

Direct Memory Access Pty. Ltd.

A.C.N 065 932 238 A.B.N 69 500 836 953

5 Carbon Court, Osborne Park, WA 6017

Tel: 08 9204 7000 Fax: 08 9445 9504

Terms and Conditions of Trading

BETWEEN

Direct Memory Access Pty Ltd

AND

Customer Name : _____

Telephone : _____

Date : _____

Total Number of Pages : 6

PS: Please fill out and send back or fax to DMA the signed copies together with proof of your business registration.

TERMS AND CONDITIONS OF TRADING

1. INTERPRETATION

1.1 In these terms and conditions:

- (a) **'DMA'** means Direct Memory Access Pty Ltd of 5 Carbon Court, Osborne Park, WA
- (b) **'Customer'** means the customer whose name and address appear on the quotation or invoice.
- (c) **'Goods'** means all of the products and, if any, services supplied by DMA to the Customer as described on the purchase order agreed to by DMA and the Customer, or otherwise whatsoever.

1.2 Nothing in these terms and conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying and condition, warranty, guarantee, right or remedy implied by law (including, without limitation the *Trade Practices Act 1974* and the *Fair Trading Act 1987*) and which by law cannot be excluded, restricted or modified.

2. GENERAL

2.1 These terms and conditions form part of the sales agreement between DMA and the Customer, and prevail over all terms and conditions of the Customer's order to the extent of any inconsistency between the two.

3. TERMS AND CONDITIONS OF SALE

3.1 The Goods and all other products sold by DMA to the Customer are sold on these terms and conditions of trading.

4. VENDOR'S QUOTATIONS

4.1 Any quotation made by DMA to the Customer shall not constitute offer to sell and any order made pursuant to any quotation shall not bind DMA unless such an order is expressly accepted by DMA.

5. PACKING

5.1 The cost of any special packing and packing materials used in relation to the Goods shall be at the Customer's expense notwithstanding that such cost may have been omitted from any quotation.

6. DELIVERY

6.1 The Customer shall take delivery of Goods at the Customer's nominated delivery address. The delivery times made known to the Customer are estimates only and DMA is not liable for late delivery or non-delivery. DMA is not liable for any loss, damage or delay occasioned to the Customer or its customers arising from late or non-delivery or late installation of the Goods.

6.2 For All Orders requiring delivery by DMA to the Customer, DMA will impose a handling charge for such Customer, to be determined and charged to the customer at the discretion of DMA.

7. LOSS OR DAMAGE IN TRANSIT

7.1 DMA is not responsible for any loss or damage to Goods in transit. DMA shall give the Customer such assistance as DMA may regard as reasonably necessary to press claims against carriers provided that the Customer:

- (a) notifies DMA and the carriers in writing within 24 hours of the receipt of the Goods; and
- (b) lodges a claim against the carrier within 3 days of the date of receipt of the Goods.

8. PRICES

- 8.1 All prices quoted by DMA are those listed on DMA's current price list. The price list is subject to change without notice. Customers should check the current price and availability of items before ordering. Unless otherwise stated, all prices quoted by DMA are exclusive of GST, insurance and freight.

9. PAYMENT

- 9.1 The purchase price in relation the Goods is payable in full on delivery of the Goods. All payments must be made in cash unless the Customer has been trading with DMA for 3 months or if DMA agrees otherwise, after 3 months trading between DMA and the Customer, acceptable forms of payment are cash, bank cheques, company cheques and direct deposit. DMA reserve the right to refuse payment by personal cheques unless accompanied by identification, which DMA may (in its absolute discretion), consider acceptable.

- 9.2 Customers who have been authorised and have made prior arrangement with DMA, may deposit payment of the purchase price for Goods directly into DMA's bank account unless otherwise notified, The banking details for DMA are:

BANK: National Australia Bank

BRANCH: Osborne Park

ACCT NAME: D.M.A

BSB#: 086 420

ACCT#: 64103 7006

- 9.3 Customers paying DMA for goods purchased by credit card will incur an administration fee. This fee will be shown as an additional line on the invoice and is calculated as a percentage of the total cost of goods and other additional charges exclusive of GST. Mastercard & Viscard Payments attract a 2% Surcharge, while American Express attracts a 3% Surcharge.

