

**CSTV Pty Ltd**

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Email: info@cstv.com.au**CSTV PTY LTD****TERMS OF TRADE****PLEASE NOTE:**

IN THE EVENT THAT THE SUPPLIER SELLS GOODS AND/OR PROVIDES SERVICES TO THE CUSTOMER OTHERWISE THAN AS A RESULT OF THE CUSTOMER COMPLETING A CREDIT ACCOUNT APPLICATION THEN THESE TERMS OF SALE SHALL BE CONSTRUED WITHOUT REFERENCE TO A CREDIT ACCOUNT APPLICATION HAVING BEEN COMPLETED BY THE CUSTOMER BUT OTHERWISE THAN IN THIS REGARD ALL OTHER TERMS AND CONDITIONS IN THESE TERMS OF TRADE APPLY TO ANY SUCH SALE OF GOODS AND/OR PROVISION OF SERVICES BY THE SUPPLIER TO THE CUSTOMER.

1. Nature

These Terms of Trade although part of the Credit Account Application are also the Terms of Trade in relation to each sale of goods and/or provision of services by the Supplier to the Customer. The Supplier is under no obligation to supply goods and/or services. The Customer acknowledges and agrees that these Terms of Trade may be altered by amendment and/or deletion at any time by the Supplier and such amended Terms of Trade shall thereupon apply to each sale of goods and/or provision of services thereafter unless a quotation by the Supplier has been provided to the Customer (including the current Terms of Trade) and such quotation has been accepted by the Customer in accordance with its terms and conditions (whereupon the Terms of Trade applicable to the quotation shall apply to the subsequent delivery of goods and/or provision of services). All invoices raised by the Supplier in consequence of an order shall include the then current Terms of Trade.

2. Parties

The **Supplier**, where appropriate, includes the employees, agents, subcontractors, successors and assignees of and any entity claiming through or under the Supplier. The **Customer** means the legal entity that has completed an Credit Account Application and is purchasing or agreeing to purchase goods and/or services of the Supplier and includes the employees, agents, sub- contractors and successors of and any entity claiming through or under the Customer.

3. Prices, Credits, Quotations, Cancellations and Taxes

- 3.1 All prices for goods and/or services are in accordance with the Suppliers' published price list from time to time are subject to change without notice unless the price is expressly stated to be fixed in a quotation (and then only if the quotation is accepted in accordance with its terms). The Supplier may set a minimum total order invoice value for any one order.
- 3.2 All quotations of the Supplier are valid only if in writing and then for thirty (30) days from the date of issue unless a shorter or longer period is stated in the quotation. No order, whether resulting from a quotation or otherwise, will result in a binding contract until the order is accepted in writing by the Supplier or by delivery of the goods and/or the

provision of services by the Supplier to the Customer pursuant to an order. Each accepted quotation and delivery pursuant to an order creates a separate contract.

- 3.3 The Supplier has the discretion to apply additional terms of trade to these Terms of Trade depending upon the nature and quantity of the goods and/or the services being provided and this is particularly so in relation to goods and/or services being provided by the Supplier as a result of a collaborative effort between the Supplier and the Customer, or, where the Supplier is building to the specification of the Customer.
- 3.4 All prices are expressed to be inclusive of goods and services tax (GST) but if a price is expressed to be exclusive of GST, then GST (and in either case any other taxes and statutory charges levied in relation to the goods sold and/or services provided) shall be added to the price.
- 3.5 The Supplier may in its absolute discretion require payment of a deposit, pre-payment and/or the provision of a Bank Guarantee or Bond (on terms satisfactory to the Supplier) particularly as regards orders that are out of the ordinary course of business either because of the type of goods ordered or services requested; the time of delivery; and/or any special requirements of the Customer. Despite an accepted Credit Account Application it is in the Supplier's absolute discretion whether or not to supply goods and/or services on credit to the Customer. If credit is extended by the Supplier to the Customer then unless otherwise agreed in writing, payment is due by the end of the calendar month following the calendar month in respect of which the invoice was raised to the Customer. The Supplier may, by notice in writing at any time, withdraw or vary the terms on which credit is offered or given.
- 3.6 The Customer must pay all direct and indirect costs incurred by the Supplier on cancellation of any order by the Customer for any reason.

