

DIXON 2012 TERMS AND CONDITIONS OF SALE OF DIXON (ASIA) PACIFIC PTY LTD

1. INTERPRETATION

In these Conditions:

- 1.1 **"Australian Consumer Law"** means the law as set out in Schedule 2 of the Competition and Consumer Act 2010;
- 1.2 **"Buyer"** means the buyer specified in the attached Application for Credit Account or if there is no such application, or there is no buyer specified in the application, the purchaser of the Goods from the Company and includes any servants, agents, or contractors acting on behalf of the Buyer where the context permits;
- 1.3 **"Company"** means Dixon (Asia Pacific) Pty Ltd ACN 075 100 239 which is the seller of the Goods;
- 1.4 **"Conditions"** means these terms and conditions of sale;
- 1.5 **"Consumer"** means a "consumer" as that term is defined in Section 3 of the Australian Consumer Law;
- 1.6 **"Consumer Contract"** means a contract for supply of Goods by the Company to the Buyer as a Consumer;
- 1.7 **"Consumer Guarantees"** means the consumer guarantees under the Australian Consumer Law;
- 1.8 **"Contract"** means a contract for the sale and purchase of the Goods in accordance with these Conditions, as evidenced by the acceptance of any Order from the Buyer to the Company;
- 1.9 **"Date of Acceptance"** means the date that the Company approves the Application for Credit Account made by the Buyer or otherwise notifies the Buyer that these Conditions apply to the sale of Goods by the Company to the Buyer;
- 1.10 **"Effective Date"** means 1 January 2012;
- 1.11 **"Goods"** means the products purchased from the Company by the Buyer from time to time and which are the subject of an Order;
- 1.12 **"Implied Terms"** means any guarantees, conditions, warranties or other terms implied by any Australian Commonwealth, State or Territory laws (excluding the Australian Consumer Law), or the laws of any other jurisdiction;
- 1.13 **"Order"** means any Order for Goods from the Buyer to the Company from time to time in a form acceptable to the Company;
- 1.14 **"PPSA"** means the Personal Property Securities Act 2009;
- 1.15 **"Quotation"** means a quotation supplied by the Company to the Buyer in respect of the Goods.

2. GENERAL

- 2.1 These Conditions apply to all Goods supplied by the Company as from the Effective Date and the Buyer is deemed to have read and agreed to these Conditions prior to the placing of any Order.
- 2.2 These Conditions shall prevail over all inconsistencies in an Order and Quotation, unless the Company expressly agrees otherwise and that agreement is acknowledged in writing.
- 2.3 The Company reserves the right to vary, add or substitute to these Conditions from time to time and any such variations to these Conditions will have effect from the date of publication of such changes to the Company's customers.
- 2.4 No promise, representation, warranty or undertaking (including any technical advice or assistance provided by the Company to the Buyer in connection with the Buyer's Order for the Goods) other than that which is expressed in these Conditions will bind the Company, unless the Company expressly agrees otherwise in writing.

3. SHORTAGE AND NON-CONFORMING GOODS

The Buyer waives any claim for shortage of any Goods delivered or failure to supply Goods conforming with the Order if a claim for short delivery or failure to supply Goods conforming with the Order has not been lodged with the

Company within seven (7) days from the date of receipt of Goods by the Buyer. Any claim for shortage of any Goods delivered or failure to supply Goods conforming with the Order must be submitted in writing in a form approved by the Company.

4. SPECIFICATIONS

Except where the Goods are purchased under a Consumer Contract:

- 4.1 all specifications, drawings, and particulars of weights and dimensions submitted or published by the Company are approximate only and any deviation from any of these things does not vitiate any contract with the Company or form grounds for any claim against the Company; and
- 4.2 the descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the Contract or of the description applied to the Goods.

5. PERFORMANCE

Except where the Goods are purchased under a Consumer Contract, any performance figures given by the Company are estimates only. The Company is under no liability for damages for failure of the Goods to attain such figures unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.

