

# TERMS & CONDITIONS FOR SALE

## 1. Definitions and Interpretation

1.1 In these conditions unless the context otherwise requires:

**"Collateral"** means all of the Customer's present and after-acquired personal property, and all of the Customer's present and future rights in relation to any personal property to which the PPS applies.

**"Conditions"** means the terms and conditions set out in this document as varied in writing by Your Space Oceania.

**"Customer"** means the purchaser of the Products and/or the applicant listed in the Application for a Trading Account.

**"Delivery Charge"** means the cost of delivering the Products to the Customer.

**"Delivery Date"** means the estimated date for delivery of the Products to the Delivery Point.

**"Delivery Point"** means the place to which the Products are to be delivered, as nominated by the Customer.

**"GST Act"** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and the regulations thereunder.

**"Intellectual Property"** means the copyright subsisting in the Products and any written material supplied in relation thereto and all patents, trademarks and industrial designs (whether registered or not) and all confidential information and trade secrets concerning or relating to the Products or the Services.

**"Interest Rate"** means the rate of two percent (2%) above the Indicator Lending Rate quoted by Westpac Banking Corporation from time to time.

**"Quotation"** means a written quotation provided by Your Space Oceania to the Customer specifying Products to be supplied to the Customer and the Price of those Products.

**"PPS"** means the *Personal Property Securities Act 2009 (Cth)* and the regulations thereunder.

**"PPSR"** means the Personal Property Securities Register established pursuant to the PPS.

**"Price"** means the price paid by the Customer for the Products.

**"Products"** means the goods and services supplied or to be supplied to the Customer by Your Space Oceania.

**"Security Agreement"** means any contract entered into between the Customer and Your Space Oceania, including an Application for a Trading Account and the Conditions.

**"Tax Invoice"** means an invoice that complies with the GST Act.

**"Terms of Payment"** means the terms of payment of the Price and Delivery Charge. Unless Your Space Oceania specifies otherwise and it is noted in the Schedule, the Price and any other monies owing by the Customer to Your Space Oceania must be paid in accordance with the Agreed Terms in which the relevant invoice is issued.

**"The Schedule"** means the agreed agenda of payments, delivery and product as determined by the signed contract.

**"Warranty Period"** means that period of time specified in the warranty applicable to the relevant Product.

**"Your Space Oceania"** means Your Space Oceania Pty Ltd ABN 83 671 028 881.

1.2 In these Conditions, where the context admits:

- a) a word denoting one gender includes the other genders;
- b) a word denoting the singular includes the plural and vice versa; and
- c) a word denoting a natural person includes reference to a corporation and other entities.

1.3 The margin notes and headings in these Conditions are for convenience only and do not affect the interpretation of or form part of these Conditions.

## 2. General

2.1 The only contractual terms that bind Your Space Oceania are those set out in these Conditions and noted in the Schedule

(including any updated version of these Conditions provided from time to time) and in the Quotation or otherwise agreed to in writing by Your Space Oceania or which are imposed by law and cannot be excluded. In the event of any inconsistency between the contractual terms set out in these Conditions and any other contractual term then the terms set out in these Conditions will prevail to the extent of such inconsistency.

2.2 The Customer acknowledges that the Customer is responsible to ensure that the Products are suitable for its intended use. Your Space Oceania warrants that the Products will perform to the published specifications subject to specified tolerances or if no tolerance is specified then reasonable tolerances. Your Space Oceania gives no warranty that the Products will be suitable for any particular purpose even if it has been given notice of that purpose.

2.3 These Conditions are applicable only to Products supplied by Your Space Oceania. Supply of goods and services by other organisations will be subject to the terms and conditions issued by those organisations.

## 3. Formation of Contract

3.1 A Quotation submitted to the Customer by or on behalf of Your Space Oceania does not represent an offer by Your Space Oceania to sell the Products to the Customer. A Quotation will remain current for 30 days unless withdrawn or varied.

3.2 Each order for goods and/or services placed by the Customer with Your Space Oceania ("Order") will constitute an offer by the Customer to purchase the Products specified in the Order and is subject to these Conditions.

3.3 An Order once given by the Customer is irrevocable unless Your Space Oceania gives its written consent or receives written notice of revocation before the Order is accepted by Your Space Oceania. Where Your Space Oceania accepts the revocation of an Order after it has been accepted. Your Space Oceania may at its discretion charge a restocking fee.

3.4 A contract for the sale of Products to the Customer will be formed at the time of acceptance of the Order from the Customer and will be subject to these Conditions.

3.5 Your Space Oceania reserves the right to reject Orders in whole or in part. Orders will be accepted by Your Space Oceania on the earliest to occur of the following:

- (a) Confirmation to the Customer by Your Space Oceania of the estimated delivery date of the Products; or
- (b) Delivery of the Products by Your Space Oceania to the Customer.

