

Terms & Conditions of Sale

1. Interpretation

In these terms and conditions and any other contract to which these terms and conditions apply:

- i. **contract** means the contract of sale between ContinUIT and the Purchaser, for, or in relation to, the sale of goods and/or services;
- ii. **ContinUIT** means ContinUIT Pty Ltd (ABN 58 302 574 688), the entity which accepts the Purchaser's order through the issue of a written confirmation;
- iii. **goods** means any item or service of any nature which is sold by ContinUIT;
- iv. **services** means any form of fixed price consulting, installation, or configuration services provided by ContinUIT to the purchaser.
- v. **Purchaser** means the person or corporation purchasing or agreeing to purchase goods and/or services from ContinUIT;
- vi. **Confirmation of Sale** means written acceptance of the sale;
- vii. **Prescribed Terms** means any terms, conditions and warranties which the law expressly provides may not in respect to the contract be modified or excluded or may be modified to a limited extent (as the law permits);
- viii. Words importing the singular shall be deemed to include the plural and words importing the male gender shall be deemed to include the female gender and vice versa; and
- ix. Any headings in this document are for convenience only and do not effect the interpretation herein.

2. General

- a. Subject to any Prescribed Terms, this document together with all related Sales documentation (including Sales Confirmation) embodies the sole terms and conditions of the Contract of Sales between ContinUIT and the Purchaser and supersedes all other terms and conditions and/or agreements between the parties unless expressed in writing by ContinUIT.
- b. These terms and conditions shall apply to all future transactions between ContinUIT and the Purchaser in the relation to the sale or purchasing of goods and services whether or not this document is delivered in the course of that transaction.
- c. All purchase orders received by ContinUIT are subject to acceptance and no contract comes into existence until ContinUIT supplies a Confirmation of Sale of the order in writing.
- d. No variations of these terms and conditions shall be effective unless it is evidenced in writing and signed on behalf of ContinUIT.

3. Payment

- a. Unless otherwise agreed by ContinUIT in writing, payment shall be made in agreement with the terms indicated on the invoice or quotation. Where payment terms are not indicated on the invoice or quotation, payment shall be made in advance.
- b. Where an order requires payment in advance, no contract exists until payment is made in full unless expressly agreed to in writing by ContinUIT.
- c. Time for payment of the price shall be the essence of the contract and where the Purchaser fails to pay the price when due ContinUIT may treat the contract as repudiated by the Purchaser or may at their discretion, suspend delivery of the goods and/or services until payment is made in full without incurring any liability to the Purchaser in respect thereof. In addition, without prejudice to such rights of ContinUIT, the Purchaser shall (if required by ContinUIT) pay interest in the amount of 20% per annum (calculated daily) until the price is paid in full.
- d. ContinUIT shall have a lien (including a right of sale) over the goods until the price of the contract is paid in full.

4. Delivery

- a. Unless specifically itemised on the quote or invoice, freight is not included in the price.
- b. Any time or date named and accepted by ContinUIT for completion, delivery, dispatch or arrival of the goods and/or services or for tender of documents is an estimate only and does not constitute a condition of the contract.
- c. The Purchaser shall notify ContinUIT within 7 days of any short fall in, loss or damage to goods delivered. Failure to so notify ContinUIT shall, subject to any Prescribed Terms, disentitle the Purchaser to any remedy in respect to the shortage, loss or damage.
- d. Service components of a contract will be delivered in accordance with the terms and conditions for the specific service as agreed by the Purchaser and ContinUIT.

