



Terms and Conditions

1. DEFINITIONS

In these terms the following defined terms apply:

Company means Gordyn & Palmer Pty.Ltd: ABN 74 006 062 915

Custom Software means software specifically written or modified for the purchaser;

Defective Goods means a Good (or part thereof) that is defective solely because its design, materials contained within it or the way it is manufactured is faulty;

Force Majeure means events beyond the reasonable control of the Company and, without limitations includes strikes, lock-outs, slow downs, fire, riot, tempest, war, embargo, governmental act, regulation or request, accident, delay in transportation or inability to obtain necessary labour, materials or manufacturing facilities or default by any manufacturer, supplier, subcontractor to the Company preventing or hindering the Company in due performance and observance of its duties and obligations under this contract for sale of any equipment;

Goods means any product delivered pursuant to these terms of supply, including labour and Software;

GST means any consumption tax imposed by government, whether at point of sale or at some other occurrence, by whatever name, which operates during the term of this agreement and includes without limitation a goods and services tax, an indirect tax value added tax;

Licence means the licence to use the Custom Software and the Standard Software granted in clause 7(a).

Offer means tender, quotation or any other offer to supply Goods;

Price means the price quoted in the Company's catalogue (published from time to time), offer or the contract or sale price as the case may be.

Purchaser means the company, firm or a person to whom the Company's offer or invoice is addressed and includes successors in title and permitted assigns;

Sale means and includes the sale by the Company of Goods as well as any order or Offer made or given by the Company and any contract entered into between the Purchaser and the Company;

Software means the computer program and related documentation supplied pursuant to this agreement including Custom and Standard Software;

Standard Software means a packaged software encoded on magnetic or optical medium intended for multiple sale without modification; and

Specifications mean the document containing technical information relating to the functionality and/or of criteria for the Goods.

Warranty Period means the period from dispatch of the Goods by the Company to the Purchaser up until the earlier to occur of either 18 months after such dispatch or 12 months after the Purchaser first places the Goods into service.

2. GENERAL

- (a) These terms apply sale of Goods by the Company.
- (b) Each tender or quotation by the Company is, notwithstanding any rule of law, an invitation to treat only and is not an offer by the Company to the Purchaser.
- (c) The Company and the Purchaser agree that these terms constitute the entire agreement between them and that there are no other understandings, representations or warranties of any kind (express or implied) forming part of the Contract.
- (d) Any condition contained in the Purchaser's order, which inconsistent with, qualifies, or is contrary to these terms, is of no effect unless that condition is expressly accepted in writing by the Company.
- (e) The applicable law of the contract is the law of Australia.
- (f) No alteration or variation of these terms is effective unless expressly stated in the Company's tender or quotation or in any other case agreed in writing by the Company.



3. OFFER

- (a) Unless otherwise advised in writing to the Purchaser any tender or quotation made by the Company remains valid for 30 days from the date it is made.
- (b) Any variation, waiver or cancellation of the Purchaser's order is of no effect unless accepted in writing by the Company. If the Company accepts cancellation of an order then the Company may levy a handling charge of up to 10% of the Price
- (c) If the Purchaser and the Company agree to a variation in the quantity of the Goods, then the Purchaser will, in its absolute discretion, price the Goods either at the rate applicable to the original quantity or the revised quantity.
- (d) The Purchaser must ensure that the Goods ordered are fit and suitable for the purpose for which they are required and the Company is under no liability if they are not.
- (e) The Purchaser is solely responsible for obtaining all necessary permits to comply with all legislation, regulations, by-laws or rules having the force of law in connection with the installation and operation of the Goods.
- (f) The prices quoted by the Company are only for the supply of those Goods specified in the quotation and tender and do not apply to any additional Goods supplied by the Company unless agreed in writing by the Company.
- (g) Following submission of a tender or quotation the Company is not required to comply with any additional standards, specifications, rules or other requirements are proposed by the Purchaser the Company reserves the right to decline to proceed with the tender or quotation or vary it (including Price).
- (h) Any technical assistance provided by the Company is at the Purchaser's expense unless the contract is inclusive of installation, erection or commissioning in which case any technical assistance provided by the Company pursuant to such installation, erection or commissioning is at the Company's expense.
- (i) The Price of the Goods does not include training by the Company of the Purchaser's employees, servants or agents.
- (j) Unless otherwise notified in writing to the Purchaser the Goods are of standard design and the Company is not required to comply with tender specifications to the operation of the Goods.
- (k) Drawings and documentation supplied by the Company are standard technical commercial literature.

