



Terms and Conditions of Sale

Steadfast Solutions Pty Ltd ABN 31 106 505 168

1. **PRELIMINARY**

- 1.1 In these terms and conditions, the "Company" shall mean Steadfast Solutions PTY LIMITED (ABN 31 106 505 168).
- 1.2 These conditions shall apply to any Contract between the Company and any person, firm or company ("the Purchaser") placing an order with the Company in respect of any parts, components, products, services or other items ("Products" and "Services").

2. **QUOTATIONS**

- 2.1 Quotations are based upon the statement of requirements given to the Company by the Purchaser and are current for thirty (30) days after which they are subject to confirmation or revision.
- 2.2 Quotations may only be accepted by the Purchaser's submission of a written purchase order and prior to receipt of such are subject to change or withdrawal by the Company at any time in writing.
- 2.3 All verbal quotations are subject to written confirmation by the Company prior to acceptance of an order.

3. **ORDERS**

- 3.1 The Company will be under no liability for any purchase order received until the order has been accepted by the Company.
- 3.2 Any offer, order, sale and/or delivery or any conduct in confirmation of any transaction will be subject to these terms and conditions which are the only basis upon which the Company does business and shall prevail notwithstanding any printed or other conditions contained or referred to in any purchase order or other document prepared by or on behalf of the Purchaser.
- 3.3 No other agreement, representation, promise, undertaking or understanding of any kind unless expressly confirmed in writing by the Company shall add to, vary or waive any of these terms and conditions.

4. **VARIATIONS**

An accepted order may only be cancelled or varied with the Company's consent and the giving of this consent shall not in any way prejudice the Company's right to recover from the Purchaser full compensation for any loss or expense arising from such cancellation or variations.

5. **PACKING**

- 5.1 All Products will be supplied in packaging to the Company's standard specifications. Any other packaging requested by the Purchaser will be charged for in addition to the price quoted.

6. **PRICES**

- 6.1 Unless otherwise and specifically stated, prices quoted are for the Company's Products and Services including delivery but excluding:
 - (a) Sales Tax, Customs Duty and any other Government charges or imposts
 - (b) Insurance
 - (c) Installation and commissioning
 - (d) Any Goods and Services Tax imposed under A New Tax System (Goods and Services Tax) Act 1999 ("GST").
 - 6.2 The Purchaser agrees to pay and is liable for any tax, levy, impost, deduction, withholding or duty payable by or assessed against the Company as a result of or in connection with the supply of Products or Services to the Purchaser. The Purchaser further agrees that where any GST is imposed it shall pay that GST according to clause 24.
 - 6.3 Prices quoted are based upon the quantities referred to in the quotation. Should there be any variation in the total quantity of Products ordered from that quoted, the Company reserves the right to amend the prices quoted. In all other aspects, the Contract shall remain in full effect.
- ### 7. **DELIVERY AND PASSING OF RISK**
- 7.1 Dates of delivery quoted are approximate only, are not of the essence of the contract and failure to comply with such dates shall not constitute a breach of contract. If any delivery date is specified, the Company shall not be liable for failure to meet such date resulting from any cause referred to in clause 19.
 - 7.2 If delivery of the whole or part of any order is delayed through fault of the Purchaser or at the Purchaser's request, the Company may invoice the Purchaser for the total order or part thereof at such time as the Company has either effected or is prepared to effect delivery of the order or part thereof.
 - 7.3 If by reason of the Purchaser's default or instructions or lack of instruction, the Company is unable to dispatch the Products within fourteen (14) days after they are ready for dispatch, the same will be held by the Company at the Purchaser's risk and the Purchaser will be liable for the Company's standard storage charges.
 - 7.4 Where the Products are to be delivered by instalments and the Purchaser either fails to accept any delivery when due or defaults in making any payment due, then the Company may cancel any or all subsequent deliveries and the Purchaser shall compensate the Company in full for any loss or expense arising from such cancellation.
 - 7.5 The risk in the Product passes to the Purchaser upon delivery to the Purchaser's nominated delivery address.
- ### 8. **PASSING OF TITLE**
- 8.1 Title to and property in the Products (excluding Software which is subject to clause 18) shall only pass to the Purchaser on the Company's receipt of all monies payable by the Purchaser.
 - 8.2 The Purchaser shall be entitled to sell the Products and pass the property in the same to third parties in the normal course of business until one of the events set out in 8.5 below occurs, but the proceeds of resale and/or



