is a **commercial warranty** (*warranty against defects*) **in addition to** the consumer's non-excludable rights under the ACL. Nothing here limits those rights.

#### 5.1 Benefit offered

If **the same issue** reappears within **30 days** from **Service Completion**, JMS Tech Newcastle will perform a **re-attendance with no labour charge**. Re-attendance may be remote, **on-site** or in-workshop, as reasonably determined by JMS according to the nature of the issue.

#### 5.2 Scope and exclusions (commercial warranty only)

Not covered:

- a) Issues different from the one originally reported and diagnosed.
- b) Accidental damage, negligence or misuse after the intervention.
- c) New malware/virus infections after the intervention.
- d) Hardware failures requiring **parts replacement** (diagnosis is billable; parts are covered by the manufacturer's/supplier's warranty in line with the ACL).
- e) Issues that are non-reproducible/intermittent at re-attendance, or caused by third-party software/services or conditions beyond our control.

#### 5.3 What we will do to honour the warranty

- Once confirmed that the claim falls within Clause 5, we will **re-perform the service with no labour charge** to correct the same issue.

- If parts or other work not covered by this commercial warranty are required, we will **quote** before proceeding.

#### 5.4 How the customer claims

- Notify within **30 days** from **Service Completion**, providing **reasonable proof of purchase** (e.g., invoice, receipt, bank statement or email confirmation), the **date**, and a **description** of the issue.
- Provide **physical/remote access**, passwords/credentials and information needed to reproduce the fault.
- Send the claim to **mateo@jmstech.com.au** or **+61 416 665 227**; or in writing to **20/70 Hanbury Street, Mayfield, NSW 2304**.

#### 5.5 Claim expenses

- **Valid claim:** JMS Tech Newcastle covers **reasonable re-attendance** expenses (e.g., usual travel or pre-agreed transport).
- **Not covered:** expenses are billed at **current rates**, after prior notice.
- For reimbursement, email receipts to **mateo@jmstech.com.au** (processed within **up to 10 business days** from approval).

#### 5.6 Warrantor details

**JMS Tech Newcastle — ABN:** 82 423 623 805

**Address:** 20/70 Hanbury Street, Mayfield, NSW 2304

**Phone:** +61 416 665 227 — **Email:** mateo@jmstech.com.au

#### 5.7 Mandatory ACL wording (goods and services)

*Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:*

- *to cancel your service contract with us; and*
- *to a refund for the unused portion, or to compensation for its reduced value.*

*You are also entitled to choose a refund or replacement for major failures with goods.*

*If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion.*

### 6) Limitation of liability

#### 6.1 ACL – non-excludable rights

Nothing in this policy excludes, restricts or modifies the **non-excludable guarantees and remedies** under the ACL (due care and skill; fitness for disclosed purpose; and supply within a **reasonable time**).

## 6.2 Consumers (personal/domestic goods/services)

For acquisitions by a **consumer** of goods or services of a personal, domestic or household nature, our liability is governed by the ACL and **is not limited or excluded** by this document. If there is a **major failure** with the service, the customer may cancel the contract and obtain a refund for the unused portion and **reasonably foreseeable loss or damage**; if the failure is **not major**, the customer is entitled to rectification within a reasonable time or to cancel if rectification is not provided.

## 6.3 Business customers and/or non-PDH services

To the extent permitted by the ACL (s 64A), where the customer **does not** acquire services of a kind ordinarily acquired for personal, domestic or household use or consumption, our liability for consumer guarantees is **limited** to:

(a) **re-supplying the services**, or (b) **paying the cost of having the services re-supplied** (at JMS Tech Newcastle's election).

## 6.4 Data loss and indirect loss

The customer is responsible for maintaining **back-ups** before any intervention. To the **maximum** extent permitted by law, we are not liable for **loss of profits, business interruption, loss of opportunity or data loss, except** to the extent that such loss is **reasonably foreseeable** as a consequence of our breach of a **non-excludable** ACL guarantee.

## 6.5 Third-party products/services

We do not warrant the performance of third-party products or services beyond what is required by the ACL; any manufacturer/supplier warranty applies according to its terms and the ACL.

## 6.6 No waiver of the ACL

If any part of this clause is inconsistent with the ACL, the ACL's **non-excludable** rights and remedies prevail and the inconsistent part is deemed **severed**.

