

TERMS AND CONDITIONS

1. We, Capital IT Pty Ltd ABN 91 098 118 720 (the Supplier) and the Customer named on invoices issued to the Customer by the Supplier hereby agree that the Supplier will supply the goods identified or described on issued invoices and any goods supplied by the Supplier to the Customer in the future ("the Goods") on the terms hereof and to the exclusion of any terms and conditions that the Customer may seek to introduce in any order form or other document as a term of the agreement between the Supplier and the Customer.
2. The "Purchase Price" means the price for the Goods supplied by the Supplier to the Customer as stated on the invoice to the Customer, plus any GST and any present and future government or semi-government taxes.
3.
 - (a) The Goods shall be at the Customer's risk from the time the Supplier dispatches them from its premises;
 - (b) The Customer shall ensure that all the Goods in transit to it and in its possession shall at all times be properly insured and shall describe the rights and interest of the Supplier on any policy of insurance.
4.
 - (a) The Supplier reserves the right to accept or decline in whole or in part any order made by the Customer for the supply of any goods to the Customer;
 - (b) The Supplier reserves the right to supply any order in whole or in part;
 - (c) The Supplier reserves the right to refuse to supply any order at its sole discretion in the event that the \$A is devalued as against the \$US or the Euro by more than 5% in the period between the date of any order by the Customer and the date for delivery of the Goods. The devaluation shall be computed by reference to the retail buy rates on the relevant days as defined in the Australian Financial Review.
 - (c) The Supplier reserves the right to cancel any trading arrangements without prior notice to the Customer.
5.
 - (a) Any claims shortages or loss and damage in respect of Goods supplied or sold by the Supplier to the Customer must be made in writing by the Customer and forwarded to the Supplier within seven (7) days of the supply of the Goods;
 - (b) The Supplier shall not be bound to accept any return of Goods by the Customer unless the return is authorised in writing by a representative of the Supplier;
 - (c) Returns once authorized must be:
 - (i). Sent using only the Supplier nominated freight forwarder; and
 - (ii). Addressed to it at the nominated address specified in this invoice.
 - (d) Any costs incurred or loss suffered in respect of or arising as a result of any unauthorised return shall be paid by the Customer and the Supplier is hereby authorised to deduct the amount for any costs incurred or loss or damage suffered from any credit granted by it to the Customer.
6. The Customer hereby irrevocably authorise and licence the Supplier or its agent or nominee at any time without prior notice to enter into any premises occupied by the Customer to inspect and carry out an inventory of the Goods.
7. These conditions of sale contain the whole contract between the Supplier and the Customer and no variation hereof shall be binding on the Supplier unless assented to by it in writing signed by one of its directors.
8. This Agreement shall at all times be governed by the laws of the State of Victoria and the Supplier and the Customer hereby irrevocably submit to the jurisdiction of the courts of the State of Victoria and all Courts of Appeal there from.
9. A. In this agreement, the following words have these meanings:

Event of Default means that any of the following has occurred:

 - (a) a provisional liquidator is appointed to the Customer or a petition or an application is presented or an order is made or an effective resolution is passed or a meeting is summoned or convened for the purpose of considering a resolution for the winding up or dissolution without winding up of the Customer or the Customer is placed into liquidation;
 - (b) a receiver or a receiver and manager or an administrator or controller is appointed over the Customer or any assets of the Customer;
 - (c) an encumbrancer takes possession of any property of the Customer or any part of such undertaking or property;
 - (d) the Customer ceases or threatens to cease to carry on its business or is unable to pay its respective debts or permits execution to be levied against any of its assets for an amount in excess of \$2,000.00 and such execution is not stayed or satisfied within fourteen (14) days;
 - (e) the Customer enters into any arrangement, reconstruction or composition with any of its creditors or proposes so to do;
 - (f) the Customer charges, mortgages or otherwise encumbers all or any of its assets or purports to charge, mortgage or otherwise encumber those assets;
 - (g) in the sole opinion of the Supplier exercised in its sole and absolute discretion, the Customer is carrying on a business at a loss and further prosecution of such business will endanger the ability of the Customer to repay any monies owing to the Supplier;
 - (h) pursuant to the provisions of the Corporations Act the Customer is placed under official management or a meeting is summoned or other steps taken for the purpose of placing the Customer under Official Management or appointing an Official Manager pursuant to the Corporations Act or if any person is appointed or proposed to be appointed under the Corporations Act to investigate the affairs of the Customer;
 - (i) without limiting the operation of the events referred to in paragraphs (a) to (h) above, the Customer proposes or enters into some other form of insolvency or administration whether voluntary formal or informal;
 - (j) an event or series of events whether related or not or whether as a result of the fault of the Customer or not results in any material adverse change in the financial condition of the Customer which has or is in the opinion of the Supplier is likely to have a material and adverse affect on the ability of the Customer to repay any money that it owes to the Supplier;
 - (k) the Customer defaults in the performance of any of its obligations under these terms and conditions; or
 - (l) if the Customer or Guarantor is an individual, any act of bankruptcy of the Customer or Guarantor or if the Customer or Guarantor dies or is permanently incapacitated.

