

**TERMS AND CONDITIONS OF SALE**  
**Mediaware International Pty Ltd**  
ABN: 77 077 094 798

**1. VALIDITY AND ACCEPTANCE**

- (a) Unless previously withdrawn all quotations are valid for thirty (30) days from the date shown thereon, but are not to be construed as an obligation to sell and no contractual relationship arises therefrom until the Purchaser's order has been accepted in writing by the Company. Company reserves the right to withdraw or amend a quotation at any time prior to Company's acceptance of the relevant Contract, Purchase Order, or Order.
- (b) Company's acceptance of any purchase order issued by Purchaser shall be expressly limited to the terms and conditions set forth below. Any additional, inconsistent, or different terms referenced in Purchaser's purchase order are hereby objected to by Company and shall not be deemed a part of any resulting order.
- (c) These terms and conditions, together with any specifications, drawings or other documents incorporated in writing and agreed to by both parties represent the entire agreement between Purchaser and Company pertaining to the subject matter of this quotation or order, whether the subject matter of the order is Goods or services or both (referred to herein as "Goods"), and shall supersede all prior oral and written agreements, proposals, communications and documents.

**2. TAXES**

Unless specifically stated to the contrary, any and all taxes, assessments, or duties, including, but not limited to, Goods and Services Tax (GST) or other value added sales taxes (VAT), domestic or foreign, which may be imposed upon the production, shipment, installation, or sale have not been included and shall be the sole responsibility of and shall be paid by Purchaser.

**3. PRICE VARIATION**

- (a) Prices quoted are based on ruling award wages, charges currently made by the Company suppliers and current rates for freight, ordinary marine insurance, customs duties, landing, clearing and delivery charges and other taxes and duties in respect of the Goods. In the event of there being changes in the said wages and/or charges and/or prices and/or rates after the date of the Quotation the Company reserves the right unless otherwise stated herein to increase the price by such an amount as it deems necessary to take account of such requirement.
- (b) Prices quoted are based on the work in respect of the installation of the Goods being carried out during normal working hours. If the Purchaser requires such work or any part thereof to be carried out outside normal working hours, the Company reserves the right unless otherwise stated herein, to increase the price by such an amount as it deems necessary to take account of such requirement.
- (c) If the Company is subjected to increased costs attributable to delays caused by the failure of the Purchaser or contractors for whom the Purchaser is responsible to meet their respective obligations, it reserves the right unless otherwise stated herein to increase the price by such amount as it deems necessary to take account of such increased costs.
- (d) Unless otherwise specified, prices quoted in respect of any Goods being purchased by the Company from an overseas source are based on the prevailing currency exchange rate at the date of the Quotation between Australian currency and the currency in which payment is required to be made by the Company to the source of the Goods described in the Quotation. The Purchaser hereby expressly agrees to indemnify the Company against any loss occasioned to the Company due to any adverse currency exchange rate fluctuation on the date when EITHER the Letter of Credit established by the Company with its bankers is actually drawn upon by the original vendor OR actual payment is made to the original vendor in some manner other than by Letter of Credit but otherwise in accordance with the terms of the contract between the Company and such vendor.

**4. VARIATION(S) IN SCOPE OR QUANTITIES**

In the event of any variation in the Goods or to the work in respect of the installation of the Goods or any additional Goods or work in respect of the installation of such additional Goods being requested by the Purchaser, notice of any such variation or addition must be given to the Company in writing as soon as possible showing full and detailed information thereof. Upon receipt of such information the Company will prepare a schedule of the variations so requested by the Purchaser, and submit in duplicate to the Purchaser the prices and terms and conditions for the variations concerned. No variation work in respect of installation of the Goods will be commenced unless and until the Company receives a signed acknowledgement from the Purchaser of the terms and conditions and price or prices of such variations. The Company reserves the right to refuse any such request for variations.

**5. DELIVERY OR COMPLETION PERIOD**

If any delivery or completion period is quoted by the Company it shall be deemed to be given on the following basis:

- (a) In the case of standard Goods, the delivery or completion period stated in any Quotation made by the Company is subject to prior sale and/or confirmation of availability by the Company's supplier;
- (b) In the case of Goods which are in part or all subject to special design, manufacture or other non-standard requirements, the delivery or completion period stated in any Quotation made by the Company is subject to the Purchaser having given the Company full, final and adequate instructions and/or drawings and having fulfilled any other requirement specified by the Company to enable the Company to proceed uninterruptedly with the supply and/or manufacture of the Goods. (c) Where the Company is required to install and/or commission the Goods, the delivery or completion period stated in any Quotation made by the Company is subject to the Purchaser having fulfilled all requirements referred to in (b) above and further is subject to site availability as accepted by the Company and completion of all activities necessary to enable the Company to install and/or commission the Goods. In all cases, the Company will use reasonable endeavours to meet the time quoted by the Company for delivery of Goods or completion of the installation of Goods. However the time so quoted is an indication only and shall not be considered as a binding commitment by the Company. The Company shall not be liable for any loss or damage suffered by the Purchaser or otherwise arising out of the Company's failure to meet the times quoted.

