

## General Terms and Conditions of Sale

### 1. Definitions

1.1 In these terms and conditions:

- (1) "Contract" means a contract for the sale of goods and/or services by the Seller to the Purchaser.
- (2) "Purchaser" means the entity purchasing the goods and services upon these terms and conditions.
- (3) "Seller" means CONSONIC PTY LTD ACN 001 331 960 and any related body corporate of the Seller within the meaning of section 50 of the Corporations Law.
- (4) "Services" includes:
  - (a) the provision of advice, recommendations or information; and
  - (b) "services" as defined in the Trade Practices Act 1974.

### 2. Binding Terms and Conditions

2.1 The only terms which are binding upon the Seller are:

- (1) those set out in these terms and conditions or otherwise agreed to in writing by the Seller; and
- (2) those, if any, which are imposed by law and which cannot be excluded.

2.2 The Purchaser agrees that these terms and conditions shall apply to and be incorporated in all contracts and dealings between the Seller and the Purchaser for all goods and services supplied by the Seller after the date the Purchaser receives these terms and conditions.

### 3. Price

3.1 Validity of Quotation

Subject to clause 3.2, any quotation issued by the Seller for any purpose shall be valid for thirty (30) days from the date of issue and thereafter shall lapse.

3.2 Status of Quotation

The Seller reserves the right to withdraw any quotation issued at any time before acceptance by the Purchaser. Such withdrawal may be in writing or may be communicated in the ordinary course of dealings between the Seller and the Purchaser.

3.3 Price Change

Prices in any price lists issued by the Seller are subject to alteration without notice.

3.4 Taxes

- (1) GST: Capitalised expressions in this clause 3.4 bear the same meaning as those expressions in the A New Tax System (Goods and Services Tax) Act 1999 (as amended). Any amount that may be payable under this contract is exclusive of GST. If a party makes a Taxable Supply in connection with this contract for a Consideration which represents Value, then the Recipient of the Taxable Supply must also pay, at the same time and in the same manner as the Value is otherwise payable, the amount of any GST payable in respect of the Taxable Supply. The Recipient's obligation to pay the GST is subject to a valid Tax Invoice being delivered.
- (2) In addition to sales tax and GST, all taxes, duties and charges lawfully imposed by any government or semi-government authority howsoever arising whether within or outside of Australia upon any contract between the Seller and the Purchaser or upon any goods or services to be supplied to the Purchaser by the Seller shall be borne by the Purchaser. Any such taxes, duties or charges if levied on the Seller shall be paid for by the Purchaser in addition to all other charges otherwise agreed to by the parties.

### 4. Delivery

4.1 Delivery at Store

Unless otherwise specified in writing, delivery of goods is at the Seller's store, and the cost of insurance and transportation of the goods must be paid by the Purchaser.

4.2 Delivery Charges where not at Store

Where a place of delivery other than at the Seller's store is specified in writing, the Seller must pay the costs of insurance and transportation of the goods to the place of delivery, except that if the Purchaser requires delivery by same day courier, first class air freight, or other special delivery, the costs must be paid by the Purchaser at the same time as, and in addition to, the price.

4.3 Delivery Date

If a delivery date (including a date for delivery of a service) is specified, that date is an estimate only and the Seller is not liable for any delay in delivery.

4.4 Partial Supply

If the Seller is unable to supply the Purchaser's total order these terms and conditions continue to apply to the goods and services supplied.

4.5 Delivery on Approval or Loan Goods on Trial

Goods delivered to the Purchaser on approval shall be delivered at the cost of the Purchaser as to insurance, freight and all risks howsoever arising from the moment of despatch by the Seller of the goods to the Purchaser for approval. No express or implied warranties of any kind are given by the Seller in respect of such goods. Such goods shall be returned on demand by the Seller and at the cost and risk of the Purchaser. No charge shall be made for fair wear and tear but all damage other than fair wear and tear to such goods shall be paid for by the Purchaser to the Seller on demand.

### 5. Acceptance

5.1 The Purchaser must inspect the goods and services immediately upon delivery and must within 10 days after the date of inspection give written notice to the Seller, with particulars, of any claim that the goods or services are not in accordance with the contract. If the Purchaser fails to give that notice, then to the extent permitted by law the goods and services are deemed to have been accepted by the Purchaser and the Purchaser must pay for the goods and services in accordance with the provisions of the contract.

