

The Customer has agreed to purchase Products from the Seller in accordance with the following Terms and Conditions:

## **1. Definitions**

In these Terms and Conditions, unless the context otherwise requires:

- 1.1 "Customer" means the person(s) (including a body corporate) who orders the Products from the Seller (and including any person acting on behalf of and with the authority of the Customer);
- 1.2 "Invoice(s)" means the tax invoice(s) provided by the Seller to the Customer in relation to the order and purchase of the Products by the Customer;
- 1.3 "Price" means the price payable by the Customer to the Seller for the Products in accordance with clause 3 of these Terms and Conditions;
- 1.4 "Products" means goods supplied by the Seller to the Customer (and where the context so permits shall include any supply of services as agreed between the parties) and are as described on the Invoices, or any other forms provided by the Seller to the Customer;
- 1.5 "Seller" means National IT Consumables Pty Ltd (ABN 84 158 240 436/- , Level 1, 52 Holmes Street, Brunswick East, Victoria 3189 and its successors and assigns (and including any person acting on the behalf of and with the authority of the Seller);
- 1.6 "Terms and Conditions" means the terms and conditions set out in this document; and
- 1.7 "Product Vouchers" means a pre-paid product voucher paid for by the Customer in relation to Products held by the Seller until redeemed by the Customer, and/or a discount voucher for Products provided by the Seller to a Customer.

## **2. Acceptance**

The Customer accepts and agrees to be bound by these Terms and Conditions by submitting an order with the Seller for the supply of Products and/or by accepting Products supplied by the Seller.

### **3. Price and Payment**

3.1 The Price for the Products shall be the price specified in the Invoice(s) or other form provided by the Seller to the Customer.

3.2 The Seller reserves the right to change the quoted Price in the event that the Customer's order is varied.

3.3 At the Seller's sole discretion, the Customer may be required to pay a deposit on the Price.

3.4 The due date for the payment of the Price will be:

- (a) the date specified in the Invoice(s) or other form(s) provided by the Seller to the Customer; or
- (b) If no such date is specified, fifteen (15) days after the date of each respective Invoice.

3.5 The time for payment of the Price shall be of the essence.

3.6 Payment of the Price may be made by cash, bank cheque, credit card, direct deposit or by any other method as agreed to between the Customer and the Seller.

3.7 If the Seller has any liability to pay Goods and Services Tax (GST) on the supply of any Products, the Customer must pay to the Seller an amount equivalent to the GST liability of the Seller at the same time as the Price is paid for the Products or services (unless the Price for the supply is expressed specifically to be GST inclusive).

3.8 The Customer must pay all money due to the Seller without deduction or set off and must not withhold any payment on the grounds of alleged non-performance by the Seller of its obligations or for any other reason.

3.9 Acceptance by the Seller of payment of a sum less than the full sum due to the Seller will not be an acknowledgment of payment in full and will not prejudice the Seller's rights to recover the balance due or to pursue any other remedy in respect of any unpaid money.

## **4. Product Vouchers**

4.1 Any Product Vouchers which may be provided by the Seller to a Customer:

- (a) are not redeemable for cash or travellers cheques;
- (b) are where applicable, partially redeemable and it is the Customer's responsibility to use the full value of the Product Voucher within the validity period;
- (c) no change will be given for a purchase of Products made with a Product Voucher;
- (d) any unused balance will not be refunded or credited when a Product Voucher expires;
- (e) when the Price for the Products exceeds the available Product Voucher amount, the Customer will be required to make up the difference with an alternate form of payment pursuant to clause 3.6.

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4.2 Any promotional Products or items, including Product Vouchers, provided by the Seller to a Customer, are for the benefit of the Customer responsible for or deemed to be responsible for the payment of the Invoice only.

## **5. Delivery of Products**

5.1 At the Seller's sole discretion, delivery of the Products shall take place:

- (a) in the event that the Products are delivered by the Seller or the Seller's nominated carrier, when the Products are delivered to the Customer's nominated address for delivery;
- (b) in the event the Products are collected from the Seller by the Customer or the Customer's nominated carrier (which carrier shall be deemed to be the Customer's agent), when the Products are given to the Customer or the Customer's nominated carrier by the Supplier.

