

Capital Interactive Systems Pty Ltd – Terms & Conditions of Trade

<p>1. Definitions 1.1 "CIS" shall mean Capital Interactive Systems Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Capital Interactive Systems Pty Ltd. 1.2 "Customer" means the person(s) or any person acting on behalf of and with the authority of the Customer requesting CIS to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and: (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and (b) if the Customer is a partner of a Trust, shall be bound in their capacity as a trustee; and (c) includes the Customer's executors, administrators, successors and permitted assigns. 1.3 "Goods" shall mean the Goods supplied by CIS to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and as described on the invoices, quotation, work authorisation or any other forms as provided by CIS to the Customer. 1.4 <u>"Non-stocklist items"</u> shall mean all items not held in stock by CIS. 1.5 "Services" shall mean all Services supplied by CIS to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above). 1.6 "Price" shall mean the Price payable (plus any GST where applicable) for the Goods and Services as agreed between CIS and the Customer in accordance with clause 6 of this contract. 1.7 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).</p>	<p>2. Acceptance 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods. 2.2 These terms and conditions may only be amended with the consent of the Customer in writing at any time, to the extent of any inconsistency with any other document or contract between the Customer and CIS. 2.3 Goods are supplied by CIS only on the terms and conditions of trade set forth in this contract and notwithstanding that any such order placed on terms that purport to override these terms and conditions of trade. 2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.</p>	<p>3. Errors and Omissions 3.1 The Customer acknowledges and accepts that CIS shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s): (a) resulting from an inadvertent mistake made by CIS in the formation and/or administration of this contract, and/or (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by CIS in respect of the Services. 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1 and is not attributable to the negligence and/or willful misconduct of CIS, the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.</p>	<p>4. Change in Control 4.1 The Customer shall give CIS not less than forty-five (45) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax numbers, changes of trustees or business practices). The Customer shall be liable for any loss incurred by CIS as a result of the Customer's failure to comply with this clause.</p>	<p>5. Supply and Credit 5.1 Where a Customer wishes to open a credit account then the Customer must complete an official Credit Application Form before supply will be considered. The Customer acknowledges that CIS, at CIS' sole discretion, may refuse to open a credit account or to supply on credit terms (including the credit limit), in consideration of the Credit Application and any other relevant factors. 5.2 In the event that the supply of Goods requests exceeds the Customer's credit limit and/or the amount exceeds the payment terms, CIS reserves the right to refuse delivery and/or request an alternative payment method.</p>	<p>6. Price and Payment 6.1 At CIS' sole discretion the Price shall be either: (a) as indicated on invoices provided by CIS to the Customer in respect of Goods supplied; or (b) CIS' quoted Price (subject to clause 6.2) which shall be binding upon CIS provided that the Customer shall accept CIS' quotation in writing within the time period indicated on the quotation. 6.2 CIS reserves the right to change the Price in the event of a variation to CIS' quotation. Any variation from the plan of scheduled Services or specifications (including but not limited to, delays in arrival of stock, stock availability, installation site not being ready as agreed, change to the scope of the services, any variation as a result of fluctuations in foreign currency rates of exchange and/or international freight and insurance charges for foreign sourced components) will be charged for on the basis of CIS' quotation and will be shown as variations on the invoice. The Customer shall be required to respond to any variation submitted by CIS within three (3) working days. Failure to do so will entitle CIS to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of completion. 6.3 At CIS' sole discretion a deposit may be required. 6.4 At CIS' sole discretion: (a) payment shall be due on delivery of the Goods; or (b) payment shall be due before delivery of the Goods; or (c) the date specified on any invoice or other form as being the date for payment; or (d) any other date to the contrary, the date which is either thirty (30) days, fourteen (14) days or seven (7) days following the date of any invoice given to the Customer by CIS. 6.5 Payment will be made by cheque, or by bank cheque, or by direct deposit, EFT (Electronic Funds Transfer), or by any other method as agreed to between CIS and the Customer. 6.6 The Customer shall not be entitled to set off, or deduct from the Price, any sums owed or claimed to be owed to the Customer by CIS nor to withhold payment of any invoice because part of that invoice is in dispute. 6.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to CIS an amount equal to any GST CIS must pay for any supply by CIS under this or any other contract for the sale of Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price. 