### 6. Payment

6.1 Payment Terms

Unless otherwise agreed in writing, payment for goods and services supplied by the Seller to the Purchaser must be tendered in full no later than the expiration of 7 days from delivery of such goods and services.

6.2 Timing of Payment

Payment is deemed to be made:

- (1) if cash is tendered - on the date it is tendered; and
- (2) if a cheque (bank or otherwise) or other negotiable instrument is tendered - on the date upon which the cheque or other negotiable instrument is negotiated and cleared by the Seller's bankers.

6.3 Time of the Essence

Time is of the essence in respect of the Purchaser's obligation to make payment for goods and services supplied by the Seller to the Purchaser.

6.4 Sanctions for Late Payment

If the Purchaser defaults in making payment to the Seller strictly in accordance with the contract the Seller may in its absolute discretion:

- (1) charge the Purchaser interest calculated on the portion of the Purchaser's account overdue at the rate of 2% per month from the date on which the default arose; and

- (2) require the Purchaser to reimburse the Seller for all collection costs including legal costs incurred by the Seller calculated on a solicitor and client basis as a consequence of the Seller instructing its solicitor to provide advice to it in connection with the default and/or to institute such recovery process as the Seller in its discretion decides.

6.5 Application of Payments

Any payments tendered by the Purchaser to the Seller must be applied as follows:

- (1) first, as reimbursement for any collection costs incurred by the Seller in accordance with clause 6.4(2);
- (2) secondly, in payment of any interest charged to the Purchaser in accordance with clause 6.4(1); and
- (3) thirdly, in satisfaction or part satisfaction of the oldest portion of the Purchaser's account.

### 7. Returns and Cancellations

7.1 Terms Applying to all Returns

The Purchaser must not return any goods which the Purchaser claims are not in accordance with the contract (whether or not the goods are deemed to be accepted by the Purchaser) unless the Seller has first given its written approval to their return. Their return must then be with freight and cartage prepaid by the Purchaser.

7.2 Returns where Goods Accepted

If the Seller has given its written approval to the return of goods deemed to be accepted under clause 5.1 then unless prohibited by law the Purchaser agrees:

- (1) the Seller will only give credit for the goods returned which are readily saleable goods and are in a saleable condition; and
- (2) the Seller may charge a handling charge equivalent to 15% of the price of the goods returned.

7.3 Returns where Goods Not Accepted

If the Seller has given its written approval to the return of goods which are not deemed to have been accepted by the Purchaser under clause 5.1, the Seller must refund the freight and cartage to the Purchaser if the Purchaser's claim that the goods are not in accordance with the contract is found to be valid.

7.4 If, prior to delivery of goods, which are readily saleable goods, the Purchaser requests cancellation of the order, the Seller may in its sole discretion in writing accept the cancellation and Purchaser hereby agrees if the order is cancelled by the Seller to pay all Seller's costs incurred or owing in relation to the goods plus a handling charge to 10% of the sale price of the goods to the Purchaser.

### 8. Risk and Insurance

8.1

Goods supplied by the Seller to the Purchaser are at the Purchaser's risk immediately on delivery to the Purchaser or into the Purchaser's custody (whichever is the sooner). The Purchaser must insure the goods at its cost from delivery of the goods until they are paid for in full against such risks as would be insured against by a reasonably prudent owner of the goods and must note the interest of the Seller on the policy and produce a certificate to this effect to the Seller on request.

### 9. Retention of Title

9.1 When Property Passes

Property in the goods supplied by the Seller to the Purchaser does not pass to the Purchaser until those goods have been paid for in full. For the avoidance of doubt, until the Seller has been fully paid for the goods by way of payment that cannot be voided, rescinded, cancelled or recalled in any manner whatsoever, any such goods which are attached to other equipment which is not permanently attached to the land with the intention that it becomes a fixture to the land remain the property of Seller who has the authority to remove those goods and enter on to premises to detach and move those goods at anytime. Where the Purchaser does not make payment in respect of specific goods, payment must be treated as having been made first in respect of goods which have passed out of the possession of the Purchaser, and then in respect of whatever goods still in the possession of the Purchaser the Seller elects.

