

TRUCCELL

Smarter I.T. Solutions

Trucell Pty Ltd A.B.N. 93 113 471 873

- A The Supplier has agreed to supply and the Customer has agreed to purchase the Product more fully identified in the Quotation provided for the Consideration as set out in the Quotation provided.
- B Both the Supplier and the Customer agree that except as otherwise expressly agreed upon in writing between a duly authorised officer of the Supplier and the Customer, these Terms and Conditions shall apply notwithstanding any provisions to the contrary which may appear on any order form or other document issued by any Customer.

CONDITIONS OF SALE

1. All orders placed with the Supplier shall only be accepted subject to these Terms and Conditions. The Supplier may at any time and from time to time alter these Terms and Conditions of Sale and such altered Terms and Conditions of Sale shall apply after notification by the Supplier to the Customer.
2. The Customer agrees to pay the consideration, GST, government levies and all other associated fees for the Product without deduction or setoff, any account query or dispute as follows:
 - (a) if the sale is for new software purchases or upgrades, the Customer will effect payment of 50% on placement of the order. The balance is to be paid in full immediately on delivery. Where software is provided for projects to be implemented in stages payment for each individual stage will be required before delivery of each individual stage for installation. In the event that a project's implementation date is delayed due to the fault of the Customer or for any reason beyond the control of the Supplier payment for all supplies and services made will become immediately due and payable.
 - (b) if the sale is for hardware purchases the Customer will effect payment of 50% on placement of the order and the balance is to be paid in full immediately on delivery. Where hardware is provided for projects to be implemented in stages payment for each individual stage will be required before delivery of each individual stage for installation. In the event that a project's implementation date is delayed due to the fault of the Customer or for any reason beyond the control of the Supplier payment for all supplies and services made will become immediately due and payable
 - (c) For all monies due and owing by the Customer to the Supplier monthly interest will accrue on a daily basis at the default interest rate of 4%per annum above the current overdraft rate which the Supplier has with its appointed banker presently being Westpac Banking Corporation Pty Ltd such interest will continue to accrue and be payable until such time that payment is made in full either prior to or after the commencement of legal proceedings for recovery of the monies due and owing In addition the Customer shall be liable to pay all expenses and legal costs incurred by the Supplier.
 - (d) Costs of installation of any hardware or software and training in the use of the same is subject to the Suppliers normal charge out rate and is not included in the sale price for the Product
 - (e) A certificate signed by the Supplier shall be prima facie evidence of the amount of indebtedness of the Customer to the Supplier at that time.
3. If the Customer fails to comply with any of these Terms and Conditions or being a natural person or persons commits any act of bankruptcy, or being a corporation passes a resolution for winding up or liquidation (other than for the purposes of reorganisation or reconstruction) or administration or enters into any composition or arrangement with creditors or if a receiver or manager is appointed for any property or assets of the Customer or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, or if a liquidator or provisional liquidator is appointed, the Supplier may, in addition to exercising all or any of its rights against the Customer, suspend any further deliveries and immediately recover possession of any products not paid for in accordance with these Terms and Conditions and is entitled in its sole discretion to terminate all or any part of any contract entered into with the Customer.

On cancellation of the contract the Supplier may dispose of the balance of the Product contracted for and the Customer will indemnify the Supplier for any loss in price incurred by it on realisation against the price at which the Product were contracted to be bought by the Customer.
4. The Supplier will make every effort to ensure delivery of Product, or performance of services, is on time, but will not be liable for any loss or damage arising in any way from any delay in delivery or performance.

Any date or time quoted for delivery is an estimate only and the Supplier shall endeavour to effect delivery at the time or times required by the Customer but failure to do so shall not confer any right of cancellation or refusal of delivery on the Customer or relieve the Customer from its obligation to pay for the product or

render the Supplier liable for any loss or damages directly or indirectly sustained by the Customer as a result thereof.

The Supplier shall not be liable for any failure or delay in supply or delivery the products or performance of Services where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of the Supplier including, but not limited to, war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind.

Where Product appear to be damaged or missing the customer agrees to notify the Supplier as soon as is reasonably practicable of any defects in the goods and nature of such defects.

The Customer shall be fully responsible for any loss or damage to the Product whatsoever and howsoever caused following delivery.