- the claim to such proceeds will be held in trust for the Company until such time as all sums owing to the Company in respect of the sale of such Products have been paid. Until such sums have been paid, the Purchaser shall, subject to the terms of this clause, retain the Products in a fiduciary capacity only.
- 8.3 The Company shall be entitled at any time whilst any monies in respect of the Products are outstanding to notify the Purchaser of its intention to take possession of them.
- 8.4 On receipt of notice from the Company in accordance with clause 8.3 above or on the happening of any of the events set out in clause 8.5 below, the Purchaser's authority to sell the Products shall be withdrawn and all proceeds of sale received by the Purchaser from sales made prior to the withdrawal of authority shall be paid by the Purchaser into a Bank account separate from all other of its monies and held in such account for the Company. Further, all Products shall be immediately re-delivered to the Company and by its servants or agents the Company shall have the right during normal business hours to enter upon any land, vessels or buildings to take re-possession of the Products.
- 8.5 The events referred to above are:
- (a) any notice that an Administrator, Receiver or Manager is to be or has been appointed to the Purchaser,
 - (b) (where the Purchaser is a corporate body) any notice that a petition or resolution to wind-up the company is to be or has been presented (save for the purpose of a reconstruction or amalgamation)
 - (c) a decision by the Purchaser that it intends to make an arrangement with its creditors;
 - (d) any act of bankruptcy by the Purchaser;
 - (e) failure to pay the Company for any Products in accordance with Clause 9.
- 9. PAYMENT**
- 9.1 The company shall invoice the Purchaser for all amounts payable in accordance with clause 6 and for any variations requested by the Purchaser and carried out by the Company (the "Purchase Price").
- 9.2 If the Purchase Price is payable in a lump sum, the Company shall invoice the Purchaser at the time the system ordered is commissioned by the Company.
- 9.3 If the Purchase Price is payable in instalments, the Company shall invoice the Purchaser at the following times:
- (a) when the company accepts the purchase order;
 - (b) at the time the Company delivers the system to the Purchaser; and
 - (c) at the time the system ordered is commissioned by the Company.
- 9.4 The Purchaser must pay the full amount of each invoice within fourteen (14) days from the date of invoice. Payment must be made in cash unless specifically agreed otherwise by the Company and that agreement is in writing. Each invoice which relates to part of the purchase order shall be an instalment of the Purchase Price and not a deposit. Minor defects or shortages in delivery shall not entitle the Purchaser to pay any invoice late.
- 9.5 Where the Purchase Price is invoiced in instalments, the Company shall not commission the system until the Purchaser has paid both of the invoices sent in accordance with sub-clauses 9.3(a) and 9.3(b). When the Purchaser has paid those invoices, the Company will commission the system and invoice the Purchaser for the final instalment of the Purchase Price in accordance with clause 9.3(c).
- 9.6 If the Purchaser defaults in paying any invoice or otherwise defaults under these conditions or any of the events set out in clause 8.5 occurs, the Company shall have the right to do any or all of the following:
- (a) withhold further deliveries;
 - (b) terminate the contract;
 - (c) retain any payments already made, sufficient to recover any and all costs incurred by the Company;
 - (d) charge interest calculated from the due date for payment to the actual date of payment of any amounts owing to the Company at the Commonwealth Bank of Australia's Published Base Rate plus two percent per annum.
- 9.7 The rights set out in clause 9.6 shall be in addition to the Company's rights under these conditions and any right of action or remedy on the Company's part for the recovery of any moneys due or for any breach by the Purchaser prior to the Company's determination of the contract.
- 9.8 The Company's agreement to accept payment of invoices other than cash or to extend credit to the Purchaser shall be at the Company's absolute discretion.
- 9.9 Without limiting the generality of clause 9.8, letters of credit will only be accepted by prior arrangement with the company and must be:
- (a) in favour of the Company;
 - (b) consistent with the provisions of these conditions;
 - (c) in sufficient amounts and for the period necessary to meet payment obligations under these conditions; and
 - (d) irrevocable or confirmed by a bank in Australia acceptable to the Company.
- 9.10 All costs including bank charges associated with any letter of credit shall be to the account of the Purchaser.
- 10. WARRANTY**
- 10.1 The Company warrants the Products to be free from defects in materials and workmanship under normal use, service and conditions for a period of twelve (12) months from the date of delivery provided that they have been installed by the Company or its authorised contractors and agrees to make any necessary repairs resulting from defective parts or workmanship. This warranty does not cover damage to the Products caused by accident, misuse, acts of third parties, environmental conditions, neglect, improper installation, improper maintenance or other causes beyond its control.
- 10.2 The above warranty is in addition to the warranties and conditions implied in of the Trade Practices Act, 1974 or by applicable State Acts and Territorial Ordinances to the extent that such implied warranties and conditions are incapable of exclusion. All other conditions are hereby expressly excluded.
- 10.3 The Company's obligations under this warranty in relation to Products and services shall be limited at the Company's option to:
- (a) In the case of Products, any one of the following:



- (i) replacement of Products or the supply of equivalent Products;
 - (ii) repair of the Products;
 - (iii) payment of the cost of replacing the Products or of acquiring equivalent Products;
 - (iv) payment of the cost of having the Products repaired
- 10.3 (b) In the case of Services, any of the following:
 - (i) supplying of the Services again; or
 - (ii) payment of the cost of having the Services supplied again
- 10.4 Freight on Warranty claims is at the Purchasers cost.
- 10.5 Where the Company responds to a complaint which is not covered by the above warranty, it reserves the right to charge the Purchaser at its normal rates for travel, subsistence, labour and materials in carrying out any inspection and rectification.
- 11. **LIMITATION OF LIABILITY**

Subject only to its liability under warranties or conditions implied by the Trade Practices Act, the Company shall have no liability for any Indirect Loss howsoever arising save as expressly provided in these terms and conditions. In this clause, Indirect Loss includes special, indirect, exemplary or consequential loss or damage, loss of profit or revenue, loss of or inability to use equipment, a failure to realise anticipated savings lost data, lost opportunity, downtime costs or loss of goodwill or business reputation, or any financial penalties imposed by Government or semi-government authority. The Company's cumulative liability for all claims arising out of or in connection with the manufacture, sale, delivery, use or repair of Products or the provision of Services shall not exceed the price paid for such Product or Service.
- 12. **SPECIFICATIONS**

All specifications are approximate only and are subject to normal margins of tolerance. The Company reserves the right to vary specifications without notice in the light of changes in technical knowledge, production techniques, Government or other regulation, consideration of safety or other reasonable cause.
- 13. **DATA AND TECHNICAL INFORMATION**

The information contained in the advertising, sales and technical literature issued by the Company may be relied upon to be accurate in the exact circumstances in which it is expressed otherwise any illustration, performance details, examples of installations and methods of assembly and all other technical data in such literature are based upon experience and from trials under test conditions. Accordingly, the information contained in the Company's publications is provided for general guidance only and forms no part of the Contract unless expressly agreed in writing. Purchasers should obtain specific recommendations and advice from the Company regarding the uses, programming, defaults and attributes of the Company's Products.
- 14. **SECOND HAND SALES**

The terms of Clause 10 above do not apply to sale of second hand products which are sold as seen, unless otherwise and specifically stated.
- 15. **PATENTS**

The Company warrants to the best of its knowledge that the Products, except when made to a design or drawing provided by the Purchaser, do not infringe any patent held by any third party in Australia and agrees to indemnify the Purchaser in this respect by refunding any cost and/or damages awarded against the same by final judgement of any Court or competent jurisdiction, provided that the Products shall have been used by the Purchaser in accordance with the Products normal operating procedures and all instructions and directions of the Company from time to time, that the Products have not been altered or modified in any way,, that the Company has been informed forthwith in writing upon the institution of threat of the legal proceedings in question or of any indication that an infringement is being alleged or may have taken place, that the Purchaser shall have supplied all information requested, that the Purchaser has given the Company the option of dealing with the matter, including defending and settling any claim that may be made, , that the Purchaser gives the Company all reasonable assistance in connection with dealing with the matter and defending any claim, and that the Purchaser shall have refrained from any admission or any action by which the extent of liability might have been enhanced. Without limiting the generality of the foregoing, the indemnity given by this clause shall not extend to any Indirect Losses as described in clause 11.
- 16. **INTELLECTUAL PROPERTY RIGHTS**

