

# **NETTEX AUSTRALIA**

**Pty Limited**  
A.B.N. 37 002 538 892

## **CONDITIONS OF SALE**

### **1. DEFINITIONS**

In these Conditions of Sale;

- 1.1 "Conditions" means these Conditions of Sales;
- 1.2 "Contract" means a contract of sale arising out of an order accepted by the Seller in its absolute discretion;
- 1.3 "Customer" means the Applicant described in PART ONE of the Credit Application;
- 1.4 "credit card" means a card that can be used for purchasing goods or services on credit, or any other article commonly known as a credit card, including, but not limited to cards of the Mastercard, Visa, Bankcard, American Express and Diners Club credit card schemes;
- 1.5 "due date" means in relation to an invoice, the date on which the price of the goods (the subject of the invoice) must be paid and will be the date specified under "Term" in the invoice;
- 1.6 "goods" means any of the products of the Seller;
- 1.7 "invoice" means the invoice issued by the Seller in relation to a Contract setting out certain terms applicable to the Contract;
- 1.8 "order" means any offer, whether oral or in writing or electronic made by the Customer to the Seller to purchase goods from the Seller;
- 1.9 "PPSA" means the Personal Properties Securities Act 2009 (Cth) as amended from time to time;
- 1.10 "Seller" means Nettex Australia Pty Limited A.C.N. 002 538 892 A.B.N. 37 002 538 892;
- 1.11 GST has the same meaning as defined in the A New Tax System (Goods and Services Tax) Act 1999 as amended or replaced from time to time and any associated legislation including without limitation delegated legislation.

### **2. CONTRACT**

- 2.1 Every Contract is governed by these Conditions and the terms of the invoice which constitute the entire agreement between the Customer and the Seller.
- 2.2 The Seller may at any time after the giving of at least 14 days notice to the Customer, vary these Conditions. The Conditions as varied will not apply to any Contracts already in existence.
- 2.3 If there is inconsistency between the terms of an invoice and these Conditions, these Conditions will prevail.

### **3. PRICES, DISCOUNT AND INTEREST**

- 3.1 Prices set out in all invoices are (unless otherwise expressly stated) payable in Australian currency on or before the due date and do not include GST which is to be added if applicable.
- 3.2 The Seller may from time to time issue a list of the prices at which the Seller is willing to sell its goods in relation to certain orders. The list of prices is subject to change without notice.
- 3.3 The Seller may allow the Customer a discount or rebate on the price of goods, provided that if payment for any goods previously delivered to the Customer has not been received by the Seller on or before the due date the discount or rebate will be automatically cancelled without further notification.
- 3.4 The Seller is entitled to charge the Customer:
  - (a) interest at a rate of two percent (2%) per annum above the maximum overdraft rate for amounts over \$100,000 charged by any branch of Westpac Banking Corporation (or such other trading bank as may be notified by the Seller in writing from time to time) on any amount outstanding as at the due date calculated from the day after the due date until the amount in question is paid in full;
  - (b) bank fees, commissions or any other bank charges charged to the Seller on presentation of any cheque, promissory note or other bill of exchange of the Customer which must be paid to the Seller on demand;
  - (c) if the Seller is liable for GST in relation to the sale of the goods or any other "Supply" as that term is defined in A New Tax System (Goods and Services Tax) Act 1999, the consideration payable by the Customer will be increased by an amount calculated by multiplying the price or the amount of the other "Supply" by the rate of GST;
  - (d) a surcharge in relation to certain orders. The surcharges will be included in the list of prices referred to in clause 3.2 and are subject to change without notice. Notwithstanding anything in this Clause the Seller is not obliged to afford the Customer any indulgence to make payment after the due date;
  - (e) an administration charge of \$25.00 where any cheque, bill of exchange or promissory note given to the Seller by the Customer is not honoured on first presentation which must be paid to the Seller on demand;
  - (f) an administration fee of 2.5% of the purchase price of any goods sold to the Customer (for accepting payment by credit card) which must be paid on the due date. The credit card administration fee is subject to change upon notice being provided by the Seller to the Customer on the terms set out in clause 2.2; and
  - (g) bank fees, merchant fees, commissions or any other bank charges, charged to the Seller as a result of payment being made by the Customer by way of credit or debit cards which must be paid to the seller on demand.

