



A.B.N 17 094 444 238

Smart Temp Australia Pty Ltd
Unit 20, 1488 Ferntree Gully Road
Knoxfield VIC 3180
Australia

Application for Credit Account

PLEASE RETURN COMPLETED ORIGINAL APPLICATION FORM TO:

admin@smarttemp.com.au

Fax (03) 9763 0098

Office Use Only

Approved by: _____ Credit Limit \$ _____ Date ____/____/____

A. ACCOUNT TYPE (Please indicate the type of business conducted. Tick one box only)

SOLE TRADER PARTNERSHIP COMPANY
PUBLIC LISTED OTHER (Provide Details)

B. ACCOUNT DETAILS

Date of Commencement/Incorporation: _____

A.B.N. No: _____ A.C.N. No: _____

Registered Company Name: _____

Trading Name: (if different to above) _____

Registered/Delivery Address: _____

Suburb: _____ State: _____ Postcode: _____ Phone: _____

E-Mail Address: _____ Fax: _____

Postal Address (if different to above): _____

Industry Type: _____

Period of Occupation at Present Address: _____ Premises: Owned: Leased:

C. CREDIT REQUIREMENTS

Approx Credit Limit Required: (\$) _____ Anticipated Monthly Purchases (\$) _____

D. CONTACTS

Sales: _____ Accounts Payable: _____

General Manager: _____ Purchasing Officer: _____

Financial Controller: _____

E. DIRECTORS, PARTNERS, OFFICE BEARERS

1. Surname: _____ Given Name/s: _____

Residential Address: _____

Mobile Phone Number: _____

Date of Birth: _____ Signature: _____

2. Surname: _____ Given Name/s: _____

Residential Address: _____

Mobile Phone Number: _____

Date of Birth: _____ Signature: _____

3. Surname: _____ Given Name/s: _____

Residential Address: _____

Mobile Phone Number: _____

Date of Birth: _____ Signature: _____

F. SUPPLIER TRADE REFERENCES (Couriers, Office Suppliers & Credit Card Providers not acceptable)

Name & Address of Supplier	Telephone/Fax Numbers	Contact Person
1.		
2.		
3.		

ACCEPTANCE BY BUYER OF TERMS AND CONDITIONS OF PROVISION OF CREDIT

(This page must be completed and signed by all applicants, partners and directors.)

I/We agree that in consideration of the Seller providing goods on credit, we agree to be bound by the Seller's Terms and Conditions of Sale attached.

I/We confirm and agree as follows:

- (a) I/we have read and understand the Terms and Conditions of Sale and agree that, subject to the Seller's acceptance of this application, those conditions will apply and will prevail over all other terms and conditions of the Buyer's order to the extent of any inconsistency. I/We agree that the Seller reserves the right to accept or reject this application in its absolute discretion;
- (b) the information provided in this application is true and correct in every particular and I/we acknowledge that the Seller will be relying upon the information to determine whether or not to grant this application for credit and I/we warrant that we have authority to enter into this contract on behalf of the Buyer;
- (c) I/we authorise the Seller to make enquiries including obtaining a credit report concerning my/our credit worthiness or as to the accuracy of the information provided in this application and consent to any credit report concerning me/us being made available to the Seller for the purpose of assessing this application. I/We authorise the Seller to exchange or disclose any information concerning my/our credit worthiness or this application from or to any person or source and acknowledge that all or some of the information may be disclosed to a credit reporting agency within the meaning of the Privacy Act 1988 as amended;
- (d) the Seller may make additional periodic credit report checks that it sees fit to continue its assessment;
- (e) the Seller's terms of payment are strictly net 30 days from the date of invoice;
- (f) the terms and conditions provide that interest may be charged by the Seller on amounts which exceed the 30 day credit limit;
- (g) I/we understand and accept the consent we have given under the Privacy Act 1988.
- (h) I/we are duly authorised by the Company to sign this application and warrant that the Company will perform its obligations pursuant to this application.

