

TERMS and CONDITIONS OF SALE



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The following terms and conditions of sale shall apply to the sale of goods or services ("goods") by Zezt Pty Ltd. These terms and conditions of sale replace any previous terms and conditions of sale.

1. DEFINITIONS

"Customer" means a person whose order for the purchase of goods is accepted by the Supplier.

2. INTERPRETATION

- a) The headings used do not form part of these terms and conditions and are for convenience only.
- b) Where the context admits or requires words importing the singular number shall include the plural number, those denoting a given gender shall include all other genders and those denoting natural persons shall include corporations.

3. GENERAL

- a) Unless otherwise agreed in writing by the Supplier, any terms and conditions of the Customer's order deviating from or inconsistent with these terms and conditions are expressly rejected by the Supplier. Any variations to these terms and conditions not expressly agreed to in writing by the Supplier are expressly rejected by the Supplier.
- b) A quotation shall not constitute an offer to sell goods to the Customer. No contract for the supply of goods shall exist between the Supplier and the Customer until a Customer's order for goods has been accepted by the Supplier (such acceptance of Customer's orders may be made and communicated by the Supplier in writing or by overt act of acceptance). The Supplier may accept or refuse any order for goods in its absolute discretion and may make its acceptance of an order conditional upon it receiving a satisfactory credit assessment of the Customer.
- c) The Supplier may vary these terms and conditions by notice in writing to the Customer. The Customer agrees that the purchase of any goods after the date of a notice of variation will be deemed to be an acceptance of such varied terms and conditions.
- d) Should there be any variation to any of the information supplied by the Customer to the Supplier or in the structure or nature of the Customer's business (such as a conversion to or from a Company or Trust) the Customer shall forthwith notify the Supplier in writing.
- e) These terms and conditions and all obligations hereunder shall be binding on the Customer's personal representatives successors and permitted assigns and shall be for the benefit of the Suppliers successors and assigns.

4. PRICING

- a) Notwithstanding any prior acknowledgment by the Supplier of the price of goods, the prices specified for goods may at the Supplier's option be subject to alteration to reflect the Supplier's prices and charges in effect at the time of delivery
- b) Any variations in the invoice or contract price as a consequence of currency fluctuations, taxes, customs duty or other imports shall be to the Customer's account
- c) The Supplier will be entitled to set off against any money owing to the Customer amounts owed to the Supplier by the Customer on any account whatsoever.

5. ACCOUNT TERMS

- a) The Customer shall pay for all goods delivered in any calendar month on or before the last trading day in the following month.
- b) Credit extended to the Customer for all goods sold will be made in accordance with the terms of credit as agreed by the Supplier at the time the Customer's account was established or as subsequently altered by the Supplier. In all other respects these terms and conditions will apply.
- c) If the Customer does not pay the Supplier by the due date, the Customer shall pay interest on monies due, charged on a daily basis at 2% per annum above the National Australia Bank Limited Base Rate (as at the due date) from the due date for payment until actual date of payment. If the Customer has an account with the Supplier, the Supplier may debit the Customer's account monthly or at such other times it chooses for such interest.

- d) The Customer shall pay any legal costs (on a solicitor/client indemnity basis), stamp duties and other expenses payable on these terms and conditions or any credit application, guarantee or other security documents signed by the Customer together with any collection costs or dishonoured cheque fees.
- e) The Supplier may withdraw the Customer's credit facilities at any time or vary the Customer's credit limit, without notice to the Customer or any guarantor of the Customer.

6. DEFAULT

If:

- (i) there is any default or failure by the Customer in making due and punctual payment to the Supplier of any moneys owing by the Customer;
- (ii) an administrator, liquidator or provisional liquidator is appointed in respect of the Customer;
- (iii) a receiver, receiver and manager, administrator or controller is appointed in respect of any assets or group of assets of the Customer;
- (iv) the Customer goes into bankruptcy or is wound up;
- (v) the Customer becomes, admits in writing that it is, or is declared by a court to be unable to pay its debts as and when they fall due, or
- (vi) there is a breach by the Customer of any of these terms and conditions, then all monies payable by the Customer to the Supplier shall at the Supplier's election become immediately due and payable notwithstanding the due date for payment shall not have expired, and; the Supplier may without prejudice to any other rights it may have do any or all of the following:
 - (i) withdraw any credit facilities which may have been extended to the Customer;
 - (ii) withhold any further deliveries of goods;
 - (iii) in respect of goods already delivered enter onto the Customer's premises to recover and resell the goods for its own benefit; and
 - (iv) recover from the Customer the cost of materials or goods acquired for the purpose of future deliveries.