### **4. ORDERS**

- 4.1 All orders accepted by the Seller will be executed at the Customer's sole risk.
- 4.2 A customer is not entitled to countermand any order except with the written consent of the Seller and on terms which will indemnify the Seller against any loss or damage resulting from the countermand of the order by the Customer.
- 4.3 The party signing the Customer's Credit Application and the party placing an order, severally warrant that they are authorised by the directors of the company for whom they act or purport to act, to bind their company to these Conditions.
- 4.4 Where the Seller has authorized the Customer to place orders electronically the provisions of clause 4A also apply.

### **4A. INTERNET ORDERS**

- 4A.1 In this clause 4A:

"Password or Passwords" means one or more confidential alphanumerics provided by the Customer to the Seller.  
"PIN Number or PIN Numbers" means one or more confidential alphanumerics provided by the Customer to the Seller, one or more of which when used with a matching Password allows the Customer to place an order at the Seller's web site.
- 4A.2 The Customer may place an order electronically at the Seller's web site <http://www.nettex.com.au/> (or such other URL as the Seller may advise the Customer).
- 4A.3 The Customer will be liable for any order placed electronically for which a correct PIN Number and Password have been provided. The customer acknowledges that the Seller cannot verify by way of signature or otherwise whether an order quoting a correct PIN Number and Password is the Customer and that a correct PIN Number and Password allow anybody using them to place an order in the name of the Customer.
- 4A.4 The Customer must ensure that the PIN Numbers and Passwords are kept secure and not disclosed to anyone except the Seller or authorized employees of the Customer.
- 4A.5 If the Customer suspects a breach of security of its PIN Number or Password, the Customer must notify the Seller of the breach of security and must ensure that the Password or PIN Number are changed.

### **5. DELIVERY**

- 5.1 Unless otherwise agreed, delivery will be made at the Seller's premises and the Customer must at its cost collect the goods at the Seller's premises when called upon to do so by the Seller.

- 5.2 Time will not be of the essence of each Contract. Any delivery date quoted by the Seller will be approximate only. If no delivery date is quoted then the Seller will deliver the goods as soon as it can conveniently do so.
- 5.3 No claim of any nature will lie against the Seller for goods lost or damaged in transit through whatever cause, including negligence, and any carrier of the goods will be deemed to be the agent of the Customer even where such carrier has been engaged by the Seller.
- 5.4 All claims in respect of goods delivered, including a claim for short delivery of goods for reasons other than those set out in clause 5.3 and clause 6.4, must be made in writing and delivered to the Seller within 7 days of the delivery of the goods (whether or not at the Sellers premises), failing such claim the Customer will be deemed to have accepted the delivery of the goods and will be deemed to have waived its right to claim against the Seller.
- 5.5 Strikes, differences with workmen, accidents to or failure of machinery, failure of usual sources of supply of materials, war, civil commotion, acts of terrorism, commercial exigencies, acts of government or quasi government or legislation, or other contingencies beyond the control of the Seller, will be sufficient excuse for any delay in or suspension of delivery of an order. The Seller may with the consent of the Customer cancel the order, after which the Customer will have no further claim on the goods. If the order is not so cancelled, the Seller will complete delivery as soon as possible.
- 5.6 If the Seller delivers the goods at the direction of the Customer to a place other than to the premises of the Seller pursuant to clause 5.1 then the Customer must pay all the transportation charges for delivery of the goods (including freight charges). The transportation charges will be payable by the Customer to the Seller within 7 days from the date of the demand by the Seller.

## 6. RETURNS

- 6.1 Goods returned without the consent of the Seller will not be accepted for credit and the Seller will be entitled to:-
  - (a) return the goods at the Customer's expense to the Customer which expenses will be payable on demand by the Seller; or
  - (b) hold the goods as a pledge in respect of the Customer's indebtedness to it, whether liquidated or not, and sell the goods and apply the proceeds of sale to the amount owing by the Customer.
- 6.2 For the purpose of clause 6.1 the consent means
  - (a) written consent, or
  - (b) a Return Number provided by the Seller to the Customer.
- 6.3 If the Seller consents to the return of the goods, the Seller will be entitled to charge a handling fee equivalent to 15% of the price of the returned goods quoted on the relevant invoice. All transportation charges (including freight charges) must be paid by the Customer. The handling fee and transportation charges will be payable by the Customer to the Seller within 7 days from the date of the return of the goods concerned.
- 6.4 The Customer must inspect the goods prior to reselling or cutting the goods. Once the goods have been resold or cut the Customer has no right to return the goods under any circumstances whatsoever.

