

THOMAS GLOBAL SYSTEMS

TERMS AND CONDITIONS OF SALE

1 Definitions and interpretation

1.1 Definitions

Buyer means the purchaser of the Goods whose details are set out in the invoice.

Facilities means working space, computer equipment, access to the internet and the Buyer's computer network, telecommunications system and similar. It includes access to such resources but also use of them to the extent required by the Seller in order to perform the Services.

Goods means the products, if any, specified in the invoice.

Seller means the seller of the Goods whose details are set out in the invoice.

Services means the services, if any, specified in the invoice.

1.2 Interpretation

Nothing in these conditions exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the *Competition and Consumer Act 2010* (Cth)) and which by law cannot be excluded, restricted or modified.

2 General

These conditions (which will only be waived in writing signed by the Seller and Buyer) will prevail over all conditions of the Buyer's order, to the extent of any inconsistency.

3 Terms of sale

The Goods are sold and/or the Services are provided by the Seller on these terms and conditions.

4 Seller's quotations

Unless previously withdrawn, Seller's quotations are open for acceptance within the period stated in them or, when no period is so stated, within 30 days only after its date. The Seller reserves the right to refuse any order based on this quotation within 30 days after the receipt of the order.

5 Packing

The cost of any special packing and packing materials used in relation to the Goods are at the Buyer's expense, even if that cost has been omitted from any quotation.

6 Shortage

The Buyer waives any claim for shortage of any Goods delivered if a claim in respect for short delivery has not been lodged with the Seller within 30 days from the date of receipt of Goods by the Buyer.

7 Performance

Any performance figures given by the Seller are estimates only. The Seller is under no liability for damages for failure of the Goods or the Services to attain such figures unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.

8 Delivery and Performance

- (a) Products will be delivered EXWORKS Seller's facility (EXW Incoterms 2010).
- (b) The delivery times made known to the Buyer are estimates only and the Seller is not liable for late delivery or non-delivery.
- (c) The Seller will not be liable for any loss, damage or delay occasioned to the Buyer or its customers arising from late or non-delivery of the Goods and/or Services and late installation of the Goods.
- (d) The Seller may at its option deliver the Goods to the Buyer in any number of instalments unless there is an endorsement overleaf to the effect that the Buyer will not take delivery by instalments.
- (e) If the Seller delivers any of the Goods by instalments, and any one of those instalments is defective for any reason:
 - (i) this does not constitute a repudiation of the contract of sale formed by these conditions; and
 - (ii) the defective instalment is a severable breach that gives rise only to a claim for compensation.
- (f) The Seller and the Buyer will agree the time and place for the performance of the Services subject to the availability of the Seller's staff and agents.
- (g) The Seller will use reasonable endeavours to complete the Services by the dates specified on the invoice.
- (h) The Services will be performed by the employees or agents that the Seller may choose as most appropriate to carry out the Services.

9 Use of subcontractors

- (a) The Seller is permitted to use other persons to provide some or all of the Services.
- (b) The Seller is responsible for the work of any of the Seller's subcontractors.
- (c) Subject to clause 9(d), any work undertaken by any of the Seller's subcontractors will be undertaken to the same standard as stated in these conditions and the invoice.
- (d) To the extent that the terms of any subcontract stipulate a higher standard for any of the Services than the standards set out in these conditions (including as to timing or quality), any Services provided by the relevant subcontractor will be governed by the terms and conditions of that subcontractor's subcontract.

10 Loss or damage in transit

- (a) The Seller is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to Goods in transit caused by any event of any kind or by any person (whether or not the Seller is legally responsible for the actions of that person).
- (b) The Seller must provide the Buyer with such assistance as may be reasonably necessary to institute claims against a carrier for damages to Goods in transit so long as the Buyer:
 - (i) has notified the Seller and the carrier in writing immediately after loss or damage is discovered by the Buyer on receipt of Goods; and
 - (ii) serves a claim for compensation on the carrier within 3 days of the date of receipt of the Goods.

11 Buyer's obligations

- (a) During the performance of the Services the Buyer will:
 - (i) co-operate with the Seller as the Seller reasonably requires;
 - (ii) provide the information and documentation that the Seller reasonably requires;
 - (iii) make available to the Seller such Facilities as the Supplier reasonably requires; and

- (iv) ensure that the Buyer's staff and agents cooperate with and assist the Seller.
- (b) The Buyer will not charge for the Seller's use of the Facilities made available by the Buyer.
- (c) If the Buyer does not provide the Facilities that the Seller reasonably requires (and within the time period) to perform the Services, then any additional costs and expenses which are reasonably incurred by the Seller will be paid by the Buyer.