9.2 Purchaser's Obligations Until Paid For

Until the goods have been paid for in full:

- (1) the Purchaser must store the goods in such manner as to show clearly that they are the property of the Seller; and
- (2) the Purchaser may sell the goods, in the ordinary course of its business, as agent and in a fiduciary capacity for the Seller and must account to the Seller for the proceeds (including any proceeds from insurance claims) which must be kept in a separate bank account.

9.3 Seller's Authority to Inspect and Reclaim

The Purchaser irrevocably authorises the Seller or its agents at any time to enter any premises:

- (1) upon which the Seller's goods are stored to enable the Seller:
  - (a) to inspect the goods; and/or
  - (b) to reclaim possession of the goods if the Purchaser has breached the contract or if the Seller has terminated, or is entitled to terminate, the contract; and
- (2) upon which the Purchaser's records pertaining to the goods are held to inspect and copy the records.

9.4 Goods Attached to Premises

- (1) The Seller's property in the goods is not affected by the fact that the goods become fixtures attached to premises of the Purchaser or a third party, and if the Seller enters those premises for the purpose of reclaiming possession of the goods, and incurs any liability to any person in connection with the entry, the Purchaser indemnifies the Seller against that liability.
- (2) Before any of the Seller's goods become fixtures attached to the premises of the Purchaser or a third party, the Purchaser must do all that is necessary (or that is requested by the Seller) to ensure that the Seller's property in the goods is not adversely affected by such attachment.
- (3) If requested by the Seller prior to delivery, the Purchaser must obtain in terms acceptable to the Seller:
  - (a) written agreement from the owner and mortgagee of the Premises that goods are not a fixture and will be deemed never to become a fixture of the Premises;
  - (b) irrevocable authority for the Seller or its agents at any time to enter the Premises upon which the goods are stored to enable the Seller or its agents:
    - (i) to inspect the goods; and/or
    - (ii) to reclaim possession of the goods if the Purchaser has breached the contract, the contract has been rescinded, the Seller terminates, or is entitled to terminate this contract.

9.5 Goods Supplied on Credit

The provisions of this clause 9 apply despite any arrangement between the parties under which the Seller grants the Purchaser credit. Where the Seller grants the Purchaser credit for a specific period the credit period is for that period or until the re-sale of the goods by the Purchaser, whichever is the earlier.

### 10. Insolvency, Breach and Termination

10.1 Termination

The Seller may terminate a contract by giving written notice to the Purchaser immediately upon any of the following occurring:

