

Ardex Technology Trading Terms and Conditions

1. Interpretation

In these conditions:

- (1) "Seller" means Ardex Technology Pty Limited which is the Seller of the goods.
- (2) "Buyer" means the purchaser of the goods specified overleaf.
- (3) "Goods" means all products and, if any, services, supplied by the Seller to the Buyer.
- (4) "Ident Order" means an order placed by the Buyer on the Seller for goods or services not normally stocked by the Seller, and in order to satisfy the order from the Buyer, the Seller must specifically purchase such goods from a third party.
- (5) "delivery" means collection of the Goods from any of the Company's premises by or on behalf of the Buyer.
- (6) "Ex works" means that the goods shall be made available at the Seller's usual warehouse, works or factory location of such goods for the purposes of loading onto the conveyors or carriers nominated by or provided by the Buyer.
- (7) "Return of Material Authorisation" means the document approved and issued from time to time by the Seller and authorising the return of Goods by the Buyer to the Seller in accordance with the terms and conditions contained thereon.
- (8) "sales contract" means the contract made between the Seller and the Buyer for the supply of Goods.
- (9) "manufacturer" means the original manufacturer of the goods, whether in Australia or outside Australia, including its office or representative in Australia.
- (10) "C.O.D." means Cash on Delivery
- (11) Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricted or modifying any condition, warranty, guarantee, right or remedy implied by the law (including the Trade Practices Act 1974) and which by law cannot be excluded, restricted or modified.
- (12) Headings are for convenience and do not form part of these conditions.

2. GENERAL

(1) These terms and conditions shall supersede all terms and conditions previously issued by the Company.

(2) The terms contained within this document with respect to the return of goods shall prevail over the terms documented on the Return Material Authorisation to the extent of any inconsistency.

3. TERMS OF SALE

The Goods sold by the Seller are sold on these terms and conditions and form part of the sales contract (express or implied) and no other sales contract for the supply of Goods shall exist between the Seller and the Buyer except upon these terms and conditions unless their exclusion or modification is agreed to in writing by the Seller. Any order placed by a Buyer is deemed to incorporate these terms and conditions notwithstanding any inconsistencies in the Buyer's order.

4. SPECIFICATIONS

(1) The Seller will, from time to time, make available listings, electronically or otherwise, of Goods, including usually, but not necessarily and not limited to, a stock code and a description.

(2) All specifications, drawings and images, and particulars of weights and dimensions and other information submitted to the buyer are as supplied by the manufacturer and any deviation from any of these things does not vitiate any contract with the Seller or form grounds for any claim against the Seller. The descriptions, illustrations and performance contained in catalogues, price lists, web site and other advertising matter do not form part of the contract of sale of the goods or of the description applied to the goods. The Buyer acknowledges that neither the Seller nor any person acting on its behalf has made any representation or given any promise or undertaking not expressly set out in the contract of sale whether as to the fitness of the Goods for any particular purpose or any other application or matter.

(3) The Buyer acknowledges that without relying upon the skill or judgment of the Seller or any person acting on its behalf it has determined that Goods conforming to the contract description will be fit for its purposes. Any description of the Goods used in the Sales contract is for identification only and shall not constitute a contract of sale by description.

(4) (i) The Buyer acknowledges that the inclusion of certain Goods on price lists, catalogues, advertising material and otherwise, or a verbal quote or representation regarding goods, does not mean;

- a) that such Goods are items normally stocked by the Seller; or
- b) that such Goods continue to be available from the manufacturer.

(ii) Where:

- a) goods have been quoted by the Seller to the Buyer; and/or
- b) goods were present on an order (ident or otherwise) submitted by the Buyer to the Seller

and

- a) such goods are no longer available from the manufacturer; or
- b) such goods are subject to delayed delivery from the manufacturer

The Seller is under no obligation to:

- a) substitute the goods with other goods, similar by description or application or otherwise, at the same price or any other price; or
- b) make available for current or future delivery any goods of similar or improved description or application at either the price so ordered or any other particular price.