4. PRICE

- (a) Unless otherwise agreed in writing, the Price is ex works and excludes transport and delivery costs, Customs excise duties and charges, sales taxes and GST all of which must:
 - I) Be paid by the Purchaser; and
 - II) If the Company disburses those costs, be refunded to the Company by the Purchaser.

Without limitation, the Purchaser must pay to the Company on demand the GST payable by the Company for the Goods.

- (b) A minimum order value of one hundred dollars applies based on the total new value of the order exclusive of GST. A service charge applies to orders below this value.
- (c) The Prices are subject to alteration without notice and the Price payable by the Purchaser for the Goods ordered is the Price applicable at the date the Goods are dispatched.
- (d) The Purchaser must pay to the Company the Price for the Goods:
 - I) At the address of the Company stated in the invoice;
 - II) Within 30 days of invoice date;
 - III) Without set-off, discount or by of exchange of the Purchaser's goods or services; and
 - IV) In Australian dollars,

unless otherwise in writing by the Company.

- (e) If any part of an invoice is disputed, the Purchaser must promptly pay the amount not in dispute according to applicable payment terms.
- (f) Without prejudice to its rights to sue for payment or exercise any other remedy where any payment is not made on the due date, the Company has the right to charge interest on the outstanding amount at the interest rate prescribed by the Commonwealth Bank Indicator lending rate for overdrafts about \$100,000.00 plus 3%, calculated from the date of invoice to the actual date of full and final payment.
- (g) Where the Purchasers' account is in arrears, the Company may demand payment of the arrears as well as payment in advance for any undelivered Goods before proceeding with manufacturing or making any further delivery of Goods under this or any other contract between the Company and the Purchaser.
- (h) Notwithstanding the above the Company reserves the right to restrict or withhold the sale of further Goods on credit if the Company has reason to doubt the Purchaser's ability to pay for such purchases.
 - I) The company may correct any clerical errors or omissions, whether in computation or otherwise in any quotation, acknowledgments or invoice.



