

1. Definitions

- 1.1 “Agent” means Pioneer Tech Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Pioneer Tech Pty Ltd.
- 1.2 “Buyer” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Buyer is a reference to each Buyer jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by the Agent to the Buyer at the Buyer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable (plus any GST where applicable) for the Goods as agreed between the Agent and the Buyer in accordance with clause 5 below.
- 1.5 “GST” means Goods and Services Tax (GST) as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

2. Acceptance

- 2.1 The Buyer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Buyer places an order for, or pick up the Goods in person from the Agent’s address, or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Buyer and the Agent.

3. Electronic Transactions Act 2000

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Change in Control

- 4.1 The Buyer shall give the Agent not less than fourteen (14) days prior written notice of any proposed change of ownership of the Buyer and/or any other change in the Buyer’s details (including but not limited to, changes in the Buyer’s name, address, contact phone or fax number/s, or business practice). The Buyer shall be liable for any loss incurred by the Agent as a result of the Buyer’s failure to comply with this clause.

5. Price and Payment

- 5.1 At the Agent’s sole discretion, the Price shall be either:
 - (a) as indicated on any invoice provided by the Agent to the Buyer; or
 - (b) the Price as at the date of delivery of the Goods according to the Agent’s current price list; or
 - (c) the Agent’s quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 The Agent reserves the right to change the Price if a variation to the Agent’s quotation is requested. Variations will be charged for on the basis of the Agent’s quotation, and will be detailed in writing, and shown as variations on the Agent’s invoice. The Client shall be required to respond to any variation submitted by the Agent within ten (10) working days. Failure to do so will entitle the Agent to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.3 At the Agent’s sole discretion, a non-refundable deposit may be required.
- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Buyer on the date/s determined by the Agent, which may be:
 - (a) on delivery of the Goods;
 - (b) by way of instalments in accordance with the Agent’s payment schedule;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Buyer by the Agent.
- 5.5 Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Buyer and the Agent.
- 5.6 The Buyer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Buyer by the Agent nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Buyer must pay to the Agent an amount equal to any GST the Agent must pay for any supply by the Agent under this or any other agreement for the sale of the Goods. The Buyer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Buyer pays the Price. In addition, the Buyer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery of Goods

- 6.1 Delivery (“**Delivery**”) of the Goods is taken to occur at the time that:
 - (a) the Buyer or the Buyer’s nominated carrier takes possession of the Goods at the Agent’s address; or
 - (b) the Agent (or the Agent’s nominated carrier) delivers the Goods to the Buyer’s nominated address even if the Buyer is not present at the address.
- 6.2 At the Agent’s sole discretion, the cost of delivery is in addition to the Price.
- 6.3 The Agent may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.4 Any time specified by the Agent for delivery of the Goods is an estimate only and the Agent will not be liable for any loss or damage incurred by the Buyer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Agent is unable to supply the Goods as agreed solely due to any action or inaction of the Buyer, then the Agent shall be entitled to charge a reasonable fee for redelivery and/or storage.

7. No Liability for Delay

If the product is not available by the estimated date, we are not liable to compensate you for any costs claimed by you as a consequence of such delay.

8. Risk

- 8.1 Risk of damage to or loss of the Goods passes to the Buyer on Delivery and the Buyer must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, the Agent is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Agent is sufficient evidence of the Agent's rights to receive the insurance proceeds without the need for any person dealing with the Agent to make further enquiries.
- 8.3 If the Buyer requests the Agent to leave Goods outside the Agent's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Buyer's sole risk.
- 8.4 Any advice, recommendation, information, assistance or service provided by the Agent in relation to Goods or Services supplied is given in good faith, is based on the Agent's own knowledge and experience and shall be accepted without liability on the part of the Agent and it shall be the responsibility of the Buyer to confirm the accuracy and reliability of the same in light of the use to which the Buyer makes or intends to make of the Goods or Services.

