



## Cloudtronics Pty Ltd Terms and Conditions of Supply

### 1 GENERAL

#### 1.1 In these Terms:

CC Act means the Competition and Consumer Act 2010 (Cth);

Credit Facility is defined in clause 5.1(a);

Goods is defined in clause 3.1;

Price is defined in clause 4;

Purchaser means the person to whom a quotation is provided, or to whom Goods are supplied;

Quotation means a quotation for the supply of Goods by the Supplier to the Purchaser;

Supplier means Cloudtronics Pty Ltd ABN 46 603 072 000 and each of its related bodies corporate from time to time (within the meaning of the Corporations Act 2001 (Cth)) and

for each Quotation means the company (being Cloudtronics Pty Ltd or one of its related bodies corporate) that issues the relevant Quotation;

Supplier's Books means the Supplier's applicable catalogue(s) or price books, relevant at the time of any Quotation or order; and

Terms means these Standard Terms and Conditions of Supply.

### 2 QUOTATIONS

#### 2.1 This section of the Terms applies to all Quotations provided by the Supplier to the Purchaser and invoices issued by the Supplier to the Purchaser

(a) A quote will be deemed accepted by the purchaser when a Purchase Order is received by the Supplier within the timeframe stated in 2.2 (b).

#### 2.2 Unless stated specifically to the contrary in a Quotation, each Quotation is:

(a) based on the Supplier's understanding of the Purchaser's requirements. It is the Purchaser's responsibility to verify prior to accepting a Quotation that the Goods will meet the Purchaser's requirements;

(b) valid for 30 days from the date it is given;

(c) exclusive of GST and other taxes unless otherwise stated;

(d) confidential, and the Purchaser agrees not to disclose the pricing detail to any other person; and

(e) in \$A unless the parties agree otherwise in writing.

#### 2.3 The Supplier reserves the right to vary or withdraw a Quotation prior to acceptance, to take into account any variation in currency exchange rates, government charges and import duties, transportation costs etc arising after the date of the Quotation.

- 2.4 Where a Quotation relates to Goods to be exported from Australia, all prices are quoted FOB at the port nominated by the Supplier. The Purchaser acknowledges that it is responsible for all additional charges by any Government or other authorities.
- 2.5 Products marked with an “\*” asterisk next to them in the Quotation are non-stocked items and are not returnable.
- 2.6 If the Product requires the Purchaser to hold a current certification from the manufacturer or the Supplier as a condition to the right to purchase, use, install or resell the Product, then the Purchaser represents and warrants to the Supplier that it holds a current certification for the Product and is approved to purchase, use, resell and/or install (directly or indirectly) the Product. The Purchaser acknowledges that a breach of this warranty by the Purchaser may result in a breach by the Supplier of its contract with the manufacturer of the Product and the Supplier may suffer damages, including without limitation loss of profits, in consequence of the breach.

### **3 STANDARD TERMS OF SALE**

- 3.1 These Terms apply to the supply to the Purchaser of any goods described in the Supplier’s Books, or which are the subject of a Quotation, or are otherwise ordered by the Purchaser (Goods).
- 3.2 The Supplier may amend these Terms on 30 days’ prior written notice to the Purchaser, and the amended Terms shall apply to any Quotation or order made after such date.
- 3.3 These Terms shall prevail over any Terms provided by the Purchaser, except to the extent specifically agreed by the Supplier in writing and signed by an authorised representative of the Supplier.
- 3.4 No variation to these Terms is binding upon the Supplier unless set out in writing and signed by an authorised representative of the Supplier.

### **4 PRICE**

Subject to these Terms, the price of the Goods (Price) shall be:

- (a) the price set out in a Quotation where that Quotation has been validly accepted prior to expiry; or
- (b) in any other case, as set out in the Supplier’s Books (less any discount agreed in writing).

### **5 PAYMENT**

- 5.1 Terms are strictly 30 days from invoice date.
- (a) a credit facility has been granted by the Supplier (Credit Facility), in which case payment is to be in accordance with the terms of the Credit Facility; or
- (b) the parties agree otherwise in writing.
- 5.2 If the Purchaser breaches its obligations relating to payment of the Price or any other amount due under these Terms, then the Supplier may require the Purchaser to pay interest on any overdue amount at a rate of 1.5% per month (or the rate specified in the Credit Facility, whichever is the higher) calculated daily on the overdue portion from the date payment was due, until payment is made in full.