5. TITLE

- (a) Until the Purchaser has paid the price for the Goods supplied under each contract:
 - I) The Company is and remains the legal and equitable owner of the Goods;
 - II) The Purchaser holds the Goods as a fiduciary bailee for the Company and must store the Goods safely and in a manner that clearly shows the ownership of the Company; and
 - III) The Purchaser grants to the Company, its employees and authorised representatives an irrevocable licence to enter the Purchaser's premises (or any other premises either under the control of the Purchaser or where the Goods are stored on behalf of the Purchaser) at any time to inspect the Goods and, if the Purchaser defaults in paying for those Goods, to use reasonable force to take possession of the Goods without liability for trespass, negligence, payment of any compensation to the Purchaser or other person or otherwise. Any exercise of this right is without prejudice to any other rights the Company has against the Purchaser, including the right at all times to make a claim against the Purchaser for the invoiced price of the Goods, when due and payable.
- (b) Clause 5(a) also applies until the Purchaser has paid all monies owing to the Company on any account whatsoever, including any costs incurred by the Company because of the Purchaser's failure to pay or late payment of any such monies and the costs incurred by the Company in recovering the Goods from the Purchaser.
- (c) Notwithstanding clause 5(a), the Purchaser may, subject to clause (d), re-sell and deliver the Goods in the ordinary course of its business but if the Purchaser:
 - I) Is paid for that sale, the Purchaser holds all of the proceeds of sale on trust for the Company and must promptly pay those proceeds to the Company (keeping them separate and identifiable from the Purchaser's other fund until it has done so);
 - II) Intermingles those proceeds of sale with the Purchaser's other funds, the Purchaser acknowledges that the Company has a beneficial interest in those intermingled funds to extent of the monies owing by the Purchaser to the Company at any time; and
 - III) Is not paid for that sale, the Purchaser must assign to the Company, if the Company so elects by notice in writing, its claim against the person who bought the Goods from the Purchaser. For this purpose the Purchaser irrevocably appoints the Company as the Purchaser's attorney.
- (d) The Purchaser's rights to re-sell the Goods pursuant to clause 5(c) cease if the Company exercises its right to of the Goods pursuant to clause 5. The Purchaser also acknowledges that any purported exercise of its rights under clause 5© once the Company elects to exercise its rights for the return of the goods (either by notice in writing to the Purchaser or by physical recovery of the Goods pursuant to clause 5(a) would be outside the ordinary course of the Purchaser's business.
- (e) If the Purchaser makes a new object from the Goods (whether finished or not), mixes the Goods with other goods or the Goods otherwise become part of other goods (combined goods) the clauses 5(a), 5(b) and 5 (c) apply to the Combined Goods as if each reference in those clauses to Goods was a reference to Combined Goods. For these purposes, ownership of the Combined Goods passes from the Purchaser to the Company at the beginning of the first operation by which the Goods become Combined Goods.
- (f) If the Purchaser pays for Goods by cheque then payment only occurs when all cheques have been presented and cleared in full.
- (g) Notwithstanding the operation of this clause, risk in the Goods (including responsibility for insurance) passes to the Purchaser upon delivery of the Goods to the Purchaser. Delivery of the Goods to a carrier nominated by the Purchaser constitutes delivery to the Purchaser (regardless of who pays for freight).
- (h) Each sub-clause of this clause is intended to operate separately from the rest. If any sub-clause of this clause is held to be invalid then it will be severed from the rest of the clause (which continues in full force).

6. DELIVERY

- (a) The Company will make all reasonable efforts to meet any date for delivery of the Goods agreed between the Company and the Purchaser. Where a delay in delivery is caused by Force Majeure the time for delivery is extended by a reasonable period.
- (b) The Company reserves the right to dispatch the Purchaser's order in one delivery or by instalments. Where the Company acknowledges an order which provides for delivery by instalment the Company is entitled to separate payment for each instalment delivered (as if it were a separate contract) but failure to deliver any instalment does not entitle the Purchaser to repudiate the contract as to any remaining instalments.
- (c) All statements or forecasts of delivery times made by the Company are made in good faith but estimates only, not commitments. The company is not bound by any such estimate.
- (d) Where the Purchaser requests a particular method of delivery and the Company agrees in writing then the Purchaser must pay for the cost of delivery by that method from the point of dispatch of the Goods by the Company. Otherwise the Company will select the method of delivery.



- (e) The Company's liability for shortages in the quantity of the Goods is limited to making up the shortages. The Company is not liable for any claim for shortages in quantity unless the Purchaser notifies the Company of the shortages in writing within 7 days of delivery and provides the Company a reasonable opportunity to take all necessary steps to investigate the claim.
- (f) Claims made for damage or loss in transit must be made against the carrier in the prescriber manner.
- (g) Prior to acknowledging delivery to the carrier the Purchaser must ensure that the complete consignment as per the carrier's note has been received. If there is a shortage or visible damage to the outer packaging of the Goods then the Purchaser must endorse the carrier's note accordingly.
- (h) The Company is not responsible for any loss or damage to the Goods caused by or arising from transport or delivery of the Goods both when the Company has not packed the Goods and when the Purchaser has nominated a carrier.
- (i) Without limiting the generality of clauses 6(a) and (j), if delivery of the Goods by the Company is delayed by:
 - I) The Purchaser's failure to return to the Company within 14 days of the submission date the drawings submitted by the Company; or
 - II) The Purchaser varying the order after it has been accepted by the Company, the Company may in its absolute discretion review the order and vary the Price and delivery date accordingly.
- (j) The Company is not liable to the Purchaser for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the Goods.