9. Title

- 9.1 The Agent and the Buyer agree that ownership of the Goods shall not pass until:
 - (a) the Buyer has paid the Agent all amounts owing to the Agent; and
 - (b) the Buyer has met all of its other obligations to the Agent.
- 9.2 Receipt by the Agent of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 9.3 It is further agreed that, until ownership of the Goods passes to the Buyer in accordance with clause 9.1:
 - (a) the Buyer is only a bailee of the Goods and must return the Goods to the Agent on request.
 - (b) the Buyer holds the benefit of the Buyer's insurance of the Goods on trust for the Agent and must pay to the Agent the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Buyer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Buyer sells, disposes or parts with possession of the Goods then the Buyer must hold the proceeds of any such act on trust for the Agent and must pay or deliver the proceeds to the Agent on demand.
 - (d) the Buyer should not convert or process the Goods or intermix them with other goods but if the Buyer does so then the Buyer holds the resulting product on trust for the benefit of the Agent and must sell, dispose of or return the resulting product to the Agent as it so directs.
 - (e) the Buyer irrevocably authorises the Agent to enter any premises where the Agent believes the Goods are kept and recover possession of the Goods.
 - (f) the Agent may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Buyer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Agent.
 - (h) the Agent may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Buyer.

10. Personal Property Securities Act 2009 ("PPSA")

- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Buyer to the Agent for Services – that have previously been supplied and that will be supplied in the future by the Agent to the Buyer.
- 10.3 The Buyer undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Agent may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Agent for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Agent;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Agent;
 - (e) immediately advise the Agent of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.4 The Agent and the Buyer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Buyer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Buyer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

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- 10.7 Unless otherwise agreed to in writing by the Agent, the Buyer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Buyer must unconditionally ratify any actions taken by the Agent under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary (including those contained in this clause 10) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

11. Security and Charge

- 11.1 In consideration of the Agent agreeing to supply the Goods, the Buyer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Buyer either now or in the future, to secure the performance by the Buyer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Buyer indemnifies the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Agent's rights under this clause.
- 11.3 The Buyer irrevocably appoints the Agent and each director of the Agent as the Buyer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Buyer's behalf.

12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 12.1 The Buyer must inspect the Goods on delivery and must within three (3) days of delivery notify the Agent in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Buyer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Buyer must allow the Agent to inspect the Goods.
- 12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 12.3 The Agent acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Agent makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Agent's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Buyer is a consumer within the meaning of the CCA, the Agent's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If the Agent is required to replace the Goods under this clause or the CCA, but is unable to do so, the Agent may refund any money the Buyer has paid for the Goods.
- 12.7 If the Buyer is not a consumer within the meaning of the CCA, the Agent's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Buyer by the Agent at the Agent's sole discretion;
 - (b) limited to any warranty to which the Agent is entitled, if the Agent did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Buyer has complied with the provisions of clause 12.1; and
 - (b) the Agent has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Buyer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
 - (e) the Goods was not installed onto the Buyer's vehicle, no holes were driven on the Goods for installation preparations.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, the Agent shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Buyer has finished the installation of the Goods onto his/her vehicle;
 - (b) the Buyer failing to properly maintain or store any Goods;
 - (c) the Buyer using the Goods for any purpose other than that for which they were designed;
 - (d) the Buyer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (e) the Buyer failing to follow any instructions or guidelines provided by the Agent;
 - (f) fair wear and tear, any accident, or act of God.
- 12.10 Notwithstanding anything contained in this clause if the Agent is required by a law to accept a return then the Agent will only accept a return on the conditions imposed by that law.

13. Intellectual Property

- 13.1 Where the Agent has designed, drawn or developed Goods for the Buyer, then the copyright in any designs and drawings and documents shall remain the property of the Agent. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Agent.
- 13.2 The Buyer warrants that all designs, specifications or instructions given to the Agent will not cause the Agent to infringe any patent, registered design or trademark in the execution of the Buyer's order and the Buyer agrees to indemnify the Agent against any action taken by a third party against the Agent in respect of any such infringement.
- 13.3 The Buyer agrees that the Agent may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Agent has created for the Buyer.

