

**TERMS AND CONDITIONS
XSI DATA SOLUTIONS PTY LTD**

1. Definitions

- 1.1 "Seller" shall mean XSI Data Solutions Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of XSI Data Solutions Pty Ltd.
- 1.2 "Buyer" shall mean the Buyer or any person acting on behalf of and with the authority of the Buyer.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Buyer on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the contract, agreement, invoices, quotation, work authorisation or any other forms as provided by the Seller to the Buyer.
- 1.5 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Seller and the Buyer subject to clause 3 of this contract.

2. Acceptance

- 2.1 Unless otherwise specifically provided for by way of a tender, contract or agreement and accepted in writing by the Seller, any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein, irrespective of any terms and conditions which may be attached to or incorporated in the purchase order or other instructions.
- 2.2 Order cancellations must be received in writing (email, fax or mail) and are subject to a 25% cancellation fee. If the order has shipped from the manufacturing facility, it is subject to approval.

3. Commonwealth Trade Practices Act 1974 and Fair Trading Acts

- 3.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

4. Default & Consequences Of Default

- 4.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
- 4.2 If the Buyer defaults in payment of any invoice when due, the Buyer 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.
- 4.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
- 4.4 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 4.5 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
 - (b) the Buyer 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) or similar person is appointed in respect of the Buyer or any asset of the Buyer.

5. Unpaid Seller's Rights

- 5.1 Where the Buyer has left any item with Seller for repair, modification, exchange or for the Seller to perform any other Service in relation to the item and Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:
- (a) a lien on the item;
 - (b) the right to retain the item for the Price while the Seller is in possession of the item;
 - (c) a right to sell the item,

- 5.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.

6. General

- 6.1 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.
- 6.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
- 6.3 The Seller shall be under no liability whatever to the Buyer for any indirect or consequential loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
- 6.4 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.
- 6.5 The Buyer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Buyer by the Seller.
- 6.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 6.7 The Seller reserves the right to review these terms and conditions at any time. 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 Buyer of such change.
- 6.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 6.9 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.

7. Confidentiality

- 7.1 The Buyer and the Seller agree that they will keep at all times as strictly confidential any confidential information that is disclosed or provided by one party to the other. In this clause, "confidential information" means information in any form but does not include information that is already in the public domain at the time that it is disclosed or becomes part of the public domain otherwise than as a result of an unauthorised disclosure by the Buyer or the Seller.