Any sale of Products or services shall not transfer any intellectual property rights. All design details, specifications, software, technical handbooks, drawings or other data, and all intellectual property contained therein, supplied to the Purchaser whether with or without charge is not transferred to the Purchaser and the Company retains the right to have all such data promptly returned upon request. All information contained in such data is copyright and shall be kept confidential by the Purchaser except to the extent that the information is in the public domain.
- 17. **SITE PREPARATION AND INSTALLATION**
- 17.1 Where the Company is to install any Products the Purchaser shall be responsible for ensuring that the proposed installation site is suitable and in accordance with any requirements which the Company has notified the Purchaser of before the installation is due to commence.
- 17.2 If the Company agrees to delay installation at the request of the Purchaser, the Purchaser shall pay to the Company a monthly fee of 1.5% of the value of the Product to be installed for the duration of the delay to cover additional storage and handling expenses incurred by the Company.
- 17.3 The Purchaser agrees to indemnify the Company for any additional expenses it may incur as a result of the site not being prepared in accordance with the Company's requirements.
- 17.4 If the Purchaser requests that installation takes place outside of normal business hours then the Company shall be entitled to charge the Purchaser for any additional labour expenses it incurs as a result, unless otherwise and specifically agreed.
- 17.5 Upon completion of the installation the Company shall commission the system and notify the Purchaser that



- the system is ready for use and shall submit to the Purchaser an Installation Acknowledgement and Acceptance Form. Within three (3) business days after such notification the Purchaser shall either accept the Product by signing and returning the Installation Acknowledgement and Acceptance Form or notify the Company in writing of those particulars in which the Product is not in conformity with the Contract. Use of the Product or failure to either accept or provide notice as set out above shall constitute acceptance of the Product.
- 17.6 The Company shall take whatever action it deems appropriate after receiving notice of non conformance to ensure that the Product does conform with the Contract. The Company shall make the final decision as to whether or not the Product conforms with the Contract.
- 18. SOFTWARE LICENCE**
- 18.1 In this clause the expression "Software" shall mean computer programs and routines contained on magnetic tape, disk, semi conductor device or other memory device or system consisting of;
- (a) Hard wired logic instructions which manipulate data in the central processor and control input output operations and error diagnostic and recovery routines;
- (b) instruction sequences in machine readable code that control call processing, peripheral equipment, administration and maintenance functions; and
- (c) all documentation used to describe, maintain and use such programs and routines.
- 18.2 Upon payment in full of the Purchase Price for the Products, the Company shall grant to the Purchaser a non-transferable, non- exclusive, paid up licence to use any Software included in or accompanying the Products. The Purchaser acknowledges that it acquires no right, title or interest in or to the Software nor any intellectual property rights contained therein.
- 18.3 The Purchaser shall limit the use of the Software to its own internal business purposes, for installation, operation and maintenance of the system purchased pursuant to this agreement. The purchaser shall not use the Software for any other purpose nor allow anyone else to use the Software.
- 18.4 The rights granted to the Purchaser by this licence are not transferable unless otherwise and specifically agreed to in writing by the Company.
- 18.5 The Purchaser shall hold the software in confidence for the Company using no less a degree of care than it uses to protect its own valuable and confidential information. The Purchaser shall not at any time modify, reproduce enhance, adapt or translate the Software except for the purpose of amending the Purchasers database.
- 18.6 The Purchaser shall not make copies of the Software provided however that the Purchaser shall be entitled to make one copy solely for archival purposes. The copy for archival purposes belongs to the Company and is subject to this licence as if it were the licensed copy of the Software
- 18.7 The Purchaser shall not attempt to reverse engineer, disassemble, reverse translate, decompile or in any other manner decode the Software (or any part of the Software) in order to derive the source code or for any other reason nor directly or indirectly allow anyone else to do so.
- 18.8 This licence may be terminated by the Company in the event of any breach of the terms of the licence by the Purchaser. Unless so terminated, the licence shall continue until the discontinuance of the system or the Software, whichever comes first.
- 19. FORCE MAJEURE**
- 19.1 The Company shall be under no liability for any delay or failure to perform in the event that the manufacture, supply or delivery of the Products is prevented by any act or circumstance beyond the Company's reasonable control including but not limited to Act of God, legislation, war, riot, fire, drought, flood, explosion, accident, sabotage, failure to obtain power supply, raw materials, labour, containers, transportation, lockout, strike, labour trouble or other action taken by employees in contemplation of furtherance of a trade dispute.
- 19.2 If, because of any such event, the Company is unable to supply the total demand for the Products, the Company may allocate its available supply of Products without obligation and may purchase similar Products from other sources among itself and all of its customers, including those not under contract, on such basis as it determines to be equitable.
- 19.3 During the period of total or partial suspension of delivery, the Purchaser shall be free to purchase elsewhere at its sole risk and cost, such quantities of alternative Products necessary to cover the shortfall of Products not delivered by the Company. Notwithstanding anything else contained in these conditions, the Company shall incur no liability whatsoever as a result of such suspension and shall be under no obligation to subsequently deliver Products not delivered during the period of suspension, but this contract shall otherwise remain unaffected.
- 20. WAIVER AND SEVERANCE**
- 20.1 Any indulgence granted by the Company to the Purchaser and any failure by the Company to insist upon strict performance of these terms and conditions shall not be deemed a waiver of any of the Company's rights or remedies nor be deemed a waiver of any subsequent default by the Purchaser.
- 20.2 The invalidity in whole or in part of any clause in these terms and conditions shall not affect the validity of the remainder of such clause of these terms and conditions.
- 21. SUB-CONTRACTING**
- The Company may at its discretion and without notification to the Purchaser sub-contract the manufacture and/or supply of any part of the Products and services quoted.
- 22. TERMINATION**
- If any of the events in clause 8.5 occur to the Purchaser or the Purchaser makes default in or commits a breach of the Contract, the Company may forthwith on written notice to the Purchaser terminate the Contract without incurring liability to the Purchaser and without prejudice to the Company's right which may have accrued up to the date of termination.
- 23. CONSTRUCTION OF CONTRACT AND GOVERNING LAW**
- The terms and conditions constitute the entire agreement between the Company and the Purchaser relative to



the Company's provision of Products and/or services and supersede and take precedents over all prior agreements, understandings and negotiations relating to the Products and/or services. The conditions may not be changed or modified in any way subsequent to the acceptance by the Company of a purchase order except by an instrument in writing signed by the Purchaser and the Company. The validity, interpretation and application of any quotations or contracts embodying these terms and conditions shall be governed by and construed in accordance with the law of the state of Victoria.

24. **GST**

- 24.1 A party must pay GST on a Taxable Supply made to it under these terms and conditions, in addition to any consideration (excluding GST) that is payable for that Taxable Supply. It must do so at the same time and in the same way as it is required to pay the consideration for the Taxable Supply.
- 24.2 A party making a Taxable Supply to another party under this agreement must issue a tax invoice to the other party, setting out the amount of the GST payable by that other party. The party must do so at the time the other party is required to pay the consideration for the Taxable Supply.
- 24.3 If a party is required under these terms and conditions to indemnify another party, or to make a reimbursement or contribution to another party, and that other party can obtain an Input Tax Credit on an acquisition associated with that indemnity, reimbursement or contribution, the amount the party is required to pay is:
- (a) reduced by the amount of that Input Tax Credit; but
 - (b) increased by any GST payable by that other party in respect of the indemnity, reimbursement or contribution.
- However, the amount of an indemnity, reimbursement or contribution is not reduced by the amount of an Input Tax Credit if that credit has already been taken into account in calculating the amount of the indemnity, reimbursement or contribution.
- 24.4 The supplier of a Taxable Supply warrants that it is registered or will be registered for Australian Business Number and GST purposes at each time a taxable supply is made. The supplier must continually indemnify the other party for any loss it suffers as a result of the supplier not being registered for Australian Business Number and GST purposes. On request by the other party, the supplier must produce evidence that it is registered.
- 24.5 If an Adjustment Event results in the GST on a taxable supply being different from the GST recovered by the supplier, the supplier:
- (a) must refund to the other party any excess; and
 - (b) may recover from the other party any shortfall.
- The recovery of any money from the other party is conditional on an Adjustment Note being given first.
- 24.6 For the purposes of this clause 24, the words Adjustment Event, Adjustment Note, Input Tax Credit, Taxable Supply means what it means under *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and GST means tax levied under *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.