### **6 CANCELLATION**

An order accepted by the Supplier shall not be cancelled by the Purchaser without the written consent of the Supplier. Where the Supplier does so consent, the Purchaser shall pay to the

Supplier all reasonable costs incurred by the Supplier in relation to the supply of the Goods, up to the date the Purchaser cancelled the order.

## **7 DELIVERY AND FREIGHT**

- 7.1 Cloudtronics will arrange delivery to the Purchaser within the Sydney Metro area at no charge. The Purchaser shall be responsible to arrange and pay for Freight outside the Sydney Metro area from the Supplier's place of business.
- 7.2 In the event of the Purchaser returning or failing to accept any delivery of the Goods, the Supplier shall be entitled to payment for those Goods and to treat the requirement to supply the remainder of the Goods (if any) as cancelled by the Purchaser.
- 7.3 The Supplier shall be entitled to store at the risk and cost of the Purchaser any Goods which the Purchaser refuses or fails to take delivery of, without limiting any other rights the Supplier may have.
- 7.4 Delivery and despatch dates are estimates only. Subject always to Goods being in stock, the Supplier will use all reasonable endeavours to deliver the Goods:
- (a) at the time requested by, or agreed with, the Purchaser; or
  - (b) if no delivery time is requested by or agreed with the Purchaser, within a reasonable period from the date of the order for the Goods.
- 7.5 The Supplier will not in any circumstances be liable for late delivery and late delivery does not entitle the Purchaser to cancel any order or part order for the Goods.

## **8 CLAIMS AND CREDITS**

- 8.1 Any request for credit, or claim by the Purchaser (including any claim that the Goods delivered do not correspond with the Goods ordered) shall be made in writing within 14 days of delivery, and must be accompanied by proof of purchase, otherwise the Purchaser will be deemed to have accepted the Goods.
- 8.2 Small deviations or variations in the Goods shall not give rise to any claims.
- 8.3 If the Supplier accepts a request for credit, the Goods must be returned in "as new" condition, and may be subject to a restocking fee to cover the reasonable costs of the Supplier.

## **9 INTELLECTUAL PROPERTY AND MODIFICATIONS**

- 9.1 The Purchaser acknowledges the Supplier's licence to use or ownership of the copyright, patents, trademarks, designs and any other intellectual property rights contained within the Goods manufactured or supplied by the Supplier and in particular agrees that neither the Purchaser, nor its servants or agents, will attempt to do anything with any of the Supplier's intellectual property rights which will render the Purchaser liable to the Supplier for violation or infringement of its intellectual property rights.
- 9.2 Where the Purchaser provides information and / or instructions in writing to the Supplier and where the Supplier makes any modifications, alterations or adjustments to any Goods as a result of or in reliance upon the information or instructions provided by the Purchaser, the Purchaser indemnifies the Supplier in full against any loss or damage suffered by the Supplier howsoever arising out of any reliance by the Supplier on the information or instructions provided by the Purchaser.
- 9.3 Where the Purchaser provides information and / or instructions to the Supplier on which modifications, alterations or amendments to the Goods are made, the Purchaser indemnifies the Supplier in full against any loss or damage suffered by the Supplier where any such

modifications, alterations or amendments are challenged by a third party as being in breach of that third party's intellectual property rights.

## **10 LICENCES OR CONSENTS**

- 10.1 It is the Purchaser's responsibility to obtain any licence or consent required by a Government or other authority for the purchase or use of the Goods.

## **11 TRADE MARKS**

- 11.1 The supply of Goods shall not confer any right upon Purchaser to use any of the Supplier's trademarks, which at all times remain the property of the Supplier.

## **12 TITLE**

- 12.1 Title to all Goods shall remain with the Supplier and will not pass to the Purchaser until such time as all monies due from the Purchaser to the Supplier are paid in full.

## **13 WARRANTY AND LIABILITY**

- 13.1 The Supplier warrants that the Goods are of acceptable quality and free from defects caused by faulty manufacture or faulty materials. This warranty is valid for up to 60 months from the date of delivery of the Goods, or such period provided in the manufacturer's warranty documentation accompanying the Goods, whichever is the greater. This warranty is in addition to any non-excludable legal rights or remedies conferred on the purchaser under the CC Act and any similar laws.

- 13.2 If during the warranty period, any part of the Goods fails to operate correctly due to faulty manufacture or materials, the Supplier will, at its option, either repair the Goods, supply replacement Goods or reimburse the Purchaser for the Price, provided that the Purchaser returns the Goods to the Supplier at the address specified in the Quotation, or a service centre authorised by the Supplier. The Supplier shall not be liable for defects arising from fair wear and tear or misuse of the Goods.

