

Terms and Conditions

In these terms and conditions of supply ('these terms and conditions'), 'the Supplier' means Smartcase Solutions Pty Ltd ABN 16 123 530 432, a company duly incorporated in Victoria, Australia, of 41 Main Road, Ballarat, Victoria, 3350 and 'the Customer' means the customer specified in the Quotation attached to or accompanied by these Terms and Conditions ('the Quotation').

1. Acceptance of Customer's Order

These terms and conditions form part of the sale contract between the Supplier and the Customer for the supply of goods or services by the Supplier to the Customer formed upon acceptance by the Supplier of an order by the Customer. Any terms and conditions of the Customer's order deviating from or inconsistent with these terms and conditions, unless expressly consented to in writing by the Supplier and incorporated as Special Conditions pursuant to clause 14, are expressly rejected by the Supplier and excluded. The rejection and exclusion applies despite any statement by or on behalf of the Customer that the Customer's terms and conditions shall prevail notwithstanding any stipulation by the Customer regarding the manner of declaring such rejection. The Customer's order is constituted by countersigning and returning the Quotation. A sale contract is formed between the Supplier and Customer for the supply of goods only when the Customer's order has been accepted by the Supplier.

2. Prices

(a) The Quotation may be exercised within 30 days from the date of issue (unless withdrawn by the Supplier earlier) by countersigning and returning the Quotation.

(b) This Quotation is made on the basis of the conditions and specifications included in the Quotation. In the event

of any variation (other than as directed or approved by the Supplier) the Supplier reserves the right to amend or withdraw the Quotation and/or to reject the Customer's order.

(c) All prices are free on board (FOB) at the Supplier's designated warehouse or place of delivery.

3. Price Variation

The Supplier reserves the right to vary the quoted price should there be any adjustment necessary attributable to any cause beyond the Supplier's control including but not limited to exchange rate fluctuations, variation in indirect tax and any Government actions. The Supplier will use its best endeavours to notify the Customer of any such variations before delivery of the goods.

4. Firm Sale

The goods are supplied on a firm sale basis only, that is to say that the Supplier shall neither supply the goods on an 'approval basis' nor shall it accept returns of the goods for reasons other than a breach of the warranty contained in Clause 15.

5. Property & Risk

The risk in the goods sold pass to the Customer when all or part of the goods are delivered to the premises of the Customer whether by carrier employed or engaged by the Supplier or the Customer. Notwithstanding anything contained herein, property in and legal title to the goods does not pass to the Customer until payment for all debts owing to the Supplier by the Customer has been received by the Supplier in full in cleared funds. Until such payment has been received by the Supplier, the Customer will store the goods separately and apart from its own goods and those of any other person or company. The Supplier is entitled to re-take possession of all goods delivered until all debts owing to the Supplier by the Customer have been paid in full. Until payment of all debts

owing to the Supplier by the Customer the Supplier may, at its discretion, without further notice and without prejudice to any other of its rights re-take possession of the goods and re-sell them, or any of them, and may enter upon the Customer's premises, by its servants or agents, for that purpose, without any liability on the part of the Supplier for any loss or damage suffered as a consequence of such entry or re-taking or possession and the Customer hereby agrees to provide the Supplier with an irrevocable licence to so enter any premises occupied by it if:

(a) there is a breach of any term of any contract between the Supplier and the Customer; or

(b) the Customer has provided any false or misleading information to the Supplier including information set out in any application for credit or to open an account with the Supplier; or

(c) the Customer commences to be wound up or is placed in liquidation, under official management, or a receiver, or a receiver and manager or voluntary administrator is appointed in respect of the Customer, its undertaking or property or any part thereof, or an encumbrancer, by itself or by an agent, takes or purports to take possession of the Customer's undertaking or property of any part thereof; or

(d) the Customer parts with possession of the goods or any of them otherwise than by way of sale in the ordinary course of its business

In the event that the Customer, sells, parts with possession of or merges the goods into the property of a third party, prior to title in the goods passing to the supplier, the Customer agrees to hold as trustee for the Supplier, in a separate trust account, so much of the consideration received by the Customer from the third party, that relates to the said sale, or merger of the goods, as is equal to the amount then owing by the

Customer to the Supplier in respect of those goods.

Notwithstanding the foregoing, the Customer shall be responsible for the goods until payment in full is made to and received by the Supplier, and the Customer shall indemnify the Supplier for any damage, destruction, depreciation and diminution in value of the goods during the period the Customer is responsible for the goods.