(iii) The Seller is not liable for any loss, damage or delay occasioned to the buyer or its customers arising from the non-availability or delayed-availability of the goods from the manufacturer.

5. PRICES

1. Unless otherwise agreed in writing by the Seller the price for Goods supplied shall be at the Seller's current price list for such Goods as at the time Goods are made available Ex Works.

2. Any quotations given by the Seller to the Buyer are subject to final written confirmation given by the Seller to the Buyer at the time of placement of order (ident or otherwise) by the Buyer.

3. All prices and quotations are given Ex Works by the Seller and are exclusive of any tax, impost, duty or other levies.

4. Any tax, impost, duty or other levies are to be borne by the Buyer.

5. All prices quoted include standard packaging. Any special packaging shall be charged to the Buyer.

6. All prices displayed by the Seller electronically or otherwise, quoted verbally or otherwise, are subject to change without further or prior notice to be given to the Buyer.

7. In the event of fluctuations or changes in exchange rates or duties the Seller reserves the right at any time between the time of quotation and/or order (ident or otherwise) and the date of delivery and/or invoicing of the Goods to increase its selling price for such Goods.

8. The Seller reserves the right at any time between the time of quotation and/or order and the date of delivery of the Goods to make adjustments to prices and quotations given where there has occurred fluctuations in the Seller's cost for labour, materials, Goods or transport or any other reason.

9. In the event of any decrease in price of particular Goods, and where the Buyer retains in their inventory, in transit or Ex works those particular Goods of the same stock code and description, the Seller is under no obligation

a) to credit the difference between the old price and the new price to the Buyer; or

b) to accept the return of such Goods for credit at either the old price or the new price or any other price.

6. CANCELLATION

The Seller will not accept the cancellation or alteration of any ident orders or orders to be undertaken by the Seller pursuant to the Buyer's own specifications or requirements.

7. DELIVERY

(a) The delivery times made known to the buyer are estimates only and the Seller is not liable for late delivery or non-delivery

(b) The Buyer shall bear the full cost and risk involved in bringing the Goods from the Seller's works, warehouse or factory to the Buyers desired destination.

(c) The Seller is not liable for any loss, damage or delay occasioned to the buyer or its customers arising from late or non-delivery of the goods.

(d) The Buyer shall not be relieved of any obligation to accept or pay for Goods or Services by reason of any delay in delivery despatch or performance

(e) The Seller may at its option deliver the goods to the buyer in any number of installments.

(f) Failure of the Seller to deliver any one of the installments shall not entitle the Buyer to repudiate or rescind the sales contract.

(g) If the Seller delivers any of the goods by installments, and any one of those installments is defective for any reason:

- (1) it is not a repudiation of the contract of sale formed by these conditions; and
- (2) the defective installment is a severable breach that gives rise only to a claim for compensation.

8. LOSS OR DAMAGE IN TRANSIT

(a) The Seller is not responsible to the buyer or any such person claiming through the buyer for any loss or damage to goods in transit caused by any event of any kind by any person (whether or not the Seller is legally responsible for the person who caused or contributed to that loss or damage)

(b) The Seller must provide the buyer with such assistance as may be necessary to press claims on carriers so long as the buyer:

(1) has notified the Seller and the carriers in writing immediately after loss or damage is discovered on receipt or non-receipt of goods

(2) lodges a claim for compensation on the carrier within three (3) days of the date of receipt / non-receipt of goods.

9. RETURN OF GOODS

(1) Subject to the prior written approval of the Seller pursuant to a Return of Materials Authorisation the Buyer may return any Goods provided that:

a) the Goods were supplied originally by the Seller to the Buyer; and

b) such Goods are returned (with specific identification on the Goods so as to correspond with details contained on the Return of Materials Authorisation), to the Seller's usual

works, warehouse, factory or place of business, within seven days from the date of delivery; and

c) the Goods, as received by the Seller, are in the same condition as when originally delivered to the Reseller; and

d) all freight charges in respect of the returned Goods have been prepaid by the Buyer.