7. LICENCE OF STANDARD SOFTWARE AND CUSTOM SOFTWARE

- (a) Subject to the terms of this agreement and payment of the Price, the Company grants to the Purchaser a non-transferable, non-exclusive, perpetual right and licence to use the Standard Software and/or the Custom Software.
- (b) The Company warrants that it has the authority to grant the Licence.
- (c) Subject to the terms of this Agreement, the Company is not liable to install the Standard or Custom Software or to provide any services or support concerning its installation.
- (d) The Company retains ownership of the Standard and Custom Software whether in its original form or as modified by the Purchaser (with or without the authority of the Company) during the term of the Licence.
- (e) The Purchaser must not modify the whole or any part of the Standard and/or Custom Software or combine or incorporate the whole or any part thereof in any other program or system without the prior written consent of the Company.
- (f) The Purchaser must fully indemnify and hold harmless the company against any liability incurred if any modification (authorised or unauthorised) infringes the intellectual property rights of a third person.
- (g) The Company is obliged to notify the Purchaser of any upgrades/services releases to software if the Purchaser has a current subscription agreement.

8. ACCEPTANCE OF STANDARD SOFTWARE AND CUSTOM SOFTWARE

- (a) Upon installation of either the Standard Software or the Custom Software, the Purchaser is responsible for ensuring that the Software is used in accordance with the Specifications.
- (b) The Purchaser can refuse to accept the Software only if it notifies the Company within 14 days after the delivery date of the Software that it fails to perform substantially in accordance with the Specification. For Custom Software, if there are specific terms associated with the contract for the supply of the Custom Software then this clause 8(b) will not apply and the specific contract conditions prevail.
- (c) If the Software is not accepted pursuant to clause 8(b) and the Software is Standard Software, the Company will rectify the defect and/or replace the Standard Software within such period as the Purchaser and the Company agree (but in the absence of agreement within period of 1 month).
- (d) The Software is deemed to be accepted if:
 - I) The Purchaser does not receive any written notice within the time specified in clause 8(b); or
 - II) The Purchaser fails to install the Software within 1 month of delivery.
- (e) If the company undertakes rectification work pursuant clause 8(c), then the terms of clause 8(b), mutatis mutandis, apply to that work.

9. WARRANTY

Goods manufactured by the Company

- (a) The Company's liability for any Defective Goods, or for any loss, injury, or damage attributable thereto is limited to repairing or replacing, at the Company's option, those Defective Goods that arise within the Warranty Period PROVIDED THAT:
 - I) The Company is notified within 7 days of the alleged defect first coming to the Purchaser's notice and within the Warranty Period; and
 - II) The Defective Good is returned promptly to the Company's work at the Purchaser's cost if the Company so requires and the Company will return the repaired or replaced Goods at the Company's cost to the original contract delivery point (unless otherwise arranged); and
 - III) Any unauthorised repairs or alterations to the Goods invalidate this warranty.
- (b) This warranty does not cover damage from misuse, accident, neglect or improper operation, maintenance, installation, modification or adjustment.



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Software

- (c) The Company warrants that the Software will perform steps substantially in accordance with the Specifications for a period of 90 days after the Acceptance Date.
- (d) If, within 90 days after the Acceptance Date, the Purchaser notifies the Company in writing:
 - I) That the Software is not performing substantially in accordance with the Specifications; and
 - II) Of the alleged defects or errors, with sufficient particularity to enable the Company to remedy the defects or errors then the Company must at its own expense, commence to examine the Software within 1 month of notification and, as soon as practicable thereafter, rectify the defect or error or replace the Software.
- (e) The warranty contained in Clause 9(c) and (d):
 - I) Is subject to the Purchaser having fully complied with its obligations under this agreement; and
 - II) Is not a warranty that the results obtained from the Software will be in accordance with the Purchaser's expectations; and
 - III) Does not operate where the substantial non-performance arises from the installation of the product by the Purchaser. The nature or operation of the equipment on which the Software is used or the use of any materials or software not provided by the Company; and
 - IV) Is subject to the Purchaser paying the Company's reasonable costs of its representatives travelling to the site where the Software is located (calculated at an hourly rate specified in advance by the Company plus actual travel costs and sustenance) where that site is 100 kilometres or more from the Company's principal place of business.

