

HELP ME iT&D PTY LTD (ACN 141 703 317)

TERMS OF TRADE

1. Definitions

In these Terms:

ACL means the Australian Consumer Law Schedule to the *Competition and Consumer Act 2010* (Cth) and its associated regulations as amended.

Agreement means any agreement for the provision of Goods or Services by iT&D to the Customer.

Consumer is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if Customer is a consumer under the Agreement.

Customer means the person, corporation or association, jointly and severally if more than one, acquiring Goods or Services from iT&D.

Delivery means delivery of Goods by iT&D in accordance with these Terms.

Goods means any goods supplied by iT&D to the Customer.

GST has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and its associated Regulations as amended.

iT&D means Help Me iT&D Pty Ltd ACN 141 703 317 and any related body corporate, successor or assign.

PPSA means the *Personal Property Securities Act 2009* (Cth) and its associated regulations as amended.

Services means services supplied by iT&D to the Customer.

Terms means these Terms of Trade as varied or amended from time to time.

2. BASIS OF AGREEMENT

2.1 Unless otherwise agreed by iT&D in writing, these Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms, including the Customer's terms and conditions of purchase (if any).

2.2 An Agreement is accepted by iT&D when iT&D accepts, in writing or by electronic means, an offer from the Customer or provides the Customer with the Good or Services.

2.3 iT&D has absolute discretion to refuse or accept any offer.

2.4 Without limiting other ways in which the Customer may enter into these Terms with iT&D, the Customer may sign and return this document (or a copy of this document), or by giving or continuing to give iT&D instructions in which case the Customer will be

2.5 The Customer must provide iT&D with its specific requirements, if any, in relation to the Goods or Services.

2.6 iT&D may vary or amend these Terms by written notice to the Customer at any time. Any variations or amendments will apply to orders placed after the notice date.

2.7 Any order for customised Goods cannot be cancelled or returned once the order has been accepted by iT&D, unless iT&D has provided its prior written consent.

3. PRICING

3.1 Unless advised in writing by iT&D, prices for Goods and Services are set out in iT&D's website and the Customer is deemed to have read and understood the pricing.

3.2 Prices quoted for the supply of Goods and Services exclude GST and any other taxes or duties imposed

on or in relation to the Goods and Services.

3.3 If the Customer requests a variation to the Goods or Services or where there is otherwise any change in the costs incurred by iT&D in relation to Goods or Services, iT&D may vary its price to take account of any such change, by notifying the Customer.

3.4 Where there is any variation to the price of the Goods or Services, iT&D will not continue to supply the Goods or provide the Services unless and until the Customer has expressly authorised the variation.

4. PAYMENT

4.1 Unless otherwise agreed in writing:

(a) iT&D may, at its sole discretion, require the payment of a deposit by the Customer;

(b) subject to clause 4.1(c), full payment must be made within 7 days of the date of iT&D's invoice; and

(c) iT&D reserves the right to require payment in full prior to or on Delivery of Goods and/or the supply of Services.

4.2 iT&D, by reason of supplying the Goods and providing the Services, has a lien over new Goods provided and a repairers lien over Customer goods that are repaired. In accordance with clause 13.3, the Customer agrees that iT&D will be entitled to exercise its repairer's lien and charge market related storage costs for the Customer's goods until all amounts owing to iT&D by the Customer have been paid in full.

4.3 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.4 Payment terms may be revoked or amended at iT&D's sole discretion immediately upon giving the Customer written notice.

4.5 The time for payment is of the essence.

5. PAYMENT DEFAULT

5.1 If the Customer defaults in payment by the due date of any amount payable to iT&D, then all money which would become payable by the Customer to iT&D at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and iT&D may, without prejudice to any of its other accrued or contingent right:

(a) charge the Customer interest on any sum due at the prevailing rate pursuant to the schedule 2 of the *Court Procedures Rules ACT 2006* plus 2% for the period from the due date until the date of payment in full;

(b) charge the Customer for, and the Customer must indemnify iT&D from, all costs and expenses (including without limitation all bank charges and legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any Goods or seek outstanding payments for services;

(c) cease or suspend supply of any further Goods and Services to the Customer;

(d) by written notice to the Customer, terminate any uncompleted Agreement or other contract with the Customer.

5.2 Clauses 5.1(c) and 5.1(d) may also be relied upon, at iT&D's option:

(a) where the Customer is a natural person and

becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or

(b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

6. PASSING OF PROPERTY

6.1 Until iT&D receives full payment in cleared funds for all Goods supplied and Services provided by it to the Customer, as well as all other amounts owing to iT&D by the Customer:

- (a) title and property in all Goods remain vested in iT&D and do not pass to the Customer;
- (b) the Customer must hold the Goods as fiduciary bailee and agent for iT&D;
- (c) the Customer must keep the Goods separate from its goods and maintain iT&D's labelling and packaging (if applicable);
- (d) if applicable, the Customer must hold the proceeds of sale of the Goods on trust for iT&D in a separate account with a bank to whom the Customer has not given security however failure to do so will not affect the Customer's obligation as trustee; and
- (e) in addition to its rights under the PPSA, iT&D may without notice, enter any premises where it suspects the Goods are and remove them (notwithstanding that they may have been attached to other goods not the property of iT&D) and for this purpose the Customer irrevocably licenses iT&D to enter such premises and also indemnifies iT&D from and against all costs, claims, demands or actions by any party arising from such action.