5.2 Delivery of the Products to a third party nominated by the Customer is deemed to be delivery to the Customer. If the third party carrier damages the Products in transit, the Customer is still required to pay the Price for the Products in accordance with clause 3 and all amounts owing to the Seller for the particular Products.

5.3 Unless otherwise specified in writing in an Invoice, or other form, the costs of delivery of the Products shall be in addition to the Price and the Customer shall be responsible for these costs.

5.4 The Customer shall make all arrangements necessary to take delivery of the Products. In the event that the Customer is unable to take delivery of the Products as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.

5.5 The failure of the Seller to deliver shall not entitle the Customer to treat these Terms and Conditions as repudiated.

5.6 The Seller shall not be liable for any loss or damage suffered by the Customer as a result of any failure by the Seller to deliver the Products (or any of them) promptly or at all.

5.7 The Seller may charge a storage fee if Customer orders Product(s) but does not want the Product delivered immediately upon becoming available.

## **6. Retention of Title**

6.1 Following delivery, ownership of the Products shall not pass to the Customer unless or until the Customer has paid the Seller the Price and all amounts owing to the Seller for the particular Products including delivery fees and all other associated costs. Until such time the Products shall remain the sole and absolute property of the Seller as legal and beneficial owner.

6.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership and rights in respect of the Products shall continue.

6.3 Until the Seller has received payment for the Price and all amounts owing to the Seller for the particular Products in full:

- (a) the Seller shall have the right of stopping the Products in transit whether or not delivery has been made;
- (b) where practicable, the Customer must ensure that the Products are kept separate and identifiable;
- (c) the Customer must not charge the Products in any way nor grant nor otherwise give any interest in the Products;
- (d) the Seller may give notice in writing requiring the Customer to return the Products or any of them to the Seller, and if the Customer fails to return the Products within a reasonable time then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Customer where the Products are situated to take possession and remove the Products and the Seller shall not be liable for any damage, injury or loss however caused resulting from the recovery of the Products;
- (e) the Customer is only a bailee of the Products and the Customer shall hold any proceeds from the sale or disposal of the Products on trust for the Seller, either in a separate account or clearly identified in the books and records of the Customer as being so held for the Seller;
- (f) if the Products are converted into other products the Seller will be the owner of the end products; and
- (g) the Seller can issue proceedings to recover the Price of the Products sold and all amounts owing to the Seller for the particular Products notwithstanding that ownership of the Products may not have passed to the Customer.

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6.4 The Customer acknowledges that:

- (a) these Terms and Conditions constitute a security agreement for the purposes of the *Personal Property Securities Act 2009* (Cth) and regulations made under that Act ("PPSA");
- (b) the Customer grants a security interest to the Seller in the goods supplied to the Customer pursuant to the security agreement for the purposes of the PPSA;
- (c) the Seller is entitled to and may register its security interest in the goods supplied to the Customer in accordance with the PPSA;
- (d) at the Seller's request, the Customer must, at its cost, do anything considered by the Seller in its absolute discretion to be necessary for the purposes of ensuring that the Seller's security interest is able to be registered on the Personal Property Securities Register and is enforceable, perfected and effective and able to be registered so that the security interest has the priority required by the Seller; and
- (e) the Seller is not required to give the Customer any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

## 7. Risk

7.1 All risk for the Products passes to the Customer on delivery pursuant to clause 5.1 irrespective of whether ownership in the Products has passed to the Customer.

7.2 If any of the Products are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Products. The production of these Terms and Conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

7.3 The Customer acknowledges that the Seller will not accept responsibility for damage to Products after delivery pursuant to clause 5.1 and that the Seller should ensure that they or their nominated carrier have sufficient insurance to cover the Products during transit including loading and unloading.