**6. PAYMENT**

- (a) Unless otherwise stated, the Purchaser shall pay to the Company the price quoted by the Company (including any variation) upon presentation of invoice. HOWEVER, Company may require full or partial payment in advance of delivery or in some other manner as specified in the Quotation. Where the Company considers that the financial condition of the Purchaser so warrants, it may decline to deliver or install the Goods or carry out the work unless the purchaser provides satisfactory security for the purchase price. Should the Purchaser fail to comply with this provision the Company may cease deliveries and/or leave the site with any re-establishment, re-engagement, or other costs thereby incurred to be borne entirely by the Purchaser.
- (b) In the event that Purchaser intends to arrange lease or purchase financing for the acquisition of the Goods or any part thereof, the Purchaser shall notify the Company of such intention and shall arrange for the finance documentation to be completed in sufficient time to permit settlement of the invoice on or before the date of delivery or installation.
- (c) Should Purchaser fail to pay the purchase price when due, the Company shall be entitled (without prejudice to any other right hereunder, in equity, or at law):
  - (i) to charge interest thereon from the date when due until payment is received by the Company at the rate of 2½% per cent per month, or any lower amount required by law.
  - (ii) where the Company still retains title, to retake possession of the Goods and to give the Purchaser written notice that the Company intends to resell the Goods after the expiry of seven (7) days from the date of the notice. If Purchaser fails within that period of time to pay the purchase price, with interest thereon, then the Company (not Purchaser) shall be released from all obligations under the agreement.
  - (iii) commence legal proceedings without notice and the Purchaser shall pay to Company all reasonable costs of collection or litigation, including, but not limited to, solicitor or attorney fees and expenses.

**7. TERMS OF TRADE AND DELIVERY POINT**

Unless specifically stated otherwise in writing the Company's terms of trade and shipping shall be ex-warehouse (EXW Incoterms 2010) the Company's location, Canberra, Australia. Liability for loss or damage to the Goods shall pass to Purchaser upon delivery of such Goods to Purchaser's designated carrier at the EXW point. All freight and delivery charges to the Purchaser's premises or other address specified by the Purchaser are for the account of the Purchaser.

**8. RETURN OF EQUIPMENT**

Except in the case of delivery of wrong Goods by the Company, no Goods shall be returned to the Company without the prior written authorization of the Company. The Company, at its sole discretion, may or may not give such authorization and such authorization if given, shall be conditioned upon:

- (a) Where, in the opinion of the Company, Goods are not returned in the condition in which they were delivered (the "as supplied condition") any costs incurred by the Company in restoring such Goods to the "as supplied condition" are for the account of the purchaser;
- (b) The imposition of a special fee to be determined by the Company at its sole discretion, to cover among other things, restocking charges, shipping fees, and any loss the Company may incur in reselling such returned Goods;
- (c) Such other conditions as the Company may deem necessary under the circumstances.

**9. INSTALLATION**

Where the Company is not contracted to install the Goods, the Company representatives may, if requested by the Purchaser, provide advice on the siting, installation (if appropriate) and operation of the Goods. HOWEVER, in providing such advice the representatives of the Company are expressing their personal views derived from their experience in the industry and, except as provided in clause 14 below, the Company shall have no liability whatsoever to the Purchaser and the Purchaser assumes as risks with and in respect of any such advice given by any representative.

**10. TITLE TO GOODS**

- (a) Title and ownership of each unit of the Goods, whether or not delivered to Purchaser, shall remain with the Company until all unpaid balances owing on account have been paid to Company (the "Debts"). Until payment in full has been made, Purchaser must take delivery and custody of the Goods as designated by Company and maintain them as the Company's assets under an appropriate relationship, whether such relationship is as a trustee, under a fiduciary obligation or as an agent or bailee of the Company, whichever term or terms are deemed to be the more/most appropriate, and shall store the Goods in such manner that they are readily distinguishable from other goods owned by the Purchaser or other persons (the "Other Goods"). Pending resale or utilisation in any Good in a manufacturing or other process, the Goods are to be kept separate and apart from the Other Goods and shall be properly identified, marked, stored, protected and insured in the name of Company until such Good has been paid for in full.
- (b) The Purchaser must not combine or commingle any unpaid for Good(s) with any Other Goods unless the unpaid for Goods can be easily removed, extracted or extricated from such combination at any time and without damage.
- (c) The Purchaser hereby authorizes and grants a licence to the Company or any representative thereof to enter any of Purchaser's premises where the unpaid for Good(s) are located, to dismantle any such combination which utilizes an unpaid for Good as a component thereof and to otherwise retake possession of the unpaid for Good(s). Purchaser agrees, to the fullest extent it may permit, that any entry for such purpose will be deemed lawful and not in violation of any law or right of Purchaser and that Company shall be indemnified and held harmless from any damage which may ensue as a result of such entry.
- (d) If the Purchaser is unable to grant the Company any such right of entry or licence to enter a premise wherein an unpaid for Good may be located, the Purchaser, upon the request of Company, shall immediately dismantle such combination, extricate the Good(s) and immediately deliver it/them to the Company. The

