

LEADER COMPUTERS PTY. LTD ACN 093 139 354

TERMS AND CONDITIONS OF SALE

1. GENERAL

- 1.1 Unless otherwise agreed in writing by Leader Computers Pty Ltd ("**Leader**") the following conditions shall govern this transaction and shall be incorporated into all future transactions where supplying any goods, as described in the individual tax invoice provided by Leader, ("**the Goods**") to a Customer ("**Customer**") whether or not these conditions are made expressly applicable to any particular transaction.
- 1.2 Terms and conditions contained in any form, order or other writing of the Customer and which are at variance with or additional to these terms and conditions are not binding upon Leader unless specifically accepted by Leader in writing.
- 1.3 Any quotation submitted by Leader shall constitute an invitation to do business only. A contract shall only be formed when an order is received from the Customer to purchase goods subject to Leader terms and conditions of sale. The quotation shall at the discretion of Leader be capable of being withdrawn at any time prior to acceptance by Leader of the Customer's offer to purchase Goods.
- 1.4 The description of the Goods on the face hereof or given in any other document is for identification purposes only and the use of such description shall not constitute the order for the supply of the Goods as a sale by description unless expressly stated.
- 1.5 Leader reserves the right to deliver the Goods by instalment and each instalment shall be deemed to be sold under a separate contract incorporating Leader's standard terms and conditions of sale. Failure by Leader to deliver any instalment shall not entitle the Customer to cancel the balance of the order.

2. RIGHTS IN RELATION TO GOODS

- 2.1 It is the responsibility of the Customer to ensure, when ordering that all Goods ordered are in conformity with the Customer's requirements.
- 2.2 Notwithstanding any other provisions of these Terms, full legal and beneficial title to all Goods supplied by to the Customer (whether supplied before or after the date of these Terms) shall remain with Leader until Leader has received payment in full in cleared funds of:
 - (a) the invoiced purchase price of the Goods; and
 - (b) all other monies whatsoever now or in the future owing by the Customer to Leader on any account, whether pursuant to these Terms or otherwise, and whether or not such monies relate to the Goods supplied, including interest, costs and expenses ("Secured Monies")
- 2.3 This clause creates a continuing "all monies" retention of title arrangement and applies to all Goods supplied by Leader to the Customer at any time. The invoiced price for the Goods as well as any additional charges, taxes or duties, in full, in relation to the Goods to Leader in accordance with these terms and conditions.
- 2.4 The Customer acknowledges that:
 - a. these Terms constitute a security agreement for the purposes of the *Personal Property Securities Act 2009* (Cth) ("PPSA");
 - b. Leader holds a Security Interest in all Goods supplied by Leader to the Customer, whether paid for or not, and in all present and after-acquired property supplied by Leader;
 - c. the Security Interest secures payment of all Secured Monies;
 - d. the Security Interest is a continuing security interest and is not limited to specific invoices or Goods;
 - e. the Security Interest extends to all Proceeds (as defined in the PPSA) of the Goods; and

- f. Leader may register one or more financing statements on the Personal Property Securities Register ("PPSR") in respect of the Security Interest.

2.5 The Customer will if required by Leader assist Leader in any way necessary and deemed reasonable, to ensure that the Security Interest becomes a "Perfected Security Interest" as that term is defined in the PPS Act

2.6 Leader's Security Interest:

- a. is intended to constitute a Purchase Money Security Interest ("PMSI") to the maximum extent permitted by the PPSA;
- b. attaches to the Goods immediately upon supply;
- c. continues in any Goods that are mixed, processed or incorporated into other goods
- d. continues in all Proceeds of the Goods; and
- e. has priority over any other Security Interest to the extent permitted by the PPSA.

The Customer must do all things necessary to enable Leader to register and maintain a perfected PMSI.

