

Terms and Conditions of Sale

1. General

Unless the context otherwise requires:

Agreement means these Terms and Conditions of Sale which apply to the supply of Goods by Quest to Customer.

Customer means the party named in the attached invoice, to whom Quest has agreed to supply Goods pursuant to the Agreement.

Goods means the goods and/or services agreed to be supplied by Quest and purchased by Customer, as detailed in the attached invoice.

GST has the meaning given by the *A New Tax System* (Goods and Services Tax) Act 1999 (Cth).

Order means an order by the Customer for Quest to supply the Goods.

PPSA means the Personal Property Securities Act 2009 (Vic).

Quest means Quest Payment Systems Pty Ltd ABN 36 651 426 238.

2. Formation of Agreement

2.1 A contract is formed by and upon Quest accepting an Order or verbal or written instruction from Customer. Each contract is governed by the Agreement.

2.2 The Agreement takes precedence over any other representations, agreements, arrangements or understandings relating to the Goods and any matters in connection with the Goods.

Any conditions or terms of purchase submitted by Customer deviating from or inconsistent with the Agreement will not bind Quest, notwithstanding any statement by Customer that its terms and conditions prevail over the Agreement.

3. Quotes and Pricing Variation

3.1 Where manufacturing of hardware is required to fulfil a specific hardware order, prices quoted are subject to variation and will be confirmed by Quest at the time of manufacture. A manufacturing deposit may be required when placing an order.

3.2 Variations may occur where the Australian dollar falls by 1% or more to the US dollar (source: Reserve Bank of Australia) from the time of quotation to the time of manufacture, and/or where increases in component pricing, logistics and freight charges occur from the time of quotation to the time of manufacture.

4. Payment

4.1 The Customer must pay the amount due for the Goods, according to the terms of payment set out in the invoice issued by Quest.

4.2 If Customer does not pay money by the due date for payment, or a payment made by Customer fails to be honoured, without affecting any other rights which it may have against Customer, Quest may require Customer to pay on demand interest at the National Australia Bank Limited prime lending rate effective from time to time plus 4% per annum calculated from the due date on daily balances of amounts unpaid.

4.3 Customer must not set off any money owing or alleged to be owing by Quest against money due by Customer to Quest.

4.4 The total purchase price, unless otherwise stated in the Order, includes GST (unless stated otherwise), delivery charges and packaging but does not include any freight, assembly costs, installation costs, costs and charges of third party suppliers such as electricians, insurance or any statutory, sales, excise, or other taxes, duties or imposts, all of which will be paid by Customer.

5. Return of goods

5.1 Customer is deemed to have accepted the Goods unless it makes a claim in accordance with this clause.

5.2 Customer may reject any Goods that are wrongly supplied or oversupplied by notifying Quest of the claim and providing full particulars of the claim in writing within 10 days of receipt of those Goods. Quest may dispute any such claim.

5.3 Goods referred to in clause 4.2 may be returned to Quest for credit if all of the following is complied with:

- The Goods are returned to Quest's premises by prior arrangement and with Quest's written approval within 10 days of delivery, at no cost to Quest (unless delivered as the result of an administrative error by Quest, in which case Quest will bear the cost of return);
- the Goods are accompanied by a dispatch note stating Quest's original invoice number and reason for return; and
- the Goods are returned in an unsoiled, undamaged and re-saleable condition in their original packing.

5.4 Customer must not return any Goods to Quest unless it has complied with clause 4.3 and has done all things necessary to permit Quest to examine the Goods to Quest's satisfaction within that period.

6. Delivery and storage

6.1 All quoted delivery or consignment dates are estimates only. Quest is not obliged to meet such dates and will not be liable to Customer by reason of delays caused by any reason whatsoever.

6.2 Quest is deemed to have delivered the Goods when the Goods are actually delivered to the delivery point nominated by Customer, or where delivery to the delivery point is not made due to reasons which are the responsibility of Customer, the date when delivery would have been effected.

6.3 Quest may deliver the Goods by instalments (where, in Quest's opinion, this is reasonable) and issue interim invoices to Customer.

