

# Terms and Conditions of Supply of Products and Services of SuperIT Pty. Ltd.

<p>These Terms and Conditions and any document(s) referred to in them constitute the entire agreement about SuperIT's supply of the Products and Services to the Client and supersedes all prior understandings, arrangements, representations and agreements. Words used in these Terms and Conditions which have special meanings are given capital letters and are defined in clause 1.A reference in these Terms and Conditions to:-</p> <p>a. The singular includes the plural and vice versa; and b. The word "including" means "including, but not limited to," and the word "includes" means "includes, without limitation,".</p> <p><b>1. Definitions</b> In these Terms and Conditions. "SuperIT" means SuperIT PTY. LTD. (ABN 58 095 871 275) "Client" means the person, business, company or other legal entity that is the purchaser of the Products and Services. "Products" means the Products supplied to the Client by SuperIT and described in the Sales Invoice, "Sales Contract" means any sales contract entered into by the Client and SuperIT in respect of the Products and Services supplied to the Client in which these Terms and Conditions are or are deemed to be incorporated; "Sales Invoice" means the sales invoice issued by SuperIT in respect of the Products and Services supplied to the Client in which these Terms and Conditions are or are deemed to be incorporated; "Services" means the services (if any) provided to the Client by SuperIT and described in the Sales Invoice; and</p> <p><b>2. Orders</b> a. SuperIT may reject any order placed by the Client if there is an insufficient supply of Products which prevents SuperIT from being able to fulfill such order. b. SuperIT will not be bound by any terms and conditions attaching to the Client's order and, unless those terms and conditions are expressly agreed in writing by an authorised representative of SuperIT, the Client agrees that those terms and conditions are excluded. c. SuperIT reserves the right to change and or correct prices, product availability and specifications due to any factors (refer point 10) without notice.</p> <p><b>3. Payment</b> a. The price of the Products and Services will be SuperIT quoted price. b. Terms of payment are net 14 days c. SuperIT may, at its sole discretion may: i. suspend the provision of credit to the Client until all amounts owing are paid for in full; and/or ii. from time to time and at any time, vary or cancel any credit facility it makes available to the Client. d. Unless stated otherwise in these Terms and Conditions (or in writing by an authorised representative of SuperIT ), all prices quoted for Products and Services are exclusive of all taxes, handling, delivery, agents' charges and any other charge, duty or impost.</p> <p><b>4. Delivery</b> The delivery times made known to the Client are estimates only and SuperIT will not be liable for late delivery or non-delivery. Under no circumstances will SuperIT be liable for any loss, damage or delay suffered or incurred by the Client or its Clients arising from late or non-delivery of the Products.</p> <p><b>5. Part deliveries</b> SuperIT may make part deliveries of any order. and each part delivery will constitute a separate supply of the Products upon these Terms and Conditions.</p> <p><b>6. Inspection and acceptance</b> The Client must inspect all Products upon delivery to the Client premises and must, within 5 days of delivery, give notice to SuperIT of any matter or thing by which the Client alleges that the Products are not in accordance with the Client's order. Failing such notice and to the extent permitted by law, the Products will be deemed to have been delivered to and accepted by the Client.</p> <p><b>7. Title and risk</b> a. Products supplied by SuperIT to the Client will be at the Client's risk immediately upon delivery of the Products to the address stated in the Client's purchase order. b. Risk in the Products will remain with the Client at all times unless SuperIT retakes possession of the Products in accordance with clause 7(e)(ii). c. Title in the Products supplied by SuperIT to the Client will not pass to the Client until those Products and any other products supplied by SuperIT to the Client have been paid for in full. d. Until the Products have been paid for in full, the Client may sell the Products and keep records of the Products in the ordinary course of its business as agent for SuperIT and must account to SuperIT for the proceeds of sale (including any proceeds from insurance claims). e. If the Client has breached these Terms and Conditions (including any payment obligations) or the terms of any relevant Sales Contract, the Client authorises SuperIT at any time, to enter onto any premises upon which SuperIT Products are stored to enable SuperIT to:- i. inspect the