- 2.7 Until title to and property in the Goods has passed to the Customer in accordance with the preceding Clause 2.2 then without prejudice to Leader's other rights.
- a. the Customer shall keep the Goods free from all charges, liens and other encumbrance;
 - b. until such time as the Customer becomes the owner of the Goods, it will store the Goods on its premises separately from its own goods or those of any other person and in a manner which makes them readily identifiable as the Goods of Leader;
 - c. the Customer acknowledge and admits that until such time as the Goods are sold by the Customer to its Customer's by way of bona fide sale for market value it shall hold the Goods as bailee for Leader and Leader is contracting with the Customer in full reliance on this provision and the Customer shall be estopped from denying this admission;
 - d. all Goods the subject of bailments will be treated as Security Interests and will be registered on the PPS Register.
 - e. the Customer acknowledges and agrees that upon the Goods being sold by it that the entire proceeds from that sale shall immediately be payable directly into a separate bank account opened for this purpose at Westpac Bank , Gouger Street Adelaide or other bank as nominated by Leader for all present and after acquired Goods.
 - f. Leader shall be entitled, without giving notice to the Customer in accordance with section 115 of the PPS Act, to recover or require immediate re-delivery of the Goods on demand and for the purpose of such recovery or re-delivery of the Goods Leader shall be entitled and the Customer hereby grants to Leader , its officers, servants or agents full and unrestricted license to enter upon the premises of the Customer (or other premises at which the Goods may be located) to remove the Goods from such premises and such premises and such return or retaking of possessions shall be without prejudice to the obligation of the Customer to purchase the Goods if Leader so requires (whether or not subject to any conditions as to payment or otherwise which Leader , in its sole discretion, may impose);
 - g. Leader may maintain an action for the price of the Goods invoiced to the Customer notwithstanding that the property therein may not have passed to the Customer.
 - h. The Customer's rights to possession of the Goods shall immediately cease if the Customer takes any action that could result in its being made bankrupt or the Customer resolves to wind itself up or otherwise dissolve itself or gives notice of intention to do so or is wound up or is placed under official management, or a receiver and manager, or a voluntary administrator or appointed in respect of the Customer, it's undertaking or property, or any part thereof , or any part thereof, or an encumbrancer, by itself or by an agent takes possession of the Customers undertaking or property or any part thereof .

- i. The Customer acknowledges that if it becomes insolvent, enters administration, liquidation, receivership or bankruptcy, Leader's Security Interest is intended to be perfected by registration within the time required under section 588FL of the *Corporations Act 2001 (Cth)* and section 267 of the PPSA so that the Security Interest does not vest in the Customer.
- j. The Customer must immediately notify Leader in writing of any actual or threatened insolvency event.

For the avoidance of doubt, Leader is entitled to recover, seize or otherwise enforce its Security Interest over any and all Goods supplied by Leader to the Customer, whether or not those particular Goods have been paid for, if any Secured Monies remain outstanding.

- 2.8 Subject to these terms and conditions the Customer is permitted by Leader to process the Goods and to incorporate them in or with in or with any other item or items subject to the express condition that the new item or items or any other chattel whatsoever containing any part of the said Goods shall be separately stored and marked so as to be identifiable as being made from or with the Goods the property of Leader and the security interest will continue in the mixed or improved goods.
- 2.9 The Customer shall be at liberty to sell any product item or items produced from or with the Goods on the express condition that it shall enter into any such agreement to sell as the bailee of Leader and that the entire proceeds received from such sale shall be held in trust for Leader and are not mingled with any other money of the Customer and shall at all times be identifiable as Leader's moneys. If the Customer does not receive the proceeds of any such sale it will, when called upon so to do by Leader and within three (3) days thereof be deemed to have assigned to Leader all rights against the person or persons to whom it has supplied any item made from or with the Goods.
- 2.10 The Customer assumes all risks of loss and damages to the Goods from the time the Goods are loaded for dispatch from the premises of Leader or such other premises at which the Goods are stored.
- 2.11 The Customer shall indemnify Leader against and pay to Leader immediately upon demand all and any loss, damage, cost, charge, expense or other liability (including but not limited to consequential loss, loss of profits and legal costs) whatsoever and howsoever incurred or sustained by Leader as a result of or in relation to the exercise by Leader of any its rights under this Clause 2 on a full indemnity basis.
- 2.12 Nothing in this Clause 2 shall confer any right upon the Customer to return the Goods purchased by it in accordance with these terms and conditions or refuse or to delay payment for them.
- 2.13 To the extent permitted by the PPSA, the Customer:
 - a. waives its rights under sections 95, 118, 121(4), 130, 132(3)(d), 135 and 137 of the PPSA;
 - b. agrees that sections 142 and 143 of the PPSA will not apply;
 - c. agrees that Leader is not required to give any notice under the PPSA unless required by law; and
 - d. agrees not to register or permit the registration of any financing change statement without Leader's prior written consent.