10. PROVISION OF CREDIT

- 10.1 The provision of credit by DMA to the Customer, and the terms of such credit, is at the absolute discretion of DMA. Without prejudice to the generality of the foregoing:

- (a) DMA may in its absolute discretion extend and/or continue to extend credit to the Customer subject to the provision of such details as DMA may require; or
- (b) DMA may in its absolute discretion extend and/or continue to extend credit to the Customer subject to the provision of security whether by personal guarantees or other security in a form which is acceptable to DMA; or
- (c) DMA may in its absolute discretion cancel or vary credit made available to the Customer in which case the Customer shall forthwith pay to DMA the cash amount of the credit withdrawn.

11. REFUNDS

- 11.1 All refunds made by DMA shall be made by way of cheque unless the Customer paid for the Goods or products sold by DMA in cash and has expressly requested a cash refund.

12. RETURN OF GOODS FOR CREDIT

- 12.1 Subject to the following conditions, the Customer may return Goods to DMA and receive credit.
- (a) DMA shall not be under any obligation to accept Goods returned by the Customer and will do so only on terms to be agreed in writing in each individual case.
 - (b) The Goods must be returned with the original packing and in a merchantable condition to be determined by DMA.
 - (c) DMA shall be entitled to charge the Customer a restocking fee of 15% if items are returned for credit for reasons other than the item exhibiting a Genuine Fault or Incompatibility.
 - (d) If a credit return is accepted by DMA credit note is issued to Customer by DMA no less than one working day after such acceptance.

13. RETENTION OF TITLE IN GOODS

- 13.1 DMA shall remain the legal and beneficial owner of Goods delivered to the Customer and property in the Goods shall not pass to the Customer until payment by the Customer to DMA of all money owing by the Customer to DMA.
- 13.2 The Customer takes possession of the Goods as a trustee and bailee of DMA and agrees to keep the Goods separate from the Customer's own and that of third parties and properly and separately stored, protected and insured until payment in full to DMA.
- 13.3 In the event that the Customer fails to pay any sum owed to DMA in respect of the Goods or commits and act of bankruptcy or a receiver or receiver and manager or a controller or managing controller is appointed or the Customer goes into liquidation, voluntary administration or some other form of insolvency administration whether formal or informal or the Customer proposes or enters into a scheme or compromise or arrangement or deed of company arrangement with the Customer's creditors or the Customer ceases to carry on business then, without prejudice to any other rights of DMA, DMA is entitled to enter immediately onto the Customer's premises at any time and retake possession of all Goods and the Customer hereby expressly authorises and agrees to DMA being entitled to enter into the Customer's premises for such purpose.
- 13.4 At all times DMA or its assignee shall be entitled to recover from the Customer the value of the goods as invoices, as a liquidated sum. Any Expenses, costs or disbursements incurred by DMA in recovering any outstanding monies, including debt collection agency fees and solicitor costs, shall be paid by the debtor and in the case of payments to DMA's solicitors on an indemnity basis.
- 13.5 DMA authorises the Customer to sell or use Goods in the ordinary course of the Customer's business and upon such use or sale:
- (a) as between DMA and the Customer, the Customer sells the Goods on behalf of and as bailee and trustee for DMA;
 - (b) as between the Customer and any third party, the Customer sells as principal;
 - (c) the Customer shall hold an account for the whole of the proceeds of the such sales separately and upon trust for DMA; and
 - (d) DMA shall be entitled to the whole of the proceeds of such sale provided that the Customer shall be entitled to deduct amounts from the sale proceeds held on trust, but only to the extent that the remaining sum held on trust is not less than the amount of the purchase price of the Goods sold.

14. GOODS AND SERVICES TAX

- 14.1 DMA will always charge the Customer and the Customer will pay to DMA the Goods and Services Tax (GST) payable on the supply of the Goods by DMA to the Customer according to the current tax rate laid down by the Australian Taxation Office.

