



TERMS AND CONDITIONS OF SALE

1. Definitions

In these terms and conditions unless the context requires otherwise:

Contract means a contract for the sale of Goods to the Customer, which arises in accordance with clause 2 of these Terms

Cubis means Cubis Systems Australia Pty Ltd (ACN 108 718 350) trading as CUBIS Systems

Customer means the customer whose details appear in the Purchase Order and/or the Invoice

Financing Statement has the meaning given to it by the PPSA

Financing Change Statement has the meaning given to it by the PPSA

Goods means goods which the Customer has agreed to purchase from Cubis, details of which are contained in an Invoice

Invoice means a tax invoice describing the Goods which Cubis is selling to the Customer

Price means the price payable in respect of the Goods, as specified in the Invoice

Purchase Acknowledgement means a written communication from Cubis to the Customer which confirms that Cubis accepts the Customer's order for the Goods

Purchase Order means an order for the Goods provided by the Customer to Cubis

PMSI means a "purchase money security interest" as that phrase is defined in the PPSA

PPSA means the *Personal Properties Securities Act 2009* (Cth)

PPSR means the Personal Properties Securities Register

Related Entity has the meaning given to it in the *Corporations Act 2001* (Cth)

Terms means these terms and conditions of sale

Terms of Credit means Cubis' Commercial Credit Application and Terms and Conditions of Credit

Warranty means any manufacturer's warranty provided to the Customer by Cubis in relation to the Goods

Website means the Cubis website at <http://www.cubis-systems.com.au>

2. Contract

2.1. These Terms, together with the Terms of Credit (if applicable), form the agreement between Cubis and the Customer in relation to the supply by Cubis of Goods to the Customer. If the Customer has its own terms and conditions of trade, the Customer agrees that these Terms and the Terms of Credit (if applicable) shall prevail.

2.2. In the event of any inconsistency between these Terms and the Terms of Credit, these Terms shall prevail.

2.3. The Customer may order Goods from Cubis from time to time by providing a Purchase Order to Cubis, or in any other manner agreed to from time to time by Cubis.

2.4. Following receipt of a Purchase Order or order for Goods in a form approved by Cubis, Cubis will send a Purchase Acknowledgement to the Customer. Upon Cubis sending the Purchase Acknowledgement, or otherwise indicating to the Customer its agreement to supply the Goods for the Price, a contract arises between Cubis and the Customer for the supply of the Goods at the Price on these Terms, and if applicable, the Terms of Credit.

2.5. The Customer agrees that in the event of any inconsistency between a Purchase Order and these Terms, these Terms shall prevail.

2.6. The Customer is deemed to have adopted and accepted these Terms upon submitting an order for Goods to Cubis.

3. Price



- 3.1. The Customer must pay the Price in the manner set out in the Invoice.
- 3.2. If the Customer requests to vary or amend an order, including but not limited to a variation or amendment that requires Cubis to amend or prepare additional drawings, Cubis may increase the Price to account for the variation or amendment and issue an amended Invoice.
- 3.3. Where there is any increase in the costs incurred by Cubis in relation to an order that is outside the control of Cubis, Cubis may vary the Price by issuing an amended Invoice to the Customer.
- 3.4. In the event of any inconsistency between a Purchase Order and an Invoice, the terms of the Invoice shall prevail.
- 3.5. If the Customer fails to make payment of any amount of the Price on the due date, the Customer must pay to Cubis interest on the full amount outstanding at the rate equal to 1.5% per month or part thereof as at the date on which the relevant payment is due to be paid, calculated monthly for the period from the due date until payment is received.
- 3.6. The Customer may not set off against the Price any amounts due from Cubis.

4. **Delivery and Force majeure**

- 4.1. The Customer may arrange to take delivery of the Goods at its cost from Cubis' premises. Alternatively, Cubis will deliver (or arrange for delivery of) the Goods to the Customer's address at the Customer's cost as specified in the Purchase Order and/or the Invoice. The Customer must make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. Cubis is not responsible for any loss or damage to the Goods during delivery.
- 4.2. If a delivery is cancelled by the Customer within 24 hours of the agreed delivery date, a delivery cancellation fee of \$600 plus GST will be charged to the Customer.
- 4.3. If deliveries are not accepted as agreed and the Goods are required to be returned to Cubis for storage pending redelivery, additional delivery charges will be payable by the Customer at a rate of \$220.00 per hour or part thereof plus GST calculated from the time the Goods are loaded for delivery until the time they are returned to Cubis and offloaded for storage.
- 4.4. Sixty (60) minutes on site has been allowed in the Price for each delivery. Any time on site, including waiting time or offloading time, in excess of 60 minutes will be charged at \$220 + GST per hour or part thereof.
- 4.5. Unless specified otherwise in the Invoice, delivery and freight charges are not included in the Price, and are payable by the Customer at the same time as the Price is due to be paid.
 - 4.5.1.
- 4.6. Notwithstanding anything to the contrary in these Terms, no order may be cancelled, varied or suspended and no Goods may be returned by the Customer without the prior written consent of Cubis. Cubis may withhold its consent in its absolute unfettered discretion. Should Cubis agree to the return of any Goods, the Customer shall pay to Cubis a restocking fee equal to 25% of the Price of the Goods, plus all transport costs incurred by Cubis in relation to the Goods (including the initial costs to deliver the Goods and any costs to return the Goods to Cubis).
- 4.7. Cubis does not guarantee supply of Goods or the time of supply and will not be liable to the Customer or any third party for any inability to fulfil all or part of any order. If Cubis is unable to supply the Customer with the Goods or the quantity of the Goods which the Customer requires or in the time that the Customer requires then, as soon as



