



System C Pty Ltd  
19 Cambrai Ave  
Engadine, NSW 2233

<http://www.systemc.com.au>

accounts@systemc.com.au

ABN : 73 138 290 141

# Terms and Conditions

## TERMS AND CONDITIONS

### 1. SCOPE

1. These Terms apply to all supplies of Goods and Services by System C Pty Ltd to the Customer.
2. These Terms and any Invoice contain, and are deemed to be a conclusive record of, the entire agreement and understanding between System C Pty Ltd and the Customer with respect to the supply of Goods and Services. A quotation given by System C Pty Ltd to the Customer constitutes an offer by System C Pty Ltd to the Customer to acquire the Goods or Services from System C Pty Ltd on these Terms.
3. These Terms and any Invoice may not be amended or varied unless agreed in writing by the parties

### 2. DEFINITIONS

In these Terms unless inconsistent with the subject or context:

1. "Claim" means any claim, notice, demand, right of action, proceeding, litigation, investigation or judgment, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.
2. "Customer" means the person named on the Invoice as the Customer, any person who accepts the Invoice as Customer and the successors in title, legal personal representatives, assigns, employees, servants and agents of the Customer. Where more than one person is included in the term "Customer" they will be jointly and severally liable.
3. "Delivered" means that the Goods and Services have been delivered to the Customer or delivered to the Customer and installed by System C Pty Ltd at the Customer's request. The receipt by System C Pty Ltd of a delivery acknowledgment signed by the Customer is sufficient evidence of delivery and installation.
4. "Delivery Date" means the date for delivery of a batch of Goods and Services.
5. "System C Pty Ltd" means the sole Trader System C Pty Ltd
6. "Goods and Services" means any goods and services supplied, or to be supplied, by System C Pty Ltd to the Customer.
7. "Insolvency Event" means any of the following events:
  1. the Customer becomes insolvent (or insolvent under administration) as defined in the Corporations Act 2001 (Cth), states that it is insolvent or is presumed insolvent under an applicable law;
  2. the Customer is wound up, dissolved or declared bankrupt or commits an act of bankruptcy; or

3. anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the other paragraphs of this definition,
8. unless the event occurs as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved in writing by System C Pty Ltd.
9. "Invoice" means a written invoice from System C Pty Ltd to the Customer for a batch of Goods and Services.
10. "Quotation" means a written quotation from System C Pty Ltd to the Customer for a batch of Goods and Services.
11. "Purchase Price" means the price specified for Goods and Services determined under clause 3.2.

### **3. PAYMENT FOR GOODS AND SERVICES AND QUOTATIONS**

1. A contract is made when System C Pty Ltd accepts an order and by supplying all or part of the goods or services ordered.
2. Unless System C Pty Ltd states otherwise, the Purchase Price will be specified in the Quotation, with such Purchase Price to be valid for orders placed within twenty one days from the date of the Quotation. After this time, the Purchase Price will be the price specified in the Invoice. Specified prices include System C Pty Ltd's standard packaging. System C Pty Ltd may charge extra for special packaging requirements.
3. The Customer must pay System C Pty Ltd the Purchase Price in Australian Dollars prior to the Delivery Date, unless terms of credit are agreed to in writing by System C Pty Ltd.
4. If the Purchase Price is not paid in full in accordance with clause 3.1 or agreed credit terms, then all amounts owed by the Customer to System C Pty Ltd become immediately due and payable, and the Customer must pay System C Pty Ltd a late payment fee calculated on the unpaid amount from the date that the unpaid amount became due and payable to the date that the unpaid amount is paid in full at a monthly rate of interest equal to 2% plus the Citibank Banking Corporation reference-lending rate per calendar month, calculated daily. The Customer is liable to reimburse System C Pty Ltd for all costs and expenses (including legal costs and mercantile agent fees) that System C Pty Ltd may incur in attempting to recover overdue amounts.
5. The Customer is not entitled to withhold payment of any amount due on account of any Claim against System C Pty Ltd whether or not admitted by System C Pty Ltd.
6. Unless otherwise specified, all prices are exclusive of any GST or other form of tax, which will be charged at the appropriate rate where applicable.
7. If Goods and Services are Delivered in instalments System C Pty Ltd may invoice on a pro rata basis as and when delivery of an instalment will be made, and payments will be due in respect of each instalment prior to Delivery.

### **4. DELIVERY OF GOODS AND SERVICES**

1. The Customer acknowledges that any Delivery Date is an estimate only and that, whilst System C Pty Ltd will use reasonable endeavours to deliver on or before the Delivery Date, System C Pty Ltd does not warrant or represent that delivery will be made on or before the Delivery Date. System C Pty Ltd will not be liable under any circumstances for any loss, damage or delay occasioned to the Customer arising from late or non-delivery and

the Customer will not be entitled to treat the agreement between System C Pty Ltd and the Customer as repudiated if Goods and Services are not delivered on or before the Delivery Date.

