

Shift Computer Solutions Terms & Conditions of Trade

1. Definitions

- 1.1 "Seller" shall mean Shift Computer Solutions and its successors and assigns.
- 1.2 "Buyer" shall mean the buyer or any person or Seller acting on behalf of and with the authority of the buyer.
- 1.3 "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).
- 1.4 "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 supra).
- 1.5 "Price" shall mean the cost of the goods as agreed between the Seller and the Buyer subject to clause 3 of this contract.
- 1.6 PPSA means the Personal Property Securities Act 2009 (Cth).
- 1.7 PPSR means the Personal Property Securities Register.

2. Goods / Services

- 2.1 The Goods / Services shall be as described on the invoices, quotation, work authorisation, sales order or any other work commencement forms as provided by the Seller to the Buyer.

3. Price And Payment

- 3.1 At the Sellers sole discretion;
 - (a) The Price shall be as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or
 - (b) The Price shall be the Seller's current price at the date of delivery of the Goods according to the Sellers current Price list.
 - (c) The price of the goods shall be the seller's quoted price which shall be binding upon the seller provided that the buyer shall accept in writing the seller's quotation within thirty (30) days.
- 3.2 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be due on delivery of the Goods.
- 3.3 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or any other method as agreed to between the Buyer and the Seller.
- 3.4 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller.

4. Risk

- 4.1 If the Seller retains property in the Goods nonetheless all risk for the Goods passes to the Buyer on delivery.
- 4.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, to receive all insurance proceeds payable in respect of the Goods. The Seller will apply the insurance proceeds as follows:
 - (i) first, in payment of the Price of the Goods that are damaged or destroyed, if unpaid;
 - (ii) second, in payment of the outstanding Price of any other Goods supplied to the Buyer by the Seller whether under the terms and conditions or otherwise;

5. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

- 5.1 Nothing in this agreement is intended to have the affect 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.

6. Default & Consequences Of Default

- 6.1 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 shall accrue at such a rate after as well as before any judgement.
- 6.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the sellers selected collection agency's costs of collection.
- 6.3 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, then;
- (i) 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
- (ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable.

7. Title

- 7.1 It is the intention of the seller and agreed by the Buyer that property in the goods shall not pass until:
 - (a) The Buyer has paid all amounts owing for the particular Goods, and
 - (b) The Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.
- 7.2 It is further agreed that:
 - (a) Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.
 - (b) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.

8. Cancellation

- 8.1 The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

9. PrivacyAct 1988

- 9.1 The Buyer and/or the Guarantor/s agree for the Seller to obtain from a credit-reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller.
- 9.2 The Buyer and/or the Guarantor/s agree that the Seller may exchange information about Buyer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
 - (a) To assess an application by Buyer;
 - (b) To notify other credit providers of a default by the Buyer;
 - (c) To exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and
 - (d) To assess the credit worthiness of Buyer and/or Guarantor/s.
- 9.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 9.4 The Buyer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time:
 - (a) provision of Goods & Services;
 - (b) marketing of Goods and or Services by the Seller, its agents or distributors in relation to the Goods and Services;
 - (c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to the provision of Goods or Services;
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Buyer; and
 - (e) enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Goods and Services.
- 9.5 The Seller may give, information about the Buyer to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Buyer; and or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.

10. General

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

10.2 All Goods supplied by the Seller are subject to the laws of Queensland and the Seller takes no responsibility for changes in the law which affect the Goods supplied.

10.3 The Seller shall be under no liability whatever to the Buyer for any indirect 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.

10.4 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the seller notifies the Buyer in writing of such change.

10.5 The Buyer accepts that information about the Buyer may become known to employees of the Seller during the supply of Goods and Services.

(a) The Seller shall be under no liability whatever to the Buyer in relation to the disclosing of information to within the Sellers organization or to a 3rd party.