(2) The issue of a Return Materials Authorisation only authorises the Buyer to return the goods to the Seller for inspection, and:

a) Receipt of the goods by the Seller does not constitute acceptance of the goods credit, repair or replacement.

b) The Seller shall inspect the goods as soon as possible to ensure compliance with the terms of the Return Materials Authorisation and remains under no obligation to accept the returned goods.

c) The Seller will return goods to the Buyer at the Buyer's expense for any goods not accepted.

(3) The Seller will not accept the return of any ident order or orders undertaken by the Company pursuant to the Buyer's own specifications or instructions.

(4) The Seller shall, upon acceptance of Goods in accordance with (1) and (2) above, credit to the Buyer's account the original sales contract value of the goods or the price current on the day of receipt, whichever is the lesser.

(5) The Seller may, from time to time, at it's discretion, authorise for return goods outside of the terms on either the Return Materials Authorisation or in (1) above.

(6) In the event the Seller authorises for return goods as described in (5) above, and subject to part (2) above, the Seller may, at it's discretion, either;

a) Return the goods to the Buyer at the Buyer's expense; or

b) accept such goods for return and credit to the Buyer's account the original sales contract value of the goods or the price current on the day of receipt, whichever is the lesser, less a restocking fee of not less than fifteen per cent of the invoiced value of the Goods (with a minimum fee of \$25).

(7) All credits pursuant to the above:

a) shall, where:

i) the Buyer enjoys a credit account with the Seller, be credited to the account of the Buyer; or

ii) the Buyer is on C.O.D. terms with the Seller, be credited against the C.O.D. trading account which shall create a temporary credit account with the Seller to the extent of that credit, and shall revert to a C.O.D. trading account when such credit is fully offset against any number of future orders (ident or otherwise).

b) will not be refunded, under any circumstances, by the Seller to the Buyer, by way of cash, cheque, electronic or other immediate or non-immediate settlement means.

c) will not be applied to a third party

10. GUARANTEE

(1) The guarantee of the manufacturer of the goods is accepted by the buyer and is the only guarantee given to the buyer in respect of the goods. The Seller agrees to assign to the buyer on request made by the buyer the benefit of any warranty or entitlement to the goods that the manufacturer has granted to the Seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.

(2) The Seller is not liable for and the buyer releases the Seller from any claims in respect of faulty or defective design of any goods supplied.

(3) Except as provided in these conditions, all express and implied warranties, guarantees and conditions under the statute or general law as to merchantability, description, quality, suitability or fitness of the goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The Seller is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the goods or arising out of the Seller's negligence or in any way whatsoever.

11. PAYMENT

(1) The purchase price in relation to goods is payable net and payment of the price of the goods is to be made on delivery of the goods unless the Seller agrees other terms of payment in writing.

(2) The Seller reserves the right at any time to withhold the further supply of any Goods or Services in the event the Buyer fails to comply with the Seller's terms of payment or for any other reason.

(3) Irrespective of whether the Buyer is on C.O.D. or other terms, any credit amount due to the Buyer shall:

a) not be refunded, under any circumstances, by the Seller to the Buyer, by way of cash, cheque, electronic or other immediate or non-immediate settlement means.

b) expire twelve months after the date the credit was issued by the Seller to the Buyer in the event the credit has not been offset against other orders (ident or otherwise).

c) not be transferable to a third party

12. DEFAULT

(1) If the Buyer makes default in any payment, commits any act of bankruptcy or enters into involuntary liquidation or any scheme of arrangement with its creditors the Seller may at its option withhold further deliveries or cancel any Sales contract for the supply of Goods or provision of Services without prejudice to its rights thereunder.

(2) In the event of (1) above, the Seller may, at its discretion, elect to apply an interest charge against the Buyer's account at the the rate of not more than 1.5% of the outstanding monies per month or part thereof.

13. RIGHTS IN RELATION TO GOODS

(1) The Seller reserves the following rights in relation to the good until all accounts owed by the buyer to the Seller are fully paid:

1. ownership of the goods;

2. to enter the buyer's premises (or the premises of any associated Seller or agent where the goods are located) without liability for trespass or any resulting damage and retake possession of the goods; and

3. to keep or resell any goods repossessed pursuant to (2) above.