## 7. BREACH

- If:-
- 7.1 the Customer fails to make payment (including payment for any charges under clause 3.4) on the due date, or
  - 7.2 any cheque, promissory note or other bill of exchange given to the Seller by the Customer is not honoured on first presentation; or
  - 7.3 an application or order is made for the winding-up or sequestration of the Customer or an application or order is made to place the Customer under official management; or
  - 7.4 the Customer endeavours to or enters into any arrangement, compromise or composition with any of its creditors; or
  - 7.5 the Customer fails to satisfy any judgement against it within 7 days after date of judgement; or
  - 7.6 the Customer breaches any of the terms of any Contract, all of which are deemed to be material; or
  - 7.7 any of the assets of the Customer or any of the goods in the possession of the Customer which have not been paid in full, are seized under legal process issued against the Customer; or
  - 7.8 a receiver, receiver and manager, controller, administrator, official manager, trustee or similar official is appointed over any of the assets or undertakings of the Customer;
  - 7.9 the Customer ceases to carry on business, the Seller will have the right and option without prejudice and in addition to all rights under these Conditions or a law or in equity to:-
    - (a) continue to enforce its rights and recover from the Customer such payments and any other amounts owing as and when they fall due; or
    - (b) claim immediate payment of all moneys due by the Customer in respect of all Contracts which will immediately become due and payable, notwithstanding the due date for payment of any invoice or any extended terms agreed by the Seller; or
    - (c) cancel all or some of the Contracts with the Customer, upon which event the Customer will immediately return the goods to the Seller and the Customer will in addition be liable to the Seller for any loss or damage of whatever nature that the Seller may have suffered or may suffer in consequence of the cancellations.

## 8. CHANGE OF CONTROL

- 8.1 The Customer must give written notice to the Seller if:
  - (a) its business is sold, change of name or address or restructure of business,
  - (b) the Customer being a company, there is an issue of, or transfer of, 50% or more of its issued share capital to any third party (the "Buyer").
- 8.2 The Customer undertakes to procure that the purchaser of the business executes an additional Credit Application and/or the buyer executes a Guarantee in accordance with clause 2 of the Credit Application. The customer will remain responsible for all goods ordered (and accepted by the Seller) in the name of the Customer or its business prior to the sale of the business or the shares until such time as the Seller at its discretion and in writing, releases the Customer from its liability.

## 9. WARRANTIES

- 9.1 The Seller makes no representation whether express or implied as to the merchantability, condition, durability or fitness for the purpose for which the goods are to be used and any implied warranty as to latent defects is expressly excluded.
- 9.2 In no event whatsoever will the Seller be responsible for any loss, damage, cost, charge or expense suffered, incurred or sustained by the Customer whether consequential or otherwise of whatsoever nature and kind and howsoever arising including through the negligence of the Seller, its agents or servants.
- 9.3 These warranties will not be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods or services pursuant to the Conditions of all or any of the provisions of Part V of the Trade Practices Act, 1974 (as amended) or Part VIII of the Sale of Goods Act 1923 NSW or by any other statute Act of any state or territory of the Commonwealth of Australia which by law cannot be excluded, restricted or modified.
- 9.4 To the extent permitted by Section 68A of the Trade Practices Act 1974 the liability of the Seller to the Customer for a breach of a condition or warranty implied by a provision of Division 2 of Part V of the Trade Practices Act 1974 will be limited to:
  - (a) the replacement of the relevant goods or the resupply of equivalent goods;
  - (b) the repair of the relevant goods;
  - (c) the payment of the cost of replacing the relevant goods; or
  - (d) the payment of the cost of having the relevant goods repaired;
 and the Seller may in its absolute discretion determine which of the foregoing limits will apply in any case.
- 9.5 Each of the terms contained in these Conditions which exclude liability on the part of the Seller will be a separate and divisible term, and if any such term becomes unenforceable for any reason whatever, that term is severable from and will not affect the validity of the other terms.