12 Guarantee and liability

- (a) The Seller's liability for Goods manufactured and Services rendered by it is limited to making good any defects. This must be done by repairing the defects or, at the Seller's option, by replacement, within a period not exceeding 12 calendar months after the Goods have been dispatched or the Services have been rendered. This applies so long as:
 - (i) the defects have arisen solely from faulty materials or workmanship;
 - (ii) the Goods have not received maltreatment, inattention or interference;
 - (iii) accessories of any kind used by the Buyer are manufactured by or approved by Seller;
 - (iv) the seals of any kind on the Goods remain unbroken; and
 - (v) the defective parts are promptly returned free of cost to the Seller.
- (b) If the Goods are not manufactured by the Seller, the guarantee of the manufacturer of those Goods is accepted by the Buyer and is the only guarantee given to the Buyer for the Goods. The Seller agrees to assign to the Buyer on request made by the Buyer the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to the Seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
- (c) The Seller is not liable for, and the Buyer releases the Seller from, any claims in respect of faulty or defective design of any Goods supplied. This is unless the design has been wholly prepared by the Seller and the responsibility for any claim has been specifically accepted by the Seller in writing.
- (d) The Seller's liability under clause 12(c) is limited strictly to the replacement of defective parts of Goods or aspects of Services in accordance with clause 12(a) of these conditions.
- (e) Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods or Services for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The Seller is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or the provision of the Services or arising out of the Seller's negligence or in any way.

13 Consumer guarantees

The Seller's liability for a breach of a condition or warranty implied by Part 3-2 Division 1 of the Australian Consumer Law is limited to, and in any case the Seller's liability for a breach of a condition or warranty is limited to:

- (a) in the case of Goods, any one or more of:
 - (i) the replacement of the Goods or the supply of equivalent goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; and
 - (iv) the payment of the cost of having the Goods repaired; or
- (b) in the case of Services:
 - (i) the supplying of the Services again; or
 - (ii) the payment of the cost of having the Services supplied again.

14 Indemnification of suppliers by manufacturers

The Seller's liability under section 274 of the Australian Consumer Law is expressly limited to, and in any case the Seller's liability under these conditions is limited to:

- (a) the cost of replacing the Goods;
- (b) the cost of obtaining equivalent goods; or
- (c) the cost of having the Goods repaired, whichever is the lowest amount.

15 Prices

- (a) Unless otherwise stated all prices quoted by vendor are exclusive of all taxes, levies, duties, taxes, insurance, packaging and delivery costs. Buyer agrees to pay to Seller, in addition to the Prices stated, the amount of any such taxes, domestic or foreign, which may be imposed upon or payable by Seller.
- (b) Prices quoted are calculated at the date of issue of a relevant quotation and include rates provided by third parties providers. These third-party rates include the cost of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, rate of water, cost of materials and other charges affecting the cost of production (**Third Party Rates**). Third Party Rates may vary slightly from the date of the quotation to the time of delivery of the Goods or Services. The Buyer will be liable for any increase in the Third Party Rates.
- (c) If the Seller makes any alterations to the price of the Goods or Services or to any of their inputs either before acceptance of or during the currency of the contract, these alterations are for the Buyer's account.

16 Payment

- (a) The purchase price for the Goods or Services plus GST where applicable is payable 14 days following the delivery of the Goods (Payment Due Date) unless other terms of payment are agreed in writing between the parties.
- (b) Seller reserves the right to require payment in advance of shipment or to ship C.O.D. Unless the Contract states otherwise, all payments must be made in U.S. dollars.
- (c) The Buyer must pay interest on any outstanding amount not paid by Payment Due Date. Interest will be calculated on the basis of the London Inter-bank Offered Rate (or its successor rate) from time to time plus 2%. Interest will accrue daily from the Payment Due Date until the outstanding amount is paid in full.

