

## MULTIFILE TERMS & CONDITIONS OF SALE

These are the terms and conditions ("T&C") on which Multifile Pty Limited ("we", "us" and "our") supplies Products and Services to its customers ("you" and "your"). We reserve the right to update these T&C from time to time. Updated T&C will be displayed at [www.multifile.com.au](http://www.multifile.com.au) and the Contract (as defined below) includes the T&C as in force at the time the Contract is formed. You agree to check that site from time to time and acknowledge and agree that you have been made aware of such updates and agree to be bound by them.

### 1 WHOLE AGREEMENT

1.1 The contract between us and you is wholly documented by the terms set out in the purchase order for the Products and Services ("Order"), our invoice for the Products and Services ("Invoice") and these T&C (the "Contract").

1.2 The Contract constitutes the whole of the agreement between you and us. All of the agreements and understandings between you and us are set out in the Contract and they supersede all prior agreements, understandings and statements, whether written or oral.

### 2 ORDER AND ACCEPTANCE

You have 3 days from receipt of Products and Services to notify us in writing if the Products and Services are not in accordance with the Order, otherwise you will be taken to have accepted the Products and Services and your liability to pay for them.

### 3 PRICE

The price charged for Products and Services ("Price") will be as set out in a Current Quotation given to you for the Products and Services; or, if no Current Quotation has been provided, as set out in our current price list. The Price will be set out in the Order and / or Invoice.

### 4 PAYMENT AND INTEREST

4.1 You must pay the full amount of the Price within 7 days of receipt of the Products and Services unless otherwise agreed.

4.2 All payments to us must be done without set-off, deduction or counterclaim.

4.3 If any payment is not made by the due date then we will be entitled to:

(a) Cancel or suspend any further delivery of Products and Services to you under any other order; and  
(b) Charge interest (calculated daily and compounding monthly) on the overdue amount at the rate of 2% per month.

4.4 You must pay to us all costs and expenses incurred or which will be incurred by us in respect of any action for recovery of monies or repossession of Products and Services, including but not limited to mercantile agent's fees, solicitor's fees (on an indemnity basis), fees of other legal advisers and other parties acting on behalf of us.

### 5 DELIVERY & RISK

5.1 We will arrange delivery of the Products and Services to your premises but if the Products and Services are damaged in any way during transportation or delivery then our liability is limited (at our option) to replacing or repairing them, the cost or replacement or repair or repayment of the Price where it has been paid. We will not be responsible for any costs or losses resulting from delays in the replacement or repair of Products and Services.

5.2 Risk in the Products and Services (and the need to insure it) passes to you once the Products and Services are delivered irrespective of whether the Products and Services are installed or not.

### 6 PROPERTY AND TITLE

6.1 Notwithstanding that the risk in the Products and Services may have passed to you, property in and title to the Products and Services will not pass from us to you until the Price for the Products and Services has been paid for in full and until then:

(a) you will hold the Products and Services as fiduciary and agent for us;

(b) the Products and Services must be marked so as to be separately identifiable;

(c) you may sell the Products and Services in the ordinary course of business as agent for us and you must hold the proceeds of sale in a separate account on trust for us and account to us for those proceeds; and

(d) we may require you to return the Products and Services to us on demand and you hereby authorise us or our employees or agents to enter upon your premises to inspect or repossess the relevant Products and Services.

6.2 If we recover or attempt to recover the Products and Services then, in addition and without prejudice to any or our other rights or remedies under the Contract or at law, you will be liable for all our expenses of such recovery and (if applicable) you will be liable to pay interest in accordance with clause 4.3(b).

6.3 You acknowledge and agree that you grant us a security interest over the Products and their proceeds by virtue of the retention of title in clause 6.1. You undertake to:

(a) do all acts and provide us on request all information we require to register a financing statement or financing change statement on any securities register, including on the Personal Property Securities Register established under the Personal Property Securities Act 1999

("NZPPSA") and on the Personal Property Securities Register established under the Personal Property Securities Act 2009 (Cth) ("AUSPPSA"); and

(b) advise us immediately in writing of any proposed change in your name or other details on any securities register.

