

CPolicy for: CPA-0022- TERMS & CONDITIONS- SALE

TERMS AND CONDITIONS OF SALE

1. **Interpretation:** "Delivery Date" means the time at which Goods leave LSM's premises or when services are supplied. "Force Majeure" means an act of God, strike, labour dispute or other interference with work, war, blockade, disturbance, flood, explosion, governmental requirement, intervention or embargo, unavailability or delay in availability of raw materials, equipment or transport and any other cause whatsoever which is not reasonably within the control of LSM. "Goods" means goods supplied or to be supplied to the Purchaser by LSM pursuant to these terms and conditions. "LSM" means LSM Technologies Pty Ltd A.C.N. 003 661 434 / ABN 41 944 773 938. "LSM" Catalogue" means any LSM catalogue, brochure or other documentation, describing Goods or Services or both. "Prescribed Terms" means terms, conditions and warranties implied by law into contracts for the supply of goods and services which cannot be excluded, restricted or modified by agreement. "Purchaser" means the person to or for whom Goods or Services or both are supplied by LSM pursuant to these terms and conditions. "Services" means services supplied to the Purchaser by LSM pursuant to these terms and conditions.
2. **General:** 2.1 A provision of or a right created under these terms and conditions may not be waived except in writing signed by an authorised officer of the party granting the waiver.
- 2.2 The Purchaser may not assign its rights under these terms and conditions of sale without the prior written consent of LSM.
- 2.3 If the whole or any part of these terms and conditions is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of these terms and conditions have full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of these terms and conditions or is contrary to public policy.
- 2.4 These terms and conditions of sale shall not be changed or modified in any way except in writing signed by the parties.
- 2.5 The parties agree that the Vienna Sales Convention will not apply to these terms and conditions.
3. **Operations and Orders:** 3.1 All orders for, and supply of Goods or Services or both shall be governed by these terms and conditions. These terms and conditions shall prevail over and operate to the exclusion of any terms and conditions of the contrary effect and shall supersede all prior arrangements, written or oral and shall comprise all the terms and conditions of any contract for the supply of Goods and Services between LSM and the Purchaser.
- 3.2 The purchaser shall be deemed to have accepted these terms and conditions by placing an order for Goods or Services or both, with LSM or LSM's representative.
- 3.3 LSM is not obliged to accept any order for Goods or Services or both. LSM may accept any order for Goods or Services or both. LSM may accept an order for Goods or Services by notifying the Purchaser in writing of the acceptance or by delivering Goods or supplying Services or both described in the Purchaser's order. No other acknowledgment or receipt of money shall constitute an acceptance of the order by LSM.
- 3.4 An order from the Purchaser, which has been accepted by LSM cannot be cancelled by the Purchaser without LSM's prior written approval. If LSM accepts the cancellation, LSM may charge a cancellation fee.
- 3.5 The Purchaser acknowledges that: (a) LSM may accept part of an order for Goods or Services; (b) LSM may deliver to the Purchaser part of Goods or supply part of Services or both ordered by the Purchaser, such delivery constituting an acceptance by LSM of that part of the order only; and (c) these terms and conditions shall apply to each accepted part of an order.
- 3.6 Where LSM accepts an order from the Purchaser for both Goods and Services the supply by LSM of Goods ordered shall be treated as a separate contract from the supply by LSM of Services ordered.
4. **Quotations:** Any quotation (including any attached quotation) provided to the Purchaser by LSM is subject to withdrawal, correction or variation at any time until the Purchaser's order is accepted by LSM in accordance with clause 3.3. Under normal circumstances, quotes are valid for 30 days maximum unless stated otherwise in writing.
5. **Specifications:** 5.1 All information in LSM Catalogues is approximate and is only a general guide of the Goods or Services described therein. Subject to Prescribed Terms, the Purchaser acknowledges that LSM shall be under no liability whatsoever should any LSM Catalogue contain errors or incorrect descriptions.
6. **Prices:** 6.1 Subject to clause 6.3 prices of Goods and Services are these ruling at the Delivery Date.
- 6.2 Prices are on an ex-warehouse basis and do not include, testing, inspection, drawings of Goods, delivery, packaging, sales tax, stamp duty an any other governmental taxes and imposts relating to Goods or Services. All such sums shall be payable by Purchaser at its expense unless agreed in writing by an authorised officer of LSM.
- 6.3 Prices for Goods and Services shall be subject to labour award rate, exchange rate and market fluctuations and tariff, customs and tax amendments occurring between date of ordering Goods and Services and the Delivery Date. Further, LSM may in its sole discretion, increase the price for Goods or Services if extra expenses are incurred as a result of lack of Purchaser instructions.
- 6.4 LSM's prices and rates are exclusive of any goods and services taxes and other similar types of taxes which shall be payable by Purchaser in addition to such rates, and if paid by LSM shall be reimbursed to LSM by Purchaser.

