

Terms and Conditions of Sale

1. These conditions of sale apply in respect of offers to sell, quotations, confirmation of order, invoices, and other commercial transactions for the supply of products, including computer hardware, software and components (the 'Products') and related services including maintenance and support ('Services') by Motium Pty Ltd (A.C.N. 099 456 381) (hereinafter called 'Supplier'). These conditions of sale shall be coexistent with and be read in conjunction with any Special Conditions of Sale except where the latter specifically vary or over-ride any or all of these General Conditions.
2. The buyer of the Products and Services from the Supplier (hereinafter called the 'Purchaser') is deemed to have accepted the terms and conditions contained herein by placing an order with the Supplier. If any conditions contained in the Purchaser's purchase order or other documentation shall be contrary to or differ from these conditions, then these conditions shall prevail. Acceptance of the order and/or the performance thereof by the Supplier shall be deemed to be an acceptance of this condition notwithstanding that the acceptance of the purchase order or other documentation of the Purchaser may contain a condition similar in terms to this condition. No variation of these conditions shall be effective and binding upon the Supplier unless issued in writing by the Supplier.
3. The Supplier's failure to object to any term or condition contained in any communication, whether written or oral from the Purchaser, shall not be deemed a waiver of these terms and conditions.
4. Unless specified otherwise by the Supplier, in writing and at the time of quotation, all quotations made by the supplier are valid for a period of fourteen (14) days from the date of quotation. Following the expiration of this period, each quotation is subject to written confirmation by the supplier.
5. Unless otherwise stated it shall be the Purchaser's responsibility to obtain and provide access, services, facilities, permits, approvals or licenses as may be necessary, required for supply of any goods or the performance of the work.
6. Unless otherwise stated all Suppliers specifications, drawings and particulars of weights, dimensions and performance characteristics submitted are approximate only and any descriptions and illustrations contained in catalogues, price lists and other written material are intended merely to present a general idea of the goods described therein and none of these shall form part of the contract.
7. Any contract arising from a purchase order and an order acceptance shall be deemed to have been executed and entered into in the state of Western Australia and the same shall be construed, enforced and performed in accordance with the laws thereof and any proceedings whether by arbitration or otherwise shall be heard at Perth.
8. Any dispute, that cannot be readily solved, arising between the Purchaser and the Supplier shall be referred to an independent Arbitrator mutually acceptable to both parties.
9. The Supplier Reserves the right to sub-contract the production manufacture or supply of the whole or any part of the goods or of any materials or service to be supplied.

PRICES

10. Unless otherwise specified GST and other government imposts are not included and are additional to any quoted price.
11. Unless otherwise expressly stated, the quoted price does not include the cost of transportation, and of conforming to statutory obligations to the point stated in the quotation and shall be deemed to be calculated at the rates ruling for freight, insurance, premiums, customs duties and other

taxes and statutory charges, shipping expenses, sorting and stacking charges, cartage, etc. at the date of quotation.

12. All quoted prices of imported goods are based on F.O.B. price of the Supplier's supplier and the rates of exchange, freight, insurance and customs or package duty as at the date of quotation. The quoted prices may be varied by the same percentage amount by which the Supplier'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 Supplier reserves the right to increase its quoted price in relation to goods supplied to the Purchaser 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 Supplier to its supplier, calculated from the date of quotation by the Supplier to the date of invoice, as disclosed by the variation in the Bankwest Bank Spot Selling Rate in the relevant period.
13. The quotation is based on current rates for labor and materials and unless otherwise stated orders will be invoiced and payable at prices ruling at the date of dispatch.

TERMS OF PAYMENT

14. When any payment is due upon delivery, which is delayed by the Purchaser, such payment shall be made as though such delivery had been completed. Any extra costs thereby incurred by the Supplier shall be to the Purchaser's account.
15. Where delivery of goods the subject of a quotation is effected in any way by part deliveries then the Supplier shall be entitled to pro-rata progress payments in respect thereof.
16. In the case of death, incapacity, bankruptcy, liquidation, suspension of payment or the making of any agreement with creditors on the part of the Purchaser or of any nonpayment punctually for any delivery parcel or installment tendered or of any failure to make any payment or to meet any draft under this or any other contract or obligation to the Supplier or should a receiver or receiver manager be appointed in respect of the Purchaser's business or affairs, the Supplier may without prejudice to any other rights or remedies open to it cancel this contract or suspend or continue delivery hereunder at the Supplier's option always reserving to the Supplier all rights to recover any loss consequent upon any such loss cancellation or suspension.
17. In the event that the Purchaser fails to make any payment to the Supplier when payment falls due, the Supplier shall have the right, without prejudice to any other right or remedy to which the Supplier may be entitled, to charge interest on the overdue amount at the rate of 2% per annum in excess of the interest rate prescribed by the Bankwest indicator lending rate for overdrafts above AU\$ 100,000.00, calculated from the date of invoice to the actual date of full and final payment. Any payment by the Purchaser shall be credited first against any interest so accrued and the balance of payment, if any, shall be applied in reduction of the outstanding balance of the price.
18. The extension of credit facilities and the items upon which such credit is provided are, in all cases, at the sole discretion of the Supplier and are subject to confirmation on the receipt of an order. In any event the Supplier retains the right to withdraw credit facilities at any time prior to delivery of goods.