2. If System C Pty Ltd is unable to deliver Goods and Services to the Customer on or before the Delivery Date for any reason whatsoever beyond the control of System C Pty Ltd including but not limited to industrial dispute, a failure of a supplier of System C Pty Ltd to deliver, fire or Act of God, then System C Pty Ltd may:
  1. deliver those Goods and Services to the Customer after cessation of any such disabling event and these Terms will continue to have full force and effect as though the delivery was made on or before the Delivery Date; or
  2. rescind these Terms in which case the Customer will have no recourse against System C Pty Ltd except for a refund of any part of the Purchase Price paid in respect of those Goods and Services.
3. Where the Customer requests System C Pty Ltd to arrange for transportation of Goods, the Customer must pay for all carriage charges and expenses including cartage and insurance, unless otherwise agreed by System C Pty Ltd in writing.
4. Where Goods are transported by System C Pty Ltd or a contractor engaged by or on behalf of System C Pty Ltd, System C Pty Ltd will be under no liability whether in tort or contract for any loss or damage to those Goods or delay in delivery whether or not such loss, damage or delay is caused by the negligence or wilful act or omission of System C Pty Ltd or its contractors.

## 5. LIABILITY AND INDEMNITY

1. Any Claims by the Customer in respect of Goods and Services must be notified in writing by the Customer to System C Pty Ltd within seven days after Delivery and if the Customer does not do so, the Customer is deemed to forever release and discharge System C Pty Ltd from all Claims which relate directly or indirectly to those Goods and Services.
2. The Customer acknowledges and agrees with System C Pty Ltd that:
  1. Goods and Services Delivered are fit for the purpose for which they were ordered and/or purchased;
  2. System C Pty Ltd has given the Customer no warranty as to the fitness of Goods for any particular purpose or that Goods are of merchantable quality; and
  3. any term, warranty, condition, representation or obligation whether express or implied and whether as to quality, fitness for any particular purpose or otherwise relating to Goods which is not expressly stated herein is expressly excluded from these Terms to the extent permitted by law.
3. The Customer agrees that System C Pty Ltd, to the extent permitted by law, accepts no responsibility or liability whether in contract or tort (including negligence or breach of statutory duty) or otherwise for any loss, damage, cost or expense of any kind whether direct, indirect or consequential (including for loss of profits, business or anticipated savings):
  1. arising directly or indirectly out of or in respect of the use, custody or supply of Goods and Services; or
  2. caused directly or indirectly by the inadequacy, failure, breakdown, defect or deficiency of whatsoever nature or kind in the Goods or Services;

4. and the Customer releases System C Pty Ltd from all such related responsibilities and liabilities and related Claims.
5. The Customer indemnifies System C Pty Ltd against any liability, loss, damage, cost or expense suffered or incurred by System C Pty Ltd as a result of System C Pty Ltd taking any action or exercising any of its rights under these Terms, including but not limited to any debt collection costs and related legal costs.
6. The Customer will, to the extent permitted by law, indemnify and keep indemnified System C Pty Ltd against any Claims for loss, damage, cost or expense whether direct, indirect or consequential (including for loss of profits, business or anticipated savings) brought, made or threatened against System C Pty Ltd by any third party arising directly or indirectly out of or in respect of the use, custody, purchase or supply of Goods and Services.
7. If System C Pty Ltd is held liable in respect of Goods and Services for a breach of a condition or warranty implied by Division 2 of Part V of the Trade Practices Act 1974 (Cth), or equivalent statutes of any relevant jurisdiction any liability for such breach will be limited at System C Pty Ltd's option to any of the following as determined in the sole discretion of System C Pty Ltd: (a) a replacement of those Goods and Services or the supply of equivalent Goods and Services; (b) the payment of the value of the Goods and Services or of replacing the Goods and Services or of acquiring equivalent Goods and Services; (c) the repair or restoration of the Goods; or (d) the payment of the costs of having the Goods and Services repaired or restored.
8. For the avoidance of doubt, System C Pty Ltd does not guarantee fault-free, continuous or optimal service by supplying the Goods and Services to the Customer. In particular, and in addition to the limitations of liability otherwise set out in this clause 5, System C Pty Ltd takes no responsibility for any failure, breakdown, defect or deficiency in the Goods or Services caused directly or indirectly by suppliers to System C Pty Ltd or the Customer and which are beyond the control of System C Pty Ltd.
9. All costs to address issues arising from software, configuration or corruption issues will be charged at System C Pty Ltd's applicable rates. Such matters include, but are not limited to problems resulting from user interference or tampering, integrating equipment purchased from other vendors post-installation, loss of data and manufacturer's software bugs or defects.