The risk in the products shall pass to the Customer upon delivery to the Customer

5. With the exception of software (including its medium, packaging and documentation) which is subject to licence and in which no property shall pass other than as is provided in the relevant license agreement, title in the Product shall pass when the Customer has discharged all outstanding indebtedness (whether in respect of the Product supplied or otherwise) to the Supplier on any account whatsoever, including all applicable sales taxes and other taxes, levies and duties. Any payment made by or on behalf of a Customer which is later avoided by the application of any Statutory Provision shall be deemed not to discharge the Customer's indebtedness and, in such an event the parties are to be restored to rights which each respectively would have had if the payment had not been made

Until such time as the Customer pays to the Supplier the Consideration in full, the Customer shall be deemed to be in a fiduciary capacity as bailee of the Supplier in respect of any Product supplied by the Supplier. The Customer if required by the Supplier, will store the Product in such condition and place that it is clear that they are owned by the Supplier. The Customer shall not under any circumstances mix the Product supplied by the Supplier with other Product in any manner whatsoever. The Customer hereby irrevocably grants to the Supplier, its agents and servants, an unrestricted right and licence, without notice to enter premises occupied by the Customer to identify and remove and/or uninstall any of the products the property of the Supplier without in any way being liable to the Customer or any person claiming through the Customer. The Supplier shall have the right to sell or dispose of any such products removed or otherwise in its sole discretion and shall not be liable for any loss occasioned thereby.

Where the Supplier lawfully resells, stores or repossess any Product agreed to be sold the Customer shall indemnify the Supplier for all costs thereof including any legal costs on a Solicitor and client basis.

6. **Sale to Non-Consumers**

In the case of products supplied by the Supplier to a Customer who is not a "consumer" (as defined in the Trade Practices Act, 1974 as amended from time to time ("the Act")), if the products do not correspond with the description of them on the invoice or are defective, then provided that the products are preserved intact and made available for inspection by a representative of the Supplier and are returned to the Supplier in the same order and condition as that in which they were delivered, the Supplier shall at its option replace those products or reimburse the Customer for the amount of the purchase price paid for them, but any claim in this respect must be made in writing within seven (7) days of the date of delivery of those products.

Should the Customer seek indemnity from the Supplier in respect of any claim by a consumer on the Customer as a result of a breach of condition or warranty implied by the Act in a contract for the supply of products by the Customer to that consumer, sub-paragraph (i) will not apply and in respect of products that are of a kind ordinarily acquired for personal, domestic or household use or consumption ("consumer goods") the Supplier's liability is limited to indemnifying the Customer in accordance with the Act, limited to a liability to pay to the Customer an amount equal to the cost of replacing the products or the cost of obtaining equivalent products or the cost of having the products repaired, whichever is the lesser amount.

Sales to Consumers:

In the case of products supplied by the Supplier to a Customer who is a consumer, to the extent that the products are not consumer products or goods, the liability of the Supplier to the Customer for breach of any warranty or condition (other than a warranty or condition implied by section 69 of the Act) or for breach of any duty of care shall in all cases be limited, at the option of the Supplier, to any one or more of the replacement of the products or the supply of equivalent products, the repair of the products or acquiring equivalent products or the payment of the cost of having the product repaired.

Except for those conditions and warranties implied by the Act or other sale of products or consumer protection legislation which may not be excluded, the Customer agrees that:

- (i) It has not relied on any inducement, representation or statement made by or on behalf of the Supplier in purchasing the products and there are no implied conditions or warranties herein and no collateral contracts in connection herewith (except such as may be in writing and signed by a duly authorised representative of the Supplier); and

- (ii) This clause sets out the entire liability of the Supplier in respect of its liability under the Act or otherwise in respect of liabilities to a consumer for a breach of a condition or warranty with respect to the sale of products or goods. In no circumstances will the Supplier incur any liability in respect of or arising out of or in connection with any special, consequential, direct or indirect loss, damage, harm or injury suffered or incurred by the Customer.
7. The Customer agrees that these Terms and Conditions of Sale shall be construed according to the laws of the State or Territory as the Supplier may in its sole discretion determine. Proceedings may be instituted in such State or Territory as the Supplier may in its sole discretion determine. Failing such determination the Customer consents to any proceedings being instituted and heard by any appropriate Court sitting in the State of New South Wales applying the laws of the State of New South Wales.
 8. The Customer agrees that service of any notices or Court documents may be effected by forwarding same by pre-paid post or facsimile to the last known address of the Customer.
 9. Any dispute or difference whatsoever arising in relation to this contract shall first be submitted for dispute resolution in accordance with the institute of arbitrators rules Australia.