6.8 When style, type or layout is left to CIS' judgement and then the Customer makes further alterations to the copy this will be invoiced as an extra. 6.9 Delivery of Goods 7.1 At CIS' sole discretion delivery of the Goods shall take place when the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by CIS or by the Customer's nominated carrier). 7.2 At CIS' sole discretion the costs of delivery are in addition to the Price. 7.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this contract. 7.4 CIS may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions. 7.5 Any time specified by CIS for delivery of the Goods is an estimate only and CIS will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that CIS is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then CIS shall be entitled to charge a reasonable fee for delivery and/or storage. 7.6 Subject to clause 7.5, in the event that the Customer does not accept delivery of the Goods within seven (7) days of being notified by CIS that the Goods are available for collection or delivery, then CIS will offer, agree to pay a restocking fee of twenty percent (20%) of the value of the Goods which is non-refundable or pay for the Goods in full in accordance with the invoice.</p>	<p>8. Risk 8.1 CIS retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer immediately the Goods leave CIS premises or leave the premises of any manufacturer/warehouse (whether in Australia or overseas) where the Goods are situated prior to dispatch of the customer's order. CIS will accept no responsibility for claims for damage to Goods incurred in transit from any manufacturer/warehouse to the Customer or from the Customer to CIS. The Customer must ensure that the Goods are insured at all times when the Goods are in transit, and/or until such time as the Goods are received by the Customer. 8.2 If any of the Goods are at any time damaged or destroyed in transit, or before ownership of the Goods passes from CIS to the Customer, then CIS shall be entitled to receive all insurance proceeds paid out for loss of the Goods. The products of these terms and conditions by CIS is sufficient evidence of CIS' rights to receive the insurance proceeds without the need for any person dealing with CIS to make further enquiries. In the event there is any shortfall between the amount of the insurance proceeds and the monies due to CIS then the shortfall shall become a debt due and payable by the Customer to CIS which must be paid in full within the normal payment terms afforded by CIS to the Customer. 8.3 Where the Customer expressly requests CIS to leave Goods outside CIS' premises for collection of, and/or the Goods to an unattended location then such Goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods are insured adequately.</p>	<p>9. Access 9.1 The Customer shall ensure that CIS has clear and free access to the premises at all times to enable them to undertake the Services. CIS will not be liable for any loss or damage to the premises (including without limitation, damage to pathways, driveways or concrete or paved or grassed areas) unless due to the negligence of CIS. 9.2 Title 9.3 CIS and the Customer agree that ownership of the Goods shall not pass until: (a) the Customer has paid CIS all amounts owing for the particular Goods; (b) the Customer has met all other obligations due by the Customer to CIS in respect of all contracts between CIS and the Customer. 9.4 Receipt by CIS of any form of payment other than cash shall not be deemed to constitute payment until that form of payment has been honoured, cleared or recognised and until then CIS' ownership or rights in respect of the Goods shall continue. 9.5 It is further agreed that: (a) where the Goods shall be kept separate and identifiable until CIS shall have received payment and all other obligations of the Customer are met; and (b) the Customer shall not request CIS to advise CIS where all Goods supplied by CIS are located; (c) until such time as ownership of the Goods shall pass from CIS to the Customer CIS may give notice in writing to the Customer to return the Goods or any of them to CIS. If the Customer returns Goods to CIS which are in the sole opinion of CIS damaged or not in a saleable condition, CIS may require the Customer to rectify the damage to the Goods at the Customer's cost or require the Customer make payment of amount necessary to rectify the damages and account to CIS for any loss or damage suffered by CIS with respect to the damaged Goods. 9.6 Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease and the Customer shall indemnify CIS from and against all CIS' costs and disbursements in legal fees on a solicitor and own client basis that CIS may incur pursuing any monies that become due and payable under this clause; and (d) CIS shall have the right of stopping the Goods in transit whether or not delivery has been made; and (e) if the Customer fails to return the Goods to CIS then CIS or CIS' agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods and the Customer shall be deemed to be the Customer is only a bailee of the Goods and until such time as CIS has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes CIS, for the benefit of the Customer. (f) the Customer shall not deal with the money of CIS in any way which may be adverse to CIS; and (g) the Customer shall not charge the Goods in any way nor grant any other interest in the Goods while they remain the property of CIS; and (h) CIS can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and (i) until such time as the ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that CIS will be the owner of the end products.