5. Warranty and Exclusions

- a. ContinUIT warrants that the goods when delivered to the Purchaser will comply with the description of the goods contained in the Sales Confirmation.
- b. The Purchaser accepts that when the goods are delivered in accordance with clause 5a, all warranty claims will be handled in accordance with the manufacturer's warranty and no additional warranty except those under any Prescribed Terms is provided by ContinUIT.
- c. The purchaser releases and indemnifies ContinUIT and its officers, employees, agents and consultants from any claims, proceedings or demands that arise from the improper use and operation (as specified by the manufacturer's warranty) of any goods delivered under this contract.
- d. To the extent permitted by law, ContinUIT will have no liability to the Purchaser, however arising and under any cause of action or theory of liability, in respect of special, indirect or consequential damages, loss of profit (whether direct or indirect) or loss of business opportunity arising out of or in connection with the contract or its performance.

6. Return of goods

- a. Goods supplied under this contract are not returnable except as provided in clause 5 above.
- b. ContinUIT from time to time under exceptional circumstances may at its discretion agree to the return of goods where the goods have not been used and are in the same condition as when delivered to the Purchaser, and where its supplier has agreed to the return of the goods. In the event that a restocking fee is required, the Purchaser agrees to pay this amount or have it deducted from any refund or credit.

7. Risk & Title

- a. All risk passes to the Purchaser immediately on delivery of the goods by ContinUIT.
- b. Property and title of goods will not pass to the Purchaser until payment under the contract has been received in full by ContinUIT. Until that time, the Purchaser agrees to store the goods in a manner which clearly identifies that the goods are the property of ContinUIT. In the event of default of payment, ContinUIT or its servants and agents may enter the Purchaser's premises at any time without notice to repossess the goods.
- c. Until payment has been made in full, the Purchaser is at liberty to sell the goods and hold in trust for ContinUIT the proceeds thereof and promptly account to ContinUIT for those proceeds in payment of the purchase price for the goods.

8. Indemnity

The Purchaser shall keep ContinUIT indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature,

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including, without prejudice to the generality of the foregoing, claims of death, personal injury, damage to property and consequential loss (including loss of profit) which may be made against the Purchaser or which the Purchaser may sustain, pay or incur as a result of or in connection with the manufacture, sale, export, import or use of the goods unless such costs, claim, demand, expense or liability shall be directly and solely attributable to any breach of contract by, or negligence of, ContinuIT or its duly authorised employee or agent.

9. Licenses , Duties, Taxes, etc.

The payment of any taxes and the obtaining and maintenance in full force and effect of any necessary import or export license or authorisations in respect to the good is the sole responsibility of the Purchaser and ContinuIT shall be under no liability whatsoever in respect of goods exported without the necessary licenses or authorisations.

10. Force Majeure

ContinuIT shall not be liable for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

If there is an event of force majeure, ContinuIT will notify the Purchaser of the event and the likely impact on its performance under the contract. If the event affects the capacity of ContinuIT to complete its material obligations under the Contract in a timely manner, ContinuIT may by notice to the Purchaser terminate the Contract without any liability whatsoever on its part arising from such termination.

11. Notices

Any and all notices given to the Purchaser shall be deemed to be given upon its being posted to or sent via facsimile to the address or facsimile number set out in the contract or the Purchaser's registered address or last known address.

12. Health and Safety

It is the responsibility of the Purchaser to ensure that all applicable health and safety regulations in relation to the storage, handling and use of the goods is brought to the attention of its agents, employees, subcontractors, visitors and customers. It is also the responsibility of the Purchaser to ensure that safe facilities are provided for the reception of goods.

13. Assignment

The Purchaser may not assign or purport to assign or transfer any of its rights under or in connection with the contract to any other person or corporation whatsoever.

14. GST

Goods and Services Tax (GST) will be charged on those purchases that attract GST at the applicable rate.

15. Proper Law and Jurisdiction

All Contracts made between ContinuIT and the Purchaser shall be governed by and construed in accordance with the laws of Queensland, Australia. The Purchaser agrees to submit to the non-exclusive jurisdiction of the Queensland Courts and courts of appeal therefrom for all purposes of or in connection with such Contracts.

16. Cost of Recovery

Any expenses, costs or disbursements made by ContinuIT in recovering any outstanding monies owing by the Purchaser shall be paid by the Purchaser.