17 Rights in relation to Goods

- (a) The Seller reserves the following rights in relation to the Goods until all accounts owed by the Buyer to the Seller are fully paid:
 - (i) ownership of the Goods;
 - (ii) to enter the Buyer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
 - (iii) subject to, and in accordance with, the *Personal Property Securities Act 2009* (Cth) (**PPSA**), to keep or resell any Goods repossessed pursuant to clause 17(a)(ii).

18 Buyer's property

Any property of the Buyer under the Seller's possession, custody or control is completely at the Buyer's risk as regards loss or damage caused to the property or by it.

19 Storage

The Seller reserves the right to charge a reasonable fee for storage if delivery instructions are not provided by the Buyer within 7 days of a request by the Seller for such instructions. The parties agree that the Seller may charge for storage from the first day after the Seller requests the Buyer to provide delivery instructions.

20 Returned Goods

- (a) Except for any provisions to the contrary contained in these conditions, the Seller is not under any duty to accept Goods returned by the Buyer. The Seller will do so only on terms to be agreed in writing in each individual case.
- (b) If the Seller agrees to accept returned Goods from the Buyer under clause 20(a) of this clause, the Buyer must return the Goods to the Seller at the Seller's place of business referred to at the head of these conditions.

21 Goods sold

All Goods to be supplied by the Seller to the Buyer are as described on the purchase order agreed by the Seller and the Buyer and the description on such purchase order as so agreed prevails over all other descriptions of the Goods including any specification or enquiry of the Buyer.

22 Cancellation

No order may be cancelled by the Buyer except with the written consent of the Seller. If there is a cancellation of the order by the Buyer, the Seller has the right to claim indemnity against all losses suffered by the Seller as a result of such cancellation.

23 Retention of Security Interest

- (a) These conditions constitute a security agreement for the purposes of the PPSA.
- (b) The interest of the Seller in the Goods and all proceeds from the sale of the Goods by the Buyer to a third party is a security interest.
- (c) The Buyer consents to the Seller registering its security interest on the Personal Property Securities Register and agrees to provide all assistance reasonably required by the Seller to facilitate registration.
- (d) Until title in the Goods has passed to the Buyer as contemplated by clause 17 of these conditions, the Buyer agrees not to in any way assign, charge, lease or otherwise deal with the Goods in such a manner as to create, a security interest over, the Goods in favour of the Buyer or any third party. The parties agree that this clause will not prohibit the Buyer from selling the Goods in the ordinary course of business..
- (e) The Buyer waives its rights to receive any notice under PPSA (including notice of verification statement) unless the notice is required by the PPSA and cannot be excluded.
- (f) The Seller and Buyer agree that these conditions and all related information and document(s) are confidential (**Confidential Information**) and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by these conditions or required by law.
- (g) The Seller and Buyer agree that the Seller will not disclose the Confidential Information pursuant to a request under section 275(1) of the PPSA.
- (h) The Seller and the Buyer agree each that the following requirements or rights whether under the PPSA or otherwise do not apply to the enforcement of the Seller's security interest in the Goods or of these conditions:
 - (i) any requirement for the seller to give the Buyer a notice of removal of accession;
 - (ii) any requirement for the Seller to give the Buyer a notice of the Seller's proposed disposal of the goods;
 - (iii) any requirement for the Seller to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties;
 - (iv) any requirement for the Seller to give the Buyer a statement of account if the Seller does not dispose of the Goods;
 - (v) any right the Buyer has to redeem the Goods before the Seller exercises a right of disposal; and
 - (vi) any right the Buyer has to reinstate these conditions before the Seller exercises a right of disposal of the Goods.
- (i) Expressions defined in the PPSA have the same meaning when used in these conditions.