- Company shall not be liable and is hereby indemnified and held harmless by the Purchaser for any ensuing damage caused by or costs incurred in the dismantling of the combination in which an unpaid for Good(s) has been incorporated.
- (e) The Purchaser may, upon the written consent of Company, resell the Goods or any product of which the Good(s) constitute a part thereof, but only as fiduciary agent and trustee for the Company, by way of bona fide sale at full market value and in the ordinary course of its business. Company shall be immediately entitled to any such proceeds of sale (the "Proceeds") representing the Debts, or any portion thereof, or be granted priority over any other creditor of any such proceeds of sale which represent the Debts in the event bankruptcy proceedings are commenced by or on behalf of Purchaser.
- (f) In the event of any sale of Goods as set forth above, Purchaser shall immediately pay Company all proceeds received up to the amount of the Debts. In the event that the proceeds of sale are not sufficient to satisfy the entirety of the Debts, Purchaser shall remain obligated for any outstanding balance owed thereon.
- (g) In the event that different consignments of Goods are being sold, with the consent of Company and in the ordinary course of business, by Purchaser as trustee or agent acting as a fiduciary of Company; For the purposes of identification of different consignments of the Goods purchased from the Company, the subsequent receipt of Proceeds and the distribution of the Proceeds toward payment of the Debts, the Purchaser agrees that the principle of "Last In, First Out" shall be applied to any items which cannot be distinguished.
- (h) Receipt by the Purchaser of payment for the sale of any products into which the Goods have been mixed or converted by any process shall be treated as evidence that it has received Proceeds.
- (i) Until Company has been paid in full for the Goods, the Company may trace the Proceeds in equity.
- (j) Upon complete satisfaction of all payment obligations for the purchase of the Goods, Purchaser shall have all right, title and interest in and to the Goods.
- 11. POWER SUPPLY**  
The Purchaser shall at its own expense provide power of a quality and at such locations as specified by the Company. The Company shall be under no liability whatsoever should any loss be incurred and/or damage suffered including incidental, consequential, indirect or special losses or damages as a result of the required power not being continually available.
- 12. LICENCES AND CONSENTS**  
(a) If it is necessary for the lawful fulfilment of the contract:  
(i) For the Purchaser to hold or obtain import, export, currency or other licence, consent or authority the Purchaser shall be obliged to obtain the same.  
(ii) For the Company to hold or obtain any such licence consent or authority, the Company shall apply for the same; but if the same is refused this contract shall forthwith terminate, and neither the Company nor the Purchaser shall be under any liability in respect thereof.  
(b) Where required by the Company, the Purchaser shall execute and deliver to the Company prior to delivery of the Goods, an end user operating system licence or other software licence in a form required by the Company or the supplier of the Goods to the Company.
- 13. MAINTENANCE**  
If any repairs to or maintenance of the Goods (other than those covered by the Company's normal warranty provisions) are to be carried out by the Company and the Purchaser does not have a current Maintenance Agreement with the Company, then the cost of such work shall be charged to the Purchaser at the Company's then current rates for such work.
- 14. WARRANTY**  
(a) Except where the Purchaser is a "Consumer" for the purpose of the Trade Practices Act, 1974, the Company  
(i) unless otherwise agreed in writing with the Purchaser, makes no warranty of any kind as to the Goods supplied or to work done in respect of the installation of the Goods pursuant to this Agreement and all terms, conditions and warranties and whether express or implied other than contained in this Agreement are hereby expressly negated and excluded,  
(ii) shall not be liable to compensate the Purchaser for any loss (including but not limited to loss of profits and consequential loss) or from damage to person or property or for death or injury caused by an act or omission of the Company, its employees or agents including loss or damage arising out of the installation of the Goods or from failure of the Goods.  
(b) In connection with the supply by the Company to the Purchaser of any Goods or services within the meaning of the Trade Practices Act, 1974 other than Goods or services of a kind ordinarily acquired for personal domestic or household use or consumption, the liability of the Company in the event of a breach of a condition or warranty implied by that Act (other than a condition or warranty implied by Section 69) shall be limited to one of the following as determined by the Company:  
(i) in the case of Goods, to any one or more of the following:  
(aa) the replacement of the Goods or the supply of equivalent goods;  
(bb) the repair of the Goods;  