These provisions apply despite any arrangement under which the Supplier provides credit to the Customer and these provisions will prevail to the extent of any inconsistency between these provisions and any other agreement or arrangement entered into by the Customer and the Supplier.

In addition, the Supplier may recover the purchase price of the goods sold to the Customer by legal proceedings and may file an application for the appointment of a liquidator to the Customer notwithstanding that property in the goods has not passed to the Customer.

6. Insurance

Until the passing of risk pursuant to Clause 5, the Customer will, at its own cost, insure the goods, in the Supplier's name, against such risks as a prudent owner of the goods would insure for at their full insurable value.

7. Payment

The price of the goods shall be paid by the Customer to the Supplier:

(a) by deposit (if any) in the amount specified in the quotation upon confirmation of order; and

(b) by payment of the balance upon completion.

If payment by letter of credit is specified in the Quotation, the Customer will cause a letter of credit drawn for fulfilment by an Australian branch of an Australian bank to be deposited with the Supplier or its nominee before any obligation of the Supplier to fulfil the

order shall arise. The letter of credit shall be unconditional other than to require in the normal commercial form of the issuer of the letter of credit that the Supplier is to provide evidence of goods having been made available for collection by the Customer's designated agent FOB.

In the event that payment of the balance is not made upon completion. The Customer acknowledges and agrees to pay the Supplier interest on the amount that remains outstanding calculated at the rate of 1.5% per calendar month.

Time of payment for any goods sold to the Customer is an essential term of any contract between the Supplier and the Customer.

8. Cancellation

Cancellation of any contract of sale between the Customer and the Supplier requires approval in writing from the Supplier otherwise the goods will be delivered to the Customer and the Supplier will be entitled to payment from the Customer.

Upon approval of cancellation of this contract by the Supplier, the Supplier shall be entitled to retain the deposit monies.

The Supplier is not obliged to supply goods in relation to any contract and may cancel the contract at any time if:

(a) there is a breach of any term of any contract between the Supplier and the Customer; or

(b) the Customer has provided any false or misleading information to the Supplier including information set out in any application for credit or to open an account with the Supplier; or

(c) the Customer commences to be wound up or is placed under official management, or a receiver, or a receiver and manager or voluntary administrator is appointed in respect of the Customer, its undertaking or property or any part

thereof, or an encumbrancer, by itself or by an agent, takes or purports to take possession of the Customer's undertaking or property or any part thereof; or

(d) the Supplier is unable to supply goods as a result of the failure of any supplier of the Supplier to deliver goods or provide services which are required in order for the Supplier to supply the goods to the Customer.

9. Acceptance and Claims

Acceptance of the goods delivered shall be deemed for all purposes to have taken place at the expiration of fourteen (14) days from the date of delivery. No goods will be accepted for return unless agreed in writing by the Supplier prior to such return and then only upon conditions acceptable to the Supplier and at the Customer's entire risk as to loss or damage and provided the goods are and remain in the same condition which they were delivered. The Supplier's liability for a breach of any conditions of warranty is implied by Division 2 of Part V of the Trade Practices Act 1974 (other than a condition or warranty is implied by Section 69 of the Act) is limited to such one or more of the following as the Supplier decides:

(a) the replacement of the goods or the supply of equivalent goods; or

(b) the repair of the goods; or

(c) the payment of the costs of replacing the goods or of acquiring equivalent goods; or

(d) the payment of the cost of having the goods repaired.

Without limiting the generality of any other provision of these terms and conditions but subject to the above, the Supplier is not under any liability to the Customer or to any other person in respect of any loss or damage however caused, which may be suffered or incurred or which may arise either directly or indirectly in respect of the supply of the goods or any ancillary services or advice or the failure or omission on the

part of the Supplier to comply with its obligations hereunder.

Except as expressly provided to the contrary in these terms and conditions, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise are excluded to the extent permitted by law, including but not limited to the United Nations Convention on Contracts for the International Sale of Goods.

10. Force Majeure

If delivery is prevented or delayed, in part or all, by reason of Act of God, or the consequence thereof including, but not limited to fire, flood, typhoon, earthquakes, tornado or by reason of riots, wars, hostilities, government restrictions, trade embargoes, strikes, lockouts, labour disputes, boycotting of goods, ship shortage, chemical or nuclear spill, manufacturer's bankruptcy, delays or damage in transportation or other causes beyond the Supplier's control, the Supplier may, at its option, perform the contract or the unfulfilled portion thereof within a reasonable time from the removal of the cause preventing or delaying performance, or rescind unconditionally and without liability, this contract or the unfulfilled portion thereof.