The Supplier's normal trading terms are COD or payment with order.

DELIVERY AND ACCEPTANCE

19. Any delivery dates and/or times quoted are given in good faith but unless otherwise stated the Supplier will not be held responsible for any delay arising from causes beyond reasonable control. The Purchaser's receipt of goods shall constitute a waiver of any claim for delay.
20. The Supplier will have no liability whatsoever for any direct, indirect or consequential damage or loss arising from non-delivery or any delays in delivery including off-loading or misdirection in transit.
21. The Purchaser will be responsible for immediate examination of goods after arrival at place of delivery and except as may be otherwise provided by law, the Supplier shall not be liable for any claim to which it would otherwise be liable in respect of goods damaged in course of transit unless

particulars of such claim are notified to the Supplier in writing within three (3) working days after arrival of the goods at the place of delivery.

22. It is the responsibility of the Purchaser to satisfy themselves that the goods supplied are of the description, quality and character ordered, suitable for the purpose for which they are required. Subject to any legislation to the contrary, the Supplier shall not be liable for any loss or damage (whether direct, indirect or consequential, howsoever arising from the sale or from the failure of the Purchaser to satisfy themselves.
23. In the event of any delay caused by the Purchaser 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 Supplier, the Supplier at their 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 Purchaser shall not be relieved of its obligation to accept and pay for an order, or any part of an order, in accordance with the Terms of Payment, above, as a result of any such extensions, partial consignments or suspensions.

STORAGE OF GOODS

24. In the event that after notification to the Purchaser, that the goods are ready for delivery, delay in delivery is caused by the Purchaser 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 Supplier, the Supplier shall be entitled, at its option, and without limiting its rights under Terms of Payment above, to arrange suitable storage, whether at its premises or elsewhere and shall take reasonable steps to protect the Purchaser's interest in the goods. The Purchaser shall pay all costs of storage, insurance, demurrage, handling and other charges associated with such storage.

RISK

25. All goods sold to the Purchaser shall be at the Purchaser's risk immediately upon delivery to the Purchaser, to the Purchaser's nominee, or to the Purchaser's carrier, except where goods are held for the Purchaser in accordance to the Storage of Goods clause above, in which case risk shall pass to the Purchaser on the date being seven (7) days from the date of notification to the Purchaser that the goods are ready for delivery.

TITLE OF GOODS

26. The risk in the goods supplied by the Supplier to the Purchaser shall be deemed to pass at the time of delivery but the ownership in the goods shall not pass or be deemed to pass until the Purchaser has paid for them and has discharged all other indebtedness to the Supplier on any account whatsoever, or until such time as the Purchaser sells the goods to its customers bona fide and at market value. The receipt by the Supplier of any cheque, bill of exchange or promissory note shall not be deemed to be payment in any respect until the same has been honoured or cleared and until that occurs the Suppliers rights, power and remedies against the Purchaser and/or the goods shall remain unaffected altogether.
27. The Purchaser hereby irrevocably grants to the Supplier or its agents and servants an unrestricted right and license, without notice, to enter premises occupied by the Purchaser to identify and remove any of the goods the property of the Supplier in terms of these conditions as aforesaid without in any way being liable to the Purchaser or any person claiming through the Purchaser. The Supplier shall have the right to sell or dispose of any such goods so removed or otherwise in its sole discretion and shall not be responsible for any loss occasioned thereby.
28. If payment for any goods is not made within the terms specified in the quotation, or invoice, in whole or in part then the Supplier may (without prejudice to any of its other rights) recover or resell the goods or any part thereof.
29. Payment for any goods sold shall become immediately due upon default by the Purchaser in payment for any other goods which the Supplier has sold to the Purchaser and the Supplier shall be entitled to suspend the supply of further goods to the Purchaser.