Products; and/or ii. (a) retake possession of the products (see clause 7(e)(ii)) at which time a rental fee of 60% of the invoice face value will be due and payable. Further, any and all charges and costs incurred by SuperIT Pty. Ltd. or its agents in the recovery of the products and the rental fee are to the Client's account. OR (b) Interest will be charged from the end of the trading term until full payment is received by SuperIT Pty. Ltd. The rate of interest charged being the Bankcard or Visa card rate, whichever is the higher. Further, any and all charges and costs incurred by SuperIT Pty. Ltd. or its agents in the recovery of the outstanding amount are to the Client's account. f. The Client agrees that the provisions of this clause 7 apply despite any arrangement under which SuperIT grants credit to the Client.</p> <p><b>8. Returns</b> a. Where SuperIT approves the return authority (RA) request a restocking fee of 20% may apply, all returns for credit that are accepted must be in the original packaging and unopened or credit will be denied. b. The Client must notify SuperIT of any Products it wishes to return within 7 days from the date of the invoice relating to those Products. At the discretion of SuperIT's directors, custom spare parts (special orders, non-stock or non-returnable items) are non-returnable and non-refundable.</p>	<p>c. Returns will be subject to SuperIT returns policy as advised to the Client and amended by SuperIT from time to time d. Each claim for the return of Products by the Client will be dealt with in accordance with the Returns Policy Any substitute Products to be shipped to the Client in accordance with the Returns Policy will be sent by SuperIT to the Client by ordinary freight pre-paid. If the Client requests that the Products be sent by means other than ordinary freight, the extra cost of such accelerated or special freight must be paid by the Client. e. SuperIT will not be liable for any damage or defects in the Products that have been caused by the improper storage, warehousing or transport. or by any neglect, abuse or improper use, installation, maintenance or unauthorised repair. f. The provisions of this clause 8 do not extend to any Products which have been added to, modified, varied or changed by any person or party other than SuperIT.</p> <p><b>9. Loss or damage in transit</b> SuperIT is not responsible for any loss or damage to Products in transit by the Client's carrier whether shipping from or returning to SuperIT.</p> <p><b>10. Force majeure</b> If the performance or observance of SuperIT obligations under these Terms and Conditions or any relevant Sales Contract is prevented, restricted or affected by a force majeure event including strike, lock out, industrial dispute, raw material shortage, breakdown or plant, transport or equipment or any other cause beyond the reasonable control of SuperIT , SuperIT will give notice of such cause to the Client and after 60 days from the receipt by Client of such notice, either party may terminate the relevant Sales Contract without penalty.</p> <p><b>11. Client's cancellation</b> a. Unless otherwise agreed in writing, the Client will not have the right to cancel an order which has been accepted by SuperIT. b. If a Client's right of cancellation is agreed to by the parties in writing, the right must be exercised by notice in writing from the Client to SuperIT not later than 7 days before the estimated date of shipment by the manufacturer or SuperIT (as the case may be). c. Unless otherwise agreed between the Client and SuperIT, upon cancellation prior to shipment, any deposit paid by the Client will be forfeited to SuperIT.</p> <p><b>12. Default of Client</b> Without prejudice to any other rights that SuperIT has under these Terms and Conditions, if the Client fails to make any payment due to SuperIT under these Terms and Conditions, SuperIT may, in its sole discretion, and without further liability to the Client:- a. Refuse to make further supplies to the Client under the relevant Sales Contract and/or b. Terminate the Sales Contract without notice.</p> <p><b>13. Warranty</b> a. Warranty period on all spare parts supplied is 90 days, return to base. (RTB) b. SuperIT will notify the Client of any applicable manufacturers' warranty in relation to the Products to the extent permitted by law, SuperIT entire responsibility with respect to warranties for the Products is to pass on to the Client the benefit of any such warranties. c. To the extent permitted by law, the manufacturers' warranties referred to in clause 13(a) are in substitution for all other terms, conditions and warranties, whether implied by statute or otherwise (including any implied warranties with respect to merchantability, fitness for purpose or quality, and whether as to design, assembly, materials or workmanship) and all such terms, conditions and