## 4. Price and Payment

4.1 The Customer must pay the Price and the Delivery Charge to Your Space Oceania in accordance with the Terms of Payment.

4.2 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Your Space Oceania, Your Space Oceania may:  
(a) suspend or cancel any outstanding Orders placed by the Customer; and

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- (b) charge the Customer interest (both before and after any judgement) on the amount overdue, at the Interest Rate calculated on a daily basis from the date payment was due to Your Space Oceania to the date of actual payment.

All costs incurred by Your Space Oceania in enforcing payment will be borne by the Customer.

4.3 If GST (goods and services tax) is payable pursuant to A New Tax System (Goods and Services Tax) Act 1999 (as amended) on a Taxable Supply (as defined by that Act), then despite anything to the contrary in these conditions, the Customer must pay to Your Space Oceania at the same time that payment of the purchase price, service fee or other money or consideration is due from the Customer to Your Space Oceania under these Conditions for or on account of such Taxable Supply (or if no such payment is due, then on demand by Your Space Oceania), an additional amount which is equal to the GST which is payable on such Taxable Supply.

### 5. Delivery and Installation

5.1 Your Space Oceania will endeavour to deliver the Products to the Delivery Point by the Delivery Date. Your Space Oceania will in no event be liable to the Customer by reason of delays in delivery caused by any reason whatsoever.

5.2 The Customer will inspect the Products immediately after delivery and will within one (1) business day from such inspection give written notice to Your Space Oceania of any shortages or damage apparent in relation to the Products. In the event that:

1. the Customer fails to give such notice, then to the extent permitted by statute the Products will be deemed to have been accepted by the Customer; or
2. the Customer gives such notice, then Your Space Oceania will upon verification of the notice make up any shortages and replace any damaged Products as soon as it is reasonably able to do so.

5.3 If the Customer fails to take delivery of goods ordered within fourteen (14) days after invoice then without prejudice to any other right or remedy available to Your Space Oceania, Your Space Oceania may store the goods until actual delivery and charge the Customer for the costs of or associated with storage including without limitation insurance and handling charges.

### 6. Risk and Property in Goods

6.1 All goods will be at the Customer's risk immediately upon delivery to the Customer or the Customer's nominee or carrier, or upon being placed into storage in accordance with clause 5.

6.2 Notwithstanding the provisions of Clause 6.1, in respect of each sale of Products to the Customer by Your Space Oceania, Your Space Oceania will retain title in the Products, the subject of that sale, as well as title in goods being the subject of all previous and subsequent sales ("Goods") until Your Space Oceania has received payment in full of all sums due in connection with the supply of all Goods by Your Space Oceania to the Customer (whether the subject of the current, previous or subsequent sales).

6.3 In the event that any Goods are incorporated into or attached to, or mixed with, other goods by the Customer, so that they are no longer identifiable or separable, then property in the composite goods will vest in and be retained by Your Space Oceania in accordance with Clause 6.2.

6.4 If payment for any Goods is overdue, Your Space Oceania is entitled, without prejudice to any of its other rights and

remedies, to repossess Your Space Oceania Goods and to enter into any premises upon which Your Space Oceania Goods are stored, without notice, for this purpose.

6.5 Until such time as Your Space Oceania receives payment in full for all Your Space Oceania Goods, if the Customer sells or receives any payment from a customer or insurer in respect of Your Space Oceania Goods, the proceeds of any such sale or disposition and any insurance proceeds (or claim thereto) will be held by the Customer on trust for Your Space Oceania and paid into a separate bank account which shall not be overdrawn or otherwise dealt with without Your Space Oceania's prior written consent.

6.6 Nothing in clauses 6.2 to 6.5 inclusive, shall affect Your Space Oceania's rights as an unpaid seller.

### 7. Warranties

7.1 Subject to clauses 7.4 and 7.5, the Products are warranted against faulty workmanship and/or materials produced by Your Space Oceania for the Warranty Period.

7.2 Except as provided in Your Space Oceania's standard warranty for the Products notified by Your Space Oceania to the Customer from time to time to the fullest extent permitted by law:

- a. All warranties, representations, terms and conditions concerning the Products to be supplied by Your Space Oceania are hereby expressly excluded;
- b. Your Space Oceania will have no liability whatsoever for any incidental, special or consequential damages, including but not limited to loss of business, profits, data or use, whether in an action in contract or tort (including negligence) or based upon any representation or other conduct of Your Space Oceania, arising out of or in connection with the Products or these Conditions; and
- c. Your Space Oceania's liability to the Customer for any reason whatsoever arising out of or in connection with the Products or these Conditions will not exceed the cost of resupplying the Products in question (or equivalent Products) or for repairing those Products.