SIGNATURE: _____ SIGNATURE: _____

PRINT NAME: _____ PRINT NAME: _____

DATE: _____ DATE: _____

SIGNATURE: _____ SIGNATURE: _____

PRINT NAME: _____ PRINT NAME: _____

DATE: _____ DATE: _____

THIS CREDIT APPLICATION WILL NOT BE CONSIDERED UNLESS THIS SECTION IS SIGNED AND DATED

IF THE BUYER IS A COMPANY OR IF THE BUSINESS IS OWNED BY A COMPANY, THE DIRECTORS ARE REQUIRED TO COMPLETE THE FOLLOWING:

WE _____ OF _____

AND _____ OF _____

BEING DIRECTORS OF THE BUYER IN CONSIDERATION OF THE SELLER GRANTING CREDIT TO THE BUYER HEREBY JOINTLY AND SEVERALLY:

- (i) GUARANTEE THE SELLER PAYMENT OF ALL DEBTS TO BE PAID, BY THE BUYER AND AGREE THAT THIS GUARANTEE WILL BE A CONTINUING GUARANTEE AND WILL NOT IN ANY WAY BE WAIVED OR AFFECTED BY ANY TIME OR INDULGENCE GRANTED BY THE SELLER TO THE BUYER.
- (ii) CHARGE ANY PROPERTY OWNED BY US WHETHER ALONE OR JOINTLY AS A TENANT IN COMMON OR AS A JOINT TENANT IN FAVOUR OF THE SELLER TO SECURE ANY MONEYS OWING HEREUNDER WHETHER OR NOT THE SELLER HAS TAKEN OR HAS THREATENED TO TAKE ANY ACTION AGAINST THE BUYER OR AGAINST ANY GUARANTOR IN RESPECT THEREOF.
- (iii) ACKNOWLEDGE THAT WE HAVE BEEN GIVEN THE OPPORTUNITY TO SEEK LEGAL ADVICE BEFORE SIGNING THIS GUARANTEE.

DATED THIS _____ DAY OF _____ 20____

SIGNED: _____ SIGNED: _____

PRINT NAME: _____ PRINT NAME: _____

SIGNED: _____ SIGNED: _____

PRINT NAME: _____ PRINT NAME: _____

SMART TEMP AUSTRALIA PTY LTD

TERMS AND CONDITIONS

1. General

- 1.1 In these terms and conditions (unless the context requires otherwise):
- (a) "Seller" means Smart Temp Australia Pty Ltd ABN 17 094 444 238 in its own capacity;
 - (b) "Buyer" means any person who enters into a contract with the Seller for the purchase of goods and includes:
 - (i) any successors or permitted assigns;
 - (ii) if the Buyer consists of more than one person, both of them jointly and each of them severally;
 - (c) "carrier" means a carrier nominated by the Seller to make delivery of the goods;
 - (d) "goods" means any goods or services supplied or to be supplied by the Seller as specified in an order accepted by the Seller.
 - (e) "order" means an order placed with the Seller for the supply of goods.
- 1.2 These terms and conditions apply to the sale of goods by the Seller and all offers made by the Seller in relation to the Seller's goods, unless varied, amended or cancelled in writing signed by an officer or other duly authorised representative of the Seller.
- 1.3 The Buyer of goods from the Seller is deemed to have accepted the terms and conditions contained herein by placing an order with the Seller.
- 1.4 The Seller's failure to insist upon strict performance of any of these terms or conditions or to object to any term or condition contained in any communication, whether written or oral, from the Buyer, shall not be deemed a waiver of these terms and conditions and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.
- 1.5 These terms and conditions supersede all previous terms and conditions imposed by the Seller and override any terms and conditions of purchase used or submitted by the Buyer.

2. Quotes by the Seller

- 2.1 Subject to sub-clause 4.2, all quotations made by the Seller are valid for the period specified in the quotation, or if no such period is specified, for a period of thirty (30) days from the date of the quotation. Following the expiration of this period, each quotation is subject to written confirmation by the Seller.
- 2.2 Any goods offered ex-stock by the Seller are subject to prior sale.