30. If any of the goods are incorporated in or used as material or components for other goods before payment to the Supplier, the property in the whole of such goods shall be and be deemed to remain with the Supplier until payment is made or the other goods have been sold to the Purchaser's customers bona fide and at market value and all of the Supplier's rights hereinunder in the goods shall extend to those other goods.
31. Where the goods have been delivered to the Purchaser but the Supplier has not been paid, then until such payment is received the Purchaser agrees to keep the goods as a fiduciary for the Supplier, to store or otherwise the goods in a manner that clearly shows ownership of the Supplier.
32. If any provisions of this clause "Title of Goods" creates or constitutes a charge or other security right requiring registration under the provisions of any legislation, such provisions shall be severed from this clause.

RETURN OF GOODS AND CANCELLATION OF ORDERS

33. The Purchaser may within five (5) days of receipt of any goods claim the right to reject any goods which are wrongly 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 Supplier's right to dispute any such claim. If the Purchaser fails to notify the Supplier in writing of its claim for rejection and reasons therefore within such period, the Purchaser will be deemed to have accepted such consignment.
34. The Supplier will not accept return of goods unless prior written authorisation has been obtained from the Supplier. Goods returned to the Supplier may be subject to a handling charge, such charge to be determined by the Supplier.
35. The Supplier shall have no liability for any damage or defects in the Product that have been caused by improper storage, warehousing or transport, or by neglect, abuse or improper use, installation, maintenance or unauthorised repair to the Products.
36. This returns procedure shall not extend to Products which have been added to, modified, varied or changed by any person or party other than the Supplier.
37. Should any order resulting from a quotation be terminated for any just cause, at the sole discretion of the Supplier, the Purchaser shall pay the Supplier for all costs and expenses incurred and commitments made in connection with the performance of the order plus a reasonable profit thereon.

WARRANTY AND EXCLUSION OF LIABILITY

38. The Supplier warrants to the Purchaser that, under proper use in accordance with the Supplier's specifications and instructions (if any) the Products (excluding third-party products and software) will be free from defects solely due to faulty workmanship and materials, for a period of twelve (12) months from invoice date (the 'Standard Warranty'), to the extent that upon authorised return to the Supplier, freight pre-paid, during that period, of any part of the goods covered by this warranty, the Supplier shall, if it finds such a part to be so defective in its sole opinion, at its option repair such part or supply a replacement part, provided that:
 - a) the goods or any part thereof are not, and have not been, without the Supplier's consent, altered, repaired or subjected to any technical attention by any person other than the Supplier's authorised representatives;
 - b) the provisions of this paragraph may, at the Supplier'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 Supplier's goods in life support products, misuse or neglect or where goods have been subjected to operating or environmental conditions in excess of maximum value in the applicable specification, act of God, fire, flood, war, act of violence or any similar occurrence.

39. To the extent permitted by law, the Supplier shall not be liable, nor shall there be any remedy against the Supplier in respect of any claim, whether contractual, tortious, statutory or otherwise, for any damage, costs, expenses or other injury or harm suffered by the Purchaser 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 Supplier in relation to the goods, including, but not limited to, loss of profits, of business, unavailability of goods or losses arising from claims by third parties.
40. To the extent permitted by law, in relation to third party products purchased through the Supplier, where such of the Products are covered by a relevant manufacturer's warranty, then the Purchaser will first make a claim against the manufacturer and shall utilise that warranty for the support of such Products and in any event not look to the Supplier for such warranty support in the first instance.
41. Provisions of various trade practices acts and other legislation and laws from time to time in force in various countries, may imply warranties or conditions or impose obligations upon the Supplier which cannot, in whole or in part, be excluded, restricted or modified. These terms and conditions must be read and construed subject to any statutory provisions. If any such statutory provisions apply then, to the extent to which the Supplier is entitled to do so, the Supplier's liability (if any) shall be limited, at its option, to:
- a) in the case of goods:
 - i) the replacement or repair of the goods or the supply of equivalent goods; or
 - ii) the payment of the cost of replacing the goods or having the goods repaired or of acquiring equivalent goods.
 - 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.

PATENTS, TRADEMARKS, COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS

42. The Purchaser shall not copy or have copied any product or part of any drawing specification or other technical data in regard thereto which may be supplied or provided arising out of the supply of Products or Services to the Purchaser.
43. The Purchaser warrants that any design or instruction furnished to the Supplier shall not be such as will cause the Supplier to infringe any patent registered design or trade mark in the execution of the Purchaser's order and the Purchaser agrees to indemnify the Supplier against any infringement or unauthorised use of patents, trade marks, designs or copyright arising out of the manufacture or use of the goods and it is specifically agreed that the sale and purchase of the goods does not confer on the Purchaser any license or rights under any patents, trade mark, copyright which is the property of the Supplier or any supplier of the Supplier.