24 Compliance with laws

- (a) *General.* The Buyer shall comply with all statutes, laws, rules, regulations and guidelines of the jurisdiction applicable to this order and any country, including any governmental subdivision thereof, where Seller has an office or facility or is otherwise doing business or properly subject to jurisdiction under this order, including United States and any applicable foreign export, import, and sanctions laws, regulations, orders, including without limitation, the Export Administration Regulations (**EAR**), International Traffic in Arms Regulations (**ITAR**), and regulations and orders administered by the United States Treasury Department's Office of Foreign Assets Control, United States customs laws and regulations and all other applicable laws and regulations pertaining to importations of goods and materials into the jurisdictions relevant to this order, (collectively, the **Laws**) and any applicable authorisations issued thereunder.
- (b) *Authorisations.* Provision of United States export-controlled technology, data, software, services and/or hardware under this order may be subject to and/or superseded by the terms and conditions of applicable United States Government export authorisations. Seller shall obtain any and all licences, permits or other authorisations required by any applicable Laws for the performance of this order. Seller will provide all reasonable assistance for Buyer to obtain export or import authorisations.
- (c) *Export Jurisdiction / Classification.* For United States export-controlled technology, data, software, services and/or hardware furnished by the Seller to the Buyer under this order, the Seller shall provide the Buyer the applicable Export Control Classification Number (**ECCN**) or ITAR classification, except when the Seller is manufacturing to the Buyer's design. If the Seller is not the Original Equipment Manufacturer (**OEM**), the Seller shall obtain the ECCN or ITAR classification information from the Seller's source of supply. The Seller shall include the ECCN or ITAR classification on its packing slips and shipping documentation.
- (d) *Re-transfers and Consent.* The Buyer shall not re-transfer any export-controlled articles or information (such as technical data or software) without first complying with all the requirements of the applicable Laws and authorisations. Prior to any proposed re-transfer of any export-controlled articles or information, the Buyer shall first obtain the written consent of the Seller. Such consent, if provided, is not a waiver of the Buyer's obligations under this clause, or under applicable Laws and authorisations, nor consent for the Buyer to violate any provision of applicable Laws and authorisations.
- (e) *Imports.* The Buyer shall assume all import responsibilities, to include designation as Importer of Record, customs clearance, duty, taxes, and fees for goods and materials entering into the jurisdictions relevant to these conditions. Unless otherwise agreed in writing, the Seller will not assume any import liabilities for goods and materials procured through this order.

- (f) **Notification.** The Buyer shall provide prompt notification to the Seller in the event of changes in circumstances (e.g. ineligibility to contract with a government, debarment, assignment of consent agreement, designation under sanctions laws and regulations, and initiation or existence of a government investigation) that could affect the Buyer's performance under these conditions.
- (g) The Buyer represents, warrants and covenants that:
- (i) It has not and will not, directly or indirectly, pay, promise, offer, or authorise the payment of any money or anything of value in connection with this order to:
 - (A) an officer, employee, agent or representative of any government, including any department, agency, or instrumentality thereof or any person acting in an official capacity thereof;
 - (B) a candidate for political office, any political party or any official of a political party; or
 - (C) any other person or entity while knowing or having reason to know that all or any portion of such payment or thing of value will be offered, given or promised, directly or indirectly, to any person or entity for the purpose of assisting the Seller in obtaining or retaining business, or an improper business advantage. Without limiting the generality of the foregoing, the Buyer shall not directly or indirectly, pay, promise, offer, or authorise the payment of any facilitating payment intended to expedite or secure performance of a routine governmental action, such as, customs clearance on behalf of the Seller; and
 - (ii) No gifts, travel expenses, business courtesies, hospitalities or entertainment of any nature have been or will be accepted or made in connection with this order where the intent of was, or is, to unlawfully influence the recipient of the gift, travel expense, business courtesy, hospitality or entertainment. The Buyer also represents that any gifts, travel expenses, business courtesies, hospitalities or entertainment offered or provided shall meet the following conditions:
 - (A) be permitted under the United States *Foreign Corrupt Practices Act*, the United Kingdom *Bribery Act 2010* and any applicable laws and regulations of Australia;
 - (B) be consistent with applicable social and ethical standards and accepted business practices;
 - (C) be of such limited value as not to be deemed a bribe, payoff or any other form of improper inducement or payment; and
 - (D) be of such nature that its disclosure will not cause embarrassment for the Seller.
- (h) Breach of any of the provisions subparagraph (g) of this clause by the Buyer shall be considered an irreparable material breach of these conditions and shall entitle the Seller to terminate this order immediately without compensation to the Buyer.