reasonably practicable after it becomes aware of this, Cubis will notify the Customer specifying the details and/or quantity of the Goods that Cubis is unable to supply and/or the estimated date for delivery.

- 4.8. Cubis will use all reasonable endeavours to comply with the Customer's particular delivery requirements. Where changes are made to the manufacturing processes or specifications of any Goods, however, the Customer may not cancel the whole or part of an order or claim compensation due to Cubis' failure to comply with its delivery requirements or minor variations to the Goods.
- 4.9. If the Customer does not accept delivery of the Goods on the agreed date for delivery, then the Customer acknowledges that Cubis will store the Goods at the Customer's risk (outside if necessary) and the Customer agrees to pay the Invoice for the Goods within the terms of that Invoice plus storage at the rate of \$10 per storage pallet per calendar day calculated from the date the Goods are ready for delivery.
- 4.10. Other than as described in any quotation given by Cubis to the Customer, Cubis is not required to provide to the Customer any documentation or information relating to the Goods and/or to demonstrate their compliance with any standards or specifications of any kind.
- 4.11. If for any reason beyond the control of Cubis, including without limitation, strike, trade dispute, fire, flood, accident, tempest, death, war declared or undeclared, blockade, governmental or quasi-governmental restraint, unavailability of Goods, loss or destruction of the Goods, delays in transport, pandemic or epidemic, or an act of God, an order cannot be filled at the time required by the Customer or at all, Cubis is not required to supply the Goods to the extent and for the period that it is so unable to supply the Goods, and Cubis is not liable to the Customer or any third party in respect of any inability on its part to perform its obligations.

5. **Withholding Supply**

- 5.1. Cubis reserves the right to withhold or refuse supply of Goods to the Customer, or to suspend production of Goods for the Customer on any account or order, where:
 - 5.1.1. Cubis has insufficient goods to fill an order;
 - 5.1.2. the goods specified in the Invoice have been discontinued;
 - 5.1.3. the Customer has failed to take delivery of any Goods on the agreed date for delivery;
 - 5.1.4. the Customer or any Related Entity of the Customer has unpaid invoices; or
 - 5.1.5. the Customer or any Related Entity of the Customer is in breach of these Terms or the Terms of Credit.
- 5.2. If Cubis withholds or refuses supply in accordance with clause 5.1, it shall not be liable for any losses or expenses (including but not limited to direct or consequential loss) suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, as a result of or in connection with that action.

6. **Return of Goods**

Subject to the terms of any Warranty and the Customer's rights (if any) under the Australian Consumer law:

- 6.1. the Customer must notify Cubis if any Goods delivered under a Contract are defective or are otherwise in breach of these Terms within three (3) days of delivery. If the Customer does not give the requisite notice to Cubis within this time frame, the Customer is deemed to have waived its rights in respect of such Goods; and



6.2. if Cubis accepts a notice from the Customer in accordance with clause 6.1, Cubis' sole obligation is, at its option, either:

6.2.1. to replace the Goods with non-defective Goods; or

6.2.2. to refund to the Customer such part of the Price paid by the Customer which is referable to the defective Goods.

7. Retention of Title

7.1. The Customer acknowledges and agrees that property in and title to any Goods remains with Cubis and does not pass to the Customer until Cubis receives payment in full of all money owing by the Customer to Cubis on any account.