15. WARRANTY

- 15.1 DMA warrants that Goods are free from defect in workmanship and materials for a period of 12 months from the date of invoice to the Customer unless otherwise stated by the Manufacturer. Subject to the following conditions of warranty, if the Goods fail to operate for any reason within the warranty period and the Goods are returned to the place of purchase at the Customer's expense, DMA will repair or replace the Goods free of charge:
- (a) The Goods must be returned to DMA with proof of purchase and a copy of a Tax Invoice.
 - (b) The Goods must be returned with anti-static and foam packaging intact.
 - (c) The Goods must not have been altered in any way.
 - (d) Failure of the Goods must not be due to misuse, improper installation, and connection to the wrong voltage or any other abuse.
 - (e) DMA will not be responsible for damage or loss to Goods caused during shipping.
- 15.2 Apart from any warranties implied by the *Trade Practices Act 1974*, the *Fair Trading Act 1987* (WA) and/or Part V of the *Sale of Goods Act 1895* (WA), all other warranties express or implied and whether arising by virtue of statute or otherwise are hereby excluded.
- 15.3 Any repair of Goods undertaken by DMA, which are found to be faulty due to abuse, misuse or improper installation, shall be charged to the Customer at DMA's current hourly rate for required labour.
- 15.4 DMA will supply replacement Goods not less than 2 working days after the receipt of returned Goods. Where the Customer requires immediate replacement, DMA shall be entitled to charge the Customer for the additional cost of doing so. .
- 15.5 The Customers acknowledges that it can take up to eight weeks for DMA to replace returned Goods.
- 15.6 If by reason of stock shortage or discontinued lines, no exact replacement Goods can be supplied by DMA, then DMA reserve the right to supply a substitute that is as close an equivalent to the replacement Goods as is available to DMA or issue a credit to the customer.

16 CUSTOMER'S PROPERTY

- 16.1 Any property of the Customer under DMA's custody or control shall be entirely at the Customer's risk as regards loss or damage caused to the property or by it.

17 STORAGE

- 17.1 DMA reserves the right to make a reasonable charge for storage if sufficient delivery instructions are not provided by the Customer.

18 GOODS SOLD

- 18.1 All Goods to be supplied by DMA are as described on the purchase order agreed by DMA and the Customer. That description prevails over all other descriptions including any Customer's specification or inquiry.

19 CONSIGNMENT

- 19.1 When the Goods are shipped to the customer as consignment Goods, such Goods shall remain property of DMA.
- 19.2 The Customer must keep such consignment Goods separate from their own Goods and shall be responsible for their usual duties as xxxxx of the same at common law.
- 19.3 The Customer shall return consignment Goods to DMA within 7 days of request by DMA.

20 LIABILITY

- 20.1 DMA will not be liable for any lost revenue, profit or data caused by the use of the Goods. It is the Customer’s responsibility to ensure that data stored in or associated with the Goods is adequately protected or backed up.
- 20.2 Except insofar as they cannot be excluded or limited, all warranties terms and conditions whether express or implied by statute, common law or trade custom or usage or otherwise, are hereby expressly excluded.
- 20.3 To the extent that any term, warranty or condition cannot be excluded, such term, warranty or condition is, to the extent permitted by law, limited to the:
 - (a) repair of Goods;
 - (b) replacement of Goods or the supply of equivalent Goods; or
 - (c) payment of the cost of either (a) or (b).

21 CANCELLATION

- 21.1 All orders must be collected within 7days of invoice. Uncollected orders may be cancelled without notification to the customer.
- 21.2 Special Order items may not be cancelled by the customers as these are goods generally not part of DMA’s standard inventory. The Customer will be liable for losses resulting from such cancellation.

22 WAIVER

- 22.1 The failure by DMA to enforce any of these terms and conditions does not constitute a waiver of DMA’s rights to enforce them.

23 SEVERABILITY

- 23.1 To the extent that any one or more of the provisions herein contained is prohibited by any applicable law, such provisions shall to such extent be ineffective without invalidating or modifying the remaining provisions which shall continue in full force and effect as if the provisions so prohibited had not been included.

24 GOVERNING LAW

- 24.1 All sales made under these terms conditions of trading shall be deemed to have been made in the State of Western Australia and the construction, validity and performance of such sales is governed by the law for the time being in force in that State. The parties agree to submit to the exclusive jurisdiction of the Courts of Western Australia.

I acknowledge having read and understood the above terms and conditions.

Company: _____

| Signature(s) of Director(s): | Print Name | Witness | Date |
|------------------------------|------------|---------|-------|
| 1. _____ | _____ | _____ | _____ |
| 2. _____ | _____ | _____ | _____ |
| 3. _____ | _____ | _____ | _____ |