

Terms & Conditions

1. Definitions

ACL means the *Competition and Consumer Act 2010* (Cth) and any Regulations forming part of or passed under it (collectively "ACL")

Agreement means the Credit Application (if applicable), these Terms and Conditions each Purchase Order delivered by the Purchaser to the Supplier for the supply of Goods;

Credit Application means the application made or to be made by the Purchaser for credit to be provided by the Supplier to the Purchaser;

Goods means the goods and/or other items of personal property supplied or to be supplied by the Supplier to the Purchaser in accordance with a Purchase Order and/or this Agreement and, for the purposes of clause 8, includes commingled goods and any other item in which any Goods may be incorporated as parts, components or materials and the proceeds of sale of any of them. Where the Goods include any form of intellectual property, the Goods includes only the right to use that intellectual property and not the intellectual property itself;

PPSA means the *Personal Property Securities Act 2009* (Cth) and any Regulations forming part of or passed under it;

Purchaser means the buyer of Goods named in the Credit Application or a Purchase Order and includes the executors, administrators, successors and permitted assignees of that person or company;

Purchase Order means any order or request made by the Purchaser for the supply by the Supplier of Goods and/or services in any form and includes an invoice, proposal or quote provided by the Supplier;

Purchaser's Systems means the:

- (a) hardware;
- (b) software;
- (c) internal network; and
- (d) IT security systems,

of or used by the Purchaser;

Supplier means Direct National Pty Ltd ACN 079 502 926 and includes its successors and assignees.

2. Interpretation

The Credit Application, Supplier's invoice, these Terms and Conditions and/or any Purchase Order will be read and interpreted as a single agreement, but if there is any conflict or inconsistency between them they will be interpreted and applied in the following order:

- (a) any Special Conditions contained in the Supplier's invoice;
- (b) these Terms and Conditions;
- (c) the Credit Application; and
- (d) the relevant Purchase Order.

3. Formation of contract

(a) The delivery, by the Purchaser, of a Credit Application or a Purchase Order, either verbally or in writing, constitutes acceptance of these Terms and Conditions and the terms of the Agreement.

(b) These Terms and Conditions are subject to change at any time by the Supplier. The Purchaser is deemed to have accepted any changes to these Terms and Conditions or to any of the Supplier's credit terms immediately upon the earlier of:

- (i) the next delivery of Goods or services, by the Supplier to the Purchaser; or
- (ii) the Purchaser delivering a Purchase Order to the Supplier, after the date on which the Supplier notifies the Purchaser of those changes.

(c) Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation.

4. Payment terms

(a) All prices are subject to change without notice and Purchase Orders are accepted by the Supplier on the condition that they will be invoiced at the applicable price as at the date of dispatch.

(b) The Purchaser must pay the total cost of the Goods supplied upon placement of a Purchase Order with the Supplier unless

otherwise agreed to with the Supplier, in which case the Purchaser must pay as detailed by the Supplier in its invoice.

(c) If the Purchaser has bought a bundle of Goods and services (training and/or installation services) from the Supplier, the Purchaser must pay for the Goods supplied in accordance with paragraph (b), but may pay for the services provided within 30 days of the date the invoice is received from the Supplier.

(d) All payments required to be made by the Purchaser under this Agreement will be made in cleared funds in accordance with the Supplier's invoice and free of any set-off, or counterclaim and without deduction or withholding. The Supplier may, at any time and without notice, set off and deduct from any amounts which may be payable to the Purchaser for any reason, any amount payable by the Purchaser to the Supplier under this Agreement.

(e) If the Purchaser fails to make a payment when due or exceeds its then approved credit limit, the Purchaser will pay to the Supplier in addition to the amounts due, interest on all outstanding amounts calculated at the rate quoted by the Supplier's bank for overdrafts in the amount of the outstanding balance of the Purchaser's account plus 2%. Interest will be calculated from the date referred to in clause 7 (and not the day when the Supplier's invoice was payable) until payment by the Purchaser.

5. Deposit

(a) The Supplier may at its discretion require the Purchaser to pay a deposit prior to the production and/or delivery of any Goods or services.

(b) The deposit will be an amount determined by the Supplier.