7. QUALITY AND CLAIMS

- a) MES warrants that the goods supplied are of merchantable quality.
- b) Upon delivery of the goods, the Buyer shall promptly examine them. If the goods are not of merchantable quality, do not conform to any agreed specification, or have defects, the Buyer will notify Zezt in writing within 30 days of delivery. If the Buyer does not so notify Zezt, the Buyer shall be deemed to have accepted the goods as being of merchantable quality, free from defects, and compliant with the agreed specification.
- c) MES shall have the right to examine the goods and the Buyer must either return the goods concerned to Zezt, or where they are not capable of redelivery, the Buyer must make them available for inspection by Zezt and permit Zezt to take samples.
- d) If Zezt determines that the Buyer's claim under section (b) is valid, then Zezt will pay:
 - (a) the cost of returning the goods that are capable of being returned;
 - (b) the cost of delivery of replacement goods, if Zezt elects to replace the goods; or
 - (c) the cost of disposing of the goods, where the goods are not acceptable of being returned.
- e) Zezt' liability for breach of a condition or warranty contained in this Contract or implied into this Contract is limited to any one of the following as determined by Zezt:
 - (a) the replacement of the goods or supply of equivalent goods;
 - (b) the repair of the goods or payment of the cost of having the goods repaired; or
 - (c) the refund of the price paid by the Buyer for the goods.
- f) Zezt will not be liable for any special, indirect, or consequential loss or damage including but not limited to loss of anticipated profits arising in any manner, directly, or indirectly, out of the Goods or the supply of the Goods to the Buyer.
- g) The Buyer assumes all risk and liability for loss, damage or injury to persons or to property of the Buyer, or to other arising out of the use or possession of any of the goods sold to the Buyer, whether such goods are used singularly, or in combination with other substances, or any process.
- h) As from the date upon which the goods or any part have been treated, processed, or changed in any manner whatsoever, the Buyer shall have no claim of any nature whatsoever arising directly or indirectly or however out of those goods or the sale to the Buyer. The Buyer has the sole responsibility of determining whether the goods are suitable for the use of the Buyer or any contemplated use of the Buyer, whether or not such use is known to Zezt.

8. DELIVERY

- a) Goods will be delivered or deemed to be delivered when they are delivered to the delivery place nominated by the Customer. If no such address is nominated then delivery will be deemed to occur at the time when the goods are ready for collection at the Supplier's premises.
- b) The Customer shall pay to the Supplier packing (other than the standard packing of the Supplier), crating and delivery charges in accordance with the Supplier's current rates, as at the date of dispatch. If there is no current rate then the Supplier may charge a reasonable amount to the Customer. The Supplier reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Customer within 14 days of a request by the Supplier for such information.
- c) The Customer authorises the Supplier to deliver products to the place nominated by the Customer and to leave the products at such place whether or not any person is present to accept delivery. The Supplier shall not be liable on any basis whatsoever for loss suffered by the Customer after delivery to the nominated delivery place.
- d) The Supplier shall not be obliged to obtain a signed receipt or other acknowledgment from any person at the nominated place for delivery but if a signed receipt or other acknowledgment is obtained from someone believed by the Supplier to be authorised by the Customer to sign or otherwise take delivery, then such signed receipt or other acknowledgment shall be conclusive evidence of the Customer's acceptance of the goods delivered.
- e) Any times quoted for delivery are estimates only and the Supplier shall not be liable to the Customer for any failure to deliver or for delay in delivery of goods occasioned by strike, lockout or other industrial dispute, shortage of stock, shortage of labour, lack of skilled labour, delays in transit, fire, flood, hostility, civil commotion or any other cause whatsoever whether or not beyond the control of the Supplier.
- f) The Customer shall not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery.
- g) The Supplier reserves the right to deliver goods by instalments and each instalment shall be deemed to be sold under a separate contract. Failure to deliver any instalment or deliver any instalment on time shall not entitle the Customer to repudiate the contract in whole or in part.