3. Orders

- 3.1 The Seller may require the Buyer to place written orders for the Seller's goods. All quotations given and orders accepted by the Seller are given or accepted by the Seller subject to these terms and conditions, and to the exclusion of all other terms and conditions. A contract will be made only upon the acceptance of an order in writing by the Seller, which may be by supply of all or part of the goods ordered.
- 3.2 The Buyer must purchase at least the minimum order value and the minimum order quantity per line item determined by the Seller in its sole discretion and notified to the Buyer from time to time.

4. Prices

- 4.1 Subject to sub-clause 4.2, and unless otherwise agreed, the purchase price for goods shall be the Seller's list prices as at the date of the Seller's acceptance of an order placed by the Buyer. The Buyer acknowledges and agrees that, in the event that any price quoted by the Seller is calculated on the basis of a per unit price or is based on minimum or specific quantities, the Seller may amend that price if there is any variation in the total quantity of goods ordered from that upon which the quotation was based.
- 4.2 All quoted prices of imported goods are based upon the FOB price of the Seller's supplier and the rates of exchange, freight, insurance and customs or primage duty as at the date of quotation. The quoted prices may be varied by the same percentage amount by which the Seller's actual costs of satisfying an order vary as a result of any change in the said price or in any of these rates or duties. In the case of variations in rates of exchange, the Seller reserves the right to increase its quoted price in relation to goods supplied to the Buyer by the same percentage as the percentage devaluation (if any) of the Australian dollar against the currency in which payment for the relevant goods is required to be made by the Seller to its supplier, calculated from the date of quotation by the Seller to the date of invoice, as disclosed by the variation in the National Australia Bank Ltd Spot Selling Rate in the relevant period.

- 4.3 In the event that the Seller agrees to deliver goods in accordance with further directions of the Buyer, the agreed price of the goods shall only apply if the quantity delivered is delivered in accordance with the Buyer's directions as specified in its order or, if no directions are so specified, if the whole of the goods are delivered no later than twelve (12) months from the date of the order. If a lesser quantity is scheduled for delivery during the relevant period, the Seller reserves the right to charge for those goods, at its option, either at the Seller's standard prices in effect at the time of delivery or at the Seller's standard prices in effect at the time of the order.
- 4.4 In addition to the prices specified above, the Seller will charge the Buyer for the cost of delivery of the goods ex Sellers store together with its standard packaging and handling charges from time to time. In addition, the Seller shall be entitled to charge separately for packing, which is not in accordance with the Seller's customary standard of packing.
- 4.5 All listed, published or quoted prices (unless otherwise expressly indicated) are exclusive of any applicable goods and services tax ("GST") or any other applicable taxes and duties and costs and charges associated with the delivery of goods, and all such taxes, duties and costs and charges shall be included as an additional item in the invoiced price. The Buyer will be required to pay the Seller the amount of the price for goods and services plus GST and the following provisions of this sub-clause 4.5 shall apply.
- (a) The *consideration* payable by the Buyer for goods and/or services represents the *value* of any *taxable supply* for which payment is to be made. If a *taxable supply* is made to the Buyer, then the Buyer 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*.
- (b) Where the *consideration* payable by the Buyer for goods and/or services is invoiced or otherwise expressed other than in Australian currency, for purposes of determining the *value* (and the amount of GST payable) in respect of a *taxable supply* the expressed *consideration* for the *taxable supply* shall be treated as if it were an amount in Australian currency by converting the expressed *consideration* to Australian currency at the average exchange rate quoted by the National Australia Bank on the date of invoice for the *taxable supply*, provided however that notwithstanding anything in this sub-clause 4.5 the payment of the invoice by the Buyer shall be required to be paid in the currency and amount expressed in the invoice.
- (c) Expressions set out in italics in this clause 4.5 bear the same meaning as those expressions in the A New Tax System (Goods and Service Tax) Act 1999 (as amended).
- 4.6 The Seller reserves the right to correct clerical errors without notification.