(c) Where the Supplier holds a deposit from the Purchaser the deposit is security for the performance of the Purchaser's obligations in this Agreement and for the payment of all amounts owing by the Purchaser to the Supplier and not only the payment of the invoice price for the Goods to which the deposit relates.

(d) The deposit is also security for the payment of any damage caused to any Goods held by the Purchaser under clause 6.

(e) The Purchaser is not entitled to require the return of the deposit until all such monies are paid in accordance with the Agreement and the Supplier may at any time and without notice apply any deposit held from the Purchaser in satisfaction of any such amounts from time to time.

(f) The Purchaser must pay a non-refundable deposit of 30% of the estimated invoice cost determined by the Supplier for any non-standard goods or Goods made to specific order.

6. Assignment

(a) The Purchaser's obligations under this Agreement cannot be transferred or assigned and any attempt to do so will be void.

(b) The Supplier may assign its rights and obligations pursuant to this Agreement to another party without notice to and without the consent of the Purchaser.

7. Risk

Risk in any Goods to be supplied to the Purchaser passes to the Purchaser immediately upon the earlier of:

(a) the Supplier's notification that those Goods are available for collection; or

(b) upon delivery to the delivery address advised by the Purchaser whether or not the Purchaser collects the Goods or refuses delivery.

8. Retention of title

(a) Legal and equitable title and property in the Goods is vested in the Supplier until full payment, in cleared funds, is made to and received by the Supplier for all amounts owing by the Purchaser, inclusive of the purchase price for the Goods and all any other money owing to the Supplier for other goods or services or on any other account. Title will not pass to the Purchaser nor to any person to whom any Goods are purported to be sold by the Purchaser until full payment has been received by the Supplier in accordance with this Clause 8.

- (b) The Purchaser may, on its own account as principal, sell the original Goods supplied in the ordinary course of its business, or incorporate or use them as parts, components or materials in respect of any other product of the Purchaser subject always to the title of the Supplier in respect of the Goods and to Clause 8(a).
- (c) Until payment in full has been made and is received in cleared funds by the Supplier, the Purchaser will:
 - (i) hold the Goods as agent of the Supplier;
 - (ii) store the Goods separately so that they can be identified as the property of the Supplier, and must not mix the Goods with other goods;
 - (iii) insure the Goods (to the extent that they are insurable) for their full replacement value and have the name of the Supplier noted on the policy as payee;
 - (iv) to the extent that the Goods are the proceeds of sale, hold such proceeds (up to the total amount owing to the Supplier) as trustee for the Supplier.
- (d) Until payment in full has been made and is received in cleared funds by the Supplier, the Purchaser must not:
 - (i) claim any interest in the Goods to secure any liquidated or unliquidated debt or obligation due by the Supplier to the Purchaser;
 - (ii) claim a lien over the Goods or any part of them;
 - (iii) create or purport to create any interest in the Goods in favour of any other person without the consent of the Supplier.
- (e) The Supplier may, with or without prior notice to the Purchaser, enter upon any premises at which the Goods or any part of them are stored, or at which the Supplier reasonably believes they are stored, to inspect the Goods and/or to take possession of the Goods and whether the Goods may be in the Purchaser's possession, custody or control. The Purchaser agrees to provide the Supplier with access to any such premises for that purpose. The Supplier may direct the Purchaser to deliver the Goods to the Supplier and the Purchaser must comply with that direction. The Purchaser waives the right to receive any statutory notice or any notice under the PPSA.
- (f) The Purchaser must pay the Supplier's costs and expenses in exercising its rights under this Clause 8 and indemnifies the Supplier against any claim, action or damages arising directly or indirectly out of the exercise by the Supplier of any power or right under this Clause 8. Where the Supplier exercises any power to enter premises, that entry will not give rise to any action of trespass or similar action on the part of the Purchaser against the Supplier, its employees, servants or agents.
- (g) The Supplier may sell or otherwise deal with any Goods repossessed by the Supplier, and may sell the Goods with the trademark or name of the Purchaser on those Goods, and the Purchaser grants an irrevocable licence free of charge to the Supplier in respect of the trademark or name for that purpose.
- (e) The Purchaser agrees that the Supplier may attend to registration of its security interest on the Personal Property Securities Register ("PPSR") without notice to the Purchaser.
- (f) The Purchaser undertakes to:
 - (i) promptly sign any further documents and/or provide any further information which the Supplier may reasonably require to:
 - A. register a financing statement or financing change statement in relation to a security interest on the PPSR;
 - B. register any other document required to be registered pursuant to the PPSA;
 - C. correct a defect in a statement or document referred to in clauses 9(f)(i) & (ii);
 - (ii) pay the Supplier for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Goods charged pursuant to the PPSA;
 - (iii) not register, or permit to be registered, a financing statement or a financing change statement in relation to the goods in favour of a third party, without prior written consent of the Supplier;
 - (iv) give the Supplier not less than 14 days written notice of any proposed changes in the Purchaser's details, including but not limited to changes in name, address, facsimile number, email address, trading name or business practices;
 - (v) pay the Supplier for any costs incurred by the Supplier, including legal fees and disbursements on a solicitor-client basis, in obtaining an order pursuant to s182 of the PPSA and/or enforcing or attempting to enforce any security interest created in favour of the Supplier under this Agreement or otherwise.
- (g) The Purchaser and the Supplier agree that sections 96, 115 and 125 of the PPSA do not apply to the security interest created by this Agreement.
- (h) Pursuant to section 144, the Purchaser waives its rights to receive notices under sections 95, 118, 121, 130, 132 and 135 of the PPSA.
- (i) The Purchaser waives its rights as a grantor and/or debtor under sections 142 and 143 of the PPSA.
- (j) The Purchaser waives its rights to receive a verification statement in accordance with section 157 of the PPSA, unless otherwise agreed to in writing by the Supplier.
- (k) Any payments by the Purchaser under this Agreement will be applied in the order specified in section 14(6)(c) of the PPSA regardless of any direction or request by the Purchaser, any agreement between the parties (express or implied) or the application of any such payment by the Supplier. The Supplier does not waive any rights under this clause by applying any payment in a different order.