4. Delivery of Goods and Conditions

- 4.1 Unless otherwise expressly agreed between the Customer and the Supplier the Supplier may use any mode of transport to deliver the goods; may substitute one mode of transport for another; and may use any sub-contractor or agent to effect delivery. The Supplier reserves the right to charge at its sole discretion the cost of packaging and delivery. The Supplier may agree to deliver goods to an address other than the Customer's Nominated Address of the Customer, in which case the Customer shall pay all additional transport costs.
- 4.2 Whether or not the goods have been supplied as a result of a quotation issued by the Supplier or otherwise, delivery of the goods is subject in all cases to the availability of the goods and the Supplier will not be liable for any charges, costs and/or expenses because of a failure to deliver due to the unavailability of the goods.
- 4.3 Whether the place of delivery is or is not at the Customer's Nominated Address and the Customer is not present at the time of delivery, the Supplier may nevertheless at its discretion proceed to unload the goods, and all costs occasioned by a failed delivery are to the account of the Customer. If for any reason, the goods cannot be delivered then the Supplier may in its discretion suspend delivery until the issues relevant to delivery are resolved to the satisfaction of the Supplier. That suspension will not be a breach of the contract and the time or period for delivery will be extended accordingly.
- 4.4 The Customer must provide at all times safe access to and upon the Nominated Address and the Customer must comply with all applicable regulations as to the safe handling, storage and disposal of the goods.

- 4.5 Delivery of the goods is deemed to have been made by the Supplier and the Customer is deemed to have accepted the goods with the risk in the goods having passed to the Customer upon either the loading of the goods onto the Customer's transport (in the case of delivery from the Supplier's premises) or upon loading of the goods onto the Supplier's transport for delivery to the Customer's Nominated Address or other address (in all other cases).
- 4.6 Insurance of the goods during the delivery and transit process may be arranged by the Supplier at the request of the Customer but at the sole cost of the Customer.
- 4.7 The provisions of this clause are subject to all statutory provisions to the contrary (including but not limited to any rights that the Customer may have under the Australian Consumer Law). Any statements as to suitability, quality, fitness for purpose, capacity or otherwise in relation to the goods and/or services to be supplied in any documents issued by the Supplier do not form part of any contract between the Customer and the Supplier unless specifically agreed to in writing by the Supplier. The Customer warrants that it has satisfied itself by means other than information provided by the Supplier as to the quality and fitness for purpose of the goods offered for sale before the Customer requested a quotation and/or placed an order in respect of them. Notwithstanding the generality of these warranties on the Customer's part the Customer acknowledges that it has not relied upon any particular specification (including performance) of the goods whether generally or with respect to particular applications and/or in particular environments. For example, where composite materials comprising goods are used in high performance applications, for example, yacht and motor vehicle racing or other high performance pursuits involving high loadings and tensions the Customer acknowledges that those goods have not necessarily been designed with high safety margins commensurate with the high performance that such goods are or are intended to be used in. The Customer acknowledges that in the design and manufacture of such goods low safety margins have been applied commensurate with ordinary use and not use in the nature of high performance or involving high loadings and intentions. The Customer acknowledges that performance of such goods will be affected by varying environmental conditions (including temperature) as well as the competence and experience of those persons in possession of and using such goods together with the level of recurrent maintenance so as to ensure that the goods are properly maintained for their intended purpose.
- 4.8 It is the responsibility of the Customer at the time of delivery of the goods to undertake inspections of the goods so as to determine the correct quantity of the goods delivered; that they confirm to the description given in the delivery docket; and to satisfy the Customer of their general state and condition.

5. Information and Change in Circumstances

- 5.1 The Customer must advise the Supplier in writing of any material change in its business structure and/or financial circumstances within 7 days of the change occurring.
- 5.2 The Supplier may from time to time require financial or other trading information concerning the ongoing creditworthiness of the Customer and the Customer must promptly supply that information which the Supplier may require to be provided as a pre-condition to the supply of goods and/or services.