25 Protection of information

- (a) If a separate confidentiality, nondisclosure, or proprietary information agreement exists between the Buyer and the Seller which relates to the subject matter of this order, then confidential information furnished by one Party to the other Party shall be protected pursuant to such agreement, and paragraphs (b) to (h) of this clause shall not apply.
- (b) If no separate confidentiality, nondisclosure, or proprietary information agreement exists between Buyer and Seller, paragraphs (c) to (h) of this clause apply.
- (c) For purposes of this clause, **Information** shall mean information disclosed to the Buyer by the Seller in connection with this order which is either identified to the Buyer as being proprietary to the Seller or its customer or which is information that a reasonable person would understand to be such information. Examples of Information include, but are not limited to, customer lists, pricing policies, market analyses, business plans or programs, software, specifications, manuals, print-outs, notes and annotations, performance data, designs, drawings, dimensions, processes, data, reports, photographs, and engineering, manufacturing or technical information related to the Seller's products, Services, equipment or processes, as well as duplicates, copies, or derivative works thereof. Information shall not mean any information previously known to the Buyer without obligation of confidence, or which becomes publicly disclosed through no fault of the Buyer, or which is required by law to be disclosed, or which is rightfully received by the Buyer from a third party without obligation of confidence, or which is developed independently by Seller without reliance on any Seller information.
- (d) Information furnished to the Buyer shall remain the Seller's proprietary property, shall be duplicated only as authorised in writing by the Seller, and shall be returned to the Seller or destroyed upon request or when no longer required for the performance of this order. The Buyer shall not disclose Information to any third party, and shall take all reasonable precautions to prevent the disclosure of Information to third parties except as specifically authorised by the Seller. The Buyer further agrees not to use any Seller Information to develop any product, service or system, or to support any third party in the development of any product, service or system.
- (e) Neither the existence of this order nor the disclosure of the Seller or customer Information or any other information hereunder shall be construed as granting expressly by implication, by estoppels or otherwise, a license under any invention or patent now or hereafter owned or controlled by the Seller, except as specifically described in this order.
- (f) Data and information provided by the Buyer shall be considered proprietary or confidential only when marked as such. The Buyer's proprietary or confidential data and information will be used by the Seller only upon approval of the Buyer. The Seller may use unmarked Buyer's data and information for any purpose.
- (g) The Buyer's obligations with respect to Seller information disclosed hereunder prior to the performance in full, termination or cancellation of this order shall not, except as expressly described in this order, be affected by such performance in full, termination, or cancellation.
- (h) The Seller or its authorised representatives may at any time audit all pertinent books, records and files of Seller in order to verify compliance with this clause. The Buyer will, in all of its contracts with its suppliers relating to any order, include provisions which secure for the Seller all of the rights and protections provided for by this clause.

26 Data breach notification

In the event the Buyer reasonably believes that unauthorised access to, disclosure of, or breach in the security of the Seller's data may have occurred, the Buyer, at its own cost and expense must:

- (a) in the most expeditious manner possible, without unreasonable delay, and in any event no later than seventy-two (72) hours from becoming aware of the suspected breach, notify the Seller of any potential data security breach involving the Seller's data;
- (b) promptly provide the Seller full details of the potential breach of the data security of the Seller's data;
- (c) assist the Seller and any third parties authorised by the Seller, including law enforcement authorities, in investigating and remediating any
- (d) potential breach of the data security of the Seller's data;
- (e) promptly use best efforts to prevent a recurrence of any potential breach of the data security of the Seller's data; and
- (f) cooperate with the Seller in notifying individuals injured or potentially injured by the potential breach of the data security of the Seller's data.

27 Termination

- (a) In the absence of any breach of these conditions, either party may terminate these conditions in its absolute discretion with a minimum of 14 days' written notice to the other party.
- (b) These conditions will automatically terminate if a party enters into any composition or arrangement with its creditors or has a receiver appointed over any of its assets or is the subject of any resolution or petition for winding up or judicial management (other than for the purpose of amalgamation or reconstruction).
- (c) Either party may terminate these conditions if the other party is in material breach of any of its obligations under these conditions and if the breach is capable of remedy fails to remedy the breach for a period of 14 days after receipt of a written notice by the other party requiring rectification of the breach.
- (d) Exercise of the right of termination afforded to either party under this clause will not prejudice the legal rights or remedies which either party may have against the other in respect of a breach of any term, condition or warranty of these conditions.
- (e) The obligations of the parties that by their nature could reasonably construed as being intended to continue to apply beyond the termination of these conditions will continue to apply.

28 Applicable laws

These conditions shall be governed by and construed in accordance with the laws of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the courts and tribunals of New South Wales, Australia. Nothing in this clause is intended to undermine the jurisdiction of the Federal Court of Australia or the Federal Circuit Court of Australia.