3. DELIVERY AND ACCEPTANCE

- 3.1 Any times quoted for delivery are estimates only and Leader shall not be liable for any loss or damage howsoever arising as a result or consequence of any failure to deliver or for delay in delivery arising from any circumstances of whatsoever nature which are outside Leader's control including in particular but without limiting the generality of the foregoing fire, flood, exposure, strike, lockout or other industrial act or dispute or the breakdown of or accident to plant, unavailability or shortage of raw materials, labour, power, supplies or transport

facilities or act of god, or any order of direction of any local, State or Federal Government or Government authority.

- 3.2 Leader's obligation to deliver the Goods shall be discharged upon Leader making the Goods available for pick up at the premises at which the Goods are stored. The Customer must at its own cost take delivery of the Goods at such premises.
- 3.3 Unless otherwise specified by the Customer in writing Leader may select the mode of shipment of carrier and Leader may make partial shipments to be separately invoiced and paid. All costs incurred in freighting the Goods shall be borne by the Customer.

4. PAYMENT TERMS

- 4.1 Payment for the supply of Goods shall be made within stipulated from the date of invoice subject to Leader's rights to require other terms of payment for any particular order.
- 4.2 Should the Customer fail to pay Leader the net invoiced purchased price within stipulated from the date of invoice of the Goods, then Leader is entitled to interest at a rate equal to two percent (2%) per annum above the overdraft rate for the time being charged by Leader's banker for the relevant period on unsecured overdrafts of more than one hundred thousand Australian dollars, and which interest shall be compounded monthly and calculated from the due date for payment to the date upon which payment is actually made.
- 4.3 Should payment for supply of Goods be outside of or beyond Leader's payment terms the Customer shall be liable for all costs including legal costs (on a full indemnity basis), Mercantile Agencies, Debt Collection Agencies and all other fees incurred by Leader in recovering the amount outstanding.

5. PRICES AND VARIATION OF PRICES

- 5.1 All prices shall be a quoted or in accordance with Leader's price list current at the time of order whichever shall be the higher. Such price lists are subject to the conditions (if any) stated thereon. Verbal quotations are subject to written confirmation. Prices quoted are exclusive of any taxes, imposts, charges and duties applicable or relating to the sale of the Goods. All taxes, imposts, and duties applicable relating to the sale of the Goods (including where applicable) will be for the account of the Customer.
- 5.2 The Customer shall be required to pay to Leader any further amounts that may become payable by Leader as a result of any increases in the taxes, imposts, charges and duties applicable or relating to the sale of the Goods.
- 5.3 Prices may be varied by Leader from time to time and without notice to the Customer.
- 5.4 Recipient Created Tax Invoices (RCTI)
 - (a) Leader and the Customer agree that Leader may issue Recipient Created Tax Invoices (RCTIs) in respect of any taxable supplies made by the Customer to Leader (including but not limited to rebates, volume incentives, or commissions).
 - (b) The Customer agrees that it will not issue tax invoices in respect of any taxable supplies covered by this clause.
 - (c) Both parties acknowledge and warrant that they are registered for GST at the time of entering into this agreement.
 - (d) Each party agrees to notify the other immediately if they cease to be registered for GST, transfer their business as a going concern, or change their Australian Business Number (ABN).
 - (e) Leader will issue the RCTI to the Customer within 28 days of determining the value of the supply or making the relevant account credit.

