

## TERMS OF TRADE

### 1. Orders must be paid in full in advance.

All new orders of less than \$20,000 must be paid in full at the time of order, and no work will be commenced, and no products released for shipment, until the full payment has cleared our bank account. Orders of value greater than \$20,000 may be eligible for progress payments subject to negotiation.

### 2. International clients are exempt from GST but must pay local taxes.

All international orders for clients outside of Australia are exempt from Australian GST, but those clients are responsible for any local import duties, custom excises, local taxes, and clearance through their local customs and import regulations.

### 3. All invoices must be paid within 14 days.

All invoices, including invoices for new orders and invoices for renewal of service subscriptions, must be paid within 14 days of the invoice date.

### 4. Any account overdue by 7 days will be sent an urgent payment reminder.

Any client who has an invoice which is unpaid after 7 days from the invoice due date will be sent an urgent payment reminder.

### 5. Any account overdue by 21 days will be charged interest.

Any amount which is overdue by 21 days or more will incur an interest charge of 15% per annum, calculated daily, until the remaining balance is paid in full.

### 6. Any account overdue by 30 days will have their services suspended.

Any client who has any invoice which is overdue by 30 days or more will have all their services suspended. This includes any hotspot licenses, kiosk licenses, merchant service, and web portal access. Services will only be re-enabled after full and complete payment of the overdue amount.

### 7. We will commence legal proceedings against any client who is overdue by 60 days or more.

Shift-Ctrl will take legal action against any client who is overdue on any invoice by 60 days or more.

## TERMS OF SALE

### 1. Operation

1.1. These terms and conditions override any inconsistent terms and conditions, except for specific terms included in a written quote or invoice.

1.2. This document supersedes any previous agreement in respect of Shift-Ctrl's terms and conditions of sale.

### 2. Price

2.1. Shift-Ctrl's prices are exclusive of delivery, insurance and installation costs and taxes, duties and other imposts unless specifically advised otherwise in writing by Shift-Ctrl. The Purchaser agrees to pay any such amounts whether they are imposed or effected before or after lodgment of an order.

2.2. Unless specified otherwise in writing by Shift-Ctrl, prices will be as per the current Shift-Ctrl price list which is subject to change without notice.

2.3. Prices stipulated by Shift-Ctrl may be increased by the amounts of any increase affecting the cost of production and/or delivery due to circumstances beyond the control of Shift-Ctrl between the date of quotation and the delivery date.

2.4. Customers whose purchase orders are affected by such a price change will be advised by Shift-Ctrl and may either cancel the order or confirm acceptance of the variation in writing.

### 3. Payment

3.1. Payment in immediately available funds must accompany an order unless Shift-Ctrl agrees in writing to grant credit.

3.2. At Shift-Ctrl's absolute discretion and on the terms required by Shift-Ctrl, Shift-Ctrl may agree to grant credit.

3.3. If the Purchaser fails to pay the price or any other amount when due, without prejudice to Shift-Ctrl's other rights and remedies, the Purchaser shall pay the amounts of any loss, claim or cost of Shift-Ctrl incurred in recovering such amount including legal and administrative costs. Shift-Ctrl shall also have the right to charge interest on the overdue amount calculated daily at the Commonwealth Bank Corporate Overdraft Reference Rate (Monthly Charging Cycle) from time to time (or similar or replacement rate if this interest rate no longer exists).

## **4. Delivery**

4.1. Delivery dates and times are estimates only. Shift-Ctrl shall not be liable for any loss or claim arising from breach of delivery dates and times.

4.2. Delivery will be deemed to be complete when the goods are made available at a dispatch point nominated by Shift-Ctrl or if agreed in writing with Shift-Ctrl, at the place nominated by the Purchaser. Shift-Ctrl shall have the right to repossess any goods not picked up within 14 days of being made available.