10.6 The Seller accepts no responsibility for the safety or recovery of the Buyers data or information. The Seller shall be under no liability whatever to the Buyer for any direct or indirect loss suffered due to loss of data or information, regardless of the cause of the loss.

11. Personal Property Securities Act 2009 (Cth)

11.1.1 The Customer acknowledge that these Terms of Trade constitute a Security Agreement which creates (or may create) a Security Interest in favour of the Supplier and in all Personal Property previously supplied by the Supplier to the Customer (if any) and all after acquired Personal Property supplied to the Customer by the Supplier (or for the Customer's account) to secure the payment from time to time and at a time, including future advances. The Customer agrees to grant to The Supplier a Purchase Money Security Interest.

11.2. The Customer accepts, acknowledges and agrees that:

11.2.1. pursuant to the retention of title clause in clause 12.1, the Supplier obtains a Security Interest in all Goods and Services supplied by the Supplier to the Customer on credit, including any Commingled Goods;

11.2.2. the Supplier can, without notice to the Customer, seek Registration of its Security Interest on the PPSR; and

11.2.3. Pursuant to section 275(6) of the PPSA, the Customer agrees the Supplier is not required to disclose to an interested person information pertaining to the Supplier's Security Interest unless required to do so pursuant to the PPSA or at law generally.

11.3. The Customer will:

11.3.1. sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to enable perfection of its Security Interest or registration of a Financing Statement or Financing Change Statement on the PPSR;

11.3.2. not register a Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the Goods, including any services, without the prior written consent of the Supplier;

11.3.3. give the Supplier not less than 14 days written notice of any proposed change in their name and/or any other changes in their details (including but not limited to, changes in their address, facsimile number, email address, trading name or business practice);

11.3.4. indemnify the Supplier against any costs the Supplier incurs in perfecting and maintaining its perfected Security Interest in the Goods or such other Personal Property under the PPSA and any costs the Supplier may incur in the course of enforcing any of its rights under this Agreement, the PPSA or at law generally;

11.3.5. procure from any persons considered by the Supplier to be relevant to its security position, such agreement and waivers as the Supplier may at any time reasonably require;

11.4. To the extent permitted by the PPSA the Customer waives its rights to:

11.4.1. receive a notice under any of subsections 95(1), 121(4), 129(2) and 130(1) and sections 135 and 157 of the PPSA;

11.4.2. receive a statement that includes the information referred to in paragraph 132 (3)(d) of the PPSA ;

11.4.3. receive a statement under subsection 132(4) of the PPSA;

11.4.4. redeem Collateral after default under section 142 of the PPSA unless the lessor agrees in writing to such redemption;

11.4.5. reinstate the Security Agreement under section 143 of the PPSA ; and

11.4.6. give a Notice of Objection under section 137 of the PPSA.

12. DISPUTE RESOLUTION

12.1 If a dispute arises between the parties in relation to the Engagement ("Agreement Dispute"), any party may by written notice to the other party specify the details of the Agreement Dispute ("Dispute Notice").

12.2 If a Dispute Notice is given then the parties must meet within seven (7) Banking Days and negotiate in good faith to resolve the Agreement Dispute.

12.3 If the Agreement Dispute remains unresolved 14 Banking Days after receipt of the Dispute Notice, the parties agree to submit the Agreement Dispute to mediation administered by a single mediator, which will be agreed between the Parties.

12.4 In the event the parties cannot agree on a single mediator within 28 Banking Days after receipt of the Dispute Notice, then the parties must request the nomination by the Australian Commercial Disputes Centre of a mediator.

12.5 All parties agree to accept the determination of the mediator without question, and to take whatever actions or pay whatever charges the mediator determines is reasonable.

13. Amendment

The Supplier reserves the right to change these Terms of Trade from time to time. The Supplier will notify the Customer of any such changes and the varied Terms of Trade will apply to all Sales Contracts, requests, quotations, offers, instructions, purchase orders, sales contract confirmations, order confirmations and agreements entered into between the Supplier and the Customer after such notice is given.