6. Delivery of Goods and Provision of Services by Installments or Stages

Where by a contract the Supplier is to deliver goods by installments or supply services by stages (and whether or not the price for either is paid by installments corresponding to each delivery or supply), each installment or stage shall be treated as a severable contract and whether or not there is one contract in respect of the delivery of all the goods or all of the services.

7. Account Closure

The Supplier reserves the right to request payment of all current and forward orders upon closure of the Commercial Credit Account or sale of the business of the Customer. The

Supplier requires not less than seven (7) days written notice prior to the Customer closing the Credit Account.

8. Product Development.

The Supplier's goods are constantly evolving through market and technical research and development and the Supplier reserves the right to change specifications and/or discontinue goods at the Supplier's sole discretion.

9. Title to Goods.

The goods remain the absolute property of the Supplier until the whole of the price therefore is paid in full provided that:

- (a) the Customer may sell the goods in the ordinary course of its business as agent for the Supplier and will hold the proceeds of sale on trust for the Supplier; and
- (b) the Customer agrees that until any sale by the Customer in the ordinary course is made:
 - (i) the Customer possess the goods as bailee for the Supplier and, if the goods are incorporated into other goods, those goods are, to the extent possible, held by the Customer on trust for the Supplier; and
 - (ii) the Customer shall return the goods to the Supplier on demand.

10. Non-payment, Breach, Costs and Interest

10.1 If the Customer:

- (a) makes any representation or provides any information to the Supplier that is incomplete, untrue and/or misleading;
- (b) does not pay the Supplier for goods and/or services as provided when payment is due;
- (c) defaults in its performance of any of these Terms of Trade or any other terms and conditions in a quotation issued by the Supplier or otherwise specified by the Customer;
- (d) becomes bankrupt, insolvent or subject to any external administration, or proposes or threatens to become so;
- (e) ceases to conduct its business or ceases to conduct its business as a going concern or proposes or threatens to do so, or
- (f) advises the Supplier of a change in its financial circumstances which in the Supplier's opinion may materially affect the Customer's ability to perform all of its obligations owed to the Supplier;

THEN the Supplier may in its absolute discretion suspend further performance hereunder and any related corporation of the Customer may do likewise and for such time as it determines, or it may terminate the contract with the Customer. In the event of default by the Customer, all amounts payable by the Customer to the Supplier (and on any contract) will automatically and immediately become due and owing to the Supplier. The Supplier may, for the purpose of recovering possession of the goods enter onto the premises where the goods are located without notice. The Customer shall pay all legal expenses (on a solicitor and client basis) and any other expenses incurred by the Supplier in collecting overdue moneys or in the enforcement of these Terms of Trade with the Customer.

10.2 Further to the provisions of clause 10.1 above the Supplier reserves the right to charge the Customer an account management fee at the rate of twelve (12) per centum per annum calculated upon the balance of moneys due and payable to the Supplier from time to time ("**the Money's**") and from the date the Moneys should have been paid and up to the time all of the Moneys are paid. The Customer acknowledges that this is a genuine pre-estimate of the financial loss to the Supplier of the Moneys not being paid on time and reflects the direct and indirect cost to the Supplier.

11. **Supplier Liability**

The Customer may have rights under the Australian Consumer Law which are not affected by these Terms of Trade. The provisions of this clause 11 are to be read subject to those rights and subject to any other statutory provisions contrary to the provisions of this clause 11. To the fullest extent permitted by law: -

