

## STANDARD TERMS AND CONDITIONS OF THE CONTRACT

### 1. DEFINITION

The "Company" means Essential Technology Services Pty Ltd.

The "Purchaser" means the party to whom this Contract is addressed.

The "Contract" means this offer by the Purchaser to purchase Equipment as set out in this Contract of which the Standard Terms and Conditions of the Contract form a part.

The "Equipment" means items of equipment which are described in the Contract and which the Purchaser offers to purchase.

"Manufacturer's Warranty Period" means the period of the manufacturer's warranty (if any) specified by the manufacturer.

The "Price" means the price specified in this Contract for the purchase of Equipment, and including both Equipment and labour.

The "Site" means the address and location of installation of the Equipment as specified in this Contract

### 2. SALE OF EQUIPMENT

The Company agrees to sell the Equipment to the Purchaser and the Purchaser agrees to purchase the Equipment from the Company upon the terms and subject to the conditions of this Contract.

### 3. ORDERS

The Company shall not be bound to supply to the Purchaser any order for the Equipment made pursuant to this Contract unless and until the Company has accepted the order in writing.

The purchaser may specify a delivery date and commissioning date for the Equipment when entering into this Contract with the Company. The Company shall use its best endeavours to meet delivery schedules but shall not be liable for any delays beyond its control.

### 4. PRICES AND PAYMENT TERMS

4.1 Unless specified differently in the order, the Price shall be due and payable by the Purchaser to the Company as follows:

A) Payment of 90% of the value of the Contract prior to delivery of the Equipment

B) The balance of the value of the Contract upon commissioning the Equipment into operation.

4.2 If delivery is delayed by the Purchaser for whatever reason, the amount stipulated in Clause 4.1 (a) and the balance of the value of the Contract shall be payable on the date the Equipment is available for delivery (as long as this date is on or after the commissioning date specified by the Purchaser, if any date was specified).

4.3 All monies due to the Company are to be paid to the Company's office at North Ryde, unless finance has been arranged by the Purchaser, in which case all monies due are to be paid to the finance company according to terms and conditions set out in a separate agreement with the finance company.

4.4 The purchaser agrees to pay interest on overdue accounts at the rate of 0.3 percent (%) per day on the balance outstanding.

4.5 The Purchaser shall not cancel any order for the Equipment made pursuant to this Contract without the Company's prior written consent. The Company reserves the right to retain the 10% deposit as a condition of consenting to cancellation of the order by the Purchaser.

4.6 The Purchaser shall not return any item of the Equipment for credit or exchange without the Company's prior written approval.

4.7 The Price of the Equipment in this order will be held firm for the Purchaser provided that delivery and commissioning dates are within 30 days of this Contract being entered into. Price variation resulting from changes in taxes and duties subsequent to the Contract being entered into are excluded from the operation of this Clause.

4.8 The Company reserves its right to render all or part of the Equipment inoperative if full payment is not received on the due day of commissioning. The Purchaser acknowledges and declares that it will not be entitled to make any claim whatsoever or howsoever arising against the Company for any damages arising as a result of the Company rendering the Equipment inoperative in the event of non-payment.

## **5 DELIVERY, INSTALLATION AND TRANSFER OF EQUIPMENT**

- 5.1 The Company shall, during its normal business hours, deliver to, install and commission the Equipment at the Site.
- 5.2 The Company may specify a delivery and commissioning date but this is given as an estimate only and the Company does not guarantee or assume responsibility for failure to comply with any such date and the Company shall not be liable for any such delay.
- 5.3 The Purchaser shall provide the power requirements specified by the Company for the Equipment and shall be responsible in every respect for the cost of so providing power and for the reliability of the power so provided.
- 5.4 The Purchaser shall be responsible for ensuring that all necessary connecting facilities have been approved by Telstra.
- 5.5 Any Equipment sold by the Company shall be at the Purchaser's risk as and from delivery to the Purchaser or at the Purchaser's direction, whether title has passed or otherwise. Upon delivery (including prior to commissioning) the Purchaser shall be responsible for any loss or damage to the Equipment howsoever arising. The Purchaser hereby agrees to indemnify the Company for any loss sustained in any manner whatsoever by the Company in relation thereto.
- 5.6 Property in the Equipment shall not pass to the Purchaser until payment has been made in full by the Purchaser. The Company reserves the right to take possession of and dispose of the Equipment as it sees fit at any time until full payment has been made and the Purchaser hereby grants the permission to the Company to enter upon any land or premises where the Equipment is to do so and HEREBY APPOINTS the Company (and any duly authorised nominee thereof) as the duly authorised attorney of the Purchaser for the purpose of access to any land or premises where the equipment stored, installed or in operation.
- 5.7 Until payment is made in full the Purchaser agrees to keep all such Equipment as fiduciary for the Company and to store them in a manner which clearly shows the Company as owner.
- 5.8 Each part of the Equipment shall be deemed to be a chattel notwithstanding any affixation to any premise.
- 5.9 If at any time prior to payment in full the Purchaser commits any breach of its obligations hereunder or becomes bankrupt or commits an act of bankruptcy or calls any meeting of its creditors or enters into a meeting is called or convened for the purpose of considering such a resolution or if a Receiver or Manager is appointed then the Company may at its own option cancel the Contract and the Purchaser shall deliver up to the Company the Equipment or such part thereof as has been delivered. The Company shall be entitled to retain any deposit paid by the Purchaser for such Equipment.
- 5.10 The Company retains title to any and all software supplied with the Equipment including documentation developed and revealed in sale or service of its goods. Copyright is similarly retained and reproduction is expressly forbidden unless permission is given by the Company in writing. The Company shall extend a royalty free non-exclusive licence to the Purchaser for use of such software related to the Equipment concerned for the period during which the Equipment remains in the Purchaser's direct control.

