

1. General

- 1.1. These terms and conditions apply to the sale of goods by Shockwatch Pty Ltd ("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.
- 1.2. The buyer of goods from the Seller ("Buyer") is deemed to have accepted the terms and conditions contained herein by placing an order with the Seller.
- 1.3. 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.
- 1.4. These terms and conditions supersede all previous terms and conditions imposed by the Seller and override any terms and conditions of purchase used 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 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 Westpac Banking Corporation Spot Selling Rate in the relevant period.
- 4.3. All prices are exclusive of GST and all other domestic or foreign government duties, charges and taxes, which, where applicable, will be added to the invoice and deemed part of the purchase price, unless in the case of GST, the Buyer provides the Seller with its appropriate GST Exemption Certificate.
- 4.4. 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 one (1) month from the date of the order. If a lesser amount is scheduled for delivery during the relevant period, the Seller reserves the right to charge for the relevant 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.
- 4.5. In addition to the prices specified above, the Seller will charge the Buyer 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.
- 4.6. 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 not later than fourteen (14) 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 7.1) 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 one (1) month of the date of the notice, whichever is the earlier.

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 Westpac Indicator Lending Rate for overdrafts above \$1,000.00, 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), which may be incurred 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 and the balance of payment, if any, shall be applied in reduction of the outstanding balance of the price.

- 5.3. 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 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. The Buyer shall at his own expense arrange collection of the goods from the Seller. Unless the Seller receives specific shipping instructions from the Buyer, the Seller will exercise its own discretion in selecting the method of shipment, such shipment being at the cost of the Buyer and at the Buyer's sole risk.
- 6.3. 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, claim for demands and all losses, expenses and liabilities,

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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.

- 6.4. 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.

7. Storage of Goods

- 7.1. 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 instalments. Exercise of these rights 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. Property and ownership in the goods the subject of an invoice rendered by the Seller ("Goods") shall not pass to the Buyer until the Seller has received payment in full of all sums due in connection with the supply of all Goods by the Seller to the Buyer at any time. In the case of payment by cheque, bill of exchange or note, title shall not pass to the Buyer until the same is honoured.
- 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. If payment for any Goods is overdue, the Seller is entitled, without prejudice to any of its other rights and remedies, to repossess the Goods.
- 9.5. Until such time as the Seller receives payment in full for any Goods, 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 rated 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 five (5) 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 prepaid.
- 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.
- 10.5. In the event that the Seller agrees to the cancellation of an order in its absolute discretion, the Seller may as a condition of such cancellation, require the payment by 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 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

- 11.1. Where the Seller is not the manufacturer, the Seller relies on the specifications supplied by the manufacturer.

12. Export and/or Re-export Limitation

- 12.1. Having regard to the current statutory or other United Kingdom government regulations in force from time to time and, in the case of products manufactured in the United States of America to the export rules and regulations of the United States Department of Commerce in force from time to time and regardless of any disclosure made by the Buyer to the Seller of an ultimate destination for any products, the Buyer will not export or re-export directly any products without first obtaining all such written consents or authorisations as may be required by any applicable government 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.

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 of 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 three (3) months from delivery, 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 Supplier 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 / repair of the goods or the supply of equivalent goods;

(ii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or

(iii) 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

16.1. 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

17.1. These terms and conditions shall be governed by, and construed in accordance with, the laws of the State of New South Wales and the parties unconditionally and irrevocably submit to the non-exclusive jurisdiction of the courts of that State.

18. Use of Goods and/or Services

18.1. **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.**