7.3 Provisions of the Trade Practices Act 1974 (Cth), as amended, and other legislation and laws from time to time in force in Australia, such as, but not limited to, the Sale of Goods Acts and the Fair Trading Acts of various States of Australia, may imply warranties or conditions or impose obligations upon Your Space Oceania which cannot, in whole or part, be excluded, restricted or modified. These Conditions must be read and construed subject to any such statutory provisions. If such statutory provisions apply then, to the extent permitted by law, Your Space Oceania's liability (if any) arising out of or in relation to the Products supplied by Your Space Oceania shall be limited, at its option to:

- I. the replacement or repair of the goods or the supply of equivalent goods; or
- II. the payment of the cost of replacing the goods or having the goods repaired or of acquiring equivalent goods; (b) In the case of Services:
- III. the supply of the services again; or
- IV. the payment of the costs of having the services supplied again.

7.4 The Customer agrees that, unless the applicable product warranty provides otherwise in order to make a claim under the warranty provided in clause 7.1, it will either:

1. return the defective Products to Your Space Oceania free of charge; or
2. pay to Your Space Oceania all costs and expenses incurred by Your Space Oceania in sending its representative to the site of repair, including without

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limitation fares, working and travelling time, accommodation and sundry expenses.

7.5 Your Space Oceania reserves the right to refuse and/or void the warranty referred to in clause 7.1 if in its absolute discretion it is of the opinion that the Products have been serviced or modified by unauthorised parties without Your Space Oceania's express written permission.

### 8. PPS

8.1 The Customer grants Your Space Oceania a security interest in the Collateral.

8.2 the security interest referred to in clause 8.1 secures:

- a. payment of all amounts owing, or which may become payable, by the Customer to Your Space Oceania; and
- b. performance of any obligations the Customer has to Your Space Oceania under this agreement and these Conditions.

8.3 Your Space Oceania retains title to, and has a purchase money security interest in, all Products and any and all proceeds derived directly or indirectly from any dealing with such Products within the meaning of s 14 and 32 of the PPS, until such time as the Customer has made payment of all secured amounts to Your Space Oceania.

8.4 In respect of the PPS:

1. for the purposes of s115 of the PPS, the Customer and Your Space Oceania agree that to the fullest extent permitted by law, they have agreed to contract out of ss95, 117, 118, 120, 121(4), 125, 128, 129, 130, 132(3)(d), 132(4), 134, 135, 142 and 143 of the PPS and contract out of all matters permitted to be contracted out of pursuant to s115(7) of the PPS; and
2. to the fullest extent permitted by law, the Customer hereby waives its rights to receive any notice under s157 of the PPS pursuant to s1.57(3)(b) of the PPS.

### 9. Intellectual Property Rights

9.1 The Customer acknowledges that Your Space Oceania owns full right, title and interest in and to the Intellectual Property and agrees that it will not at any time, by act or omission, do anything that will detrimentally affect Your Space Oceania's rights in and to the Intellectual Property.

### 10. Force Majeure

10.1 The obligations of a party under the Conditions, other than the obligation to pay money, will be suspended during the time and to the extent that the party is prevented from or delayed in complying with the obligations by force majeure and the parties will not be liable for any failure to fulfill their obligations caused by force majeure.

10.2 Force majeure means a circumstance beyond the reasonable control of a party which occurs without the fault or negligence of the party affected and includes inevitable accident, storm, flood, fire, earthquake, explosion, peril or navigation, hostility, war (declared or undeclared), insurrection, executive or administrative order or act of either general or particular application of any government whether de jure or de facto or of any official purporting to act under the authority of that government prohibition or restriction by domestic or foreign laws, regulations or policies, quarantine or customs restrictions, breakdown or damage to or confiscation of property.

### 11. Notices

11.1 A notice or other communication required or permitted to be given by one party to another will be in writing and either delivered personally, sent by post (postage prepaid) to the other party's address set out in the Order or forwarded by facsimile transmission to the other party's facsimile number set out in the Order.

11.2 A notice or other communication is deemed given if:

1. personally delivered, upon delivery;
2. mailed, on the expiration of two (2) business days after posting; or
3. sent by e-mail, upon receipt of a fully legible attachment file (PDF format preferred).

11.3 The receipt of a facsimile transmission shall be acknowledged to the sending party by the receiving party.

### 12. Severance

12.1 If any provision of the Conditions is or becomes invalid, illegal or unenforceable such provision will be deemed to be severed from the Conditions but all the remaining provisions shall not be affected as far as possible.

### 13. Governing Law

13.1 The Conditions shall be governed by the laws of the States of Victoria and/or State of Tasmania (whichever is the greater) as in force from time to time and the parties agree to submit to the courts having jurisdiction in Victoria and/or Tasmania in relation to any proceedings which may arise from the Conditions.