Please note that: LSM Technologies has made every endeavour to ensure that this documents is correct and upto date without error or omission, however it reserves the right to change its Policies and Procedures from time to time, without notice and at its sole discretion

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- 7. Warranties:** 7.1 LSM warrants to the Purchaser only, that all Goods, manufactured by LSM will be free from defects in material and workmanship and that services supplied by LSM will be rendered with due care and skill. This warranty shall be valid until the expiration of twelve (12) months after the Delivery Date or longer where agreed (refer QA 20-Warranties) by LSM (the "LSM Warranty"). The LSM Warranty is in addition to and subject to Prescribed Terms.
- 7.2. Subject to Prescribed Terms, LSM's liability: (a) for a breach of Prescribed Terms, is limited at LSM's option to: (i) in the case of Goods, repair or the replacement of the Goods, supply equivalent of Goods or the cost of any of these; or (ii) in the case of Services, the supply of equivalent Services, the supply of the Services again or the cost of having the Services supplied again; and (b) for a breach of the LSM Warranty, is limited to replacing the Goods concerned or having the Services supplied again and is conditional upon the allegedly defective Goods being returned to LSM at the Purchaser's cost, allowing LSM to properly examine the Goods and LSM being satisfied that the alleged defects were caused solely by defective materials or workmanship and not from a cause beyond LSM's control (including neglect, lack of maintenance, improper installation or operation, unauthorised servicing repair or modification misuse or use for purposes not recommended by LSM).
- 7.3 Subject to any Prescribed Terms and clause 7.2 LSM shall not be liable for any loss, damage or injury of any kind whatsoever, (including, loss, damage or injury caused by our default or negligence, and incidental and consequential loss, damage or injury) arising from or in connection with any order, supply of or otherwise concerning any Goods or Services.
- 7.4 Subject to any Prescribed Terms and the LSM Warranty, the Purchaser shall indemnify and hold LSM harmless against all losses, liabilities and expenses whatsoever incurred by LSM resulting from any demands by any third party brought at any time resulting from or otherwise concerning Goods or Services.
- 7.5 In the event that the purchaser returns allegedly defective Goods to LSM and LSM replaces or pays the cost of replacing such Goods or refunds the purchase price under the LSM Warranty, the title in the allegedly defective Goods, if it has passed to the Purchaser, shall revert to LSM.
- 7.6 Except for Prescribed Terms and the LSM Warranty no written, oral or implied condition, warranty or term of any description whether under statute or implied by law custom or usage will have any operation or affects the rights of LSM under any contract in connection with the supply of Goods or Services unless recorded and accepted in writing by an authorised officer of LSM.
- 8. Delivery:** LSM shall take reasonable steps to ensure Goods and Services are delivered or supplied to the Purchaser by the date agreed. Purchaser acknowledges that LSM shall be under no liability should such delivery or supply not be made by the date agreed. Unless otherwise stated, Transport is FOT (Free on Transport) on a carrier designated by the customer at LSM's place of business.
- 9. Insurance:** Insurance for transport of ordered goods are to be at the customers risk at all times whether LSM's carrier is used or not.
- 10. Frustration:** If LSM is unable wholly or partly by reason of Force Majeure to carry out any of its obligations under these terms and conditions at LSM's option that obligation or the contract for the supply of Goods or Services will be suspended or terminated in which case LSM shall not be liable in anyway to the Purchaser. However at LSM's option, the Purchaser shall be liable to pay to LSM all costs which LSM's suppliers or sub-contractors have incurred directly or indirectly or for which LSM is liable under the contract at the time it was unable to carry out its obligations. Any prepayments made to LSM for Goods or Services or both may be applied towards such sum as may become due to LSM, and any excess will be refunded by LSM to the Purchaser.
- 11. Risk and Title:** 10.1 The risk in the Goods passes to the Purchaser upon the Delivery Date
- 11.2 Title to Goods after the Delivery Date shall remain in LSM until: (a) the full purchase price and all other sums payable by the Purchaser are paid to LSM; or (b) the Purchaser sells or disposes of the Goods to its customers in the ordinary course of business.
- 11.3 While title to Goods remains in LSM, the Purchaser shall have no ownership, property or rights in the Goods and the Purchaser shall have no ownership, property or rights in the Goods and the Purchaser shall: (a) have no right to and shall not purport to encumber, pledge sub-let or create any lien over the Goods; (b) notify any persons seizing the Goods that LSM is the owner of these Goods; and (c) while possessed of the Goods, hold only as a mere bailee for LSM.
- 11.4 Until the full purchase price and all other sums payable by the Purchaser in respect of Goods are paid the Purchaser shall store the Goods separately so that they are clearly identifiable and shall label the Goods in a way which clearly manifests LSM's title and shall not transform the Goods or incorporate the Goods into other products.
- 11.5 In addition and without prejudice to any other right or remedy available to LSM, if (a) the Purchaser fails to pay the full purchase price for Goods by the due date for payment as detailed in clause 11; and (b) the Goods are in the possession or control of the Purchaser, LSM or its servants, agents or representatives may recover possession wherever the Goods may be and the Purchaser shall indemnify LSM in relation to such recovery. Further, the Purchaser acknowledges, for the avoidance of doubt, that if Goods are so recovered, LSM shall under no circumstances be liable to the Purchaser or any other person for any loss or damage of any kind whatsoever (including, without limitation, incidental and consequential loss or loss or damage caused by negligence or default).