4.3. Shift-Ctrl may deliver goods in instalments determined by Shift-Ctrl.

## **5. Property and risk**

5.1. Notwithstanding clause 5.3, title to and property in the goods shall not pass from Shift-Ctrl to the Purchaser until the Purchaser has paid the price for the goods and any additional costs, charges, taxes, duties or other imposts in relation to the goods to Shift-Ctrl.

5.2. Until title to and property in the goods has passed to the Purchaser:

5.2.1. the Purchaser shall keep the goods free from all third party interests including charges, liens and encumbrances;

5.2.2. store the goods separately from its own goods and goods of other persons and in a manner which makes them readily identifiable;

5.2.3. the Purchaser shall hold the goods on trust and as bailee for Shift-Ctrl;

5.2.4. the Purchaser agrees not to sell, modify or alter the goods or use them to produce other goods;

5.2.5. Shift-Ctrl shall be entitled to recover or require immediate redelivery of the goods and be permitted to enter any premises on which the goods are stored;

5.2.6. Shift-Ctrl may maintain an action for the price of the goods notwithstanding that property in the goods may not have passed to the Purchaser; and

5.2.7. the Purchaser agrees to indemnify Shift-Ctrl against all losses including damage to the goods and death or injury to any person arising out of the Purchaser's possession of the goods.

5.3. All risk in relation to the goods, including risk of damage or loss, passes to the Purchaser on shipment of the goods.

5.4. The Purchaser shall indemnify Shift-Ctrl against and pay to Shift-Ctrl immediately upon demand all and any loss, damage, cost, charge, expense or other liability (including but not limited to consequential loss, loss of profits and legal costs) incurred or sustained by Shift-Ctrl in exercising any of its rights under this clause on a full indemnity basis.

5.5. Nothing in this clause shall confer a right upon the Purchaser to return the goods or to refuse or delay payment.

## **6. Claims**

6.1. Any claim, including claims for defects, deficiencies and returns, must be in writing and received by Shift-Ctrl within seven days of delivery.

6.2. Shift-Ctrl shall have no liability, risk or responsibility whatsoever in regard to goods the subject of a claim until Shift-Ctrl expressly accepts the claim by refunding the purchase price, replacing the goods, repairing the goods or otherwise accepts the claim by written notice.

6.3. Any goods returned to Shift-Ctrl shall be complete as sold, in their original packaging, and accompanied by the original invoice for the goods.

6.4. The Purchaser shall be liable for packaging, transport and insurance costs for the goods the subject of a claim up to the point that the goods are returned to Shift-Ctrl.

6.5. Shift-Ctrl holds a complete discretion to accept or reject any claim and determine any liability of Shift-Ctrl.

## **7. Warranty**

7.1. Shift-Ctrl does not provide any warranty on third-party goods, meaning Shift-Ctrl provides no warranty on goods supplied by Shift-Ctrl but not manufactured by Shift-Ctrl. Shift-Ctrl will endeavour to pass on the warranty of the original manufacturer, and those goods will be subject to the terms and conditions of those manufacturer warranties.

7.2. Where a client has a warranty claim, the client should contact the relevant manufacturer directly. The client should understand that most third party warranties are back-to-base, meaning that the client will be responsible for shipping (and shipping costs) in returning the goods to the manufacturer for repair.

7.3. If a client is covered by a Shift-Ctrl Support Plan, then the client can request that Shift-Ctrl assist in any warranty claim with a third party manufacturer.

## **8. Implied terms and limitations of liability**

8.1. Except as required by the Trade Practices Act 1974 or any relevant State Act, all express or implied conditions, warranties, undertakings and covenants not provided by Shift-Ctrl in writing to the purchaser are hereby excluded. To the extent that such conditions, warranties, undertakings and covenants cannot be excluded, the Purchaser's sole and exclusive remedy for any breach of a condition, warranty, undertaking or covenant shall be limited to any one of the following as determined by Shift-Ctrl:

8.1.1. the replacement of the goods or the supply of equivalent goods;

8.1.2. the repair or the cost of repair of the goods; or

8.1.3. the payment of the cost of replacing the goods or acquiring equivalent goods.