- 11.1 If the Customer asserts any alleged defect or irregularity whether with respect to quantity, description, condition or otherwise of the goods and/or services provided, the Customer must give telephone notice to the Supplier within 72 hours of receipt of the goods and/or provision of services and written notice within 14 days of the invoice date, (which notice is to contain sufficient particulars of the alleged defect or irregularity). The Supplier will only consider claims made after those times in its absolute discretion and its decision will be final and binding on the Customer. The Customer must obtain a return authorisation number from the Supplier prior to the actual return of the goods. Any packaged goods can be returned only in their original and complete package and must be in a good and saleable condition.
- 11.2 The liability of the Supplier, if any, for failure to comply with a guarantee in respect of goods will be limited to the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired, as the Supplier may in its complete discretion choose.
- 11.3 The Supplier's liability for failure to comply with a guarantee in regard to services is limited to the supplying of the services again; or the payment of the cost of having the services supplied again, as the Supplier may in its complete discretion choose.
- 11.4 To the extent permitted by law, all guarantees, warranties, undertakings or representations express or implied and whether arising by statute, international convention or otherwise are expressly excluded. The Supplier will not be responsible for any re-installation, travel and/or other ancillary or consequential costs related to defective goods and/or services.
- 11.5 The Customer acknowledges and agrees that specially made to order or specification goods cannot be returned.
- 11.6 The Supplier will not be liable in any way (including for negligence) for loss of or damage (including indirect and/or consequential loss and damage) to or misdelivery of, or failure to deliver or delay in the delivery of the goods and/or services through any reason whatsoever. In particular no warranty or representation is made as to changes in the quality and/or performance of goods after delivery, including their corrosion resistance and durability of finish (especially as to those goods that are exposed to the elements) and any and all terms and conditions in these respects are expressly excluded; and
- 11.7 The Customer shall indemnify and keep indemnified the Supplier against all and any liabilities, claims, losses, damages and costs of whatsoever kind and howsoever arising in relation to any use made of the goods and/or services by or on behalf of the Customer (including any re-supply of the goods and/or services by the Customer to third parties).

12. Non-waiver of Breach

If the Supplier does not act in relation to a breach by the Customer of any of these Terms of Trade or of any additional terms of trade of a relevant contract (including an accepted quotation), this does not waive the Supplier's right to act with respect to that breach or subsequent or similar breaches.

13. Preservation of Rights.

The termination of any contract between the Supplier and the Customer on any account whatsoever does not in any way prejudice or affect the rights, duties or obligations of the parties under any such contract that may have arisen before the date of termination.

14. Intellectual Property.

To the full extent permitted by law, the Supplier exclusively reserves and the Customer acknowledges the Suppliers right to all copyright, trademarks, industrial designs, patents and any other industrial and intellectual property rights in the Suppliers goods, drawings, designs, diagrams, schemes, plans, publications and other documents, discoveries, improvements and inventions that comprise, relate to or arise out of the goods and/or the services provided. The Customer shall not copy, use or allow any third party to copy or use any of the foregoing without the Supplier's prior written consent.

15. Force Majeure.

If by reason of any fact, circumstance, matter or thing beyond the reasonable, foreseeable and practical control of the Supplier, the Supplier is unable to perform in whole or in part any of its obligations to the Customer, then the Supplier will be relieved of that obligation to the extent and for such period that it is unable to perform and will not be liable to the Customer in respect of such inability.

16. Time of the Essence.

Where an obligation is imposed on the Customer by these Terms of Trade, or the relevant contract, (including an accepted quotation) time is of the essence.

17. Severance

If any of these Terms of Trade or additional terms of trade of a relevant contract (including an accepted quotation) is invalid or unenforceable, it will be struck out and the remaining terms and conditions will remain in full force and effect.

18. Remedies Law and Jurisdiction and Other Remedies

- 18.1 The exercise of any remedy herein shall be without prejudice to any other right or remedy available to either party.
- 18.2 All contracts for the sale of goods and/or services by the Supplier to the Customer shall be deemed to have been made in New South Wales and the laws of that State shall govern its construction and interpretation.
- 18.3 Each party hereby submits to the exclusive jurisdiction of the Courts of New South Wales and waives any objection to proceedings in such Courts.

19. Confidentiality

The Customer must maintain the commercial confidentiality of the terms of all quotations and accepted orders and all trade and commercial secrets of the Supplier and of any other commercially sensitive or valuable commercial or technical information of the Supplier in whatever form received by the Customer ("**Confidential Information**") and may only use Confidential Information for the purposes of the Customer's contracts with the Supplier and any other related dealings between the Supplier and the Customer.