11. Substitution

The Supplier reserves the right to substitute other goods with similar qualities if any item ordered by the Customer is not available. The Customer is deemed to have accepted substitution where it does not object to same within two (2) days of the date of delivery of the goods (unless a longer period is imposed by law). If the Customer is not satisfied with the substituted goods, the goods may be returned to the Supplier for credit.

12. Delivery

Any dates specified for delivery of any goods are estimated dates only and the Supplier shall not be liable for an damage or loss which the Customer may suffer as a result of delivery being delayed beyond such dates for any reason whatsoever.

13. Intellectual Property & Reservation

The Supplier retains all rights in respect of the intellectual property supplied with or comprised in any goods or services acquired by or performed for the Customer. No interest in the intellectual property of the Supplier is granted to the Customer, other than an inherent right to use the intellectual property comprised in goods solely for the purpose of the proper and ordinary use of those goods.

The Supplier reserves the right to vary the design of the goods to provide for improvement in design.

14. Special Conditions

Any special terms of sale are by this reference incorporated herein with the same force and effect as those set forth herein in full and shall prevail to the extent of any inconsistency with the printed terms and conditions hence.

15. Warranty

Goods sold shall have the benefit of any warranty given by the manufacturer and will only be considered for acceptance by the Supplier if return of the goods or any part of them is in accordance with the Supplier's warranty policy but the Supplier shall not be liable for any loss or damage either direct or consequential arising out of any defects arising from the use of the goods.

16. Clerical Errors

Clerical errors, typing errors or other errors in computations, catalogue, quotation, acceptance, offer, invoice, delivery docket, credit note or specification of the Supplier shall be subject to correction by the Supplier.

17. Modification

All modifications and amendments to these provisions or any approvals hereunder shall be in writing by a duly authorised signatory, and if otherwise, shall not be binding upon the Supplier.

18. GST

GST Definitions

(a) For the purposes of this clause:

'GST' means GST within the meaning of the GST Act.

'GST Act' means A New Tax System (Goods and Services Tax) Act (Cth) 1999 (as amended). Except where the contrary intention appears, expressions used in this condition and in the GST Act have the meanings given to them in the GST Act.

(b) If the introduction of GST is associated with the abolition or reduction of any tax, duty, excise or statutory charge which directly or indirectly affects the net dollar margin of a supplier in respect of any supplier made under this document, the consideration (excluding GST) payable for the supply must be varied so that the Supplier's net dollar margin in respect of the supply remains the same.

(c) Amounts otherwise payable do not include GST except as provided in Clause 18(d) and where express provision is made to the contrary, the consideration payable by a party under this document represents the value of the supply for which payment is to be made.

(d) If this document requires a part to pay for, reimburse or indemnify against any expense or liability ('reimbursable expense') incurred by the other party ('payee') to a third party, the amount to be paid, reimbursed or indemnified is the amount of the reimbursable expense net of any input tax credit to which the payee is entitled in respect of the reimbursable expense ('net expense').

(e) Subject to Clause 18(d), if a party makes a taxable supply under this document for a consideration which represents its value by virtue

of Clause 18(c) or the net expense by virtue of Clause 18(d), then the party liable to pay for the taxable supply must also pay the amount of any GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.

(f) A party is not obliged under Clause 18(e) to pay the GST on a taxable supply to it until that party is given a valid tax invoice for the supply.

(g) If the amount of the GST paid or payable by the Supplier on any supply made under this document differs from the amount paid by the supplier as GST due to an adjustment of the value of the taxable supply for the purposes of calculating GST, then the amount paid as GST by the Customer must be adjusted by a payment by the Customer to the Supplier or by the Supplier to the recipient, as the case requires, so that the amount paid by the recipient as GST accurately represents the GST payable in respect of the supply.

19. Jurisdiction

All contracts between the Supplier and the Customer shall be governed by the laws of the State of Victoria and Australia and the parties shall submit to the non-exclusive jurisdiction of the courts of the State of Victoria (and any courts which can hear appeals from such courts).

20. Execution

Any contract between the Supplier and the Customer may be executed on behalf of the Customer by any agent or employee of the Customer and the Customer shall be bound by these terms and conditions irrespective of whether any such execution was unauthorised or fraudulent.