6. DEFAULT

- 6.1 Upon the happening of any of the following events:
- a. the commission by the Customer of any act as is provided for in Clause 2.3, or
 - b. the Customer failing to make any payment to Leader by the due date, or
 - c. the Customer being in breach of any of these terms and conditions, then and in any such event Leader shall have the right to :
 - i. Cease supplying Goods to the Customer;
 - ii. Decline to deliver any Goods or the balance of any Goods still due under any order from the Customer.
 - iii. Stop any Goods in transit;
 - iv. Otherwise cease to perform any of its obligations to the Customer;
 - v. Terminate this Agreement without incurring any liability at law or in equity without prejudice to its rights to recover amounts owing to it by the Customer including any damages;
 - vi. Enter into the premises of the Customer and repossess any Goods already delivered and whether or not title in
 - vii. recover from the Customer the payment of all Goods delivered and costs for freight, insurance, handling, storage and other expenses incurred by Leader , or
 - viii. to sell elsewhere and charge the Customer with any resultant loss, and
 - ix. declare all Secured Monies immediately due and payable and enforce its Security Interest over all Goods supplied by Leader to the Customer at any time, whether paid for or unpaid.
- 6.2 Should Leader by its servants or agents enter upon any premises where Goods are situated for the purpose of repossessing such Goods in accordance with its rights under this Clause 6 and an action is brought against Leader for trespass or any other action against Leader based upon such entry or anything done during or in connection with such entry, the Customer shall indemnify and keep indemnified Leader for all damages for which Leader may be responsible as a result of such action.
- 6.3 As additional security for payment of the Secured Monies, the Customer charges in favour of leader all of its present and after acquired property and undertakes to execute any document reasonably required to register such charge.

7. RETURN OF GOODS

- 7.1 Any Goods being returned to Leader for warranty replacement or credit are to be labeled and consigned in accordance with Leader procedures for return of Goods as may be established by Leader from time to time. Such procedures to be followed for the time being for the return of the Goods include:
- a. Claims for shortages, loss or damage must be made by the Customer within two (2) days of receipt of the Goods.
 - b. Express approval for return of the Goods, by issue of a Return Authorisation number, must first be obtained from a duly authorized officer of Leader,
 - c. The Goods to be returned must include any and all relevant accessories. The Goods (including accessories) must be in the original packaging, software unopened and must be in an undamaged and saleable condition;
 - d. No claim for credit in respect of any Goods returned may be approved by Leader unless the relevant claim form of the Customer, which must accompany any Goods returned, indicates at least the following:
 - i. The purchase invoice number and date;
 - ii. The reason for return; and
 - iii. The name of the officer of Leader who has approved such return and the details of such approval;
 - e. Subject to the foregoing, any Goods returned later than 14 days after date of invoice may be credited at the current price less at 15% restocking fee: and
 - f. All cost incurred in returning the Goods to Leader shall be borne by the Customer, unless otherwise approved in writing by an authorised officer of Leader.

8. CUSTOMER WARRANTIES

- 8.1 The Customer warrants that:
- a. no representations were made by Leader or manufacturer regarding the suitability of the Goods or services or any of their qualities, other than those contained in the manufacturer's warranty statement delivered with the Goods; the Customer shall not, on its own behalf, make any representations, warranties or guaranties regarding the Goods or services to any third party;
 - b. Where applicable, prior to reselling the Goods, the Customer shall ensure that it has informed end customers, prior to purchase, that the Goods are subject to additional terms (e.g. subscription license terms), privacy policy and warranty from manufacturer;
 - c. Customer can only resell the Goods and/or related services in country where they are certified for use;
 - d. In performing its duties under these terms and conditions, the Customer represents and warrants that it, its personnel and anyone acting on behalf of the Customer, will at all times refrain from engaging, whether directly or indirectly, in unethical and/or illegal conduct, including corruption, extortion, money-laundering, tax evasion, fraud and embezzlement, comply with all applicable anti-bribery and anti-corruption laws and regulations including, but not limited to, applicable local anti-corruption legislation and regulations, the US Foreign Corrupt Practices Act, and any such other relevant laws. The Customer undertakes to have adequate procedures and policies to support compliance with each such applicable law and regulation;
 - e. For any resale of Products or services, the Customer acknowledges that it has exclusive responsibility to comply with export laws. Customer shall not download, export, or re-export any software or technical data received hereunder, regardless of the manner in which received, (a) into, or to a national or resident of, any country to which the United States has embargoed goods, or (b) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders, or (c) to any country to which such export or re-export is restricted or prohibited under U.S. law or the laws of the State of South Australia, or as to which the United States government or any agency thereof, or any governmental authority within the Territory, requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval, or (d) otherwise in violation of any export or import laws of any governmental authority within the United States or Australia.