Other Goods

- (f) Subject to the terms of this agreement, the Company will transfer and assign to the Purchaser all warranties that the Company has been given by the manufacturer or developer of any Goods not manufactured or developed by the Company.

10. GOODS RETURNED FOR CREDIT

- (a) The Purchaser may return Goods for credit only with the Company's prior written consent.
- (b) The Purchaser must deliver to the Company Goods returned for credit free into store in the original packing, unsoiled and undamaged and accompanied by return of goods authority form (GRA) stating the original invoice number, the date of purchase and the reason for return.
- (c) The Purchaser can not return for credit non-stock or indent items or Goods built to order.
- (d) The Purchaser can not return for credit Goods more than 30 days from the date of delivery.
- (e) Unless otherwise agreed in writing, the Purchaser must pay a restocking charge of 15% of their invoice amount upon Goods returned for credit.
- (f) The Company will not give credit for the incorrect supply of Goods unless the Company receives written confirmation of the order from the Purchaser prior to dispatch of the Goods.
- (g) The Company will not accept the return of Goods for credit if the total new Price exclusive of GST of Goods returned is less than fifty dollars, except where the Goods are returned under warranty.

11. DRAWINGS AND DOCUMENTATION

- (a) Any descriptive specifications and drawings and any weights and dimensions furnished by the Company with any tender or quotation and any statement, description, illustration or other information in the Company's catalogues, price lists and other advertising matter are intended merely to give a general idea of the Goods and will not form any part of the tender or quotation.
- (b) Following agreement to buy and sell Goods, if the purchaser requests and at its expense, the Company may (in its discretion) provide to the Purchaser certified drawings.
- (c) Any studies, drawings or other documents submitted by the Company to the Purchaser remain the property of the Company and constitute the confidential information of the Company and the Purchaser must not use them for any purpose other than that stipulated in the contract nor transmit them to third parties.
- (d) If a tender or quotations is not completed, the Purchaser must return to the Company any studies, drawings or other documents submitted with the Company's offer within 14 days of expiry of the tender or quotation.
- (e) Any performance figures stated in the tender or quotation are subject to the recognised tolerance and rejection limits applicable to those figures.

12. WORKS TESTS AND PERFORMANCE

- (a) Prior to delivery of the Goods, the Company may at its own expense carry out any tests on the Goods in accordance with the Company's standards for work testing. Any additional tests required by the Purchaser are at the Purchaser's expense.



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- (b) After 7 days notice that the Company is ready to conduct any test required by the Purchaser, the test may be conducted by the Company in the Purchaser's absence and the Purchaser is deemed to have been present.
- (c) If the results of the tests are outside any performance limits specified in the contract the Company is allowed a reasonable time within which to rectify performance.
- (d) The Company does not guarantee the performance figures stated in the tender or quotation unless such figures expressly guaranteed by the Company in writing.

13. TERMINATION

- (a) The Company may terminate this agreement without notice if the Purchaser:
 - I) Is in breach of a term of this agreement and fails to remedy the breach within 14 days of notice in writing by the Company specifying the breach and requesting the Purchaser to remedy it; or
 - II) Has failed or refused to take delivery of the Goods or any part thereof and such failure or refusal continues for a period of 7 days after the Company advises the Purchaser that the Goods are ready for delivery; or
 - III) Is declared bankrupt, resolves to go into liquidation or has a petition for its bankruptcy or winding up presented or enters into a scheme or arrangement with its creditors or if liquidator, receiver, official manager or administrator is appointed to the Purchaser or concerning any of its property.
- (b) If such termination occurs then the Company is, after taking into account payments made by the Purchaser to the Company, entitled to payment for work done and expenditure made under the agreement up to and including the date of termination and any direct and indirect loss suffered by the Company, including without limitation to the Company's loss of profit on the agreement and the legal costs of the Company (on a full indemnity basis) incurred because of the termination or any prior breach and in exercising any rights and remedies as a consequence of the termination or any prior breach.
- (c) Termination of the agreement pursuant to these provisions is without prejudice to the rights of the Company accruing up to the date of termination.
- (d) If by reason of the operation of Force Majeure the Company is unable to perform or observe its obligations under this agreement, the Company does not breach its obligations so long as Force Majeure continues to operate.