6. DELIVERY

- 6.1 The delivery times made known to the Buyer are estimates only and the Company is not liable for late delivery or non-delivery.
- 6.2 The Buyer may cancel an order for Goods purchased under a Consumer Contract if the Company is unable to deliver the Goods within 90 days of any specified delivery date.
- 6.3 Except where clause 6.2 applies:
 - 6.3.1 the Company is not liable for any loss, damage or delay occasioned to the Buyer or its customers arising from late or non-delivery of the Goods;
 - 6.3.2 late delivery or non-delivery does not vary these Conditions or relieve the Buyer from its obligations to accept the Goods and to pay for the Goods.
- 6.4 The Company may at its option deliver the Goods to the Buyer in any number of instalments unless otherwise agreed in writing by the Company.
- 6.5 Delivery of the Goods will be taken to have occurred when either the Goods are:
 - 6.5.1 collected by the Buyer or the Buyer's agent; or
 - 6.5.2 offloaded at the Buyer's nominated point of delivery.
- 6.6 The Goods shall be at the risk of the Buyer after delivery.

7. AUSTRALIAN CONSUMER LAW

- 7.1 Where the Contract under which the Buyer purchases the Goods is a Consumer Contract (ie where the Buyer is a Consumer):
 - 7.1.1 the Goods are supplied subject to the Consumer Guarantees;
 - 7.1.2 if the Goods fail to meet any Consumer Guarantee, the Buyer will be entitled to such rights and remedies as are permitted or provided in the Australian Consumer Law for such failure, to the extent that such rights and remedies cannot be lawfully excluded. This may include the right to reject or return the Goods and obtain a refund, have the failure remedied by repair or replacement/substitution or to receive compensation for any reduction in the value of the Goods below the price paid or payable for them;

- 7.1.3 the Buyer may only exercise any right or remedy for breach of a Consumer Guarantee strictly in accordance with the rights and responsibilities of the Buyer under the Australian Consumer Law;
- 7.1.4 where the Goods are not ordinarily acquired for personal, domestic or household use or consumption, then, unless the Company is the manufacturer of the Goods under the Australian Consumer Law, the Company's liability for breach of a Consumer Guarantee is limited at the Company's option to repairing or replacing the Goods, supplying equivalent goods or paying the costs of the repair or replacement of the Goods or of acquiring equivalent goods.

- 7.2 Where the Buyer resupplies the Goods to a Consumer and the Goods are not ordinarily acquired for personal, domestic or household use or consumption, the Company's liability to the Buyer in connection with any breach of a Consumer Guarantee in respect of the Goods is limited to paying to the Buyer an amount equal to the cost of replacing the Goods, supplying equivalent goods or having the Goods repaired, whichever is the lower amount.

8. GENERAL LIMITATION ON LIABILITY

- 8.1 This clause 8 does not limit the liability of the Company under Consumer Contracts.
- 8.2 The Company shall not be liable for any guarantee, warranty or representation as to the quality, performance, and fitness for purpose or otherwise of any Goods unless expressed in writing and signed on behalf of the Company and any such warranty or representation shall be limited to its express terms.
- 8.3 None of the Implied Terms apply to any Contract except to the extent that they cannot be lawfully excluded.
- 8.4 The Company's liability for breach of any provision of any such Contract or for breach of any Implied Terms which by force of law cannot be excluded from applying to any such Contract is limited at the option of the Company to repairing or re-supplying Goods which have been found defective, or, paying the cost of repairing or re-supplying Goods which have been found defective.
- 8.5 The Company is not liable in tort for any loss or damages suffered by the Buyer or by any third party.
- 8.6 In no circumstance whatsoever shall the Company be liable to the Buyer or to any third party for any loss of data or profits, loss of anticipated savings, economic loss or interruption of business or for any indirect or consequential loss ("Consequential Loss") arising out of the late delivery of Goods or any failure to perform or observe the Company's obligations under any Contract or Implied Terms and the Buyer will keep the Company fully indemnified against any claim made against the Company by a third party for any such Consequential Loss.