- 13.3 The Purchaser is liable for all costs associated with sending the warranty claim Goods to the Supplier, including freight or postage and insurance, and for collection or return of the repaired or replacement Goods.

- 13.4 To the extent permitted by law, all warranties, conditions, obligations and liabilities, other than those specified in these Terms, are excluded.

- 13.5 To the extent permitted by law, the Supplier's liability for any non-excludable condition or warranty is limited to (at the Supplier's option):

(a) in the case of goods – repairing, replacing or supplying equivalent goods, or paying the cost of any of those remedies to the purchaser; or

(b) in the case of services – supplying the services again or paying the cost of having the services supplied again.

- 13.6 This clause 15.6 applies where the Goods are "consumer goods" within the meaning of the CC Act:

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

13.7 Notwithstanding anything else in these Terms, Supplier shall not be liable in any circumstances for any consequential, indirect, special, incidental, or exemplary damages even if such damages are foreseeable, and even if advised of the likelihood of such damages occurring.

#### **14 DELAY**

The Supplier shall not be liable for any loss sustained by the Purchaser through delay in delivering the Goods caused by circumstances outside of the reasonable control of the Supplier.

#### **15 DEFAULT**

15.1 It is a Default if the Purchaser:

- (a) fails to pay any amount (including the Price) to the Supplier when due for payment;
- (b) breaches any of these Terms or the Terms relating to the Purchaser's credit application; or
- (c) commits an act of bankruptcy or makes an arrangement with all or any number of its creditors, or has a receiver, administrator or liquidator appointed.

15.2 If a Default occurs the Supplier may, to the extent permitted by law:

- (a) suspend any further supply or deliveries of any Goods;
- (b) cancel any Credit Facility (and require that all further sales be on a cash on or before delivery basis);
- (c) declare all amounts owing by the Purchaser to the Customer on any account immediately due and payable;
- (d) treat these terms as repudiated by the Purchaser;
- (e) exercise any other rights, including to enforce any security interest and to claim the return of any Goods to which it has title; and
- (f) recover all debt collection and legal expenses incurred by Supplier on a client/solicitor basis in connection with the enforcement or attempted enforcement of these Terms.

#### **16 DISCLAIMER AND INDEMNITY**

16.1 Except as expressly provided in these terms, to the extent permitted by law, the Supplier and each of its related bodies corporate

- (a) exclude all liability to the Purchaser or anyone else for loss or damage of any kind (however caused or arising) relating in any way to the Goods or in connection with these Terms
- (b) will not be liable for any direct, indirect, special, incidental or consequential damages arising out of the Purchaser's access to, use or resale of the Goods or in connection with these Terms.

16.2 This clause is not intended to exclude or limit any rights which the Purchaser may have under the Competition and Consumer Act 2010 (Cth).

#### **17 WAIVER**

The failure by either party to exercise or enforce any right shall not be deemed to be a waiver of any such right.

#### **18 GOVERNING LAW**

These Terms shall in all respects be exclusively governed by and constructed and interpreted in accordance with the laws of New South Wales, and the parties agree to submit to the exclusive jurisdiction of the courts of that jurisdiction.

## 19 MODERN SLAVERY RISKS

In this clause, the term “Modern Slavery” has the same meaning as in the *Modern Slavery Act 2018* (Cth).

The Supplier represents and warrants that:

- (i) as at the date of this Agreement, the Supplier does not engage in any activity, practice or conduct that constitutes Modern Slavery;
- (ii) the Supplier has within the past 12 months conducted due diligence on its operations and suppliers to assess whether there is any risk that the Supplier is causing or contributing to Modern Slavery within its supply chains;
- (iii) where the Supplier has identified any one or more risks that the Supplier may be causing or contributing to Modern Slavery within its supply chains, the Supplier has taken reasonable actions to address such risks so that the Supplier is reasonably satisfied that as at the date of this Quotation, there are no forms of Modern Slavery occurring within its supply chains.

The Supplier undertakes to provide the Purchaser with an updated written certification of the above matters at (b) at least once every 12 months commencing from the start date of this Quotation (or upon reasonable request by the Purchaser).

In the event that the Supplier becomes aware of any forms of Modern Slavery occurring within its operations or supply chain, the Supplier must notify the Purchaser of the same within 5 days of becoming aware of the occurrence.

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