9. Personal Property Securities Act

- (a) The parties agree that terms used in this clause 9 have the same meaning and are subject to the provisions of the PPSA.
- (b) The Purchaser acknowledges and agrees that:
 - (i) the purchase price for Goods is the total invoiced cost evidenced by the invoice which relates to those Goods inclusive of all parts or components of that total but without prejudice to the Supplier's right to amend the invoice in the case of error; and
 - (ii) Clause 8 constitutes a security agreement for the purposes of the PPSA and creates a security interest in favour of the Supplier in all Goods supplied previously (if any) and all Goods that will be supplied in the future by the Supplier to the Purchaser to secure payment.
- (c) It is the intention of the Supplier and the Purchaser that the Supplier's security interest is a purchase money security interest as defined in the PPSA.
- (d) The Purchaser grants to the Supplier a security interest in all the Purchaser's present and after-acquired property in which Goods have been attached or incorporated, including commingled goods.

10. Delivery

- (a) Delivery of any Goods ordered will be effected by the Supplier at the delivery address specified by the Purchaser and at the Purchaser's cost.
- (b) Delivery charges will be calculated and charged at the discretion of the Supplier.
- (c) Any time or date stated as the estimated time of delivery by the Supplier, is a bona fide estimate only, and the Supplier will not be responsible in any way for any damage or consequential loss suffered by the Purchaser as a consequence of the late or non-delivery of the Goods.
- (d) Goods delivered are at the Purchaser's risk from the time that delivery is effected.
- (e) The Purchaser is responsible for inspecting the Goods delivered and ensuring they were not damaged during their freight.
- (f) If the Goods have been damaged during freight, the Purchaser must notify the Supplier in writing within 7 days of delivery, to enable the Supplier to make a claim with the delivery company, failing which the Supplier shall have no liability for the damage whatsoever.

11. Integration

- (a) The supplier does not make any representations or warranties in respect of any of its Goods and their integration with the Purchaser's Systems.
- (b) The Purchaser is responsible prior to placing a Purchase Order for ensuring that the Goods purchased are:
 - (i) suitable for the Purchaser's intended purpose; and
 - (ii) can be integrated and interfaced with the Purchaser's Systems.
- (c) The Supplier will not be responsible for any costs of integration or interfacing of the Goods with the Purchaser's Systems.