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12. **Payment:** 12.1 Unless otherwise agreed in writing, payment shall be in full by cash on invoice of Goods or Services (the "invoice date"). Where the Purchaser has been granted credit facilities, payment shall be within thirty (30) days from the "Invoice Date". Any amount remaining unpaid after the due date will be subject to an interest charge of five percent (5%) for each month that the balance remains outstanding.
- 12.2 All payments must be made on or before the due date as a condition precedent to the supply of future Goods or Services.
- 12.3 Time for payment of Goods and Services shall be the essence of the contract for the supply of Goods and Services.
13. **Legal Construction:** The construction validity and performance of this contract shall be governed by the laws in force in Queensland.
14. **Cancellation:** If a payment is outstanding for more than seven (7) days after the due date (whether legally or formally demanded or not) or if the Purchaser fails to perform any of its obligations hereunder or if the Purchaser becomes a bankrupt or enters into voluntary or compulsory liquidation or has a receiver or provisional liquidator appointed or if execution is levied in respect of any of the Purchaser's assets, LSM may at any time thereafter terminate the contract for the supply of Goods or Services by notice in writing to the Purchaser, but without prejudice to LSM's rights hereunder.
15. **Notices:** All notices to be served on LSM shall be in writing. Any notice given by LSM to the Purchaser may be transmitted by prepaid ordinary mail address to the Purchaser at its last known address or registered address and shall be deemed to have been served on the business day following date of posting.
16. **No Agents:** In circumstances where the Purchaser has been dealing with or received a quotation from third parties other than LSM, the Purchaser is hereby notified that such third parties are not LSM's agent or partner in any respect and are not authorised to act as LSM's agent or partner or purport to incur any obligation, enter into any contract or make or give any promise, undertaking, warranty or representation of or to enter into any binding relationship for LSM or on LSM's behalf.
17. **Returns:** All returns made by the Purchaser must be authorised by LSM prior to return and QA 30 Return Goods Authority must be completed. A 20% Restocking Fee applies to all goods returned. Any freight costs incurred when goods are returned are not the responsibility of LSM and shall be paid for by the Purchaser.

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