7.2. Cubis and the Customer further agree that until property in and title to the Goods pass to the Customer:

7.2.1. the Customer must hold the Goods as the bailee of Cubis;

7.2.2. if required by Cubis, the Goods must be kept separate and identifiable;

7.2.3. if the Customer fails to make any payment in accordance with the Contract, Cubis may give notice in writing to the Customer to return the Goods to Cubis and, if the Customer fails to return the Goods, Cubis is hereby authorised to enter the Customer's premises or the premises of any agent at which the relevant Goods are located, without liability for trespass or any resulting damage, and retake possession of the Goods, and either keep or resell the Goods;

7.2.4. the Customer may sell the Goods to a third party in the ordinary course of the Customer's business, provided that:

7.2.4.1. the Customer must hold all proceeds from the sale or disposal of the Goods on trust for Cubis in a separate account from the Customer's own money; and

7.2.4.2. the Customer must account to Cubis for the proceeds of the sale or disposal of the Goods until the Customer's total indebtedness to Cubis is discharged;

7.2.5. in the event that the Customer has sold the Goods to a third party and has defaulted in payment to Cubis for such Good, the Customer;

7.2.5.1. agrees to provide full details of the third party to Cubis;

7.2.5.2. consents to Cubis seeking payment directly from the third party, or Cubis entering into a separate contract with the third party for the sale of the Goods;

7.2.5.3. forgoes any beneficial right to payment for the Goods from the third party, and will do all such things necessary to direct the third party to make payment for the Goods directly to Cubis; and

7.2.5.4. will remain liable for the entire payment of the Goods until such time as the full debt is paid to Cubis, including being liable for any shortfall in payment by the third party.

7.2.6. in the event that the Goods are converted into or intermingled with other products, property in and title to the end products vest in Cubis; and

7.2.7. the Customer may not charge the Goods in any way nor grant or otherwise give any interest in the Goods.



7.3. If Cubis takes possession of any Goods in accordance with clause 7.2.3, the Customer remains liable to pay the Invoice.

8. **Personal Properties Securities Act 2009**

8.1. The Customer acknowledges that these Terms together with any Purchase Order and Invoice:

8.1.1. constitute a security agreement for the purposes of the PPSA; and

8.1.2. create a Security Interest in all Goods described in the Purchase Order and/or Purchase Acknowledgement and/or the Invoice and/or all current and after acquired accounts as original collateral of the Customer.

8.2. The Customer acknowledges and agrees that Cubis may effect a registration on the PPSR in relation to any Security Interest arising under or in connection with these Terms, any Contract, or the Terms of Credit. The Customer acknowledges and agrees that Cubis' Security Interest in the Goods and proceeds is a PMSI to the extent that it secures payment of the amounts owing in relation to the Goods on any account.

8.3. The Customer agrees that it must:

8.3.1. promptly sign any further documents and/or provide any further information which Cubis may reasonably require to:

8.3.1.1. register a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPSR;

8.3.1.2. register any other document required to be registered by the PPSA; and

8.3.1.3. correct a defect in a statement referred to in clause 8.3.1.1 or 8.3.1.2;

8.3.2. indemnify, and upon demand reimburse, Cubis for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPSR or releasing any Goods or accounts charged thereby;

8.3.3. not register a Financing Change Statement in respect of any Security Interest without Cubis' prior written consent; and

8.3.4. not register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Goods or its accounts in favour of a third party without Cubis' prior written consent.

8.4. For the avoidance of doubt, the Security Interest extends to the Customer's present and after acquired accounts as original collateral. Section 55(4) of the PPSA applies in the event that any subsequent interest is registered in by any third party in respect of the Goods, or the Customer's accounts.

8.5. The Customer hereby waives its right to receive any notice under the PPSA (including notice of a verification statement) unless such notice is required by the PPSA and cannot be excluded.

8.6. If chapter 4 of the PPSA applies to the enforcement of a Security Interest arising under or in connection with this Agreement, the Customer agrees that the following provisions of the PPSA will not apply to the enforcement of that Security Interest:

8.6.1. section 95 (notice of removal of accession), to the extent that it requires Cubis to give the Customer a notice;



- 8.6.2. section 96 (when a person with an interest in the whole may retain an accession);
- 8.6.3. section 121(4) (enforcement of liquid assets - notice to grantor);
- 8.6.4. section 125 (obligation to dispose of or retain collateral);
- 8.6.5. section 130 (notice of disposal), to the extent that it requires Cubis to give the Customer a notice;
- 8.6.6. section 132(3)(d) (contents of statement of account after disposal);
- 8.6.7. section 132(4) (statement of account if no disposal);
- 8.6.8. section 142 (redemption of collateral);
- 8.6.9. section 143 (reinstatement of security agreement).

8.7. Where a person is a controller in relation to the Goods, Part 4.3 of the PPSA does not apply to the enforcement of any Security Interest in the Goods by that controller.

8.8. Expressions used in these Terms and in the PPSA have the same meanings as when used in the PPSA.

9. Risk

9.1. Risk in the Goods passes to the Customer upon the Goods being dispatched for delivery. The Customer accepts all risk involved in the use and/or possession of the Goods.

9.2. The Customer must insure Goods against all loss or damage, and Cubis' interest must be noted on such insurance policy.

10. Cancellation

Cubis may cancel any Contract or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. Cubis is not liable for any loss or damage whatever arising from such cancellation.