12. Return of goods

- (a) Goods will be accepted for credit only by prior agreement or to the extent that they have been wrongly or over supplied. Returned Goods must be delivered to the Supplier free of charge, in good order and condition, unused and in the original packing which must also be unmarked, accompanied by a dispatch note stating the original invoice number, date of supply and reason for return. Except where Goods have been wrongly or over supplied, a handling fee must be paid to the Supplier to reimburse it for its reasonable handling and storage costs associated with the return.
- (b) Regardless of clause 12(a), the Supplier is not required to accept any Goods returned to it later than 30 days from the date of the invoice.
- (c) Goods made to specific order cannot be returned or credited unless not to specifications or otherwise not in accordance with any expressed or implied term of the Agreement.

13. Alterations

Any alteration to an order once production has commenced will incur additional charges which will be calculated and charged at the discretion of the Supplier.

14. Cancellation of orders

The Purchaser cannot cancel any order if production of the relevant Goods has commenced or Goods have been dispatched by the Supplier.

15. Cancellation of terms of credit

- (a) The Supplier may terminate the Agreement, terminate any credit used or unused, withhold supply of Goods or refuse delivery or return of Goods at any time and without reason or notice. In particular (but without limitation) the Supplier may do so if:
 - (i) the Purchaser becomes insolvent; the Supplier determines that a material adverse event has occurred with respect to the Purchaser;
 - (ii) events beyond the control of the Supplier occur making supply impossible or undesirable to the Supplier;
 - (iii) the Supplier cannot obtain the Goods ordered in the quantity or at the price required;
 - (iv) the Purchaser breaches any of the terms or conditions of the Agreement;
 - (v) the Purchaser fails to pay any money due to the Supplier; or
 - (vi) the Purchaser breaches any other agreement with the Supplier.
- (b) Upon cancellation under clause 15(a) all amounts due by the Purchaser become immediately due and payable to the Supplier.
- (c) Cancellation under clause 15(a) will not affect the Supplier's right to institute legal proceedings for the recovery of all money owed to the Supplier.

16. Limitation of liability

- (a) Unless otherwise required by law, the liability of the Supplier for any breach of the Agreement or any related order or contract and/or in tort (including negligence) is limited at the Supplier's option to:
 - (i) the replacement or repair of Goods supplied; or
 - (ii) the supply of equivalent Goods or services; or

- (iii) the cost of replacing or repairing the Goods supplied or of acquiring equivalent Goods or services; or
- (iv) the amount paid by the Purchaser to the Supplier pursuant to the Agreement.

- (b) Any claim for short or wrongful delivery pursuant to a Purchase Order must be notified to the Supplier within 14 days after the date of delivery.
- (c) To the maximum extent permitted by law, the Supplier will not be liable for any loss of profit, loss of goodwill, loss of opportunity and/or any special, punitive, indirect or consequential loss or damage incurred by the Purchaser or any other person whether directly or indirectly related to this Agreement.
- (d) The Supplier is not liable for any loss or damage caused to the Purchaser by reason of any delay, lack of supply, industrial action, fire, riot, war, embargo, civil commotion, act of God or any other event which is beyond the Supplier's control.

17. Australian Consumer Law

Regardless of any provision in this Agreement (in particular clauses 10, 12 and 16), where the Australian Consumer Law as contained in the ACL applies to Goods supplied under this Agreement or to the Purchaser:

- (a) all non-excludable warranties and guarantees implied by statute or other law apply to the Goods supplied under this Agreement and, to the extent that any provision in this Agreement conflicts with any such warranty or guarantee or the ACL, the provisions of the ACL apply to the exclusion of that provision; and
- (b) all Goods come with guarantees that cannot be excluded under the ACL and the Purchaser is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage and to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

18. Indemnity

The Purchaser will indemnify the Supplier and keep the Supplier indemnified against any claim, loss, damage, liability, cost or expense that may be incurred by the Supplier arising from or in connection with any breach or default by the Purchaser of this Agreement, any related Purchase Order or contract or the ACL.

19. Product Warranties

Please read the Supplier's Product Warranty Terms which are incorporated into these Terms & Conditions by reference. The Product Warranty Terms detail the warranty terms relating to the Supplier's Goods.