## 8. Defects

8.1 If the Customer believes that any Product delivered is defective at the date of delivery or that the Product delivered does not correspond with the Customer's order, the Customer must notify the Seller within fifteen (15) days of delivery.

8.2 Save where a defect or error is not readily apparent in any reasonably conducted inspection of the Product at the time of delivery, if the Customer fails to notify the Seller pursuant to clause 8.1, the Customer is deemed to accept the Product and loses all rights it would otherwise have against the Seller in respect of the matters referred to in clause 8.1.

8.3 Subject to clause 8.6 and unless otherwise required by law, for Products which the Seller has agreed in writing are defective or were delivered in error, the Seller's liability is limited to either (at the Seller's discretion):

- (a) replacement of the Products; or
- (b) repair of the Products.

8.4 A Customer shall only be entitled to make a claim pursuant to this clause if they afford the Seller an opportunity to inspect the Products within a reasonable time upon request to confirm the defect or error in delivery.

8.5 The Customer is responsible for all costs associated with making a claim under this clause, unless the Seller agrees otherwise in its sole discretion.

8.6 Clause 8.3 shall not cover any defect or damage which may be caused or partly caused by or arise through:

- (a) failure on the part of the Customer to properly maintain any Products; or
- (b) failure on the part of the Customer to follow any instructions or guidelines provided by the Seller; or
- (c) a use of the Products in a manner inconsistent with any uses specified in the Invoice or other form for the Products; or
- (d) the continued use of any Products after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- (e) fair wear and tear; or
- (f) an event of force majeure pursuant to clause 18.

8.7 The Seller shall not be liable to compensate the Customer for any delay in either replacing or remedying the defect in the Product or in properly assessing the Customer's claim under this clause. **National IT Consumables Pty Ltd Terms & Conditions**

8.8 For Products not manufactured by the Seller, to the extent possible, the warranty shall be the current warranty provided by the manufacturer of the Products. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of those Products.

## 9. Returns

9.1 The Seller may (in its sole discretion) accept the return of Products that are not defective, but only if:

- (a) the Customer requests the return in writing within fifteen (15) days of delivery;
- (b) the Customer provides proof of purchase if requested;
- (c) the Seller has agreed in writing to accept the return of the Products;
- (d) the Seller has provided the Customer with a return authorisation code;
- (e) the Customer attaches the return authorisation code and eParcel label to the delivery packaging and follows all instructions of the Seller;
- (f) the Products are returned to the Seller at the Customer's cost within seven (7) days of the delivery date; and
- (g) the Products are returned new and in the condition in which they were delivered together with all packaging material, brochures and instruction material.

9.2 No returns are accepted by the Seller unless a return authorisation code is provided by the Seller and attached to the return Products packaging for delivery.

9.3 Only one return authorisation code and eParcel label which may be provided by the Seller at its discretion can be used per Product being returned.

## 10. Default & Consequences of Default

10.1 If the Customer defaults in payment of any Invoice when due, the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.

10.2 Interest on overdue Invoices shall accrue daily from the date when payment becomes due until the date of payment at the interest rate fixed from time to time by the *Penalty Interest Rates Act 1983* (Vic) and such interest shall compound monthly.

10.3 Without prejudice to any other remedies the Seller may have, if at any time, the Seller may suspend or terminate the supply of Products to the Customer and any of its other obligations under the Terms and Conditions.

10.4 Without prejudice to any other remedies the Seller may have, the Seller may suspend or terminate all or any part of any order of the Customer which remains unfulfilled in the event that:

- (a) the Customer is in breach of any obligation (including those relating to payment) under these Terms and Conditions; or
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise), controlling trustee, trustee in bankruptcy or similar person is appointed in respect of the Customer or any asset of the Customer.

10.5 If the Seller suspends or terminates all or any part of a Customer's order pursuant to clause 10.4:

- (a) all amounts owing by the Customer to the Seller shall, whether or not due for payment, become immediately payable; and
- (b) the Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under that clause.