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## 7. Force majeure

JMS Tech Newcastle is not liable for **delays** or inability to provide services or attend warranty claims within usual timeframes where this is due to a **force majeure** event.

### 7.1 Definition

"Force majeure" is any event beyond our reasonable control that cannot be prevented with reasonable measures, including, without limitation: natural disasters, fires, floods, earthquakes, severe storms, prolonged power outages, widespread telecommunications failures, acts of war, terrorism, civil unrest, pandemics/epidemics, government measures, strikes or blockades.

## 7.2 Effects

During the event, affected obligations are **suspended** and JMS Tech Newcastle will use **reasonable endeavours** to overcome the cause and **reschedule** performance as soon as feasible. Force majeure **does not remove** non-excludable ACL rights. If the service **cannot be supplied within a reasonable time**, the customer may **cancel** and will receive a **refund** of any **prepaid** amount for the unperformed portion.

## 7.3 Notice

We will inform the customer as soon as reasonably possible about the existence of the event and, where feasible, provide an estimated duration.

## 7.4 Cancellation charges

No **cancellation fees** will apply where cancellation arises **exclusively** from a force majeure event; this does not prevent charging **reasonable actual costs already incurred** that were previously disclosed and accepted.

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# 8. Claims procedure

## 8.1 Scope

This procedure applies to claims under our **re-attendance commercial warranty** (Clause 5). Non-excludable ACL rights and remedies may be exercised at any reasonable time under the ACL and are **not limited** by the timeframe in this clause.

## 8.2 Timeframe (commercial warranty)

For **re-attendance with no labour charge**, the customer must notify us within **30 days** from **Service Completion**.

## 8.3 How to notify

Provide: (a) **reasonable proof of purchase** (e.g., invoice, receipt, bank statement or email confirmation), (b) a **description** of the issue and (c) **contact availability**.

Send to: **mateo@jmstech.com.au** | **+61 416 665 227** | **20/70 Hanbury Street, Mayfield, NSW 2304**.

If an invoice is unavailable, other forms of **proof of purchase** are acceptable.

## 8.4 Response and assessment

- We will acknowledge receipt within **2 business days** and offer a **priority** appointment.
- JMS Tech Newcastle may **assess** the issue to confirm scope and cause before applying a remedy. If the claim is **valid**, **re-attendance with no labour charge** will be provided; if **not** covered, we will quote at **current rates** after informing the customer.

## 8.5 Associated expenses

- **Valid claim:** JMS Tech Newcastle covers **reasonable** travel/transport expenses previously agreed.
- **Not covered:** expenses are billed at **current rates**, after prior notice.

## 8.6 Parts or third-party products

If the claim concerns an installed **part**, it will be handled under the **manufacturer's/supplier's warranty** and the ACL. JMS Tech Newcastle will **assist** with the process (with no labour charge within **30 days** from installation), without prejudice to applicable ACL remedies.

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## 9) Policy changes

### 9.1 Nature of changes

JMS Tech Newcastle may update this policy to reflect legal/regulatory changes, operational adjustments or service improvements.

### 9.2 No retroactivity

Any modification applies **only prospectively** to services contracted or quotes accepted **after** the new version's effective date. Work already accepted, services in progress, approved quotes and warranty claims already commenced remain governed by the version in force at the time of acceptance/performance, unless the customer prefers the new version where it is **more favourable**.

### 9.3 ACL rights

Nothing in a modification excludes, restricts or modifies the customer's **non-excludable** rights and remedies under the ACL. In case of conflict, the **ACL prevails**.

### 9.4 Notice and publication

New versions will be **published** on our website and, where there is ongoing work or a current commercial warranty, affected customers will be **notified by email** at least **15 days** in advance (or as much advance as reasonably possible if required by law or for safety).

### 9.5 Recurring contracts

For **periodic/renewable** support or maintenance contracts, changes apply from the **next renewal**. If the customer does not accept the changes, they may **choose not to renew** without penalty (without prejudice to amounts accrued to date).

### 9.6 Versioning and access

We will keep a **version history** with effective dates. The customer may request the **applicable version** for their service by emailing [mateo@jmstech.com.au](mailto:mateo@jmstech.com.au).



## 9.7 Obvious errors

JMS Tech Newcastle may correct **material errors** (e.g., typographical) without affecting customer rights or altering substantive obligations.