9. PRICES AND GST

- 9.1 Unless otherwise stated all prices quoted by the Company are net, exclusive of Goods and Services Tax (GST).
- 9.2 GST applied to all supplies of Goods made by the Company and the amount payable by the Buyer will be increased by a percentage equal to the prevailing of GST rate at the time of delivery of the Goods.
- 9.3 Unless otherwise agreed, prices do not include the cost of delivery of Goods.

10. CREDIT PAYMENT

- 10.1 Where an Application for Credit Account is approved for the Buyer, the purchase price of the Goods is payable within thirty (30) days from the end of the month of date of invoice unless other terms of payment are expressly stated on the invoice. If payment is

made on or before the due date, the agreed settlement discount (if any) may be deducted from that payment.

- 10.2 The Company reserves the right to withdraw approval of an Application for Credit Account for the Buyer at any time by notice to the Buyer.
- 10.3 The Company reserves the right to request such security or additional security for any credit arrangements with the Buyer as the Company shall in its discretion think fit and shall be entitled to withhold supply of any Goods or credit arrangements until such security or additional security is provided by the Buyer.

11. CASH SALES

Where no Application for Credit Account has been approved for the Buyer, or approval of the Application for Credit Account is withdrawn, the purchase price of the Goods must be paid in full on placement of the Order, or where expressly agreed in writing by the Company, on delivery of the Goods.

12. PAYMENT

- 12.1 All amounts payable to the Company by the Buyer must be paid in Australian dollars in any manner required by the Company in writing and in full without set-off on or before the due date for payment.
- 12.2 Any costs or charges incurred by the Company in collecting or attempting to collect overdue amounts must be paid by the Buyer to the Company on demand.
- 12.3 The Company reserves the right to charge interest at the rate of 12% per annum on all overdue amounts owing to it. Such interest will accrue daily and is payable on demand.
- 12.4 Payment will not be taken to occur until all cheques tendered in discharge of amounts owing to the Company have been presented and cleared in full.

13. MINIMUM ORDER & INVOICE

All Orders will be charged at a minimum price of \$35.00 (excluding the costs of delivery of Goods) notwithstanding that the net value of the Order may be less than \$35.00.

14. TITLE TO GOODS

- 14.1 Title to and property in the Goods will not pass until the Buyer has paid all moneys owed to the Company on any account whatsoever.
- 14.2 Until the Buyer has paid all moneys owed to the Company:
- 14.2.1 the Company retains a purchase money security interest in the Goods and the proceeds of sale of the Goods under the PPSA;
- 14.2.2 the relationship of the Buyer to the Company is as a fiduciary in respect of the Goods and accordingly:
- 14.2.2.1 the Buyer must store the Goods in such a way that they can be recognised as the property of the Company;
- 14.2.2.2 upon re sale of the Goods by the Buyer, the Company will have the right to trace the full proceeds of sale; and
- 14.2.2.3 the Buyer must account to the Company for such proceeds of sale and the Company may recover from such proceeds of sale any moneys then owing to the Company on any account whatsoever.
- 14.2.3 the Company reserves the right to enter upon any premises for the purpose of repossessing the Goods without prejudice to any other rights of recovery available and the Buyer grants the Company a licence to enter such premises for the purpose of exercising such right.
- 14.3 The Buyer must do all things reasonably required by the Company in respect of the registration of the Company's interest in the Goods under this clause or

the enforcement of the Company's rights under the PPSA in respect of the Goods.

14.4 The Buyer waives any right the Buyer has under the PPSA:

14.4.1 to receive notice in relation to registration of the Company's interest in the Goods under the PPSA; and

14.4.2 to claim damages against the Company under Section 271 of the PPSA.

15. QUOTATIONS

15.1 Subject to clause 15.2, all prices quoted for Goods are valid quotes for 30 days from the date of Quotation.

15.2 Quotations are based on the current costs of sourcing the Goods and unless the Company has otherwise agreed, are subject to amendment by the Company before or after the Quotation is made to meet any rise and fall in such costs between the date of Quotation and the date of producing the Goods.

15.3 The Company reserves the right to charge the Buyer for any costs incurred as a result of the Buyer varying its Order or the Contract, correcting any errors or omissions referred to in clause 15.4, or requiring Goods urgently.