- (1) an application or order is made to or by a court or a resolution is passed for the winding up of the Purchaser or notice of intention to propose such a resolution is given (or analogous steps are taken under a law in a jurisdiction other than Australia); or
  - (2) a controller as defined in section 9 of the Corporations Law or an administrator under Part 5.3A of the Corporations Law is appointed (or a person however described is appointed under any analogous provisions of a law in a jurisdiction other than Australia) in respect of the Purchaser, or the whole or any part of its undertaking or property; or
  - (3) the Purchaser is or becomes bankrupt, insolvent or subject to any event or circumstances which in the reasonable opinion of the Seller is likely to materially and adversely affect the ability of the Purchaser to perform all or any of its obligations under the contract;
  - (4) the Purchaser fails to perform any of its obligations strictly in accordance with the contract; or
  - (5) the Seller has an agreement with a third party supplier in respect of goods or services to be supplied or re-supplied to the Purchaser under the contract and such agreement is terminated or becomes void or unenforceable.
- 10.2 Termination does not affect Seller's rights  
On termination of a contract the Seller retains its rights against the Purchaser in respect of any past breach, in addition to any other rights, powers or remedies provided by law.
- 11. Warranties**
  - 11.1 Condition of Supply  
It is a condition of supply by the Seller to the Purchaser that goods supplied shall be used strictly in accordance with operating instructions and all recommendations provided by the Seller and/or any supplier to the Seller and in particular those concerning the provision of power of any kind and character, cooling, lubricants, maintenance, mechanical loading, siting, operating temperatures, operating times, quality and quantity of materials to be processed, supplies of consumables and the Purchaser shall have the onus to demonstrate that all such instructions and recommendations have been so complied with.
  - 11.2 Warranty  
The Seller warrants that the goods supplied by it to the Purchaser will be free from defective material and workmanship for a period of 12 months from the date of delivery to the Purchaser. The terms of this warranty are subject to:
    - (1) any variation to the warranty agreed by the Seller in writing;
    - (2) the Purchaser's compliance with clause 11.1;
    - (3) the same exclusions, limitations, qualifications or procedures with respect to warranties and warranty claims as are imposed on the Seller from time to time by the supplier of the relevant goods to the Seller.
  - 11.3 All descriptive specifications, illustrations, drawings, data, dimensions and weights contained in any catalogue and/or literature shall be illustrative only and shall not form part of any warranty as to the nature of the goods to be supplied. Such material is subject to change at any time without notice. The only details that shall be binding on the Seller are those specifically agreed to in writing.
  - 11.4 All expenses of the Seller in carrying out any warranty work shall be at the expense of the Purchaser and shall include but not be limited to, wages outside normal working hours on Monday to Friday, fares and accommodation of employees, servants and agents of the Seller engaged in such warranty attendances. Under some circumstances the Seller may agree to waive part or all of such expenses.
- 12. Exclusions and Limitations**
  - 12.1 Conditions and Warranties Required to be Binding  
The only conditions and warranties which are binding on the Seller in respect of the state, quality or condition of goods and services supplied by it to the Purchaser are:
    - (1) those set out in clause 11.2; and
    - (2) those, if any, which are imposed by law and which cannot be excluded.
  - 12.2 Limitation on Liability  
To the extent permitted by law the liability, if any, of the Seller arising from the breach of the conditions or warranties referred to in clause 12.1 are, at the Seller's option, limited to and completely discharged:
    - (1) in the case of the goods, by either;
      - (a) the cost of replacing the relevant goods;
      - (b) the cost of obtaining equivalent goods; or
      - (c) the cost of having the relevant goods repaired; and
    - (2) in the case of services, the cost of supplying the services again.
  - 12.3 Exclusion of Other Conditions and Warranties  
Except as provided in this clause 12, all conditions and warranties implied by law in respect of the state, quality or condition of the goods or services which may apart from this clause be binding on the Seller are excluded.
  - 12.4 Acknowledgments by Purchaser  
The Purchaser acknowledges that the Purchaser does not rely and it is unreasonable for the Purchaser to rely on the skill or judgment of the Seller as to whether the goods supplied are reasonably fit for any purpose for which they are being acquired, and that the sale is not a sale of goods by description or sample.
  - 12.5 Exclusion of Consequential Loss  
Except to the extent provided in this clause 12, the Seller has no liability (including liability in negligence) to the Purchaser or any person for:
    - (1) any loss or damage consequential or otherwise suffered or incurred by that person in relation to the goods and/or services supplied by the Seller; and
    - (2) in particular without limiting clause 12.5(1) any loss or damage consequential or otherwise suffered or incurred by that person caused by or resulting directly or indirectly from any failure, defect or deficiency of any kind of or in those goods and/or services.
- 13. Indemnity**
  - 13.1 The Purchaser indemnifies the Seller, regardless of any negligence on the part of the Seller, against:
    - (1) all losses incurred by the Seller;
    - (2) all liabilities incurred by the Seller; and
    - (3) all legal costs (on a solicitor and own client or full indemnity basis, whichever is greater) and other expenses incurred by the Seller in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal);arising directly or indirectly as a result of or in connection with the supply of goods by the Seller to the Purchaser unless caused by wilful misconduct or gross negligence on the part of the Seller or any of its employees or agents acting within the scope of their employment.