14. CANCELLATION

If the Purchaser cancels or suspends any order of undelivered Goods without the Company's prior written consent, the Company is entitled to charge the following cancellation fees:

- (a) Where the Goods are listed in the Company's current Australian catalogue or price list for the time being as stock items, a cancellation fee of 15% of the Price; or
- (b) Where the Goods are listed in the Company's current Australian catalogue or price list for the time being as non-stock items, a cancellation fee of 100% of the Price; or
- (c) Where the Goods are not listed in the Company's current Australian catalogue or price list for the time being, a cancellation fee of 100% of the Price.
- (d) Where the Goods are manufactured by the Company, the Company is entitled to liquidated damages assessed as follows:
 - I) All cancellation costs associated with the return of Goods to suppliers; and
 - II) Where manufacture of the equipment has commenced all direct labour cost associated with work performed to date and the associated labour cost to dismantle components which are to be returned to suppliers; and
 - III) A charge of 25% of contract value for recovery of administration and design costs, overhead recovery and loss profit.

15. SEVERANCE

If any provision or part of any provision of these terms is unenforceable then it will be severed from the rest and such unenforceability does not affect any other part of such provision or any other provision of these terms.

16. EXCLUSIONS

- (a) The Company is not liable under any circumstances whatsoever for:
 - I) Any injury, damage or loss, including consequential damage or loss (including without limitation loss of market, loss of profit or loss of contracts) whether to persons or property arising out of this sale or the Goods supplied pursuant to is including any defects therein or anything connected therewith or with repair or replacement or any other work related thereto and without limitation, the Company is not liable for any loss of profit or other special damage or consequential damages arising out of any latent or other defect in the Goods; or
 - II) Any reduction in the Price for any shortages in any delivery, unless the shortage is noted by the Purchaser on the Company's delivery note for that delivery; or
 - III) Or any loss of or damage to the Goods whilst in transit.
- (b) If liability may not be excluded by this sale and where the Goods are not of a kind ordinarily acquired for personal domestic or household use or consumption then the liability of the Company for a breach of a condition or warranty implied by the Trade Practices Act (other than a condition or warranty implied by Section 69) is limited to repairing the Goods or at the Company's



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option, replacing the Goods or supplying equivalent Goods. In no event is the Company liable to the Purchaser or any third Party, in contract or tort, for more than the Price.

17. INDEMNITIES, PATENTS AND DESIGN RIGHTS

- (a) The Purchaser warrants that any design or instruction furnished or given by it will not cause the Company to infringe any patent, registered design, trademark or copyright in the performance of this agreement.
- (b) The Purchaser indemnifies the Company against all claims, damages and costs which arise out of any infringement by the Company of any patent, registered design, trademark or copyright as a result of any work carried out by the Company from any information, specifications, designs or other data supplied by the Purchaser.
- (c) All patents, registered design, trademarks or copyright held by the Company concerning the Goods remain the absolute property of the Company and must not be reproduced or disclosed without the Company's prior written consent. The Purchaser must not, without the Company's prior written consent, copy or allow others to copy any drawings, equipment or part thereof supplied by the Company.
- (d) The Purchase must indemnify the Company for any claims, demands, damages, proceedings, costs, charges and other expenses caused by, arising out of or in any way connected with any special, consequential, direct or indirect loss, damage, harm or injury suffered by any person arising out of this sale or the Goods supplied pursuant to it.

18. DISPUTE

- (a) If a dispute arises out of or relates to this agreement or the breach, termination, validity or subject matter thereof, the parties agree to first endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre Limited (ACDC).
- (b) If the dispute has not been settled within 28 days (or such other period as agreed in writing between the parties hereto) after the appointment of the mediator the dispute will be submitted to arbitration administered by and in accordance with the Rules for Domestic Arbitration of the ACDC.
- (c) The arbitrator will be a person agreed between the parties. ACDC will assist the parties by providing a list of suggested arbitrators. Failing agreement, the arbitrator will be a person appointed by ACDC. The arbitrator must not be the same person as the mediator.
- (d) The arbitration will be held in Melbourne or in such other place as the parties agree.