15.4 The Company will supply the Goods on the basis of the Order (whether written or oral). The Company will not be responsible for any errors or omissions in relation to the Goods where those errors or omissions result wholly or partially from incomplete or unclear instructions in the Order.

16. RETURNED GOODS

16.1 The Company is not under any duty to accept Goods returned by the Buyer and will do so only on terms to be agreed in writing in each individual case.

16.2 The Company may levy a handling charge of either 15% of the Order value or \$35 (whichever is greater) for any accepted returns. Goods delivered incorrectly, found to be defective or that fail to meet any Consumer Guarantees will be exempt from this handling charge.

16.3 Nothing in clause 16.1 affects the Buyer's rights under the Australian Consumer Law or in respect of any breach of Implied Terms.

17. CANCELLATION

17.1 The Company may cancel any Contract any time before Goods are delivered by giving written notice to the Buyer. On giving such notice, the Company will repay to the Buyer any sums paid in respect of the Goods. The Company will not have any other liability in respect of such cancellation.

17.2 Subject to clause 6.2, the Buyer may not cancel a Contract at any time except with the Company's prior written consent.

17.3 In the event that the Buyer cancels a Contract otherwise than under clause 6.2:

17.3.1 the Company may retain any deposit or other sums paid on account of the Goods; and

17.3.2 if payment for the Goods is not already made in full, the Buyer will be responsible for any losses incurred by the Company in respect of such cancellation (including loss of profits, loss of anticipated savings, economic loss or interruption of business loss or other incidental, consequential or indirect damages).

17.4 In the event the Buyer cancels a Contract under clause 6.2, the Company will repay to the Buyer any sums paid in respect of the Goods. The Company will not have any other liability in respect of such cancellation.

18. SUSPENSION OR TERMINATION BY THE COMPANY

18.1 If the Buyer makes a default in any payment due to the Company for any Goods provided by the Company, commits any act of bankruptcy or enters into liquidation whether voluntary or involuntary, the Company may in its absolute discretion, suspend delivery of any Goods to the Buyer or cancel any

Contract with the Buyer, without prejudice to its rights hereunder.

18.2 Any default by the Buyer or cancellation, suspension or termination by the Company shall in no way prejudice any rights of the Company against the Buyer whatsoever, including any right to recover any amounts due for the Goods, or the Goods themselves, previously supplied by the Company to the Buyer.

19. PLACE OF CONTRACT

19.1 This Contract is made in the State of South Australia.

19.2 The Buyer and Company agree that unless otherwise stipulated by the Company all disputes arising between them shall be submitted to the courts of the State of South Australia and any court competent to hear appeals from those courts of first instance.

20. MISCELLANEOUS

20.1 A Contract may be altered in writing signed by each party.

20.2 Unless otherwise provided, a party may in its discretion give (conditionally or unconditionally) or withhold any approval or consent under a Contract.

20.3 A party must not assign or otherwise deal with a Contract or any right under it without the written consent of the other party.

20.4 A Contract constitutes the entire agreement between the parties about its subject matter and supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.

20.5 A waiver of a provision of or right under a Contract must be in writing signed by the party giving the waiver and is effective only to the extent set out in the written waiver.

20.6 The failure, delay, relaxation or indulgence by a party in exercising a power or right under a Contract is not a waiver of that power or right.

20.7 An exercise of a power or right under a Contract does not preclude a further exercise of it or the exercise of another right or power.

20.8 Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of a Contract, remains in force after the expiration or termination of the Contract.

21. INTERPRETATION

In these Conditions, unless the context otherwise requires:

21.1 headings do not affect interpretation;

21.2 singular includes plural and plural includes singular;

21.3 a reference to a party includes its executors, administrators, successors and permitted assigns;

21.4 a reference to a person includes a partnership, corporation, association, government body and any other entity;

21.5 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;

21.6 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;

21.7 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;

21.8 a provision is not construed against a party only because that party drafted it;

21.9 an unenforceable provision or part of a provision may be severed, and the remainder of these Conditions continues in force, unless this would materially change the intended effect of these Conditions;

21.10 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions.