

## SUPPLY SALE TERMS & CONDITIONS

### 1 TERMS OF SALE

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- 1.1 The Goods and all other products sold by Seller are sold on these terms and conditions, and to the extent not inconsistent, the terms and conditions of any purchase order provided by the Seller which is attached or referenced.
- 1.2 These conditions (which shall only be waived in writing signed by the Seller) shall prevail over all conditions of the Buyer's order to the extent of any inconsistency.

### 2 SELLER'S QUOTATIONS

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- 2.1 Unless previously withdrawn, Seller's quotations are open for acceptance within the period stated in them or, when no period is so stated, within 14 days after its date. The Seller reserves the right to refuse any order based on this quotation within 7 days after the receipt of the purchase order.

### 3 PACKING

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- 3.1 The cost of any special packing and packing materials used in relation to the Goods are at the Buyer's expense notwithstanding that such cost may have been omitted from any quotation or purchase order.

### 4 DELIVERY

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- 4.1 The delivery times made known to the Buyer are estimates only and the Seller is not liable for late delivery. The Seller will notify the Buyer of any delay to the delivery times if it becomes aware of any such delay.
- 4.2 The Seller is not liable for any loss, damage or delay occasioned to the Buyer or its customers arising from late delivery.
- 4.3 The Seller may deliver the Goods to the Buyer in any number of installments.
- 4.4 If the Seller delivers any of the Goods by installments, and any one of those installments is defective for any reason:
- (a) it is not a repudiation of the contract of sale formed by these conditions; and
  - (b) the defective installment is a severable breach that gives rise only to a claim for compensation.

### 5 LOSS OR DAMAGE IN TRANSIT

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- 5.1 The Buyer must lodge a claim for compensation for any damaged Goods within seven (7) days of the date of receipt of the Goods.
- (a) The Buyer must provide the Seller with such assistance as may be necessary to press claims on carriers so long as the Buyer has notified the Seller in writing immediately after loss or damage is discovered on receipt of Goods.

## 6 GUARANTEE

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- 6.1 The Seller's liability for Goods manufactured by it is limited to making good any defects by repairing the defects or at the Seller's option by replacement so long as:
- (a) defects have arisen solely from faulty materials or workmanship;
  - (b) the Goods have not received maltreatment, inattention or interference;
  - (c) accessories of any kind used by the Buyer are manufactured by or approved by Seller;
  - (d) the seals of any kind on the Goods remain unbroken; and
  - (e) the defective parts are promptly returned free of cost to the Seller.
- 6.2 If the Goods are not manufactured by the Seller the guarantee of the manufacturer of those Goods is accepted by the Buyer and is the only guarantee given to the Buyer in respect of the Goods. The Seller agrees to assign to the Buyer on request made by the Buyer the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to the Seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable. The Seller will organize for any warranty or other entitlement claim made by the Buyer to be proceeds by the relevant third party manufacturer.
- 6.3 The Seller is not liable for and the Buyer releases the Seller from any claims in respect of faulty or defective design of any Goods supplied unless such design has been wholly prepared by the Seller and the responsibility for any claim has been specifically accepted by the Seller in writing. In any event the Seller's liability under this paragraph is limited strictly to the replacement of defective parts in accordance with para 8(a) of these conditions.
- 6.4 Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The Seller is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of the Seller's negligence or in any way whatsoever.

## 7 THIRD PARTY CONDITIONS

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- 7.1 If the Seller is not the manufacturer of the product, the Buyer shall be bound by any third-party conditions imposed by the manufacturer of the product such as end-user license, use or support agreements. The Seller shall notify the Buyer of any such third party conditions know to it. Failure to notify the Buyer does not relieve the Buyer of any liability under this clause.

## 8 LIABILITY

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- 8.1 Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Competition and Consumer Act 2010) and which by law cannot be excluded, restricted or modified.
- 8.2 The Seller's liability for a breach of a consumer guarantee set out in Division 1 of Part 3-2 of the Competition and Consumer Act 2010 (other than sections 51, 52 and 53) is limited to in the case of Goods, any one or more of the following:

- (a) the replacement of the Goods or the supply of equivalent Goods;
- (b) the repair of the Goods;
- (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods;
- (d) the payment of the cost of having the Goods repaired; or

8.3 The Seller's liability under Schedule 2 of the Competition and Consumer Act is expressly limited to a liability to pay to the Buyer an amount equal to:

- (a) the cost of replacing the Goods;
- (b) the cost of obtaining equivalent Goods; or
- (c) the cost of having the Goods repaired, whichever is the lowest amount.

## **9 PRICES**

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9.1 Unless otherwise stated all prices quoted by the Seller are net, exclusive of Goods and Services Tax (GST).

## **10 PAYMENT**

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10.1 The purchase price in relation to Goods is payable net and payment of the price of the Goods plus GST must be made within a period stated on the invoice or, when no period is stated, not exceeding fourteen (14) days from the date of the invoice.

10.2 The Seller will issue an invoice after receiving confirmation from the Buyer that the quotation is acceptable.

## **11 RIGHTS IN RELATION TO GOODS**

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11.1 The Seller reserves the following rights in relation to the Goods until all accounts owed by the Buyer to the Seller are fully paid:

- (a) ownership of the Goods;
- (b) after prior written demand, to enter the Buyer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass and retake possession of the Goods; and
- (c) to keep or resell any Goods repossessed pursuant to (2) above.

11.2 If the Goods are resold, or products manufactured using the Goods are sold, by the Buyer, the Buyer shall hold such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold in a separate identifiable account as the beneficial property of the Seller and shall pay such amount to the Seller upon request. Notwithstanding the provisions above the Seller shall be entitled to maintain an action against the Buyer for the purchase price and the risk of the Goods shall pass to the Buyer upon delivery.

11.3 Seller (or its third party suppliers) retain ownership and title to those items identified in the quotation, invoice or purchase order as 'leased'.

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## **12 BUYER'S PROPERTY**

- 12.1 Any property of the Buyer under the Seller's possession, custody or control is completely at the Buyer's risk as regards loss or damage caused to the property or by it.

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## **13 STORAGE**

- 13.1 The Seller reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Buyer within a period not exceeding fourteen (14) days of a request by the Seller for such instructions. The parties agree that the Seller may charge for storage from the first day after the Seller requests the Buyer to provide delivery instructions.

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## **14 RETURNED GOODS**

- 14.1 The Seller is not under any duty to accept Goods returned by the Buyer and will do so only on terms to be agreed in writing in each individual case.
- 14.2 If the Seller agrees to accept returned Goods from the Buyer, the Buyer must return the Goods to the Seller at the Seller's place of business with all original packaging and materials.
- 14.3 If the Seller agrees to accept returned Goods from the Buyer, the Buyer must pay a restocking fee equivalent to 20% of the purchase price of the Goods except where the Goods are returned pursuant to Clause 8.

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## **15 GOODS SOLD**

- 15.1 All Goods to be supplied by the Seller to the Buyer:
- (a) are as described on the purchase order agreed by the Seller and the Buyer and the description on such purchase order modified as so agreed prevails over all other descriptions including any specification or enquiry of the Buyer;
  - (b) are new and of merchantable quality;
  - (c) if applicable, all imported Goods have been cleared by Australian Customs for entry into Australia, and all customs and other duty has been paid by the Seller; and
  - (d) are fit for the purpose for which Goods of the same kind are commonly supplied and for any other purpose which the Buyer has made known to the Seller.

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## **16 CANCELLATION**

- 16.1 No order may be cancelled except with consent in writing and on terms which will indemnify the Seller against all losses.

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## **17 CONFIDENTIALITY**

- 17.1 Both parties acknowledge that information within this agreement is confidential and both parties agree that it will not, directly or indirectly, without the prior written consent of the other party, use, disclose, publish or permit the use, disclosure or publication of any information pertaining to this agreement

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## **18 PLACE OF CONTRACT**

- 18.1 The contract for sale of the Goods is made in the state of Victoria.

18.2 The parties submit all disputes arising between them to the non exclusive jurisdiction of the courts of Victoria and any court competent to hear appeals from those courts of first instance.

## 19 INTERPRETATION

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19.1 In these conditions:

- (a) "Seller" means O2 Networks Pty Ltd which is the seller of the Goods.
- (b) "Buyer" means a corporation or person which is the Buyer of the Goods.
- (c) "Goods" means the products, including all hardware and software components and associated integration and support services, as specified within the purchase order.

**SIGNED BY AN AUTHORISED REPRESENTATIVE FOR [INSERT COMPANY NAME] IN THE PRESENCE OF**

\_\_\_\_\_  
Signature of authorized representative

\_\_\_\_\_  
Date

By executing this agreement the signatory warrants that the signatory is duly authorised to execute this agreement on behalf of **[INSERT COMPANY NAME]**.

\_\_\_\_\_  
Name of authorized representative (print)

\_\_\_\_\_  
Position

**SIGNED BY AN AUTHORISED REPRESENTATIVE FOR O2 NETWORKS PTY LTD IN THE PRESENCE OF**

\_\_\_\_\_  
Signature of authorized representative

\_\_\_\_\_  
Date

By executing this agreement the signatory warrants that the signatory is duly authorised to execute this agreement on behalf of O2 Networks Pty Ltd.

\_\_\_\_\_  
Name of authorized representative (print)

\_\_\_\_\_  
Position