

TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "Yendor Systems" shall mean Yendor Systems Limited, or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from Yendor Systems.
- 1.3 "Products" shall mean:
- 1.3.1 all Products and/or Services of the general description specified on the agreement / invoice and supplied by Yendor Systems to the Customer; and
- 1.3.2 all Products and/or Services supplied by Yendor Systems to the Customer; and
- 1.3.3 all inventory of the Customer that is supplied by Yendor Systems; and
- 1.3.4 all Products supplied by Yendor Systems and further identified in any invoice issued by Yendor Systems to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
- 1.3.5 all Products that are marked as having been supplied by Yendor Systems or that are stored by the Customer in a manner that enables them to be identified as having been supplied by Yendor Systems; and
- 1.3.6 all of the Customer's present and after-acquired Products that Yendor Systems has performed work on or to or in which goods or materials supplied or financed by Yendor Systems have been attached or incorporated.
- 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Products" shall also mean all products, goods, services and advice provided by Yendor Systems to the Customer including all technical and analytical advice and all charges for time and attendances, hire charges, insurance charges, or any fee or charge associated with the supply of Products by Yendor Systems to the Customer.
- 1.5 "Price" shall mean the cost of the Products as agreed between Yendor Systems and the Customer and includes all disbursements eg charges Yendor Systems pay to others on the Customer's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by Yendor Systems from the Customer for the supply of Products shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises Yendor Systems to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Products provided by Yendor Systems to any other party.
- 3.2 The Customer authorises Yendor Systems to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Products shall be deemed to be sold at the current amount as such Products are sold by Yendor Systems at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Products that is beyond the control of Yendor Systems between the date of the contract and delivery of the Products.

5. PAYMENT

- 5.1 Payment for Products shall be made in full on or before the 20th day of the month following the date of the invoice or unless prior arrangements have been made ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Yendor Systems in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 A deposit may be required.

6. QUOTATION

- 6.1 Where a quotation is given by Yendor Systems for Products:
- 6.1.1 Unless otherwise agreed the quotation shall be valid for fourteen (14) days from the date of issue; and
- 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
- 6.1.3 Yendor Systems reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Products are required in addition to the quotation the Customer agrees to pay for the additional cost of such Products.

7. RISK

- 7.1 The Products remain at Yendor Systems risk until delivery to the Customer.
- 7.2 Delivery of Products shall be deemed complete when Yendor Systems gives possession of the Products directly to the Customer or possession of the Products is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.
- 7.3 The time agreed for delivery shall not be an essential term of this contract.

8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 8.1 Title in any Products supplied by Yendor Systems passes to the Customer only when the Customer has made payment in full for all Products provided by Yendor Systems and of all other sums due to Yendor Systems by the Customer on any account whatsoever. Until all sums due to Yendor Systems by the Customer have been paid in full, Yendor Systems has a security interest in all Products.
- 8.2 If the Products are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Products shall remain with Yendor Systems until the Customer has made payment for all Products, and where those Products are mixed with other property so as to be part of or a constituent of any new Products, title to these new Products shall be deemed to be assigned to Yendor Systems as security for the full satisfaction by the Customer of the full amount owing between Yendor Systems and Customer.

- 8.3 The Customer gives irrevocable authority to Yendor Systems to enter any premises occupied by the Customer or on which Products are situated at any reasonable time after default by the Customer or before default if Yendor Systems believes a default is likely and to remove and repossess any Products and any other property to which Products are attached or in which Products are incorporated. Yendor Systems shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Yendor Systems may either resell any repossessed Products and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Products and credit the Customer's account with the invoice value thereof less such sum as Yendor Systems reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 8.4 Where Products are retained by Yendor Systems pursuant to clause 8.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.
- 8.5 The following shall constitute defaults by the Customer:
- 8.5.1 Non payment of any sum by the due date.
- 8.5.2 The Customer intimates that it will not pay any sum by the due date.
- 8.5.3 Any Products are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Products.
- 8.5.4 Any Products in the possession of the Customer are materially damaged while any sum due from the Customer to Yendor Systems remains unpaid.
- 8.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets.
- 8.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
- 8.5.7 Any material adverse change in the financial position of the Customer.
- 8.6 If the Credit Repossession Act applies to any transaction between the Customer and Yendor Systems, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

9. PAYMENT ALLOCATION

- 9.1 Yendor Systems may in its discretion allocate any payment received from the Customer towards any invoice that Yendor Systems determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by Yendor Systems, payment shall be deemed to be allocated in such manner as preserves the maximum value of Yendor Systems purchase money security interest in the Products.

10. DISPUTES

- 10.1 No claim relating to Products and/or Services will be considered unless made within seven (7) days of delivery.

11. LIABILITY

- 11.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Yendor Systems which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Yendor Systems, Yendor Systems liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 11.2 Except as otherwise provided by clause 11.1 Yendor Systems shall not be liable for:
- 11.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Products and/or Services by Yendor Systems to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Products provided by Yendor Systems to the Customer; and
- 11.2.2 The Customer shall indemnify Yendor Systems against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Yendor Systems or otherwise, brought by any person in connection with any matter, act, omission, or error by Yendor Systems its agents or employees in connection with the Products and/or Services.
- 11.3 If, contrary to the disclaimer of liability contained in these terms and conditions of trade Yendor Systems is deemed to be liable to the Customer, following and arising from the supply of Products and/or Services by it to the Customer, then it is agreed between Yendor Systems and the Customer that such liability is limited in its aggregate to \$500.00.

12. CONSUMER GUARANTEES ACT

- 12.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Products from Yendor Systems for the purposes of a business in terms of Section 2 and 43 of that Act.

13. MISCELLANEOUS

- 13.1 Yendor Systems shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 13.2 Failure by Yendor Systems to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Yendor Systems has under this contract.
- 13.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 13.4 All products, including any intellectual property and/or source code in any format, remain the property of Yendor Systems.