## 10. OWNERSHIP

- 10.1 Ownership of goods delivered by the Seller to the Customer will not pass from the Seller to the Customer until such time as the goods the subject of any Contract and all other goods supplied by the Seller to the Customer have been paid in full.
- 10.2 Notwithstanding clause 10.1 all risk of loss, damage or other injury to the goods will pass from the Seller to the Customer on delivery in accordance with clause 5.1 of these Conditions.
- 10.3 The Customer will indemnify and keep indemnified the Seller against loss, damage or other injury to the goods from the date of delivery of the goods to the Customer until full payment as provided in clause 10.1 has been received by the Seller.
- 10.4 Until full payment for the goods is received by the Seller, the Customer must keep the goods as bailee for the Seller. The Customer is at liberty to sell the goods in the ordinary course of business in the name of the Customer and as a principal and not as agent for the Seller but the benefit of any such sale and the proceeds of any such sale belongs to the Seller absolutely.
- 10.5 The Customer must not represent to any third party that it is in any way acting for the Seller and the Seller will not be bound by any contract in relation to the goods which the Customer may enter into with any third party.

- 10.6 The Customer must keep separate accurate and current records of all goods delivered to it by the Seller and the sale of any of those goods by it to third parties. The Customer must keep the Seller's goods separate from all other goods in an area designated for that purpose in the Customer's premises and must at all times prominently display a notice in such area stating that ownership of the goods is reserved to the Seller. If at any time required by the Seller, the Customer must give notice to the landlord of the premises in which any of the goods are stored that the goods is reserved to the Seller. If at any time required by the Seller, the Customer must give notice to the landlord of the premises in which any of the goods are stored that the goods are the property of the Seller.
- 10.7 The proceeds of sale of the goods by the Customer at any time prior to full payment for the goods being received by the Seller must be paid into a separate account on trust for the Seller and the Customer must forthwith make payment to the Seller from the account of the amount owing for the goods.
- 10.8 If full payment is not received by the Seller for any Contract by the due date specified in the relevant invoice, the Customer irrevocably authorises the Seller to enter any premises where the goods are kept and retake possession of all goods in the Customer's possession which have not been fully paid for notwithstanding the due dates for payment of any of the goods concerned.
- 10.9 In the event of a repossession under clause 10.8, the Seller will be entitled to sell the goods and apply the proceeds of sale to the amount owing by the Customer.
- 10.10 The Customer indemnifies and continues to indemnify the Seller against any costs incurred by the Seller and claims arising from the entry into the premises where the goods are kept  
retaking possession and selling the goods.
- 10.11 If the goods:  
(a) become constituents of other products so as not to be separable from those products; or  
(b) are converted into other products of a distinctly different character,  
then  
(1) the Seller has a charge over the other products and each of them to the extent of the unpaid purchase price of any goods sold to the Customer; and  
(2) if the Customer sells those other products or any of them:  
(A) the Seller has a charge over the rights of the Customer to receive the purchase price in respect of those other products or any of them to the extent of the unpaid purchase price of any goods; and  
(B) the Customer holds the proceeds of sale on trust for the Seller to the extent of the unpaid purchase price of any goods.

## 11. CERTIFICATE

The Customer agrees that a certificate signed by any employee of the Seller or any partner of the Seller's auditors setting out the balance owing by the Customer to the Seller for goods sold will be final, binding and conclusive upon the Customer and the guarantors referred to in clause 2 of the Credit Application.