You:

(a) agree that if and to the extent that the NZPPSA applies:

(i) you waive your right to receive a verification statement in respect of any financing statement or financing change statement relating to any security interest;

(ii) you waive your rights and, with our agreement, contract out of your rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the NZPPSA; and

(iii) you agree that nothing in sections 114(1)(a), 133 and 134 of the NZPPSA shall apply to the Contract and, with our agreement, contract out of such sections;

(b) agree that if and to the extent that the AUSPPSA applies:

(i) if Chapter 4 of the AUSPPSA would otherwise apply to the enforcement of any security interest arising under the Contract, you agree that the following sections of the AUSPPSA do not apply: sections 95, 120, 121(4), 125, 128, 129, 130, 132(3)(d), 132(4), 135, 142 and 143; and

(ii) without limiting any of the foregoing, you waive your right to receive a verification statement in respect of any financing statement or financing change statement relating to any security interest unless a requirement for notice cannot be waived or otherwise excluded under the AUSPPSA.

6.4 Unless the context otherwise requires:

(a) where the NZPPSA applies, terms and expressions used in Clauses 6.3 and 6.4(a) have the meanings given to them in, or by virtue of, the NZPPSA; and

(b) where the AUSPPSA applies, terms and expressions used in Clauses 6.3 and 6.4(b) have the meanings given to them in, or by virtue of, the AUSPPSA.

## **7 WARRANTIES**

7.1 Subject to these T&C we warrant that the Products and Services supplied by us are fit for the purpose for which they are supplied.

7.2 The Products and Services will be supplied with the warranties of the manufacturer that the Products and Services will be free from manufacturing or material defects for the period specified by the manufacturer; however you should note that such a warranty does not cover items requiring regular replacement such as light globes, filters, etc.

## **8 LIMITATION OF LIABILITY**

8.1 The warranty in Clause 7.1 does not apply in respect of defects specifically drawn to your attention or defects arising from incorrect or negligent handling, disregard of operating and/or maintenance instructions, overloading or unsuitable operating conditions, defective civil or building work, lightning, accident, neglect, faulty erection or installation (unless carried out by us), unauthorised repairs or alterations, acts of God or other causes beyond our control.

8.2 Our liability under Clause 7.1 is limited (at our option) to replacement or repair or payment of the cost of replacement or repair of the relevant Products and Services or repayment of the Price where it has been paid. Any claim against us relating to the quality of the Products and Services must be made within 3 months of delivery to be considered.

8.3 Our liability to you for breach of any implied term not excluded by these T&C is limited (at our option) to replacement or repair or payment of the cost of replacement or repair of the relevant Products and Services or repayment of the Price where it has been paid.

8.4 We will not be responsible for the cost of any delays in the delivery of the Products and Services.

8.5 To the fullest extent permitted by law we will not be liable to you for any loss of profit or other economic loss, indirect or consequential loss, special, general or other damages, or other expenses or costs; or for injuries to any person, arising out of your use or misuse of the Products and Services, or from anything under this Contract or from any common law duty (including negligence) by us, our agents or employees; however if any liability is incurred by us by operation of law then such liability shall be limited to the cost of replacing the Products and Services or performing any related services again.

8.6 If and to the extent that the Consumer Guarantees Act 1993 ("CGA") is applicable to the supply of the Products and Services by us to you under the Contract:

(a) you and we acknowledge and agree that you and we are both in trade (as defined in the CGA); and

(b) you and we agree to contract out of the provisions of the CGA such that the provisions of the CGA will not apply to the supply of the Products and Services by us to you under this Contract.

8.7 You agree that if the Contract is not a 'consumer contract' under the Australian Consumer Law (as set out in schedule 2 of the Competition and Consumer Act 2010 (Cth) ("ACL")), to the full extent permitted by law, the guarantees, conditions, and warranties implied by the ACL or by any other relevant law(s), are expressly excluded.

## 9 JURISDICTION

9.1 If the delivery location of the Products and Services is New Zealand you agree that your Contract with us shall be deemed to have been made in New Zealand and you further agree to submit to the exclusive jurisdiction of the appropriate courts of New Zealand.

9.2 If the delivery location of the Products and Services is a State or Territory of Australia you agree that your Contract with us shall be deemed to have been made in that State or Territory and you further agree to submit to the exclusive jurisdiction of the appropriate courts of that State or Territory.

## 10 MISCELLANEOUS

10.1 You acknowledge that all conditions, warranties or other terms implied by statute or common law are expressly excluded from our Contract with you to the fullest extent permitted by law.

10.2 The sale to and purchase by you of the Products and Services does not confer on you any licence or right under any copyright, patent, registered design or trademark which is our property and you agree to conform to all reasonable requirements imposed by us with respect to trademarks or identification marks in respect of the Products and Services.

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