## 6. RETENTION OF OWNERSHIP

1. Upon the first to occur of the Goods being Delivered or being placed with an independent carrier for Delivery, those Goods will be at the Customer's risk.
2. Notwithstanding clause 6.1, property in, and ownership of, Goods will remain with System C Pty Ltd and not pass to the Customer until the Customer has paid System C Pty Ltd for those Goods and related Services in full and has also paid System C Pty Ltd all other amounts owing on any account whatsoever by the Customer.
3. When property in, and ownership of, Goods has not passed to the Customer, the Customer will, from the time those Goods are Delivered, take custody of the Goods and retain custody of them as the fiduciary agent and bailee of System C Pty Ltd. The Customer will ensure that the Goods do not lose their identity as, and are clearly identifiable as, the property of System C Pty Ltd and are properly stored, protected and insured.

4. In the event that:
  1. the Customer fails to pay the Purchase Price for Goods and Services in full by the due date as determined under clause 3.1 or agreed credit terms;
  2. an Insolvency Event occurs;
  3. the Customer parts with possession of Goods held under clause 6.3; or
  4. the Customer breaches any of the other provisions of these Terms,
  5. System C Pty Ltd will have the immediate rights to:
  6. re-take possession of Goods held by the Customer under clause 6.3 without notice to the Customer and for that purpose System C Pty Ltd may enter upon any premises occupied by the Customer or any other place where such Goods are stored free from trespass; and
  7. sell Goods held by the Customer under clause 6.3 or not yet Delivered and apply the proceeds after defraying expenses of sale and enforcement in or towards reduction of amounts due and payable on any account whatsoever to System C Pty Ltd.
5. The Customer must allow representatives of System C Pty Ltd, free from trespass, to enter any premises where Goods held under clause 6.3 are stored and inspect such goods at any time.
6. If an Insolvency Event occurs in relation to the Customer, the Customer must immediately conduct a stocktake of all property belonging to System C Pty Ltd in the Customer's custody and provide System C Pty Ltd with access to the results of that stocktake.
7. System C Pty Ltd's rights under this part 6 in no way limit any other of its rights against the Customer.

## 7. CANCELLATION

1. The Customer may not cancel any orders unless:
  1. written notice of intention to cancel the order is given to System C Pty Ltd within seven days after the date of the order; and
  2. System C Pty Ltd (in its absolute discretion) notifies the Customer in writing that it agrees to accept the cancellation of the order; and
  3. the Customer pays System C Pty Ltd any amounts necessary, as determined by System C Pty Ltd, to indemnify System C Pty Ltd against all loss or damage resulting from the cancellation.

## 8. OTHER TERMS

1. This clause 8.1 applies where the Customer is a natural person or a business. System C Pty Ltd may collect information about the Customer including but not limited to its electronic contact details such as email ("personal information"). The Customer acknowledges and agrees that System C Pty Ltd may use the Customer's personal information to maintain a record of its dealings with the Customer and send commercial electronic messages to the Customer, as defined under the Spam Act 2003 (Cth). Unless the Customer asks System C Pty Ltd not to, System C Pty Ltd will use the Customer's personal information to provide information to the Customer about other goods or services System C Pty Ltd or its related bodies corporate, partners or associates may offer to the Customer, and to provide information to System C Pty Ltd's related bodies corporate,

partners and associates so that they can provide information to the Customer about goods and services they offer.

2. The Customer may not assign its rights or obligations contained in any agreement between System C Pty Ltd and the Customer to supply and purchase Goods without the prior written consent of System C Pty Ltd but any such agreement is assignable in whole or in part by System C Pty Ltd in its absolute discretion.
3. The Customer must (and must procure that its employees, agents and officers do) at all times use the Goods legally and according to the manufacturer's instructions, including by complying with the terms of any applicable licences or terms and conditions.
4. The Customer must inform System C Pty Ltd of any changes in its ownership, registered particulars or any other relevant information as soon as possible.
5. Notices or other communications to be given under these Terms will be deemed to have been sufficiently given if they are in writing and delivered by hand or sent by ordinary post or by being transmitted by facsimile.
6. These Terms will be governed by the laws of New South Wales and the Customer and System C Pty Ltd agree to submit to the jurisdiction of the New South Wales Courts.
7. The Customer agrees and acknowledges that it has read and fully understood these Terms and agrees to be bound by them.

Last updated 1/7/2010