(cc) payment of the cost of replacing the Goods or acquiring equivalent goods;  
(dd) the payment of the cost of having the Goods repaired; or  
(ii) in the case of services:  
(aa) to the supplying of the services again;  
(bb) to payment of the cost of having the services supplied again.  
(c) THIS WARRANTY CONSTITUTES COMPANY'S SOLE AND EXCLUSIVE LIABILITY HEREUNDER AND PURCHASER'S SOLE AND EXCLUSIVE REMEDY FOR DEFECTIVE OR NONCONFORMING GOODS OR SERVICES AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY (INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE).
- 15. FORCE MAJEURE**  
The Company shall not be liable for failure to perform its obligations if the failure arises from circumstances beyond its reasonable control and without fault or negligence. Such causes may include, but not limited to, fire, explosion, strikes, lock-outs or any other industrial disputes, freight embargos, failure or refusal of its supplier to supply the Goods, severely inclement weather, fires, floods, explosions, acts of God or of a public enemy, Governmental action, epidemics, and quarantine restrictions. In no such event shall the Purchaser be entitled to damages of any kind for late performance or failure to perform arising from a Force Majeure.
- 16. ASSIGNMENT**  
The Purchaser shall not assign its obligations hereunder without the Company's express, written consent.
- 17. WAIVER AND VARIATION**  
A provision of or a right created under these terms in favour of the Company may not be waived or varied except in writing signed by the Company. The Company may elect not to exercise its rights arising from a breach of any provision, or a future breach of a previously waived provision, of these terms and such election, even if the breaches are continuous and multiple shall not create any estoppel or presumption against the Company's rights of enforcement.
- 18. APPLICABLE LAW**  
The Quotation, these Terms and Conditions of Sale and any contract or agreement of which it shall form the basis, shall be interpreted and enforced in accordance with the laws for the time being in force in the State of New South Wales and the Purchaser agrees to submit to the jurisdiction of the Courts therein.
- 19. SEVERANCE**  
Should any Term or Condition hereof be affected by any illegality, unenforceability or invalidity, that provision shall be considered to the extent of such illegality, unenforceability or invalidity independently of and severable from the affected provision or any other provision contained herein and shall not, to the extent possible, affect the enforceability of the affected provision or any other provision hereof in any way whatsoever.
- 20. STORAGE**  
If, by reason of any act or omission of the Purchaser, the Company is unable to deliver the Goods within fourteen (14) days of having notified the Purchaser of its intention to do so, delivery shall be deemed to have been effected for the purpose of clause 6 hereon and the Company may, in addition, charge storage fees and costs to the Purchaser.
- 21. RISK**  
Risk in the Goods shall pass to the Purchaser at the date of delivery and the Purchaser will insure all Goods that are at his/its risk.
- 22. CONSIGNMENT/LOAN STOCK**  
From time to time the Company may lend the Purchaser equipment for demonstration and evaluation purposes prior to the Purchaser issuing a firm order for same, in such case the following clauses apply in addition to those above:  
(a) The Purchaser shall be responsible for ensuring the prompt return of the Goods to the Company within seven (7) days (or alternative period of time specifically agreed in writing).  
(b) The purchaser shall be responsible for all damage to the Goods incurred while the Goods are in the Purchaser's possession, and undertakes to reimburse the Company for the Goods replacement costs or repair costs at the Company's discretion.
- 23. INTERPRETATION**  
In this agreement:  
(a) the "Company" means Mediaware International Pty Limited ABN 77 077 094 798 and all of its present and future assigns or successors in title and each corporation (within the meaning of that term in Section 9 of the Corporations Law) which now or hereafter is or shall be deemed to be related to the Company (within the meaning of section 50 of the Corporations Law).  
(b) "the Purchaser" is the person, firm or company who or which is giving the order or to whom or to which the Company's quotation is addressed.
- 23. DISCLAIMER**  
UNDER NO CIRCUMSTANCE WILL COMPANY BE LIABLE IN BREACH OF CONTRACT, OR WARRANTY, OR TORT, OR OTHERWISE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES ARISING FROM ANY LOSS, DAMAGE, EXPENSE OR INJURY SUSTAINED FROM OR IN CONNECTION WITH THE SALE, INSTALLATION, USE, SERVICE OR FAILURE OF ANY GOOD SOLD HEREUNDER, OR ANY DEFECT THEREIN, OR FROM ANY OTHER CAUSE. PURCHASER'S REMEDY, IF ANY, WILL BE STRICTLY LIMITED TO THE TERMS OF THIS SECTION.
- 24. LIMITATION OF LIABILITY**  
Notwithstanding any other provisions or language in these Terms and Conditions of Sale to the contrary, in no event shall Company's liability under this contract (including breach of contract actions or any actions arising in tort) exceed the total price hereof.