## 12. PPSA

- 12.1 Unless otherwise stated, words and expressions defined in the PPSA will bear the same meanings when used in this clause 12.
- 12.2 The Customer acknowledges that this Credit Application creates a security interest under the PPSA, and hereby grants a security interest to the Seller in the goods and any proceeds of sale in respect of the goods. The Customer has not agreed to postpone the time for attachment of the security interest granted to the Seller under these terms and conditions.
- 12.3 Without derogating from any of the other provisions of this Credit Application, the Customer:  
(a) must, at the Seller's request, promptly execute any documents and anything required to register the Seller's security interest in the goods under the PPSA;  
(b) indemnifies, and upon demand will reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register;  
(c) must keep full and complete records of the goods;  
(d) must not without the prior written consent of the Seller create a security interest in or mortgage the goods or any interest in them (or purport or attempt to purport to do such thing) or permit any lien over the goods;  
(e) without limiting any other right the Seller may have, must immediately return the goods if requested to do so by the Seller following non-payment of any amount owing by the Customer to the Seller or following breach of any other obligation of the Customer to the Seller;  
(f) gives the Seller the right to inspect the goods at all reasonable times;  
(g) must not change its name, address or contact details without providing the Seller with prior written notice; and  
(h) must not cause (directly or indirectly) the registration of a financing change statement or apply to remove or alter the Seller's registration in any way without the prior written consent of the Seller.
- 12.4 The Seller and the Customer agree that the following provisions of the PPSA will not apply to these terms: section 95 (notice of removal of accession) to the extent that it requires the secured party to give a notice to the grantor; section 96 (when person with an interest in the whole may retain accession); section 125 (obligation to dispose of or retain collateral); section 129 (disposal by purchase); section 130 (notice of disposal) to the extent that it requires the secured party to give a notice to the grantor; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).
- 12.5 For the avoidance of doubt, so far as is permitted by the PPSA, the Customer waives its right to object to a proposal by the Seller to retain the goods in satisfaction of any obligation owed by the Customer to the Seller.
- 12.6 For the purposes of section 157 of the PPSA, the Customer waives its right to receive notice of any verification statement in relation to the registration of a Financing Statement or a Financing Change Statement.
- 12.7 The Customer and the Seller acknowledge and agree for the purposes of satisfying s 20(1)(iii) of the PPSA that the description of the goods the subject of each and any security interest created under these terms is as set out in these terms and any invoice in relation to those goods and the description of the goods in any invoice is expressly incorporated into these terms.
- 12.8 The Customer agrees that it will not enter into any agreement or arrangement which permits any other person to register any security interest in respect of the goods, the proceeds of sale of the goods, or any accounts owed in respect of the goods without the Seller's prior written consent.
- 12.9 The Customer agrees to give the Seller at least 10 days' prior written notice before changing any of its corporate details (such as its name, ACN or ABN) or principal place of business.  
Notwithstanding anything else in these terms, any exercise, or attempted exercise, of any enforcement right by the Seller under these terms does not prejudice or limit, in any respect, any other rights or remedies of the Seller arising at law or in equity.

## 13. GENERAL

- 13.1 The Seller's delivery notes will be deemed to be prima facie proof of delivery to the Customer of the goods described in the delivery note. In the event of a dispute as to the quantity of goods sold and delivered and their value, the onus of proving that the goods were not delivered and/or the quantity and price thereof is not in accordance with the Seller's invoices will be upon the Customer.
- 13.2 No concession, latitude or indulgence allowed by the Seller to the Customer may be construed as a waiver or abandonment of any of its rights under the Conditions or act as any estoppel against the Seller.
- 13.3 All payments to be made by the Customer must be free and clear, without any set-off, counterclaim or condition.
- 13.4 If any terms and conditions of these Conditions are invalid, such terms and conditions to the extent of their invalidity may be severed from these Conditions and will not invalidate the remainder of the Conditions.
- 13.5 The Seller in its sole and absolute discretion may appropriate any payment made by the Customer to any cause of indebtedness as may be owned by the Customer to the Seller.
- 13.6 In the event of a breach by the Customer of any Contract, the Customer will be liable to and hereby indemnifies the Seller against all costs, charges and expenses incurred by the Seller as a consequence of that breach including but not limited to all legal costs, charges and expenses incurred calculated on a solicitor and client basis.
- 13.7 The Customer irrevocably appoints the Seller its attorney and agent to do all acts and sign all documents in the name of the Customer and as the act and deed of the Customer to enable the Seller to exercise its rights under these Conditions or any Contract.
- 13.8 Any notice given under these Conditions must be served on the Customer at the last known place of businesses or residence of the Customer or on the Seller at 69 Bourke Road, Alexandria, New South Wales (or such other address as may be notified in writing by the Seller) in the manner provided in Section 170 of the Conveyancing Act, 1919.
- 13.9 All Contracts, invoices and these Conditions are governed by the laws of New South Wales and the Customer submits to the jurisdiction of the Courts of that State.
- 13.10 Headings are for reference purposes only and do not affect interpretation of these Conditions.