

Samson Communications Pty Ltd Terms and Conditions of Sale

1. Definitions

- 1.1. 'Seller' refers to **Samsons ICT, Samson Communications or Samsons**, the party to whom the order for purchase has been given.
- 1.2. 'Purchaser' refers to the person or organization placing the order.
- 1.3. 'Goods' or 'Services' refers to the product, equipment or service for which the Purchaser has placed an order with the Seller.
- 1.4. Words denoting the singular shall include the plural and vice versa. Words denoting any gender shall include all genders.

2. Application

- 2.1. The terms and conditions are valid for any Goods or Services or combination thereof provided by the Seller to the Purchaser.
- 2.2. The Seller agrees to sell the Goods or Services to the Purchaser and the Purchaser agrees to purchase the Goods or Services from the Seller subject to the terms and to these conditions.

3. Pricing

- 3.1. The pricing, quantity of goods and time of delivery mentioned in this quotation are not binding on the Seller, but the Seller will make all efforts to fulfill the stated estimates.
- 3.2. Prices shall be the price in effect on the date the Purchaser's order is received by the Seller. The Seller reserves the right to accept or decline any order, in whole or in part. Prices may be subject to delivery and/or installation charges unless otherwise stated in any quotation.

4. Payment

- 4.1. All invoices of the Seller shall be paid by the Purchaser within Seven (7) days of the date of invoice unless otherwise agreed in writing by the Seller. In the event of late payment, the Seller may charge interest at the rate of 2.5% for every 30 days on non-payment, on the amount outstanding before and after judgment. Alternatively, for invoices unpaid 30 days after the due date, the Seller may impose a surcharge equal to 2.5% of the outstanding amount.
- 4.2. If any amount of the invoice is disputed by the Purchaser, the Purchaser shall inform the Seller of the grounds for such dispute within seven days of delivery of the goods.
- 4.3. Where the Seller requires payment of a deposit, the Purchaser acknowledges that the deposit is not returnable.
- 4.4. All fees are exclusive of goods and services taxes which will be added to invoices where appropriate.
- 4.5. The Seller reserves the right to increase a quoted fee in the event that the Purchaser requests a variation to the work agreed.

5. Default

- 5.1. If the Client:
 - (a) Fails to pay for any goods or services on the due date; or
 - (b) Otherwise breached this agreement and failed to rectify such breach within seven days notice; or
 - (c) Cancel delivery of goods or services; or
 - (d) Commits an act of bankruptcy or allows a trustee in bankruptcy or receiver and manager to be appointed to the Client or any of its property; or
 - (e) Allow a judgment or order to be enforced or become enforceable against the Client's property; or
 - (f) Permits proceedings to be commenced to wind the Client up or controller, receiver, administrator, liquidator or similar officers appointed to the Client in respect of any part of its property;
then the Company may enter upon the Client's premises (doing all that is necessary to gain access) where goods supplied under this contract are situated at any time and re-take possession of any or all of the goods the Company has supplied to the Client and:
 - (a) Resell the goods concerned;
 - (b) Terminate the agreement; and
 - (c) Sue for any monies owing.
- 5.2. The Client will be in default if the Client does not pay any monies payable when called upon so to do the Client and the Guarantor jointly and severally acknowledge and agree that the Company is authorised to contact a credit reporting agency throughout the term of the Agreement to obtain a report about the creditworthiness of either the Client or the Guarantor or both.
- 5.3. The Client and the Guarantor jointly and severally authorise the Company to engage in the exchange of information with a credit reporting agency or with other such parties as are necessary to give effect to the contract and to the ongoing relationship between the parties hereto.
- 5.4. The Company reserves the right to report a Client's delinquent account to a credit reporting agency should payment remain outstanding for more than 60 days. In addition the Company may refer the outstanding account for debt collection or issue legal proceedings to recover any outstanding invoices. Should an account be referred for debt collection the Client acknowledges and agrees to pay debt collection charges to be calculated at not less than 20% plus GST and will be incurred on the day the Company refers the matter to their nominated debt collection agency. The client shall also be liable for interest and all legal recovery costs associated with such action on a solicitor and own client or indemnity cost basis.

6. Delivery and Installation

- 6.1. The Seller shall use its best endeavours to meet delivery and installation [where relevant] schedules but shall not be liable for any delays beyond its control.
- 6.2. Delivery by the Seller will be deemed to have taken place when the materials are handed to the custody of the Purchaser at his premises or to a deputed messenger or courier when posted. The Seller will be entitled to charge the Purchaser for any expenses of delivery other than normal postage charges.
- 6.3. Any Goods sold by the Seller shall be at the Purchaser's risk as and from delivery to the purchaser or at the purchaser's direction, whether title has passed or otherwise. Upon delivery (including prior to commissioning) the Purchaser shall be responsible for any loss or damage to the Goods howsoever arising. The Purchaser hereby agrees to indemnify the Seller for any loss sustained in any manner whatsoever by the Seller in relation thereto.

7. Retention Of Title

- 7.1. Property in the Goods shall not pass to the Purchaser until payment has been made in full by the Purchaser. The Seller reserves the right to take possession of and dispose of the Goods as it sees fit at any time until full payment has been made and the Purchaser hereby grants permission to the Seller to enter upon any land or premises where the Goods are to do so and HEREBY APPOINTS the Seller (and any duly authorised nominee thereof) as the duly authorised attorney of the Purchaser for the purpose of access to any land or premises where the Equipment is stored, installed or in operation.