## **6 TRAINING AND SUPPORT**

- 6.1 The Company shall use all reasonable commercial efforts to provide the Purchaser at the Site with training in the use and operation of the Equipment as the company deems reasonable and necessary and has been agreed with the Purchaser. However, any training of operators of the equipment shall be the Purchaser's responsibility to arrange, and shall be at the Purchaser's cost.
- 6.2 The Company will provide manuals for the proper operation use and upkeep of the Equipment. The Purchaser acknowledges that the proper observation of the manuals and each and every direction or advice given therein must be proven as a condition precedent to any action being taken against the Company whatsoever or howsoever arising concerning the Equipment.

## **7 MAINTENANCE**

- 7.1 The Purchaser acknowledges that the sole obligation for proper maintenance of the Equipment rests with the Purchaser and that maintenance must be by properly skilled and trained personnel. The purchaser further acknowledges that until a maintenance contract is entered into with the Company in writing, that there shall be no implied agreement placing any obligation whatsoever upon the Company to maintain the Equipment in any way.

## **8 WARRANTY**

- 8.1 The Purchaser shall be entitled to the benefit of the manufacturer's warranty (if any) in respect of each item of the Equipment for the duration of the Manufacturer's Warranty Period. This Manufacturer's Warranty Period shall begin on the date of commissioning of the Equipment.
- 8.2 Such Equipment which fails during the Manufacturer's Warranty Period for reasons due to wear and tear, negligence, neglect or default on the part of the Purchaser or third parties is excluded from warranty.
- 8.3 All Equipment included under Warranty and in need of repair or replacement will be repaired or replaced free of charge upon delivery to the Company. The Purchaser is required to pay the cost of delivery.
- 8.4 Any warranty given does not extend to any equipment other than that supplied by the Company, nor does it extend to Equipment maintained otherwise than by properly trained personnel or interfaced other than in accordance with the conditions specified by the Company.
- 8.5 The Purchaser shall have no rights under warranty until payment in full has been made for the Equipment.

## **9 LIABILITIES**

- 9.1 The liability of the Company under the Contract or otherwise or pursuant to any warranties terms or conditions which arise or are implied pursuant to the provisions of the Trade Practices Act and which may not be excluded shall be limited to the repair or replacement of any faulty or defective Equipment as the case may be, save insofar as any such limitation cannot be imposed. All other terms, conditions and warranties which might but for this sub-clause arise or be implied are expressly excluded. Without limiting the generality of the foregoing, the Company shall not be liable for any damage whatsoever or howsoever arising including (inter alia) indirect or consequential loss or damage which the Purchaser or any other party may sustain nor shall the Company be liable for any defect caused in whole or in part by Telstra or any other service provider and any of their servants agents and employees.
- 9.2 The Company shall not be under any liability in relation to any Equipment which has been maintained or tempered with by any persons who are not properly trained.

## **10 GENERAL**

- 10.1 The Company may, in its absolute discretion, and upon such terms and conditions as the Company may determine, allow the Purchaser to substitute a third party as purchaser of the Equipment, provided that this Contract shall continue to bind the Purchaser notwithstanding that it is contemplated by the parties that the Purchaser may obtain some form of finances in respect of its purchase of the Equipment under this contract, and/or that pursuant to this Contract a finance company may be substituted for the Purchaser as purchaser of the Equipment.
- 10.2 The Company may sub-contract for the performance of any of its obligations under this contract.
- 10.3 This Contract supersedes all prior agreements and understandings, including oral representations, between the parties relating to the Equipment and is intended by the parties as the complete and exclusive statement of the terms of this Contract and may be modified only in writing signed by the parties. In the case of any discrepancy between this Contract and any other document this Contract shall prevail.
- 10.4 Where this Contract has been signed on behalf of the Purchaser by any person, that person warrants that he/she has authority to complete this Contract on behalf of the Purchaser and to bind the Purchaser accordingly.
- 10.5 The Company may elect to waive any of its rights under this Contract but no such waiver shall affect the Company's rights in respect of any further or continuing or recurring breach or event.
- 10.6 In the event of any delays or prevention in performance by the Company due to any cause arising from or attributable to any Act of God or to any event beyond the reasonable control of the Company (including but not limited to delays in obtaining Telstra and/or statutory authority approval, strike, lockout, civil commotion, war, fire, explosion, storm, earthquake, failure of plant, compliance with government authority, inability to obtain suitable materials, components, labour, power, failure in delay in delivery or shipment on the part of the manufacturer of the Equipment, stock shortages or any other things beyond the Company's reasonable control) the Company shall be under no liability for loss or injury suffered by the Purchaser thereby and delivering and commissioning date(s) shall be postponed during the period of such delay or prevention.
- 10.7 In the event that any part of these terms and conditions is void, voidable, illegal or otherwise unenforceable it may be severed there from and the remaining provisions of these terms and conditions shall remain in full force and effect.
- 10.8 This Contract shall be governed and construed in accordance with the laws in force in the State of New South Wales and any dispute or litigation arising in relation to this Contract shall be dealt with in the appropriate New South Wales court in Sydney.
- 10.9 Words denoting the singular shall include the plural and vice versa. Words denoting any gender shall include all genders.