## 11. Cancellation

11.1 The Seller may reject any order for Products and/or cancel delivery of Products at any time before the Products are delivered by giving written notice to the Customer and on giving such notice the Seller shall:

- (a) repay to the Customer any sums paid in respect of the Price and/or GST; and
- (b) not be liable to the Customer for any loss or damage howsoever arising from such cancellation.

11.2 In the event that the Customer cancels an order and/or delivery of Products:

- (a) the Seller may retain any deposit paid by the Customer in respect of the Products; and
- (b) the Customer shall be liable to the Seller for any additional losses incurred by the Seller as a result of the cancellation (including, but not limited to, delivery costs, storage costs and any loss of profits).

## **12. Limitation of Liability**

12.1 The Customer acknowledges that the Products are bought relying solely upon the Customer's skill and judgement.

12.2 Any advice, recommendations, information, assistance or service provided by the Seller to the Customer in relation to the Products sold or their use or application is provided in good faith and any such advice in relation to any Products sold by the Seller is provided, however, without liability or responsibility on the part of the Seller.

12.3 In the event of any breach of these Terms & Conditions by the Seller, the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Products. The Seller shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer.

12.4 These Terms are to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations. If such legislation applies, to the extent possible, the Seller limits their liability in respect of any claim to, at the Seller's opinion:

(a) in the case of goods supplied by the Seller to the Customer:

(i) the replacement of the goods or the supply of equivalent goods;

(ii) the repair of goods;

(iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or

(iv) the payment of having the goods repaired, and

(b) in the case of services provided by the Seller to the Customer:

(i) the supply of the services again; or

(ii) the payment of the cost of having the services supplied again.

## **13. Joint and Several**

Where the Customer consists of more than one person, the Customers shall be jointly and severally liable for the obligations set out in these Terms and Conditions including but not limited to the payment of the Price and all amounts owing to the Seller for the particular Products.

## **14. Change in Control**

14.1 The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed:

(a) change of control of the Customer (as defined by section 50AA of the *Corporations Act 2001* (Cth)) if the Customer is a body corporate;

(b) any change in the Customer's company or trading name; or

(c) any other change in the Customer's address or contact details.

14.2 The Customer shall be liable for any loss incurred by the Seller as a result of the Customer's failure to comply with this clause 14.

## **15. Severance**

15.1 If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

15.2 Any provision of these Terms and Conditions which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make these Terms and Conditions enforceable, unless this would materially change the intended effect of these Terms and Conditions.

## **16. Governing Law**

16.1 These Terms and Conditions shall be governed by the laws of Victoria.

16.2 The Seller and the Customer irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria.

## **17. Sub-contract**

The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent. **National IT Consumables Pty Ltd Terms & Conditions**

## **18. Force Majeure**

The Seller shall not be liable for any default of these Terms and Conditions due to any event of force majeure including but not limited to war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond its reasonable control.

## **19. Waiver**

The failure by a party to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect a party's right to subsequently enforce that provision.

## **20. Inconsistency**

Where these Terms and Conditions are inconsistent with an Invoice provided by the Seller to the Customer, the provisions of that Invoice will prevail to the extent of the inconsistency.

## **21. Whole Agreement**

21.1 These Terms and Conditions (together with the Application and Invoice or other form provided by the Seller to the Customer) form the entire agreement between the Seller and the Customer.

21.2 All conversations, representations and statements not confirmed in writing by the Seller are expressly excluded and shall not be deemed to be part of any Invoice, order, agreement or contract, or to have induced the order of the Products, or to have any legal effect whatsoever.

## **22. Amendment**

22.1 The Seller reserves the right to review these Terms and Conditions at any time.

22.2 If, following any such review, there is to be any change to these Terms and Conditions, then that change will take effect from the date on which the Seller notifies the Customer of such change.

22.3 The Customer's acceptance of any amendments to these Terms and Conditions will be evidenced by the Customer's acknowledgement in writing or by the Customer submitting a further order of Products to the Seller after receiving notification of the amendments without the need for the Customer to provide any other formal notification of its acceptance to Seller.