- 7.2. The Purchaser may use the Goods with other products but only on the condition that if the Goods are admixed, united or incorporated with other products, the resulting product which incorporates the Goods is the property of the Seller until the Goods have been paid for in full and all other debts owing to the Seller by the Purchaser have been paid in full.
- 8. Training And Support**
- 8.1. The Seller shall use all reasonable commercial efforts to provide the Purchaser with training in the use and operation of the Goods as the Seller deems reasonable and necessary. However, any training of operators of the Goods shall be the Purchaser's responsibility to arrange, and shall be at the Purchaser's cost.
- 8.2. When available the Seller will provide manufacturer manuals for the proper operation use and upkeep of the Goods. The Purchaser acknowledges that the proper observation of the manuals and each and every direction or advice given therein must be proven as a condition precedent to any action being taken against the Seller whatsoever arising concerning the Goods.
- 9. Maintenance**
- 9.1. The Purchaser acknowledges that the sole obligation for proper maintenance of the Goods rests with the Purchaser and that maintenance must be by properly skilled and trained personnel. The Purchaser further acknowledges that until a maintenance contract offered at the discretion of the Seller, is entered into in writing, that there shall be no implied agreement placing any obligation whatsoever upon the Seller to maintain the Goods in any way.
- 10. Cancellation**
- 10.1. In view of the nature of the service, any order - once confirmed by the Purchaser - is not cancellable. Cancellation of the Order by the Purchaser will only be accepted on condition that any costs, charges and expenses already incurred, will be reimbursed to the Seller forthwith.
- 11. Notice**
- 11.1. All written notices to be served on or given to the Purchaser shall be sent or delivered to the Purchaser's principle place of business and shall be treated as having been given upon receipt.
- 12. Loss or Damage to Goods**
- 12.1. The Seller will take all reasonable steps to ensure the protection from loss, damage or destruction of the services or materials it supplies to the Purchaser (or which may be received from the Purchaser).
- 13. Confidentiality**
- 13.1. Both parties shall maintain strict confidence and shall not disclose to any third party any information or material relating to the other or the other's business which comes into that party's possession and shall not use such information and material. This provision shall not, however, apply to information or material which is or becomes public knowledge other than by breach by a party of this clause.
- 14. Employment of Personnel**
- 14.1. Subject to the prior written consent of the Seller the Purchaser shall not induce to employ, whether as an employee, agent, partner or consultant, any employee of the Seller directly associated with delivery of the Goods.
- 15. Limited Warranty**
- 15.1. The Purchaser shall be entitled to the benefit of the manufacturer's warranty (if any) in respect of Goods for the duration of the Manufacturer's Warranty Period. This Manufacturer's Warranty Period shall begin on the date of commissioning of the Goods.
- 15.2. Goods which fail during the Manufacturer's Warranty Period for reasons due to wear and tear, negligence, neglect or default on the part of the Purchaser or third parties is excluded from warranty.
- 15.3. Any warranty given does not extend to any Goods other than that supplied by the Seller, nor does it extend to Goods maintained otherwise than by properly trained personnel or interfaced other than in accordance with the conditions specified by the Seller.
- 15.4. The Purchaser shall have no rights under warranty until payment in full has been made for the Goods and related services and/or installation.
- 16. Limitation of Liability**
- 16.1. The Seller shall not be liable for any claim arising out of the performance, non-performance, delay in delivery of or defect in the Goods or Service nor for any special, indirect, economic or consequential loss or damage howsoever arising or howsoever caused (including loss of profit or loss of revenue) whether from negligence or otherwise in connection with the supply, functioning or use of the Goods.
- 16.2. Nothing herein shall limit either party's liability for death or personal injury arising from the proven negligence by itself or its employees or agents.
- 16.3. The Purchaser shall fully indemnify the Seller against any liability to third parties arising out of the Purchaser's use of the Goods.
- 17. General**
- 17.1. These Terms & Conditions of Sale contain all the agreements, warranties, understandings, conditions, covenants, and representations made between Purchaser and Seller. Neither Purchaser nor Seller shall be liable for any agreements, warranties, understandings, conditions, covenants, or representations that are not expressly set forth in these Terms & Conditions of Sale.
- 17.2. The Seller may sub-contract for the performance of any of its obligations under these Terms and Conditions.
- 17.3. This Contract supersedes all prior agreements and understandings, including oral representations between the parties relating to the Goods and Services and is intended by the parties as the complete and exclusive statement of the terms and conditions, and may be modified only in writing signed by the parties. In the case of any discrepancy between these terms and conditions and any other document these terms and conditions shall prevail.
- 17.4. Where Purchasers order has been signed on behalf of the Purchaser by any person, that person warrants that he/she has authority to complete the order on behalf of the Purchaser and to bind the Purchaser accordingly.
- 17.5. In the event of any delay or prevention in performance by the Seller due to any cause arising from or attributable to any Act of God or to any event beyond the reasonable control of the Seller (including but not limited to delays in obtaining Telstra Australia and/or statutory authority approval, strike, lockout, civil commotion, war, fire, explosion, storm, earthquake, failure of plant, compliance with government authority, inability to obtain suitable materials, components, labour, power, failure or delay in delivery or shipment on the part of the manufacturer of the Goods, stock shortage or any other thing beyond the Seller's reasonable control) the Seller shall be under no liability for loss or injury suffered by the Purchaser thereby and delivery and commissioning date(s) shall be postponed during the period of such delay or prevention.
- 17.6. In the event that any part of these terms and conditions is void, voidable, illegal or otherwise unenforceable it may be severed therefrom and the remaining provisions of these terms and conditions shall remain in full force and effect.
- 17.7. These terms and conditions shall be governed and construed in accordance with the laws in force in the State in which the Seller is based and any dispute or litigation arising shall be dealt with in the appropriate Court in this State.