Mixed Goods means any Goods supplied by the Supplier to the Customer in a state altered after the Customer has taken possession including by direct alteration or by incorporation of the Goods into another mechanism or device.

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10. In respect of each Order:
- (i) property in the Goods will pass to the Customer only when the Supplier has received payment in full of the Purchase Price from the Customer by way of cash or cleared funds (cheques or other negotiable securities given by the Customer to the Supplier shall not be deemed to constitute payment for the Goods until such time as they are cleared).
 - (ii) the Supplier may apply any payment to any account of the Customer at its absolute discretion.
 - (iii) the parties agree that until the Supplier receives payment in full of the Purchase Price from the Customer:
 - (1) The Supplier retains title in the Goods and the Customer takes possession of the Goods as fiduciary agent and bailee of the Supplier;
 - (2) The Customer may resell the Goods onto any third party, however, the Customer may not bind or place any obligation on the Supplier whatsoever in any agreement for the sale of those Goods;
 - (3) Any Goods which are delivered to the Customer will be separately identified as property of the Supplier;
 - (4) The Customer will hold in trust for the Supplier any proceeds which it receives from the sale of any Goods; and
 - (5) To the extent that any of the Goods are Mixed Goods, the Customer will hold on trust the portion of any proceeds which it receives from the sale of any of those Mixed Goods that relate to the respective Goods and will keep those amounts in a separate bank account.
 - (iv) this clause 10 survives the termination of these terms and conditions.
11. If any Event of Default occurs:
- (i) the whole of all moneys owed by the Customer to the Supplier on any account whatsoever whether under this agreement or otherwise, shall thereupon and without the necessity of any notice or demand by the Supplier to the Customer become immediately due and payable and recoverable; and
 - (ii) The Customer will license the Supplier to enter any premises where the Goods are located without prior notice and assist the Supplier to retake possession of the Goods and/or Mixed Goods which remain the property of the Supplier; and
 - (iii) The Customer will not deal with the Goods or Mixed Goods in any way without the prior written consent of the Supplier.
 - (iv) This clause 11 survives the termination of these terms and conditions.
12. Should the Customer be a trustee of a trust then the Customer shall be liable both in its own capacity and as trustee of the trust for performance of all obligations to the Supplier.
13. Any provision of this agreement which is illegal, void or unenforceable shall be ineffective to the extent only of such illegality, voidness or unenforceability without invalidating the remaining provisions hereof.
- 14.
- (a) The Supplier gives no express warranty in relation to the Goods or the supply of the Goods and the Customer acknowledges that it has not relied on any representation or warranty made by or on behalf of the Supplier in relation to the Goods or their supply.
 - (b) Any warranties or conditions implied by law, either by statutory instrument or otherwise, are expressly excluded to the extent that such warranties and conditions in respect of the Goods may be lawfully excluded.
 - (c) To the extent permitted by law, if the supplier is or becomes liable to the Customer in any manner whatsoever for breach of warranty or in relation to the supply of any defective Goods, then the Supplier's liability shall be limited solely to the price paid by the Customer for such Goods or the cost of their repair or re-supply, whichever the Supplier so elects at its absolute discretion.
- 15.
- (a) Notwithstanding any other clause of these terms and conditions, if the Customer breaches any of these terms and conditions:
 - (i) the Customer will indemnify and continue to indemnify the Supplier for all costs associated with remedying the Customer's breach of any of these terms and conditions; and
 - (ii) all amounts due and payable by the Customer to the Supplier including the Purchase Price, costs and taxes will be immediately due and payable to the Supplier without the requirement of any notice to the Customer.
 - (b) As a result of any breach by the Customer of any of these terms and conditions, interest shall accrue on all such unpaid amounts and costs at the rate of 1.6% per month, on the face value of the invoice, compounded daily from the date of the relevant invoice without need of notice.
16. Any Goods which are the property of the Customer and which are placed in the possession of the Supplier by the Customer are pledged to the Supplier and the Supplier, if not paid in full for any goods or services rendered to the Customer, has the right to deal with the Customer's goods in any way whatsoever.
- 17.
- (a) The Supplier is not liable for failure to comply with these terms and conditions if the failure (directly or indirectly) arises out of circumstances which are not within the Suppliers' reasonable control. If such circumstances occur, the Supplier may delay, cancel or alter any order for goods made by the Customer.
 - (b) The following circumstances are taken to be examples of circumstances beyond the Suppliers reasonable control, strikes, lock-outs, accidents, war, fire, flood, explosion, shortage of power, breakdown of plant and machinery, shortage of raw materials, act of God or any order or direction of any local, State or Federal Government authority or instrumentality.
 - (c) The Supplier is not obliged to remedy such circumstances. The Supplier is not obliged to settle any strike, lock-out or any other kind of dispute.
18. The Customer agrees that if there is a dispute in respect of any invoice or order, then the records of the Supplier will be conclusive evidence of the contents of that invoice or order and the agreement between the parties.
19. A quotation is not an offer by the Supplier. The Supplier may withdraw or alter it without notice.
20. If there is any inconsistency between these Terms and Conditions and an invoice, these Terms and Conditions shall prevail.
- 21.
- (a) The Supplier may, at its absolute discretion, grant to the Customer a credit account in respect of each invoice.