(2) In the event of the Buyer reselling or otherwise disposing of the Goods the Buyer will hold any proceeds of resale or disposition in a separate identifiable account as the beneficial property of the Seller to the extent of any money outstanding from the Buyer to the Seller and are not mixed with other moneys or paid to an overdrawn Bank account and shall be at all times identified as the Seller's money and the Buyer shall pay such amount to the Seller upon request. For the purposes of this section, disposition shall include attaching the Goods to/or incorporating them in any other products in the ordinary course of business in such a manner that the Goods cease to be identifiable as such;

(3) Notwithstanding the provisions above the Seller shall be entitled to maintain an action against the buyer for the purchase price

(4) Risk in the Goods purchased shall unless otherwise agreed in writing pass to the Buyer upon delivery of the Goods to the Buyer or his agent or to a common carrier commissioned by the Buyer or Company.

14. LIEN

In addition to any lien to which the Seller may be statute or otherwise be entitled, the Seller shall, in the event of the Buyer failing to pay any outstanding account by the Buyer to the Seller or the Buyer entering into any scheme of arrangement with its creditors or going into receivership or liquidation (save for the purpose of reconstruction), be entitled to a general lien on all property or Goods belonging to the Buyer in the Seller's possession (although such Goods or some of them have been paid for) for the unpaid price of any other Goods sold and delivered to the Buyer under this or any other contract.

15. LIMITATION OF LIABILITY

Save as expressly provided for in the Sales contract the Seller shall not be liable to the Buyer or the Buyer's servants agents or representatives for any direct, indirect, incidental or consequential loss or damages of any nature howsoever caused (whether based on tort or contract or otherwise) including but not limited to loss of profits, loss of production, loss of sales opportunity or business reputation, direct or indirect labour costs and overhead expenses and damage to equipment or property or any other claim whatsoever arising directly or indirectly or in any way attributable to the performance of the Sales

contract and without admitting any liability whatsoever and in no event shall any claim be recognised unless the claim is in writing and received by Seller within fourteen days (14) of the date of delivery. The provisions of this clause shall not apply insofar as their application is prevented by the Trade Practices Act 1974 or any other State or Territory laws. Notwithstanding anything herein contained and subject to the qualifications contained in section 68A of the Trade Practices Act 1974 and sections 97 and 110 of the Goods (Sales and Leases) Act 1981 if the Buyer is a "consumer" as defined in the Trade Practices Act or the transaction being performed under the Sales contract is a sale as defined in the Goods (Sale and Leases) Act and the Goods being supplied herein are other than of a kind ordinarily acquired for personal domestic or household use or consumption the liability of the Seller for a breach of a condition or warranty implied by Division 2 of Part V of the Trade Practices Act or Divisions 2 and 3 of the Goods (Sales and Leases) Act not being a condition or warranty implied by section 69 of the Trade Practices Act or Sections 88 and 103 of the Goods (Sales and Leases Act) is limited to the replacement of the Goods or the supply of equivalent Goods or the repair of the Goods.

16. WAIVER

Failure by the Seller to insist upon strict performance of any term or condition herein shall not be deemed a waiver thereof or of any rights the Seller may have, and shall not be deemed a waiver of any subsequent breach of any term or condition.

17. GOODS SOLD

All goods to be supplied by the Seller to the buyer are as described on the purchase order agreed by the Seller and the buyer and the description on such purchase order modified as so agreed prevails over all other descriptions including any specifications or enquiry of the buyer.

18. UNITED STATES OF AMERICA EXPORT ADMINISTRATION REGULATIONS

The Buyer acknowledges that some United States of America manufacturers impose restrictions on ultimate destination of their products in compliance with the United States Export Administration regulations. The Buyer agrees to comply with such regulations and hereby agrees to forever hold harmless and indemnify the Seller in respect of any damage or loss howsoever arising a result of the Buyers breach of same.

19. GOVERNING LAW

The agreement is subject to the law of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of that State and any court competent to hear appeals from those courts.