

Parties

Commercial Netmakers Pty Ltd (ACN 111 529 723) of Unit 2, 32 Bushland Ridge, Bibra Lake, Western Australia ("**Seller**")

("Purchaser")

General Terms and Conditions

1 Definitions

- 1.1 "**Conditions**" means these Terms and Conditions of the Seller and includes any variations or annexures applicable hereto.
- 1.2 "**Goods**" means all goods and/or services supplied by the Seller to the Purchaser.
- 1.3 "**Price**" means the cost of the Goods (including tax) as stated in the Quotation.
- 1.4 "**Purchaser**" means the party described in the Quotation and/or Conditions to whom the Seller shall supply Goods.
- 1.5 "**Quotation**" means the written quotation provided by the Seller to the Purchaser in accordance with Clause 3 of the Conditions.
- 1.6 "**Seller**" means Commercial Netmakers Pty Ltd and its successors and assigns.

2 Acceptance

- 2.1 Any instructions whether written or verbal, received by the Seller from the Purchaser for the supply of Goods and/or the Purchaser's acceptance of Goods supplied by the Seller, shall constitute acceptance of these Conditions.
- 2.2 Where more than one Purchaser has entered into this agreement, the Purchaser shall be jointly and severally liable for all payments of the Price and performance of the Purchaser's obligations.
- 2.3 Upon acceptance of these Conditions by the Purchaser the terms and condition hereof are irrevocable and can only be rescinded or amended in accordance with these Conditions or with the written consent of the Seller.
- 2.4 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Seller in writing nor is the Seller bound by any such unauthorised statements.
- 2.5 The Purchaser undertakes to give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Purchaser's name and/or any other change in the Purchaser's details (including but not limited to, changes in the Purchaser's address, facsimile number, or business practice).

3 Quotation

- 3.1 The Purchaser agrees and acknowledges that any Quotations provided by the Seller to the Purchaser have been prepared by the Seller in reliance on the information and specifications provided by the Purchaser.
- 3.2 The Purchaser agrees and acknowledges that it is solely responsible for providing the correct information and specifications to the Purchaser for the purposes of the Seller providing the Purchaser with a Quotation for the supply of the Goods.
- 3.3 Any Quotation provided by the Seller to the Purchaser is only valid for a period of thirty (30) days from the date of the Quotation but no later unless otherwise agreed between the Seller and Purchaser.

4 Delivery and installation

Delivery of Goods

- 4.1 The Purchaser acknowledges that any agreed or stated delivery period is an indication only of the anticipated period for delivery of the goods and that such an agreement does not make time of the essence for these terms.
- 4.2 The Purchaser is not relieved of the obligation to accept the Goods because of any delay in delivery.

Installation by Seller

- 4.3 Any installation specified in the Quotation will only be done during normal business hours, and only if there is reasonable access and space. The Purchaser must obtain any permit, licence or approval necessary for the installation. The Seller is not liable for any loss or damage caused by the installation.

5 Payment

Payment

- 5.1 The Purchaser must pay each invoice issued within fourteen (14) days of the date of the invoice, unless otherwise stated in the Quotation.

Deposit

- 5.2 Before the Seller will commence any works or supply any Goods to the Purchaser, the Purchaser must pay to the Seller the amount of the deposit contained in the Quotation.
- 5.3 Subject to clause 6.3 of these Conditions, the Purchaser agrees that the deposit is fully non-refundable for any reason not attributable to the Seller unless agreed to by the Seller in writing.

Goods remain property of Seller until payment

- 5.4 The Goods remain the Seller's property until payment in full is received by the Seller from the Purchaser and the Purchaser must:
 - 5.4.1 Store goods which have not been paid for separately; and
 - 5.4.2 the Purchaser must not give away or sell the Goods until the Purchaser has paid in full all amounts owing to the Seller for the Goods.

6 Risk, insurance and damage

Risk passes to Purchaser on delivery

- 6.1 The risk in the Goods passes to the Purchaser when they are delivered to the Purchaser or collected by the Purchaser.

Damage discovered after delivery

- 6.2 The Seller will not be liable for damage discovered after delivery unless both of the following apply:

6.2.1 The Purchaser gives written notice to the Seller within four days after the date of delivery.

6.2.2 The Purchaser gives the Seller reasonable opportunity to inspect the goods in the same condition and place in which they were delivered.