warranties are expressly excluded from these Terms and Conditions. d. Certain legislation may imply warranties or conditions or impose obligations upon SuperIT which cannot be excluded, restricted or modified or cannot be excluded, restricted or modified except to a limited extent. These Terms and Conditions must be read subject to those statutory provisions. If those statutory provisions apply, to the extent to which SuperIT is able to do so, its liability will be limited, at its option, to:- i. in the case of Products. The replacement of the Products or resupply of equivalent Products; the repair of the Products; the payment of the cost of replacing the Products or acquiring equivalent Products, or the payment of the cost of having the Products repaired; and ii. in the case of Services. The supply of the services again; or the payment of the cost of having the services supplied again.</p> <p><b>14. Liability</b> a. To the extent permitted by law, SuperIT will not be liable to the Client or any other person under any circumstances for any loss of use, profit, revenue, interest, goodwill or data, or for any injury or death to any person, or for any indirect, incidental or consequential damages sustained or incurred by the Client, whether such liability arises directly or indirectly as a result of: i. any negligent act or omission or willful misconduct of SuperIT or its employees or agents; ii. the supply, performance or use of any Products or Services; or iii. any breach by SuperIT of its obligations under these Terms and Conditions or any relevant Sales Contract. b. SuperIT does not promise that repair facilities or parts will be available in respect of the Products.</p> <p><b>15. Credit assessment</b> a. If any Products and Services are supplied to the Client on credit, SuperIT may need to disclose to a credit reporting agency certain information referred to in clause 15(c) about the Client when assessing the Client's application for credit and managing the Client's trading account with SuperIT .The Client authorises SuperIT to disclose such information to a credit reporting agency for these purposes. b. Subject to SuperIT obligations under the Privacy Act 1988 and any other applicable laws, SuperIT may give the information referred to in clause 15(c) to a credit reporting agency to obtain a consumer credit report about the Client or to allow the credit reporting agency to create or maintain a credit information file about the Client. The Client agrees that SuperIT may disclose a credit report about it to any credit provider, debt collecting agency or SuperIT insurers for the purposes of assessing the Client's credit-worthiness or to collect any overdue payments (as the case may be). c. SuperIT may disclose the following information relating to the Client in accordance with clauses 15(a) and (b): i. the Client's name and address; ii. credit limits on the Client's accounts; iii. the amount of any payments which are overdue for at least 45 days, iv. where an overdue payment has been previously reported, advice that the payment is no longer overdue, v. cheque payments which have been dishonoured;</p>	<p>vi. information that, in the opinion of SuperIT the Client has committed a serious credit infringement, and vii. information that SuperIT has ceased to supply the Products and Services to the Client</p> <p>d. The Client agrees that SuperIT may obtain information about the Client from any business which provides information about the commercial credit-worthiness of persons for the purposes of assessing the Client's application to purchase the Products and Services on credit and collecting any overdue amounts. e. SuperIT may refuse to supply the Products and Services to the Client on credit on the basis of SuperIT credit assessment of the Client.</p> <p><b>16. Privacy</b> a. The Client agrees to SuperIT collecting, using and disclosing information about the Client of the kind referred to in clause 15(c) for various purposes, including to:- i. assess credit worthiness as outlined in clause 15; ii. supply the Products and Services to the Client and the management of the Client's trading account, iii. communicate with the Client about the Products and Services which SuperIT or its partners or affiliates may provide to the Client, iv. implement these Terms and Conditions and any Sales Contract; and v. comply with the requirements of relevant laws. b. SuperIT, at the written request of the Client, will:- i. provide the Client with access to any personal information relating to the Client held by SuperIT and ii. correct or amend any personal information relating to the Client held by SuperIT which is inaccurate or out of date. c. SuperIT will handle the Client's personal information in accordance with the requirements of relevant laws.