6.4 Without limiting any other provision of the Agreement, failure by Customer to pay any instalment, or any other amount when due, will entitle Quest to withhold or delay delivery of any remaining Goods ordered.

7. Title and risk

7.1 Title to the Goods shall remain with Quest until all monies owing by Customer to Quest have been paid in full

(whether such monies are payable under a specific contract or on any other account).

7.2 Until such time as Customer has paid in full all monies owing to Quest, Customer shall:

- store, protect and insure the Goods from fire and loss damage;
- store the Goods separately and mark them so that they are clearly and easily identifiable as Quest's property and, if Quest requests, inform Quest of the location of the Goods;
- hold the Goods as bailee for Quest;
- indemnify Quest against any claim arising out of the possession, use or disposal of the Goods by Customer or repossession or attempted repossession by Quest.

7.3 If:

- a payment is not made in accordance with the Agreement;
- Customer commits any other breach of the Agreement; or
- Customer becomes bankrupt, has an administrator, a receiver or a receiver and manager appointed, goes into liquidation (whether voluntarily or otherwise), or is wound up, dissolved or declared insolvent,

then Quest may at any time, without notice to Customer and without prejudice to any other rights that it may have against Customer:

- terminate the Agreement; or
- suspend some or all its obligations to Customer under the Agreement; and
- enter upon any premises owned or occupied by Customer where Quest reasonably believes the Goods may be stored and repossess the Goods without being liable for any damages caused.

7.4 If Customer sells the Goods before payment in full to Quest, or uses the Goods in a manufacturing or construction process of its own or some third party, Customer holds the proceeds on trust for Quest in respect of those Goods, and must keep such proceeds in a separate account until the liability to Quest is discharged and must immediately pay that amount to Quest.

7.5 The risk in the Goods passes to Customer at the time of Delivery.

8. Personal Property Securities Act 2009

8.1 Where the PPSA is in force, Customer acknowledges that the Agreement creates a *security interest* under the Act, in the Goods and the proceeds of sale of the Goods.

8.2 Customer agrees:

- to do all things necessary and required by Quest to ensure that the security interest is a perfected "purchase money security interest" under PPSA; and
- not to allow any third party to acquire a security interest in the Goods.

8.3 To the extent that the Goods are for Customer's business use, Customer agrees to the extent permitted under the PPSA, that Customer has no right:

- to receive notice of removal of an accession under the PPSA; or
- under Chapter 4 of the PPSA; or
- under the PPSA to receive a copy of any verification statement or financing change statement under the PPSA.

9. Limitation of liability for Goods

9.1 To the maximum extent permitted by law, all conditions and warranties expressed or implied by statute, common law, equity, trade, custom, usage or otherwise in respect of the Goods are expressly excluded.

9.2 For equipment forming part of the Goods, which equipment is not manufactured by Quest, the original manufacturer's warranty will apply. Quest's liability for such equipment shall not exceed the liability of the manufacturer.

9.3 In respect of Goods that are not ordinarily acquired for personal, domestic or household use or consumption, the liability of Quest for a breach of any condition or warranty implied by law is limited at Quest's option to the repair of the Goods or to supply replacement Goods.

9.4 Quest's liability under the Agreement will be reduced by the amount of any contributory loss or damage to the extent caused by Customer's act or omission.

9.5 Customer acknowledges and agrees that, to the extent permitted by law, Quest has no liability in contract, tort (including negligence or breach of statutory duty), by statute or otherwise for loss or damage (whether direct or indirect) of profits, opportunity, revenue, goodwill, bargain, production, contracts, business or anticipated savings, corruption or destruction of data or for any indirect, special or consequential loss or damage whatsoever.

9.6 Quest's total liability under any contract and the Agreement shall not exceed the total dollar amount of the Goods purchased by Customer under each contract.

10. Miscellaneous

10.1 If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from the Agreement, but the rest of the Agreement is not affected.

10.2 The Agreement is governed by and must be interpreted in accordance with the laws of Victoria. Customer unconditionally submits to the nonexclusive jurisdiction of the courts of Victoria determined in accordance with this clause.

10.3 Where there is more than one Customer then the liability of each shall be joint and several.

10.4 The rights and remedies provided in the Agreement will not affect any other rights or remedies available to Quest.