</p>	<p>10. Default and Consequences of Default 10.1 Without prejudice to any other remedies CIS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions CIS may suspend or terminate the supply of Goods to the Customer. CIS will not be liable to the Customer for any loss or damage the Customer suffers because CIS has exercised its rights under this clause. 10.2 CIS may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered to the Customer. In the event that the Customer gives notice CIS shall repay to the Customer any money paid by the Customer for the Goods. CIS shall not be liable for any loss or damage whatsoever arising from such cancellation. 10.3 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all losses incurred (whether direct or indirect) by CIS as a direct result of the cancellation (including, but not limited to, any loss of profits, loss of any deposits paid by CIS for forwarded orders, etc). 10.4 In the event of a contract for Goods made to the Customer's specifications, special orders or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.</p>	<p>11. Personal Property Securities Act 2009 ("PPSA") 11.1 In this clause financing statement, financing charge statement, security agreement, and security interest has the meaning given to it by the PPSA. 11.2 Upon assent to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (accounts) – being a monetary obligation of the Customer to CIS for Services that CIS has provided to the Customer and that will be supplied in the future by CIS to the Customer. 11.3 The Customer undertakes to: (a) promptly sign any further documents and/or provide any further information if such documents are to be signed or information is up-to-date in all respects which CIS may reasonably require to; (i) register a financing statement or financing charge statement in relation to a security interest on the Personal Property Securities Register established by the PPSA; or (ii) register any other document required to be registered by the PPSA; or (iii) correct a defect in a statement referred to in clause 11.3(a)(i) or 11.3(a)(ii). (b) indemnify and reimburse CIS for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby; (c) not register a financing charge statement in respect of a security interest without the prior written consent of CIS; (d) register, or permit to be registered, a financing statement or a financing charge statement in relation to the Goods and/or collateral (accounts) in favour of a third party without the prior written consent of CIS; (e) immediately advise CIS of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales. 11.4 CIS and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions. 11.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3) and 132(4) of the PPSA. 11.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA. 11.7 The Customer agrees that any interest in the Goods and/or collateral registered in relation to a security interest in accordance with section 157 of the PPSA. 11.8 The Customer must unconditionally ratify any actions taken by CIS under clauses 11.3 to 11.5. 11.9 Subject to other provisions to the contrary (including those contained in this clause 11), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA. 11.10 Security and Charge 11.11 In consideration of CIS agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in and over, realty or other assets capable of being charged, owned by the Customer, that either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money). 11.12 The Customer indemnifies CIS from and against all CIS' costs and disbursements (including but not limited to, solicitor and own client basis incurred in exercising CIS rights under this clause). 11.13 The Customer irrevocably appoints CIS and each director of CIS as the Customer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 12, including, but not limited to, signing any documents on the Customer's behalf.</p>	<p>12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA) 12.1 The Customer must inspect the Goods on delivery and must immediately (i.e. upon delivery) notify CIS of any incorrect quantity delivered and must within two (2) business days of delivery notify CIS in writing of any evident defect/damage. Failure to comply with description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow CIS to inspect the Goods. 12.2 The applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Notwithstanding that CIS acknowledges that nothing in these terms and conditions purports to expressly or exclude the Non-Excluded Guarantees. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, CIS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. CIS' liability in respect of these warranties is limited to the fullest extent permitted by law. 12.3 If CIS is required to replace the Goods under this clause or the Customer is not able to do so, CIS may refund any money the Customer has paid for the Goods. 12.4 If the Customer is not a consumer within the meaning of the CCA, CIS' liability for any defect or damage in the Goods is: (a) limited to the value of any express warranty or warranty card provided to the Customer by CIS at CIS' sole discretion; (b) limited to any warranty to which CIS is entitled, if CIS did not manufacture the Goods; (c) otherwise negated absolutely. 