5. Terms of Payment

- 5.1 Subject to sub-clause 5.2, all invoices shall be paid in full in Australian currency not later than thirty (30) days from the date of invoice, unless the Seller otherwise agrees in writing. Time shall be of the essence for payment.
- 5.2 The Seller shall be entitled to invoice for goods supplied to the Buyer upon delivery thereof, subject to contrary agreement in writing PROVIDED THAT if delivery of any goods is delayed as a result of circumstances beyond the reasonable control of the Seller (including the circumstances set out in sub-clauses 6.3 and 7) then the Seller shall be entitled to invoice the Buyer for the goods at the expiration of a period of fourteen (14) days after notification by the Seller to the Buyer that the goods are ready for delivery, in which event payment of fifty per cent (50%) of the agreed price for the goods referred to in that notice shall fall immediately due and payable, the balance becoming payable on delivery or within three (3) months of the date of the notice, whichever is the earlier.
- 5.3 In the event that the Buyer fails to make any payment to the Seller when payment falls due, the Seller shall have the right, without prejudice to any other right or remedy to which the Seller may be entitled, to charge interest on any overdue invoice at the rate of 3% per annum in excess of the interest rate prescribed by the National Australia Bank for overdrafts above \$100,000.00, calculated and payable daily compounded from the due date until the invoice is paid in full. The Buyer must pay all costs and expenses (including legal costs on a full indemnity basis), which may be incurred whether involving the issue of legal proceedings or not by the Seller in the attempted recovery of the overdue amounts. Any payment by the Buyer shall be credited first against any interest so accrued, any such costs and expenses and the balance of payment, if any, shall be applied in reduction of the outstanding balance of the price.
- 5.4 The extension of credit facilities and the terms upon which such credit is provided are, in all cases, at the sole discretion of the Seller and are subject to confirmation on the receipt of an order. In any event the Seller retains the right to withdraw credit facilities at any time prior to delivery of goods.
- 5.4 Notwithstanding that the Seller may grant the Buyer time to pay for goods and/or services or provide credit facilities, the Buyer must, in the event the goods are sold and the proceeds of sale received, where applicable, comply with clause 9.

6. Delivery of Goods

- 6.1 Whilst the Seller will use its best endeavors to meet all quoted delivery or consignment dates the Seller shall in no event be liable to the Buyer by reason of delays in delivery caused by any reason whatsoever.
- 6.2 If the Buyer wishes to use its own carrier, delivery of the goods shall be ex-Seller's store and the Buyer shall pay all freight and insurance costs ex-Seller's store and shall indemnify the Seller against all actions, suits, proceedings, claims or demands and all losses, expenses and liabilities, howsoever arising, from the transportation of the Seller's goods delivered ex-Seller's store once delivery has been made by the Seller to the Buyer's carrier.
- 6.3 In the event of any delay caused by the Buyer or caused by industrial disputes, including strikes and lockouts, circumstances such as fire, war, mobilisation or any other cause beyond the reasonable control of the Seller, the Seller, at its option, may extend the quoted delivery or consignment dates or consign part of an order or suspend consignment during that period of delay or may cancel the order and the Buyer shall not be relieved of its obligation to accept and pay for an order, or any part of an order, in accordance with clause 5, as a result of any such extensions, partial consignments or suspensions.
- 6.4 The delivery time made known to the Buyer are estimates only and the Seller will not be liable for late delivery or non-delivery and under no circumstances will the Seller be liable for any loss, damage or delay occasioned to the Buyer or its customers arising from late or non-delivery of the goods.

- 6.5 The Seller will be conclusively presumed to have delivered the goods in accordance with this agreement if the goods are delivered to the consignment address, whether or not the Seller obtains a receipt or signed delivery docket for the goods from any person.
- 6.6 If delivery cannot be effected, the Seller may store the goods or redeliver the goods to the Buyer and the Buyer must pay or indemnify the Seller for all costs and expenses incurred.
- 6.7 The Seller will not be responsible for any loss or damage to goods in transit. The Seller will render the Buyer such assistance as may be necessary to press claims on any carrier provided the Buyer must have notified the Seller and the carrier in writing immediately loss or damage is discovered on receipt of goods and must lodge a claim on the carrier within 3 days of the date of receipt of the goods.
- 6.8 In the event of the Seller agreeing to the return of the goods by the Buyer, the goods will be at the Buyer's risk until such time as the goods reach the Sellers' place of business. The expense of return will be borne by the Buyer.