9. LIMITATION OF LIABILITY

- 9.1 Except as required by any provisions of the Competition and Consumer Act 2010 , or any relevant State Act all express or implied conditions, warranties, undertakings and covenants cannot be excluded under the provisions of the Competition and Consumer Act 2010 or any other relevant State Act the Customer's sole and exclusive remedy for any breach of a condition, warranty, undertaking or covenant hereunder shall as Leader may determine be limited to any one of the following :
- a. from the date of invoice and from the period specified thereon for those particular Goods;
 - b. The replacement of the relevant Goods or the supply of equivalent goods provided that any defect has developed under proper and normal conditions of use and maintenance of the Goods by the Customer: or
 - c. the repair of the relevant Goods; or
 - d. the payment of the cost of replacing the relevant Goods or of acquiring equivalent goods if available at the time; or
 - e. the payment of the cost of having the relevant Goods repaired.

Leader may at its discretion determine which of the foregoing limits shall apply in any case.

- 9.2 Save as provided in Clause 8.1, Leader shall not be liable to the Customer or any other person claiming under the Customer or any other person claiming under the Customer in contract or in tort for, or in respect of any direct indirect or

consequential loss, damage or expense suffered by the Customer arising out of, or in connection with, or relating to the performance or any breach by Leader or any of its employees, servants or agents or any of these terms and conditions or any matter relating to the supply of goods or services or any error (whether negligent or not) in the information supplied to the Customer before or after the supply of Goods and / or services "Consequential Loss" shall include but not be limited to loss of profit, use or goodwill (or similar financial loss) and payment made or due to any third party, or any loss or damage caused by delay in the provision of any service, together with any expenses incurred by the Customer in connection therewith or arising there from, or incurred in mitigation or attempted mitigation of such loss or damage.

- 9.3 Without derogation from or limitation to any other provisions of these terms and conditions and subject to Clause 8.1, it is expressly agreed that in the event that there may be found to exist some liability by Leader to the Customer or any person claiming under the Customer in contract or in tort arising out of, in connection with, or relating to the performance or any breach of any of these terms and conditions or any matter relating thereto, or error (whether negligent or not) in the information supplied to the Customer before or after the supply of the Goods then Leader liability shall not exceed in total the amount paid to Leader pursuant to the supply of the Goods in relation to which the liability arose after deduction from such payment of all freight, taxes, duties and other amounts payable by Leader to third parties. The loss or damage referred to above shall mean and include without limiting the foregoing loss or damage caused by the negligence or wilful, legal or other act or default of Leader or any of its employees, servants or agents whether or not such loss or damage is foreseeable or contemplated by Leader.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 The Customer acknowledges that any and all of the trademarks, trade names, patents, copyrights embodied in or in connection with the Goods and any information or documentation relating thereto are the property of Leader or such other manufacturer/supplier of the goods to Leader and further acknowledges that Leader has the rights to import and distribute the Goods in Australia and New Zealand.
- 10.2 The Customer further acknowledges that such copyright and intellectual property rights and other rights belonging to Leader or other manufacturers/suppliers as the case may be, shall only be used by the Customer with the consent of Leader or other manufacturer/supplier and the Customer shall not dispute or conspire or question the title of Leader or other manufacturer/supplier as the case may be in respect of such rights relating to the Goods. The Customer acknowledges that the sale of Goods shall not confer upon it any rights or interest in any trademarks, patents, copyright, industrial designs or other intellectual property rights of Leader or such other manufacturer/supplier as the case may be.