12.5 Subject to this clause 13, returns will not be accepted provided that: (a) the Customer has complied with the provisions of clause 13.1; and (b) CIS has agreed that the Goods are defective; and (c) the Goods are returned within two (2) business days of the notice given as per clause 13.1 at the Customer's cost (if that cost is not significant). CIS will accept no liability for returned Goods damaged in transit. It is the responsibility of the Customer to ensure that the Goods are adequately and (d) the Goods are returned in the condition in which they were delivered and with all accessories, packaging material, brochures and instruction material in an as new saleable condition. 12.6 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, CIS shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of: (a) the Customer failing to properly maintain or store any Goods; (b) the Customer using any Goods for any purpose other than that for which they were designed; (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent person; (d) the Customer failing to follow any instructions or guidelines provided by CIS, or not adhering to the manufacturer specifications or guidelines; (e) fair wear and tear, other accidental damage, or act of God. 12.7 CIS may in its absolute discretion accept non-defective Goods for return in which case CIS may require the Customer to pay handling fees up to thirty percent (30%) of the value of the returned Goods without any freight collection payments for use of such services. 12.8 Notwithstanding anything contained in this clause if CIS is required by a law to accept a return then CIS will only accept a return on the conditions imposed by that law.</p>	<p>13. Confidentiality 13.1 Each party agrees to treat all information and ideas communicated to it by the other party confidentially and agree not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party. 13.2 Where the Customer has left any item with CIS for repair, maintenance, or for CIS to perform any other service in relation to the item and CIS has not received or been tendered the whole of any monies owing to it by the Customer, CIS shall have, until all monies owing to CIS are paid: (a) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods. (b) the right to sell or otherwise dispose of the item notwithstanding the commencement of proceedings, or judgment for any monies owing to CIS having been obtained against the Customer. 13.3 Service of Notices 13.4 Any written notice given under this contract shall be deemed to have been given and received: (a) by handing the notice to the other party, in person; (b) by leaving it at the address of the other party as stated in this contract; (c) by sending it by registered post to the address of the other party as stated in this contract; (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation that the transmission is successful. 13.5 Any notice sent by the other party to the Customer by e-mail, if sent by email to the other party's last known email address. 13.6 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered. 13.7 Trusts 13.8 If the Customer at any time upon or subsequent to entering into the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Trust has any property, the Customer consents with CIS as follows: (a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund; (b) the Customer has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity which the Customer may have against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity. (c) the Customer will not, without the consent in writing of CIS (CIS will not be bound to give its consent), cause, permit, or suffer to happen any of the following events: (i) the removal, replacement or retirement of the Customer as trustee of the Trust; (ii) alteration or variation of the terms of the Trust; (iii) any advancement or distribution of capital of the Trust; or (iv) any resettlement of the Trust property. 13.9 General 13.10 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, enforceability and enforceability of the remaining provisions shall not be affected, prejudiced or impaired. 13.11 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which CIS has its principal place of business, and are subject to the jurisdiction of the Kyde Local Courts in New South Wales. 13.12 Subject to clause 13, CIS shall be under no liability whatsoever to the Customer for any consequential loss and/or consequential expense (including loss of profit) suffered by the Customer arising out of a breach by CIS of these terms and conditions (alternatively CIS' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods). 13.13 CIS does not license or grant to the Customer or any party of its rights and/or obligations under this contract without the Customer's consent. 13.14 The Customer cannot license or assign without the written approval of CIS. 13.15 CIS may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of CIS' subcontractors without the authority of CIS. 13.16 Both parties agree to the Customer may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes any further communication to CIS. 13.17 Neither party shall be liable for any default due to any act of God, war, terrorist, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party. 13.18 Both parties warrant and agree that they are entering into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.</p>
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Customer's Initials:

Please note that a larger print version of these terms and conditions is available from CIS on request.