Seller's liability for defective Goods

- 6.3 The Seller is liable for a defect in Goods it manufactures that arises from faulty design, materials or workmanship, but not from fair wear and tear. The Seller is only liable if the defect appears within six (6) months after the date of delivery. In the case of Goods not manufactured by the Seller, the Seller will give the Purchaser the same benefit of any warranty as given to it by the manufacturer or supplier of Goods to the extent that the Seller is able to successfully claim under that warranty.

Purchaser must deliver defective Goods to Seller

- 6.4 The Purchaser must deliver defective goods to the Seller's premises or other premises nominated by the Seller within seven days after the date when the defect is discovered.

Exclusion or limitation of warranties

- 6.5 Except to the extent to which conditions and warranties implied by law are not able to be excluded, all implied conditions and warranties in relation to the Goods are excluded.

- 6.6 To the extent that any implied conditions and warranties cannot be excluded, the Purchaser agrees that the total liability of the Seller, whether arising as a result of any negligent or wrongful act or omission by the Seller or any of its servants, employees or agents or for failure to perform any obligation imposed upon the Seller shall be limited to the cost of re-supply for any Goods supplied and accepted by the Purchaser.

- 6.7 Subject to Part VA of the Trade Practices Act 1974 the Seller shall not be liable:

6.7.1 In any way whatsoever for any loss, damage or costs suffered by the Purchaser or any third party which relates to any Goods provided by or on behalf of the Seller and the Purchaser hereby agrees to release and indemnify the Seller from and against any such claims; or

6.7.2 to the Purchaser or any third party for any consequential loss, damage or costs nor for any loss of actual or anticipated profits, loss of capital gains or other business gains or profits of any kind whatsoever.

Seller indemnified if Goods used improperly

- 6.8 The Purchaser will keep the Seller indemnified against any loss, damage or liability arising from a use of the Goods that is not in accordance with the Seller's instructions.

7 Default

Default Interest

7.1 The Purchaser must pay the Seller interest on any amount not paid on time. Interest is payable at a rate of 1.5% compounding interest per calendar month.

Seller's right to end Agreement

7.2 In the event that the Purchaser fails to perform any of its obligations under this Agreement the Seller may by written notice to the Purchaser end the Agreement immediately.

Seller's rights if it ends Agreement

7.3 If the Agreement is ended because of the Purchaser's default and the Purchaser owes the Seller money:

7.3.1 The money becomes payable immediately to the Seller and bears interest in accordance with clause 7.1.

7.3.2 The Seller is entitled to enter the Purchaser's premises and repossess any of the Goods in the Purchaser's possession or control.

Defaulting Purchaser liable for Seller's Costs

7.4 If the Purchaser defaults in payment of any invoice when due, the Purchaser shall indemnify and hold harmless the Seller from and against any and all of the Seller's costs and disbursements relating to such default, including on a solicitor and own client basis and in addition all of the Seller's nominees costs of collection.

Cancellation of Agreement

7.5 The Seller may cancel these Conditions or cancel delivery of the Goods at any time before the Goods are delivered by giving written notice outlining the reasons for cancellation. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

7.6 At the Seller's sole discretion, the Purchaser may cancel supply or delivery of the Goods. In the event that the Purchaser cancels the supply or delivery of the Goods the Purchaser shall be liable to the Seller for payment of the Price, or any costs incurred by the Purchaser up to the time of cancellation, at the Seller's sole discretion.

Seller's rights if unable to perform

7.7 The Seller will not be in breach of this Agreement with the Purchaser for any delay in performing, or failure to perform, its obligations under these terms and conditions if that delay or failure was due:

7.7.1 To an Act of God, war, government control, storm, fire, tempest, strike, lockout or any other cause or circumstances beyond the Seller's reasonable control; or

7.7.2 By its inability to procure services, materials or articles required for the performance of its obligations under the Agreement except at enhanced prices.

In these circumstances, the Seller may at its sole option, delay the performance of, or cancel the whole or any part of the Agreement without liability to the Purchaser.

8 Miscellaneous

Assignment

- 8.1 The Purchaser must not sell or assign its rights under this Agreement without the prior written approval of the Seller.

Description of Goods

- 8.2 The description of the Goods specified in the Quotation is given for identification only and does not create a contract of sale by description.

Governing law

- 8.3 These terms and conditions are governed by the law of Western Australia and the applicable laws of the Commonwealth of Australia.

Severability

- 8.4 If any provision of these Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not thereby be affected, prejudiced or impaired.

Waiver

- 8.5 Waiver by the Seller of a breach of these terms and conditions or any right or power arising on a breach of these terms must be in writing and signed by the Seller. A right or power created or arising on a breach of these terms is not waived by any failure or delay in exercising, or a partial exercise of that or any other right or power.