11. CREDIT DISCLOSURE & CREDIT INFORMATION

Leader may agree to provide goods to the Customer under this application on credit. In order to process the application, Leader will rely on the information the Customer provides and may also need to obtain personal credit information about the Customer in order to grant commercial credit in relation to these goods. The information may be obtained by Leader from you, from people or organisations named in your credit application and credit reporting agencies. Any defaults on credit granted to the Customer may be listed with a credit reporting agency.

In addition to the Leader Computers Terms and Conditions the Customer acknowledges and consents to Leader for the collection, use and disclosure of the Customer's personal information that conforms with the Privacy Act 1988 including:

- 11.1 Seek consumer credit information pursuant to section 18K (1) (b) of the Privacy Act 1988;
- 11.2 Exchanging information with other credit providers pursuant to section 18N (1) (b) Privacy Act 1988;
- 11.3 Listing credit default information pursuant to section 18E (1) (b) (vi) Privacy Act 1988;or
- 11.4 For any other use in connection with the Customer's credit account as permitted under the Privacy Act 1988

In accordance with section 18H (2) of the *Privacy Act* 1988 the Customer may access their personal information collected by Leader in order to assess whether the information collected and held by Leader is accurate, incomplete or out of date.

In the event that the Customer's application for credit is refused by Leader and the refusal is based wholly or partly on information derived from a credit report, obtained from a credit reporting agency, then Leader will provide the Customer with a written notice pursuant to section 18M of the *Privacy Act* 1988.

12. LAW

All sales are deemed to be made in the State of South Australia, and shall be governed and construed in accordance with the Law of the State of South Australia and with the Commonwealth of Australia.

13. SEVERABILITY

In the event that any or any part of these terms, conditions or provisions shall be determined invalid, unlawful or unenforceable to any extent such terms, conditions or provisions shall be severed from the remaining terms and conditions, which shall continue to be valid and enforceable to the fullest extent permitted by law.

14. WAIVER

Failure by Leader to insist upon strict performance of any term warranty or condition of these terms and conditions shall not be deemed a waiver therefore of any rights that Leader may have and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.

15. WHOLE AGREEMENT

No modification, variation or amendment to these terms and conditions shall be of any force or effect unless in writing and signed by Leader.

16. NOTICE

Any notice or document required under these terms and conditions to be served on Leader must be addressed to its registered office for the time being. Any notice or document similarly required to be served on the Customer may be sent to the Customer's last known address. Notices and documents may be delivered by hand or sent by prepaid post and if sent by post shall be deemed to be served on the day on which they would be delivered in the ordinary course of post. Notices and documents may be delivered by facsimile or electronic email to the parties' last known facsimile number or email address and shall be deemed to be served at the time of transmission.

17. DEFINITION

- 17.1 Unless inconsistent with the context:

"Leader" means Leader Computers Pty. Limited and / or Leader Computer Systems together with its successors and assigns. "Customer" shall include, in the case of an individual, his executors and administrators and in the case of a corporation, its successors and permitted assigns. Where the Customer is more than one person, all Customers, shall be jointly and severally bound by the terms and conditions contained or implied herein. "Goods" means all products and services offered for sale by Leader to the Customer.

17.2 The plural includes the singular and vice versa, and one gender includes all other genders.

17.3 Marginal headings shall not effect the interpretation of these terms and conditions.

DATED this day of 20.....

EXECUTED as an agreement by and on behalf of the Customer	]].(Business Name).....
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Name of Authorised Signatory].(Signatory Name).....

Authorised Signatory].(Signature).....

Witness Name

Witness Signature

EXECUTED as an agreement by and on behalf of Leader	]].....
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Witness Name

Witness Signature