7. **Storage of Goods**

In the event that, after notification to the Buyer that the goods are ready for delivery, delay in delivery is caused by the Buyer or caused by industrial disputes, including strikes and lockouts, circumstances such as fire, war, mobilisation or any other cause beyond the reasonable control of the Seller, the Seller shall be entitled, at its option, and without limiting its rights under sub-clause 5.2, to arrange suitable storage, whether at its premises or elsewhere, and shall take reasonable steps to protect the Buyer's interest in the goods. The Buyer shall pay all costs of storage, insurance, demurrage, handling and other charges associated with such storage.

8. **Risk and Supply**

- 8.1 All goods sold to the Buyer shall be at the Buyer's risk immediately upon delivery to or collection by the Buyer, the Buyer's nominee, the Buyer's carrier, except where goods are held for the Buyer in accordance with clause 7, in which case risk shall pass to the Buyer on the date being seven (7) days from the date of notification to the Buyer that the goods are ready for delivery.
- 8.2 The Seller reserves the right to: (1) withhold supply to the Buyer where: (i) the Seller has insufficient goods to fulfil the order, (ii) the goods and/or services ordered have been discontinued, (iii) the Buyer is in breach of any contract with the Seller, or (iv) the Seller otherwise considers it appropriate for any other reason; (2) supply by installments. The exercise of these rights by the Seller or delay in supply for any other reason does not entitle the Buyer to: (i) terminate any contract with the Seller; or (ii) claim any loss or damage.

9. **Title of Goods**

- 9.1 Title to and property in the goods supplied by the Seller shall not pass to the Buyer until the Seller has received payment in full of the price of all goods supplied by the Seller to the Buyer at any time and the Buyer has discharged all existing indebtedness to the Seller, whether for the price of the goods supplied or for any other amount which may be owing by the Buyer to the Seller on any other account (some of which may not necessarily be due for payment); provided however that the Buyer shall bear the risk of any loss or damage to or deterioration of the goods from whatever cause arising following delivery of the goods to the Buyer. If the Buyer fails to honour any of these terms and conditions of sale, the Seller, without notice, will have the right to take possession of the goods which are the subject of this reservation of title, or trace the proceeds of the sale thereof, as the case may be, and to recover the full amount owing to the Seller together with interest and costs, if any.
- 9.2 The Buyer acknowledges that until property and ownership in the goods passes to the Buyer in accordance with sub-clause 9.1, the Buyer is in possession of those goods for and on behalf of the Seller as a fiduciary bailee and agent and is only authorised to sell the goods (in the Buyer's own name and not as agent of the Seller) in the ordinary course of the Buyer's ordinary business.
- 9.3 The Buyer shall keep and safely store the goods on its premises separately and in such manner that the goods are readily identifiable as the property of the Seller and shall display such identification as may from time to time be requested by the Seller.
- 9.4 The Seller will have the right, at any time and without prejudice to any other remedies: (i) to repossess the goods and to enter into any premises upon which the goods are stored (forcibly if necessary), without notice, for this purpose and will not be liable for trespass or any resulting damage; and (ii) to require the Buyer not to resell or part with possession of, or otherwise dispose of, charge or otherwise encumber the goods until payment is made in full on any account.
- 9.5 Until such time as the Seller receives payment in full for any goods on any account, if the Buyer sells or receives any payment from a customer or insurer in respect of the goods, (1) the Buyer must: (a) deposit the proceeds of any such sale or disposition and any insurance proceeds (or claim thereto) into a separate and identifiable bank account which shall not be overdrawn; (b) not mix such proceeds with any other moneys; and (c) account to the Seller for such proceeds, and (2) the Seller will be entitled to trace all proceeds of sale of the goods received by the Buyer through the relevant account or any other account maintained by the Buyer.
- 9.6 If the Buyer incorporates or mixes goods supplied by the Seller (the property in which has not passed to the Buyer in accordance with this clause 9) with other goods not supplied by the Seller, the resulting product shall be the property of the Seller. The rights of the Seller in respect of the resulting product shall be the same as those provided for in this clause 9 in respect of goods the property in which has not passed to the Buyer, except that in exercising these rights the Seller shall account to the Buyer (on a pro rata basis) for that part of the realised value of the resulting products which is attributable to: (1) the goods not supplied by the Seller; and (2) the Buyer's cost of manufacture.
- 9.7 Nothing in sub-clauses 9.1 to 9.6 inclusive shall affect the Seller's rights as an unpaid Seller. This clause 9 is not intended to create a charge over the goods or over any book debts or proceeds of sale in respect of the sale of the goods. To the extent that any part of this clause is construed as creating a charge, the offending words shall be deleted.