14. Default and Consequences of Default

- 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Agent's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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- 14.2 If the Buyer owes the Agent any money the Buyer shall indemnify the Agent from and against all costs and disbursements incurred by the Agent in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Agent's contract default fee, and bank dishonour fees).
- 14.3 Further to any other rights or remedies the Agent may have under this contract, if a Buyer has made payment to the Agent, and the transaction is subsequently reversed, the Buyer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Agent under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Buyer's obligations under this agreement.
- 14.4 Without prejudice to the Agent's other remedies at law the Agent shall be entitled to cancel all or any part of any order of the Buyer which remains unfulfilled and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Agent becomes overdue, or in the Agent's opinion the Buyer will be unable to make a payment when it falls due;
 - (b) the Buyer has exceeded any applicable credit limit provided by the Agent;
 - (c) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.
- 15. Cancellation**
- 15.1 Without prejudice to any other remedies the Agent may have, if at any time the Buyer is in breach of any obligation (including those relating to payment) under these terms and conditions the Agent may suspend or terminate the supply of Goods to the Buyer. The Agent will not be liable to the Buyer for any loss or damage the Buyer suffers because the Agent has exercised its rights under this clause.
- 15.2 The Agent may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Buyer. On giving such notice the Agent shall repay to the Buyer any money paid by the Buyer for the Goods. The Agent shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.3 In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any and all loss incurred (whether direct or indirect) by the Agent as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.4 Cancellation of orders for Goods made to the Buyer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 16. Dispute Resolution**
- 16.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 17. Privacy Act 1988**
- 17.1 The Buyer agrees for the Agent to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Buyer in relation to credit provided by the Agent.
- 17.2 The Buyer agrees that the Agent may exchange information about the Buyer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Buyer; and/or
 - (b) to notify other credit providers of a default by the Buyer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Buyer including the Buyer's repayment history in the preceding two (2) years.
- 17.3 The Buyer consents to the Agent being given a consumer credit report to collect overdue payment on commercial credit.
- 17.4 The Buyer agrees that personal credit information provided may be used and retained by the Agent for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Buyer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 17.5 The Agent may give information about the Buyer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Buyer including credit history.
- 17.6 The information given to the CRB may include:
- (a) personal information as outlined in 17.1 above;
 - (b) name of the credit provider and that the Agent is a current credit provider to the Buyer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Buyer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the

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- Buyer no longer has any overdue accounts and the Agent has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of the Agent, the Buyer has committed a serious credit infringement;
- (h) advice that the amount of the Buyer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 17.7 The Buyer shall have the right to request (by e-mail) from the Agent:
- (a) a copy of the information about the Buyer retained by the Agent and the right to request that the Agent correct any incorrect information; and
- (b) that the Agent does not disclose any personal information about the Buyer for the purpose of direct marketing.
- 17.8 The Agent will destroy personal information upon the Buyer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 17.9 The Buyer can make a privacy complaint by contacting the Agent via e-mail. The Agent will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Buyer is not satisfied with the resolution provided, the Buyer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 18. Service of Notices**
- 18.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this contract;
- (c) by sending it by registered post to the address of the other party as stated in this contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 18.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 19. General**
- 19.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which the Agent has its principal place of business, and are subject to the jurisdiction of the courts in Victoria.
- 19.3 Subject to clause 12 the Agent shall be under no liability whatsoever to the Buyer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Agent of these terms and conditions (alternatively the Agent's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 19.4 Neither party shall assign or sub-contract all or any part of their rights and obligations under this agreement without the written consent of the other party.
- 19.5 The Buyer agrees that the Agent may amend these terms and conditions by notifying the Buyer in writing. These changes shall be deemed to take effect from the date on which the Buyer accepts such changes, or otherwise at such time as the Buyer makes a further request for the Agent to provide Goods to the Buyer.
- 19.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 19.7 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.