- 14. Serial Number**
  - 14.1 Where goods carry on the label or container a serial number. The Purchaser must provide all serial numbers pertaining to the goods in all correspondence with the Seller and any claims relating to the goods after their delivery.
- 15. Conflict**
  - 15.1 If there is any inconsistency between these terms and conditions and any special condition referred to in the order, quotation or invoice issued by the Seller and forming part of the contract then such special condition shall prevail to the extent of such inconsistency.
- 16. Privacy**
  - 16.1 Where goods are supplied to the Purchaser on credit the Purchaser irrevocably authorises the Seller, its employees and agents to make such enquiries as it deems necessary to investigate the creditworthiness of the Purchaser including (without limitation) making enquiries from persons nominated as trade referees, the bankers of the Purchaser or any other credit providers ("Information Sources") and the Purchaser authorises the Information Sources to disclose to the Seller all information concerning the Purchaser which is within their possession and which is requested by the Seller.
- 17. Vienna Sales Convention**
  - 17.1 The application of the Sale of Goods (Vienna Convention) Act 1986 (NSW) is excluded.
  - 17.2 The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) is excluded.
- 18. Force Majeure**
  - 18.1 If the Seller is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is prevented or delayed.
- 19. Severability**
  - 19.1 If anything in these terms and conditions is unenforceable, illegal or void then it is severed and the rest of these terms and conditions remain in force.
  - 19.2 If anything in these terms and conditions is unenforceable, illegal or void in one jurisdiction but not in another jurisdiction, it is severed only in respect of the operation of these terms and conditions in the jurisdiction where it is unenforceable, illegal or void.
- 20. Waiver**
  - 20.1 The Seller's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
  - 20.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
  - 20.3 A waiver is not effective unless it is in writing and details the instance to which it relates and for the specific purpose for which it is given.
  - 20.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- 21. Dispute resolution**
  - 21.1 If a dispute arises in connection with this Agreement, a party to the dispute must give to the other party or parties to the dispute notice specifying the dispute and requiring its resolution under this clause 21 ("Notice of Dispute").
  - 21.2 The chief executive officers of each party must confer within 3 days after the Notice of Dispute is given to try to resolve the dispute.
  - 21.3 If the dispute is not resolved within 7 days after the Notice of Dispute is given to the other party or parties (**First Period**), the dispute is by this clause submitted to mediation. The mediation must be conducted in Sydney. The Institute of Arbitrators and Mediators Australia Mediation and Conciliation Rules (at the date of this Agreement) as amended by this clause 21 apply to the mediation, except where they conflict with this clause 21.
  - 21.4 If the parties have not agreed upon the mediator and the mediator's remuneration within 7 days after the First Period:
    - (1) the mediator is the person appointed by; and
    - (2) the remuneration of the mediator is the amount or rate determined by; the President of the New South Wales Law Society ("Principal Appointor") or the Principal Appointor's nominee, acting on the request of any party to the dispute.
  - 21.5 The parties must pay the mediator's remuneration in equal shares. Each party must pay its own costs of the mediation.
  - 21.6 If the dispute is not resolved within 28 days after the appointment of the mediator ("Second Period"), the dispute is by this clause referred to arbitration. The arbitration must be conducted in Sydney by a single arbitrator.
  - 21.7 If the parties have not agreed upon the arbitrator within 7 days after the Second Period, the arbitrator is the person appointed by the Principal Appointor or the Principal Appointor's nominee, acting on the request of any party to the dispute.
  - 21.8 After accepting the appointment and during the arbitration the arbitrator may:
    - (1) require the parties to lodge security or further security towards the arbitrator's fees and expenses; and
    - (2) apply any security towards those fees and expenses;
    - (3) but the arbitrator may not direct a party to the dispute to provide security for the costs of the arbitration to be incurred by any other party.
  - 21.9 Despite anything in this clause 21, a party at any time may commence court proceedings in relation to any dispute or claim arising under or in connection with this Agreement where that party seeks urgent interlocutory relief.
  - 21.10 This clause 21 applies even where the Agreement is otherwise void or voidable.
- 22. Notices**
  - 22.1 A notice or other communication connected with these terms and conditions ("Notice") has no legal effect unless it is in writing.
  - 22.2 In addition to any other method of service provided by law, the Notice may be:
    - (1) sent by prepaid post to the address of the addressee set out in these terms and conditions or subsequently notified;
    - (2) sent by facsimile to the facsimile number of the addressee; or
    - (3) delivered at the address of the addressee set out in these terms and conditions or subsequently notified.
  - 22.3 A Notice must be treated as given and received:
    - (1) if sent by post, on the 5th Business Day (at the address to which it is posted) after posting;
    - (2) if sent by facsimile before 5 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; and
    - (3) if otherwise delivered before 5 p.m. on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
  - 22.4 Despite clause 22.3(2) a facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice.
  - 22.5 For the purpose of this clause 22 "Business Day" means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where a Notice is being sent.
- 23. Governing Law and Jurisdiction**
  - 23.1 The law of New South Wales governs the contract.
  - 23.2 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and the Federal Court of Australia.