10. **Return of Goods and Cancellation of Orders**

- 10.1 The Buyer may within ten (10) days of receipt of any goods claim the right to reject any goods which are wrongly supplied or oversupplied, or which are not in accordance with any express or implied representations, warranties, terms or conditions of the contract of sale, without limiting the Seller's right to dispute any such claim. If the Buyer fails to notify the Seller in writing of its claim for rejection and reasons therefore within such period, the Buyer will, subject always to clause 15 of these terms and conditions, be deemed to have accepted such consignments.

- 10.2 Return of any of the goods cannot be made by the Buyer:-
- (a) without prior written authorisation of the Seller, and
 - (b) unless accompanied by the delivery docket showing the Seller's authorisation reference number.
- 10.3 In the event that the Buyer returns goods other than in accordance with sub-clause 10.2, subject always to clause 15 of these terms and conditions, the Seller shall re consign those goods to the Buyer, freight collect.
- 10.4 The Buyer shall not cancel any order without the prior written consent of the Seller, which consent may or may not be granted in the Seller's sole discretion and on terms that will indemnify the Seller for all losses.
- 10.5 In the event that the Seller agrees to the cancellation of an order, the Seller may as a condition of such cancellation, require the payment by the Buyer of a cancellation fee of an amount determined by the Seller in its reasonable discretion to compensate it for the loss suffered by it arising out of the cancellation.
- 10.6 At the Seller's option, any order may be terminated by the Seller in the event of the insolvency of the Buyer or in the event of execution being levied against any of the property of the Buyer or in the event of the Buyer being placed in liquidation, whether voluntary or otherwise, or a receiver and manager or administrator being appointed in respect of the assets or undertaking of the Buyer or the Buyer entering into a deed of composition or arrangement with its creditors or any of them, or in the event that for any reason, in the Seller's reasonable opinion, the Buyer is unlikely to be able to make payment for the goods on the due date.

11. Specifications and Information

Where the Seller is not the manufacturer, the Seller relies on the specifications and warranties supplied by the manufacturer.

12. Export and/or Re-export Limitation

The Buyer must have regard to and take responsibility for all current statutory or other government regulations in force from time to time concerning export rules, regulations and restrictions in force from time to time and regardless of any disclosure made by the Buyer to the Seller of an ultimate destination for any goods or products, the Buyer will not export or re-export directly any goods or other products without first obtaining all such written consents or authorisations as may be required by any applicable government rules or regulations.

13. Intellectual Property

- 13.1 The Buyer acknowledges that all rights in respect of patents, copyrights, design rights, trade marks or other industrial or intellectual property rights connected with the goods shall not pass to the Buyer. The Buyer shall indemnify the Seller against any and all liabilities, claims and costs incurred by or made against the Seller as a direct or indirect result of carrying out of any work required to be done on or to the goods in accordance with the requirements or specifications of the Buyer involving any infringement or alleged infringement of any rights of any third party.
- 13.2 Subject to Clause 15, the Seller shall not be liable for any loss arising from the production of goods where the specification, method of construction or design has been provided to the Seller by the Buyer and the Seller has not materially deviated from those specifications when producing those goods. The Buyer acknowledges the Seller's right to vary the material or construction specification of the goods provided that their performance specification is not adversely affected.
- 13.3 The Buyer warrants to the Seller that the production and delivery of goods to the Seller will not infringe any patent, copyright, trade mark, design or other right of any third party and the Buyer agrees to notify the Seller in the event of such an infringement and further agrees to indemnify the Seller in respect of any loss suffered or incurred by the Seller for any claim, action or proceeding commenced by any person in connection with such infringement.
- 13.4 Unless otherwise agreed in writing, if the Seller is requested to provide services in respect of programming or other enhancements then the cost of such items shall be to the account of the Buyer and the Buyer agrees that the property in such items is to remain with the Seller.
- 13.5 Any preliminary work undertaken by the Seller at the Buyer's request in relation to design or construction of goods or products in respect of designs or programming shall be considered an order and the Seller may in its discretion charge the Buyer in respect to such work undertaken or services provided.