7. PERSONAL PROPERTY SECURITIES ACT

7.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.

7.2 For the purposes of the PPSA:

- (a) terms used in this clause 7 that are defined in the PPSA have the same meaning as in the PPSA;
- (b) these Terms are a security agreement and iT&D has a Purchase Money Security Interest in all present and future Goods supplied by iT&D to the Customer and the proceeds of those Goods;
- (c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
- (d) the Customer must do whatever is necessary in order to give a valid security interest over the Goods which is able to be registered by iT&D on the Personal Property Securities Register.

7.3 The security interest arising under this clause 7

attaches to the Goods when the Goods are collected or dispatched from iT&D's premises and not at any later time.

7.4 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

7.5 iT&D and the Customer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.

7.6 To the extent permitted by the PPSA, the Customer agrees that:

- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on iT&D will apply only to the extent that they are mandatory or iT&D agrees to their application in writing; and
- (b) where iT&D has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

7.7 The Customer must immediately upon iT&D's request:

- (a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
- (b) procure from any person considered by iT&D to be relevant to its security position such agreements and waivers (including as equivalent to those above) as iT&D may at any time require.

7.8 iT&D may allocate amounts received from the Customer in any manner iT&D determines, including in any manner required to preserve any Purchase Money Security Interest it has in Goods supplied by iT&D.

7.9 For the purposes of section 275(6) of the PPSA, the parties undertake and agree that these Terms and any information pertaining to the sale of Goods and details of the Goods shall be kept confidential at all times. The parties must not disclose any information relating to these Terms or the sale of the Goods, except as otherwise required by law or that is already in the public domain.

8. RISK AND INSURANCE

8.1 The risk in the Goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately on Delivery.

8.2 The Goods and Services are provided to the Customer on the basis that the Customer has obtained all necessary licences or permits under all relevant laws and regulations in relation to the Goods and Services.

8.3 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer or third parties arising out of the use or possession of any of the Goods sold by iT&D, unless recoverable from iT&D on the failure of any statutory guarantee under the ACL.

9. PERFORMANCE OF AGREEMENT

9.1 Any period or date for Delivery of Goods or performance of the Services stated by iT&D is an estimate only and not a contractual commitment.

9.2 iT&D will use its reasonable endeavours to meet any estimated dates for Delivery of the Goods or performance of the Services but will not be liable for

any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

10. DELIVERY

10.1 Subject to clause 10.5, iT&D will arrange for the Delivery of the Goods to the Customer.

10.2 iT&D may make part Delivery of Goods and iT&D may invoice the Customer for the Goods provided.

10.3 The Customer indemnifies iT&D against any loss or damage suffered by iT&D, its sub-contractors or employees as a result of Delivery, except where the Customer is a consumer and iT&D has not used due care and skill.

10.4 If Delivery is attempted and is unable to be completed, the Customer is deemed to have taken Delivery of the Goods. The Customer is liable for storage charges payable monthly on demand.

10.5 If agreed that the Customer will collect the Goods:

- (a) the Customer must collect the Goods within 7 days of being advised that they are ready;
- (b) if the Customer does not collect the within this time, the Customer is deemed to have taken Delivery of the Goods and is liable for storage charges payable monthly on demand; and
- (c) the Customer, unless agreed otherwise by iT&D, will responsible for all costs associated with the collection and transport of the Goods.

11. PROVISION OF SERVICES

11.1 iT&D may provide the Services at iT&D's usual premises or at any other location reasonably elected by iT&D.

11.2 The Customer warrants and represents to iT&D that:

- (a) the Customer has provided iT&D with all relevant information regarding the Services required and any information provided to iT&D by the Customer in accordance with these Terms is true, correct and complete;
- (b) any Goods manufactured or supplied by iT&D which are based on the Customer's designs, drawings or specifications will not infringe any third party's intellectual property rights. The Customer indemnifies iT&D for any and all loss, cost and/or damage that iT&D may suffer as a result of the Customer's breach of this warranty.

12. WARRANTY AND LIABILITY

12.1 Except as otherwise required by law or as specifically stated in these Terms or any express warranty provided in relation to the Goods or Services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services or any contractual remedy for their failure.

12.2 To the extent permitted by law, any warranty provided by iT&D in relation to the Goods will not apply where the Goods have been:

- (a) subject to an accident, negligent use, tampering, improper handling, use, operation, or storage, or due to any other causes outside of iT&D's reasonable control;
- (b) altered or modified in any way or from any reason without the written approval or instructions from iT&D; or

(c) not used, maintained or serviced in accordance with standard practice or iT&D's instructions and recommendations.

12.3 If the Customer is a consumer nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against iT&D for failure of a statutory guarantee under the ACL.

12.4 The Customer confirms Goods and Services will be inspected upon Delivery by iT&D and that, should the Customer take Delivery of the Goods, the Customer is deemed to be satisfied that the Goods and Services conform in all respects with Agreement and were rendered to the Customer's satisfaction.

12.5 If the Customer on-supplies the Goods to a consumer and:

- (a) the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of iT&D's liability to the Customer;
- (b) the Goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of iT&D's liability to the Customer,

howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the Goods by the Customer or any third party.

12.6 If clause 12.3 or 12.5 do not apply, then other than as stated in the Terms or any written warranty statement iT&D is not liable to the Customer in any way arising under or in connection with the sale, use of, storage or any other dealings with the Goods or Services by the Customer or any third party.

12.7 Except as otherwise provided by law, iT&D's maximum liability to the Customer is the refund of the price of the Goods or Services or the replacement of the Goods or resupply of the Services, at iT&D's sole discretion.

12.8 iT&D is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.

12.9 The Customer acknowledges that:

- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by iT&D in relation to the Goods and Services or their use or application.
- (b) it has not made known, either expressly or by implication, to iT&D any purpose for which it requires the Goods and Services and it has the sole responsibility of satisfying itself that the Goods and Services are suitable for the use of the Customer.

12.10 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods and Services which cannot be excluded, restricted or modified.

13. GENERAL WARRANTIES

- 13.1 The Customer must comply, at the Customer's own expense, with any recommendations and guidelines provided by iT&D with respect to the use of the Goods.
- 13.2 The Customer must promptly inform iT&D of any errors or faults in the operation of any aspect of the Goods or any provision of the Services.
- 13.3 The Customer represents and warrants to iT&D that there is no agreement or security interest in relation to the Customer's goods which prohibits the establishment of a repairer's lien by iT&D.

14. CANCELLATION

- 14.1 If iT&D is unable to deliver or provide the Goods or supply the Services, then it may cancel the Customer's order (even if it has been accepted) by written notice to the Customer.
- 14.2 No purported cancellation or suspension of an order or any part of it by the Customer is binding on iT&D once the order has been accepted.
- 14.3 In the event that iT&D accepts the Customer's request to cancel the supply of Goods or provision of Services, the Customer will be liable to iT&D for the costs of the Goods and Services to the extent that they have been provided, including any components which have been purchased to render the Services and any related costs.

15. SHORTAGES AND EXCHANGES

- 15.1 Except as otherwise provided by law and subject to clauses 15.2 and 15.4, iT&D will not be liable for any shortages, damage or non-compliance with the specifications in the Agreement unless the Customer notifies iT&D with full details and description within 10 days of Delivery otherwise the Customer is deemed to have accepted the Goods and Services.
- 15.2 When any shortages, claim for damaged Goods or non-compliance with the Agreement specifications is accepted by iT&D, iT&D may, at its option, replace the Goods, resupply the Services, or refund the price of the Goods and Services.
- 15.3 Except as otherwise provided by law, iT&D will not under any circumstances accept Goods for return that:
- (a) have been specifically produced, imported or acquired to fulfil the Agreement;
 - (b) are discontinued Goods or no longer stocked by iT&D;
 - (c) have been altered in any way;
 - (d) have been used or have been stored improperly; or
 - (e) are not in their original condition and packaging, if applicable.
- 15.4 If the Customer is a consumer, nothing in this clause 15 limits any remedy available for a failure of any of the consumer guarantees under the ACL.

16. FORCE MAJEURE

iT&D is not liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war. If an event of force majeure occurs, iT&D may suspend or terminate the Agreement by written notice to the Customer.

17. NOTICES

All notices provided under this Contract:

- 17.1 must be in writing and signed by the sending Party or its Representative;
- 17.2 must be directed to the attention of the person and at the address notified by the receiving party from time to time, and will be effective in the following manner:
- (a) in the case of delivery in person, when delivered;
 - (b) where posted, two Business Days after the date of posting; and
 - (c) where sent by facsimile or email transmission, at the time recorded on the sent message receipt,

however if the notice is received after 5:00pm on a day that is not a Business Day, notice will be taken to be received at 9:00am on the following Business Day.

- 17.3 A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by prepaid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.

18. MISCELLANEOUS

- 18.1 The law of the Australian Capital Territory applies from time to time governs these Terms. The parties agree to the non-exclusive jurisdiction of the courts of Australian Capital Territory, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 18.2 iT&D's failure to enforce any of these Terms shall not be construed as a waiver of any of iT&D's rights.
- 18.3 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from these Terms, without affecting the enforceability of the remaining terms.