11. Exclusion of Warranties

11.1. This clause 11 only applies if the Australian Consumer Law does not apply to the Contract, for example if:

11.1.1. the Goods are purchased for the purpose of resupply or for the purpose of being used up or transformed in trade or commerce; or

11.1.2. the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption; or

11.1.3. the Price is higher than \$40,000.00.

Nothing in these Terms is intended to have the effect of excluding or limiting any consumer guarantees given by Cubis under the Australian Consumer Law.

11.2. Subject to clause 11.1, except as provided in these Terms and any Warranty and to the extent permitted by law, all implied conditions, guarantees and warranties (including guarantees or warranties as to merchantability and fitness for purpose) are expressed excluded.



- 11.3. Subject to clause 11.1, Cubis makes no representation or warranty in relation to any Goods not manufactured by Cubis, all of which (to the extent permitted by law) are sold to the Customer "as is". The Customer agrees to look solely to the Warranty (if any).
- 11.4. Warranties in relation to Goods are void if the Goods are not handled in accordance with Cubis' recommended handling and installation guidelines which are available on the Website.

12. **Limitation of Liability**

- 12.1. This clause 12 only applies if and to the extent that the Australian Consumer Law does not apply to the Contract. Clause 11.1 describes Contracts to which the Australian Consumer Law does not apply. Nothing in these Terms is intended to have the effect of limiting Cubis' liability under the Australian Consumer Law.
- 12.2. Subject to clause 12.1, Cubis accepts no responsibility and is not liable for any direct or indirect, special or consequential loss or damage or injury to any person, corporation or other entity in connection with a Contract or the Goods, howsoever caused.
- 12.3. Cubis accepts no responsibility and is not liable for any loss incurred in connection with the storage of any goods by Cubis.
- 12.4. To the fullest extent permissible by law and subject to clause 12.1 and the terms of any Warranty, Cubis' liability to the Customer is limited to the lesser amount of:
 - 12.4.1. the cost of replacing the Goods; and
 - 12.4.2. the cost of repairing the Goods,provided always that Cubis' liability will not exceed the amount paid or payable by the Customer under the relevant Contract.
- 12.5. The Customer agrees to handle the Goods only in accordance with Cubis' recommended handling and installation guidelines which are available on the Website. Cubis accepts no responsibility and is not liable for any damage caused to the Goods whether caused directly or indirectly as a result of the Customer, or its representatives, officers, agents, employees or subcontractors failing to handle or install the Goods in accordance with the recommended handling and installation guidelines.

13. **Intellectual Property**

- 13.1. The Customer acknowledges that no rights to any intellectual property in the Goods or any documentation, designs, drawings, or specifications prepared by Cubis (including, without limitation, patent, trademark, design, copyright or plant breeder's rights) are transferred to the Customer.
- 13.2. The Customer must notify Cubis immediately if the Customer's use of the Goods results in an actual or alleged infringement of a third party's intellectual property rights.
- 13.3. The Customer is solely responsible for any infringement of the intellectual property rights of any third party resulting from the Customer's use of the Goods, and the Customer must indemnify Cubis for any costs, expenses, damages or liability incurred by Cubis arising from any such infringement.

14. **Enforcement Expenses and Costs**



Any costs incurred by Cubis in demanding or collecting outstanding debts and/or enforcing its rights against the Customer (including, without limitation, the fees of any mercantile agents or solicitors appointed by Cubis, on a full indemnity basis) and any loss and damage suffered by Cubis as a result of a breach by the Customer of these Terms and/or the Terms of Credit is deemed to be a debt due from the Customer to Cubis and is payable in full by the Customer.

15. **Jurisdiction**

Any Contract between Cubis and the Customer is governed by the laws of the state of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria and any courts which may hear appeals from those courts in respect of any proceedings in connection with any Contract.

16. **Severability**

If any of these Terms is invalid or unenforceable in any jurisdiction, that Term must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining Terms or affecting the validity or enforceability of that Term in any other jurisdiction.

17. **Waiver**

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

18. **Assignment**

Cubis may assign any rights or benefits under these Terms and the Terms of Credit at any time. The Customer may not assign any rights or benefits under these Terms or the Terms of Credit without the prior written consent of Cubis, which may be withheld in its absolute unfettered discretion.

19. **Entire Agreement**

These Terms are to be read in conjunction with the Invoice, and Terms of Credit and these documents constitute the entire agreement between the parties. In the event of a conflict between these Terms and the Invoice, the Invoice will prevail.

20. **Agreement Binding on Successors**

These Terms are binding on the Customer, its successors, and legal personal representative.

21. **Amendments**

Cubis may amend these Terms at any time. All amendments will be posted to the Website without prior or separate notification. The Customer agrees to be bound by any amendments to these terms and conditions from the date they are posted to the Website. Cubis recommends that the Customer refers to the Website regularly to review the current terms and conditions of sale.