8.2. Except as provided by clause 8.1, Shift-Ctrl shall not be liable to the Purchaser or any other person for any direct, indirect or consequential loss, damage or expense arising out of or in connection with, the performance or breach of these terms and conditions or any matter relating to the supply of the goods or any related services or any error in information supplied by Shift-Ctrl.

8.3. Any liability of Shift-Ctrl to the Purchaser in contract or tort in relation to performance of the goods, supply of the goods, these terms and conditions or supply of the goods, related services or information shall not exceed the purchase price of the goods.

8.4. Shift-Ctrl will not be liable for any damage, defect or failure in goods caused by acts of nature, transport, packaging, impact with objects or liquids, attachments, accessories; unauthorised repairs, maintenance or service; or power supplies.

## **9. Cancellation**

9.1. If the Purchaser cancels an order without Shift-Ctrl's written consent, Shift-Ctrl is entitled to claim, as a genuine loss arising from such breach of contract, liquidated damages.

## **10. Specifications**

10.1. Shift-Ctrl may at any time change the documented specifications of goods and the Purchaser will accept the goods delivered in fulfilment of its order unless otherwise agreed in writing by Shift-Ctrl.

10.2. This document shall be conclusive evidence of the matters stated herein.

## **11. Dealing with goods**

11.1. The Purchaser agrees not to act or omit to act in any way damaging to the intellectual property of Shift-Ctrl and its related entities including removing or altering trademarks on goods.

11.2. The Purchaser acknowledges that all intellectual property associated with the goods is the property of Shift-Ctrl, related entities or relevant manufacturers or suppliers; and that it acquires no right or interest in any such intellectual property.

11.3. All resale prices are recommendations only. The Purchaser agrees only to resell goods in their original packaging and condition, and not to resell used or defective goods as new goods.

11.4. The Purchaser agrees not to export the goods from Australia without the written consent of Shift-Ctrl.

## **12. Default**

12.1. Upon:

12.1.1. the Purchaser failing to pay any amount to Shift-Ctrl when due;

12.1.2. the Purchaser breaching these terms and conditions;

12.1.3. Shift-Ctrl having reasonable grounds to believe the Purchaser will be unable to pay amounts due or to become due to Shift-Ctrl; or

12.1.4. the Purchaser dying or being deregistered; committing an act of bankruptcy; having any action taken by or against it for the winding up or placing of the Purchaser under official management or receivership; having a receiver, trustee, assignee, liquidator or controller appointed; or a transfer in ownership or control of the Purchaser occurring;

Shift-Ctrl shall have the right to:

12.1.5. cease supplying goods to the Purchaser;

12.1.6. otherwise cease to perform any of its obligations to the Purchaser;

12.1.7. terminate this agreement;

12.1.8. enter into the premises on which the goods are stored and repossess any goods already delivered whether or not title in such goods has passed to the Purchaser; and

12.1.9. recover from the Purchaser all amounts due to Shift-Ctrl, without incurring any liability and without prejudice to its rights to recover any amount owing to it by the Purchaser including any damages.

## **13. General**

13.1. Any indulgence, waiver or extension of time shall not in any way prejudice, interfere with or constitute a waiver of Shift-Ctrl's rights.

13.2. The laws of Victoria, Australia apply and the parties agree to submit to the jurisdiction of the courts of that State.

13.3. The provisions of these terms and conditions and the rights and liabilities conferred by them are distinct and severable and any invalidity shall not effect another term, condition, liability or right.

13.4. Shift-Ctrl shall not be liable to the Purchaser for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery or failure to perform any other term or condition of an agreement or contract where such delivery or failure is caused directly or indirectly by an act of God, fire, armed conflict, labour dispute, civil commotion, intervention of a government, inability to obtain labour or manufacturing facilities, accidents, interruptions or delay in transportation or any other cause beyond Shift-Ctrl's control.