9. PROPERTY AND RISK

- a) The goods shall be at the sole risk of the Customer as soon as they are delivered or deemed to be delivered
- b) Property in and title to the goods will not pass to the Customer until those goods and all other amounts owed to the Supplier by the Customer have been paid for in full and until then:
 - (i) the Customer will hold the goods as fiduciary and bailee for the Supplier;
 - (ii) the goods must be stored separately and in a manner enabling them to be identified as goods of the Supplier and cross-referenced to particular invoices and the Customer acknowledges that if it should process or mix the goods with other products or items such that the goods are no longer separately identifiable then the Customer and the Supplier will be owners in common of the new product;
 - (iii) the Customer may sell the goods in the ordinary course of its business as bailee for the Supplier and will hold the proceeds of sale in a separate account on trust for the Supplier and account to the Supplier for those proceeds; and
 - (iv) the Supplier may require the Customer to return the goods to it on demand and may enter upon the premises of the Customer to inspect or repossess the goods.
- c) the Customer shall insure the goods against theft or any damage until such goods have been paid for or until they are sold by the Customer whichever occurs first and the Supplier will be entitled to call for details of the insurance policy. If the Customer does not insure the goods or fails to supply details of its insurance policy the Customer will reimburse the Supplier for the cost of any insurance which the Supplier may reasonably arrange in respect of the goods supplied to the Customer.

10. SPECIAL ORDERS AND SPECIFICATIONS IN GENERAL

The Customer warrants to the Supplier that all drawings and specifications and other design information provided to the Supplier for the manufacture of special orders or tooling are accurate and correct in all respects and do not infringe upon the intellectual property rights of any third party including any copyright, patents, designs or trademarks of a third party.

11. RETURN OF GOODS

- a) Subject to clause 11, unless agreed in writing by the Supplier, the Supplier will not accept the return of goods. Goods accepted for return by the Supplier may attract a charge to recover restocking and repackaging charges. The amount of this charge will be determined by the Supplier. Such charges shall be deducted from the amount of the credit allowed.
- b) The original invoice number must accompany all goods returned to the Supplier.

12. CLAIMS UPON SUPPLIER

- a) Subject to Clause 7(d), all claims for the Supplier's failure to comply with the Customer's order whether due to shortfall, defect, incorrect delivery or otherwise must be made by giving written notice to the Supplier within fourteen (14) days from the date of delivery. If the Customer fails to provide such notice then the Customer shall be deemed to have accepted the goods;
- b) These conditions shall not exclude, or limit the application of any provision of any statute including any implied condition or warranty the exclusion of which would contravene any statute (including the Trade Practices Act 1974) or cause any part of this clause 11 to be void. To the extent permitted by law all conditions, warranties and undertakings are expressly excluded;
- c) Unless the goods supplied by the Supplier are of a kind ordinarily acquired for domestic household or personal use or consumption, the Supplier's liability under clause 11 (b) for breach of a non-excludable condition or warranty is limited at
 - the Supplier's option, to any one of the following:
 - the replacement of the goods or the supply of equivalent goods;
 - the repair of the goods; or
 - the payment of the cost of providing replacement goods or of acquiring equivalent goods.
 - the payment of the cost of having the goods repaired.
- d) Subject to clause 11 (b) the Supplier shall not be liable for any direct or indirect loss whatsoever, including consequential loss, loss of profits, loss of opportunity or loss of use.

13. FITNESS FOR PURPOSE

The Customer agrees that it does not rely on the skill or judgment of the Supplier in relation to the suitability of any goods for a particular purpose. Any advice, recommendation, information or assistance provided by the Supplier is provided without any liability by the Supplier whatsoever.

14. GST

- a) In this clause the expressions "GST", "input tax credit", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the A New Tax System, (Goods and Services Tax) Act 1999.
- b) With the exception of any amount payable under this clause 13, unless otherwise expressly stated all amounts stated to be payable by the Customer under these terms and conditions are exclusive of GST.
- c) If GST is imposed on any supply made under or in accordance with these terms and conditions, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this document, subject to the provision of a tax invoice.