14. Software

- 14.1 Where the goods include software and the Buyer has been furnished with the developer's software licence, the Buyer shall sign and return it to the Seller within seven (7) days or as otherwise specified in the licence, and if the Buyer fails to sign and return the licence:-
- (a) the Seller reserves the right to withhold release of the software; and
 - (b) the Seller shall nevertheless be entitled to payment in full for the software.
- 14.2 In the absence of the developer's software licence being furnished, the Buyer shall accept a non-exclusive, non-transferable licence to use the software as provided in these terms and conditions and subject to the further provisions of sub-clauses 14.3 and 14.4.
- 14.3 The Buyer shall not copy (other than for normal equipment operation), reproduce, translate, adapt, vary or modify the software or communicate any part of it to a third party without the prior written consent of the Seller.
- 14.4 The licence granted by sub-clause 14.2 shall continue until or unless:-
- (a) either party gives to the other one month's prior written notice of termination, on or before the expiry of which the Buyer shall return or destroy the software as the Seller shall direct, which notice may only be given by the Seller if the continued use or possession of the software by the Buyer infringes the developer's third party rights or if the Seller is required to give notice by law; or
 - (b) the Seller terminates the licence immediately if the Buyer fails, or has failed, to comply with any term or condition of the contract including (without limitation) breach of copyright, patent or confidentiality.

15. **Warranty and Exclusion of Liability**

- 15.1 The Seller warrants to the Buyer that, under proper use in accordance with the Seller's specifications and instructions (if any) the goods will be free from defects solely due to faulty workmanship and materials, during a period of twelve (12) months from delivery unless otherwise stated, to the extent that upon authorised return to the Seller, freight pre-paid, during that period, of any part of the goods covered by this warranty, the Seller shall, if it finds such a part to be so defective in its sole opinion, at its option repair such part or supply (but not fit) a replacement part, provided that:-
- (a) the goods or any part thereof are not, and have not been, without the Seller's consent, altered, repaired or subjected to any technical attention by any person other than the Seller's authorised representatives;
 - (b) the provision of this sub-clause 15.1 may, at the Seller's option, be varied or replaced by specific warranty conditions issued in respect of particular products; and
 - (c) this warranty does not cover damage due to normal wear and tear, improper installation, use of any of the Seller's goods in life support products, misuse or neglect or where goods have been subjected to operating or environmental conditions in excess of maximum values in the applicable specification.
- 15.2 To the extent permitted by law, and except as expressly provided in sub-clause 15.1, all warranties, representations, terms and conditions, concerning the goods or services to be supplied by the Seller in respect of the goods, including, but not limited to, warranties, representations, terms or conditions regarding the ability of goods to be used in life support products, whether express or implied, are hereby expressly excluded.
- 15.3 To the extent permitted by law, the Seller shall not be liable, nor shall there be any remedy against the Seller in respect of any claim, whether contractual, tortious, statutory or otherwise, for any loss, damage, costs, expenses or other injury or harm suffered by the Buyer or any other person in relation to or arising out of use of the goods or in relation to or arising out of services supplied by the Seller in relation to the goods, including, but not limited to, loss of profits, loss of business, unavailability of goods or losses arising from claims by third parties.
- 15.4 Where the Seller is not permitted under the Trade Practices Act 1974 (Cth), or other applicable laws to exclude, restrict or modify its liability for the breach of a condition or warranty that is implied by the Trade Practices Act 1974 (Cth) or any other applicable laws but is permitted to limit its liability for the breach of such condition or warranty, then, to the extent to which the Seller is entitled to do so, the Seller's liability (if any) shall be limited, at its option, to:-
- (a) in the case of goods:-
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired,
 - (b) in the case of services:-
 - (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
- 15.5 The Buyer acknowledges that it has not relied on any representation made by the Seller, which has not been expressly stated in these terms and conditions. The Buyer indemnifies the Seller against all loss incurred by the Seller in connection with any act or omission of the Buyer including, but not limited to, negligence of the Buyer or any unauthorised representation made or warranty given by the Buyer in connection with the goods and/or services.