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## 10) Governing law and dispute resolution

### 10.1 Governing law

This policy and any service provided by JMS Tech Newcastle are governed by the laws of **New South Wales (NSW)** and the laws of the **Commonwealth of Australia**, including the ACL.

### 10.2 Jurisdiction and competent fora

The parties submit to the **non-exclusive jurisdiction** of the courts of NSW and the **NSW Civil and Administrative Tribunal (NCAT)** for disputes related to this policy or the services.

### 10.3 Internal resolution

Before escalating externally, the customer may (optional) lodge a written complaint to **mateo@jmstech.com.au**. JMS Tech Newcastle will **acknowledge within 2 business days** and **propose resolution steps within 7 business days**. This process **does not limit or delay** the customer's rights to approach NCAT, courts, or consumer authorities.

### 10.4 Mediation (voluntary)

At either party's request, and **by mutual agreement**, we may attempt mediation (e.g., via **NSW Community Justice Centres** or another provider). Mediation is **voluntary** and costs will be **agreed in advance**; using it **does not restrict** ACL rights.

### 10.5 No waiver of rights

Nothing in this Clause 10 excludes, restricts or modifies the customer's **non-excludable** ACL rights and remedies, nor imposes costs or burdens that impede access to such remedies.

### 10.6 Preservation of actions

Participation in internal processes or mediation **does not interrupt or reduce** the legal time limits available to the customer under applicable law.

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## 11) General provisions

### 11.1 Order of precedence

In case of conflict: (a) **accepted quote/work order** → (b) **this Warranty Policy** → (c) any other policy or commercial communication. The **mandatory ACL notice** always prevails where applicable.

### **11.2 Severability**

If any provision is held invalid or unenforceable, it will be severed without affecting the validity of the remainder.

### **11.3 Assignment and subcontracting**

The customer may not assign rights/obligations without JMS Tech Newcastle's written consent (not to be unreasonably withheld). JMS Tech Newcastle may **subcontract** parts of the service, **remaining responsible** to the customer.

### **11.4 Notices**

Formal communications may be made by **email** (including acceptance of quotes) or **postal mail** to the addresses stated in the header or the quote. They are deemed received: email upon sending **without delivery failure**; post **5 business days** after dispatch.

### **11.5 Business days and hours**

"Business days" means **Monday to Friday in NSW**, excluding public holidays. Services outside business hours may attract surcharges per the **price list** (see Clause 4.5).

### **11.6 Currency and taxes**

Unless the quote states otherwise, prices are expressed in **AUD** and will indicate whether they **include or exclude GST**. The quote/work order will specify applicable taxes.

### **11.7 No waiver**

A failure or delay in exercising a right is not a waiver; any waiver must be **in writing**.

### **11.8 Relationship of the parties**

Nothing herein creates a partnership, agency, franchise or employment relationship between the parties.

### **11.9 Intellectual property in tools and deliverables**

a) **Scripts, configurations and documentation** created by JMS Tech Newcastle for the customer are **licensed** to the customer, once paid, on a **non-exclusive, perpetual, worldwide** basis for **internal use**.

b) JMS retains ownership of its **know-how** and generic tools (templates, utilities), granting the customer a **licence** to use them to the extent necessary for the service and its results.

### **11.10 Third-party software and licences**

The customer warrants they hold **valid licences** for third-party software used in their environment and authorises JMS to configure/install it as per the contracted service. JMS is not responsible for the customer's licensing breaches, **without prejudice** to consumer rights under the ACL.

#### **11.11 Confidentiality and privacy**

Each party will protect the other's **confidential information** and use it only to provide/receive the services. Personal information is handled under our **Privacy Notice** (*Privacy Act 1988 (Cth)*) and applicable law. On request, we will sign a reasonable, mutual **NDA**.

#### **11.12 Access and back-ups**

The customer authorises JMS to perform the technical actions necessary (including **remote access**, log creation and **temporary copies** of data) to provide the service. The customer is responsible for maintaining **up-to-date back-ups** before any intervention (see Clause 6 for liability limits and data loss, always subject to the ACL).

#### **11.13 Survival**

The following survive termination: **Clauses 5 (as applicable), 6, 7, 8, 9, 10, 11.9–11.13, and any accrued payment obligations.**