</p> <p><b>17. Intellectual property</b> a. The Client acknowledges that. i. all trademarks, trade names, patents, copyright, registered designs and other intellectual property rights ("Intellectual Property") embodied in or in connection with the Products and any related information, documentation, parts or software are the sole property of SuperIT or its suppliers; and ii. all Intellectual Property of SuperIT or its suppliers, may only be used by the Client with the consent of SuperIT or its suppliers, during the continuance of any relevant Sales Contract, and such consent extends only to use essential for the purposes stated in it, Upon the expiry or termination of the Sales Contract, the Client must discontinue such use. The Client acknowledges that any licensing of Intellectual Property rights in any software supplied to the Client will immediately cease upon expiry or termination. b. The Client must not, during or after the expiry or termination of the any relevant Sales Contract without the prior written consent of SuperIT or its suppliers, register or use any trade marks, trade name, domain name, trading style or commercial designation or design used by SuperIT or its suppliers in connection with the Products or Services, nor will the Client repackage any Products, reproduce any artwork appearing on the package of any Products or copy, sell or hire or offer for sale or hire a copy of the Products. c. The Client will indemnify SuperIT against all liabilities, damages, costs and expenses which SuperIT may suffer or incur as a result of work done in accordance with the Client's specifications or as a result of the combination or use of the Products with other equipment, parts or software not supplied by SuperIT, and which results in the infringement of any Intellectual Property of any person.</p> <p><b>18. Confidentiality</b> a. The Client acknowledges that SuperIT has disclosed and may from time to time disclose to the Client certain confidential information and documentation of SuperIT relating to the Products, their marketing, use, maintenance, operation and software (including technical specifications) ("Confidential Information"). b. Subject to clause 18(e), the Client must i. only use the Confidential Information solely for the purposes contemplated under any relevant Sales Contract, and ii. not, during the continuation of such Sales Contract or thereafter, disclose (whether directly or indirectly) to any third party the Confidential Information, other than is required to carry out such purposes. c. If disclosure of SuperIT's Confidential Information to third parties is necessary, the Client will obtain from such third parties binding agreements to maintain in confidence the Confidential Information disclosed at least to the same extent as the Client is bound to protect SuperIT Confidential Information under this clause 18. d. Upon the expiry or termination of any relevant Sales Contract, the Client must cease to use and must return or destroy (as SuperIT may instruct) SuperIT's Confidential Information in its possession or control. The Client will not itself or through any subsidiary, agent or other party sell, market, distribute, manufacture or otherwise deal with the Products or have such Products manufactured for it based on the Confidential Information or any other technical information provided to it by SuperIT in accordance with these Terms and Conditions. e. The provisions of this clause 18 do not extend to any information which is i. at the time of disclosure, rightfully known to or in the possession or control of the Client and which is not subject to an obligation of confidentiality, ii. public knowledge (otherwise than as a result of a breach of this clause 18 or any other obligation of confidentiality), iii. consented or approved to be disclosed by SuperIT, or iv. required to be disclosed by a government authority or by the requirements of relevant laws.</p> <p><b>19. General</b> a. SuperIT may amend these Terms and Conditions at any time, by giving the Client notice by mail, e-mail or by posting a notice on SuperIT's public website. By continuing to place orders for Products and Services after these Terms and Conditions are amended, the Client will be deemed to have accepted the revised Terms and Conditions. b. Any provision of these Terms and Conditions which is invalid, void, voidable or unenforceable will be read down to the extent necessary, and the remaining provisions will continue unaffected. c. The Client may not assign or attempt to assign any of its rights and obligations under these Terms and Conditions. SuperIT may assign its rights and obligations under these Terms and Conditions to any person. d. These Terms and Conditions are governed by the laws of the State of New South Wales. The Client submits to the non-exclusive jurisdiction of the courts of that State.</p>
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