16. **Infringement of Intellectual and Industrial Property Rights**

If any action, suit, proceeding, claim or demand is brought or made alleging that the sale, use or any other dealing with the goods infringes the trade mark, trade name, patent, copyright, registered design or any other intellectual or industrial property rights of third parties, the Buyer shall forthwith notify the Seller thereof and give every assistance to the Seller in connection therewith as the Seller may reasonably require and shall not itself handle, deal with or compromise any such action, suit, proceedings, claim or demand except with the prior written consent of the Seller.

17. **Governing Law**

These terms and conditions shall be governed by, and construed in accordance with, the laws of the State of Victoria, Australia and the parties submit to the non-exclusive jurisdiction of the courts of that State.

18. **Use of Goods**

The Buyer will not use the goods for any purpose other than that for which the goods were sold to it and will use the goods strictly in accordance with any instructions or supporting documentation supplied with the goods, or as directed by the Seller.

19. **Specifications**

- 19.1 The Seller's policy is one of continuous development and the Seller therefore reserves the right to improve, alter or discontinue specifications without prior notice. All illustrations or samples are intended as approximate representations only and are not binding in detail with regard to finishes, colour and specifications. The Seller accepts no liability whatsoever for any loss or damage (including, without limitation, consequential loss or damage) directly or indirectly arising out of or in connection with same.
- 19.2 In the event the Buyer provides the Seller with specifications for the manufacture of goods by the Seller for the Buyer, the Buyer warrants to the Seller that the specifications and any goods manufactured by the Seller based on the said specifications will not infringe the copyright, patent, design or other intellectual property rights of any third party, and the Buyer will indemnify and keep indemnified the Seller from and against any and all claims, liabilities, obligations, expenses or damages the Seller may suffer or incur as a result of the use by the Seller of the specifications.

20. **Termination**

20.1 The Seller will be entitled to terminate any order with the Buyer or revoke any credit terms granted if the Buyer fails to punctually pay monies due to the Seller, has any security enforced against it, has an Administrator appointed under the Corporations Act, commits an act of bankruptcy or, being a company passes a resolution for winding up (except for the purposes of reconstruction) or an application is made for the winding up the Buyer.

20.2 Upon the occurrence of termination event referred to in Clause 20.1, the Seller reserves the right to cancel an order with the Buyer (to the extent that the order remains unperformed) in whole or in part without any liability attaching the Seller, any goods in transit and dispose of the goods produced for the Buyer to a third party and all monies owing to the Seller in respect of any order will be immediately payable.

20.3 Termination by the Seller is without prejudice to any other right or obligation, which may have accrued prior to termination.

21. **Force Majeure**

21.1 The Seller will not be liable for any loss incurred as a result of delay or failure to meet an accepted order or to observe any of these terms and conditions (other than an obligation to pay money) due to an event of force majeure, being any cause or circumstance beyond the Seller's control, including but not limited to any failure or delay in performance caused by any strikes, lock-outs, labour disputes, fires, acts of God or public enemy, malicious or accidental damage, delays in transport, breakdowns in machinery or restrictions or prohibitions by any Government or any semi-Government authorities or embargos.

21.2 During the continuance of an event of force majeure affecting the Seller, its obligations hereunder will be suspended and will resume as soon as possible after the cause or circumstance has ceased to have effect.

22. **Severability**

If any of these terms and conditions infringes any law in Australia it must be read down so that it does not infringe that law, otherwise it will be deemed void and severable.

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