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- (b) If the Customer is granted a credit account, then the Customer agrees that:
- (i) the Supplier may at any time and in its absolute discretion withdraw the issue of the credit account from the Customer;
 - (ii) the Customer must pay all monies owing under that credit account to the Supplier within seven days of receiving notice that the credit account has been withdrawn;
- (c) Subject to clause 19(b), the Customer will pay all monies owing under any credit account within 7 days of the issue of the invoice to which that credit account relates.
- (d) If there is any conflict between clause 19(c) and the terms of payment on any invoice to which a credit account relates, then clause 19(c) will prevail.
- (e) The obligations of the parties in this clause 19 survive the termination of these terms and conditions.
22. (a) Each party warrants by entering into these terms and conditions that it has been given the opportunity to obtain independent legal and financial advice on these terms and conditions.
- (b) An obligation imposed on two or more parties binds each of them jointly and severally.
- (c) Each of the obligations of the Customer under these terms and conditions is unconditional and irrevocable and continues without limitation.
- (d) A breach of, or default under, these terms and conditions of any right, power, authority, discretions or remedy created or arising upon a breach of, or default under these terms and conditions:
- (i) is not waived by any failure to exercise or delay in exercising or partial exercise of any right, power, authority, discretion or remedy under these terms and conditions; and
 - (ii) may only be waived in writing signed by the party granting the waiver.
- (e) Each party must do all things and execute all further agreements (including the Customer procuring any security required by the Supplier such as the Guarantee of the directors and shareholders of the Customer) necessary to give full effect to these terms and conditions.
- (f) The covenants, conditions, provisions and warranties contained in these terms and conditions will not merge or terminate upon completion of the transactions contemplated by these terms and conditions, but to the extent that they have not been fulfilled and satisfied or are incapable of having effect will remain in full force and effect.