20. Additional requirements

- (a) The Purchaser must, at the request of the Supplier, provide such further information as is required by the Supplier, whether for the purpose of assessing the Purchaser's creditworthiness or otherwise.
- (b) If the Purchaser is a corporation (other than a listed public listed company), the Purchaser must notify the Supplier, in writing of any change to its directors, shareholders, or its constitution. The Supplier may require the Purchaser to procure the execution of additional security determined by the Supplier (including any guarantee and indemnity to be given by additional directors or shareholders of the Purchaser) as a condition of providing further credit to the Purchaser or for maintaining the arrangements under this Agreement.

21. Corporations

If the Purchaser is a corporation (other than a listed public company), the Purchaser must procure the execution and delivery to the Supplier by each of its directors of a guarantee and indemnity in relation to the Purchaser's obligations under this Agreement and in a form acceptable to the Supplier.

22. Trustee capacity

If the Purchaser is the trustee of a trust (whether disclosed to the Supplier or not), the Purchaser warrants to the Supplier that:

- (a) the Purchaser enters into this agreement in both its capacity as trustee and in its personal capacity;
- (b) the Purchaser has the right to be indemnified out of trust assets;

- (c) the Purchaser has the power under the trust deed to sign this agreement; and
- (d) the Purchaser will not retire as trustee of the trust or appoint any new or additional trustee without the prior consent of the Supplier.

The Purchaser will deliver a copy of the trust deed to the Supplier on demand.

23. Partnership

If the Purchaser is a partnership, the Purchaser must notify the Supplier, in writing of any change to its principals or its partnership agreement. The Supplier may require the Purchaser to procure the execution of additional security determined by the Supplier (including any guarantee and indemnity to be given by additional partners) as a condition of providing further credit to the Purchaser or for maintaining the arrangements under this Agreement.

24. Insolvency

If the Purchaser becomes insolvent, the Purchaser remains liable under this Agreement for payment of all amounts becoming payable under it. The Purchaser remains liable under this Agreement even if the Supplier receives a dividend or payment as a result of the insolvency of the Purchaser.

25. Waiver

The Supplier may at any time and without notice, amend or vary any part of the Agreement (including the price for any Goods or services yet to be supplied). No waiver of or departure by the Supplier from a provision of this Agreement, will be effective unless it is in writing, signed by the Supplier.

26. Costs

The Purchaser must pay:

- (a) any legal costs (on a solicitor/client indemnity basis) stamp duty, and other expenses payable in relation to this Agreement or any credit application, guarantee or other security documents;
- (b) all costs incurred by the Supplier relating to any default by the Purchaser; and
- (c) the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Purchaser, including debt recovery fees paid to a collection agent or otherwise and legal costs on an indemnity basis and whether or not the recovery action, claim or remedy is successful.

27. Taxes & duties

- (a) Where prices are expressed to be exclusive of sales tax, GST or other Government imposts, the Purchaser must pay all sales tax, GST or other Government, imposts fees and charges which become payable on the supply to the Purchaser in addition to the price provided by the Supplier.
- (b) If as a result of:
 - (i) any legislation becoming applicable to the subject matter of this Agreement or any supply under it; or
 - (ii) any changes in legislation or its interpretation,the cost to the Supplier of performing its obligations or making any supply to the Purchaser increases (whether by way of any tax, duty, excise or levy or otherwise), the Purchaser must pay the Supplier such additional amounts on demand.

28. Severance

This Agreement will, to the extent possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect. If a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:

- (a) that provision will be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in the circumstances to give it a valid operation unless this would materially change the intended effect of this Agreement; or
- (b) if the provision or part of it cannot effectively be read down, that provision or part will be deemed to be void and severable and the remaining provisions of this Agreement will not in any way

be affected or impaired and will continue regardless of that illegality, invalidity or unenforceability.

29. Jurisdiction

- (a) The Purchaser acknowledges and agrees that this Agreement will be governed by the laws of Queensland, and each party submits to the non-exclusive jurisdiction of the Courts of Queensland.
- (b) The Purchaser submits and consents to the jurisdiction of Queensland in respect of any proceeding relating to this agreement or to the supply of goods to the Purchaser.

30. Entire agreement

This Agreement contains the entire agreement between the parties and any previous understanding, agreement, representation or warranty is replaced by this Agreement and has no further effect. Any right that a party may have under this Agreement is in addition to, and does not replace or limit, any other right that the party may have.