

TRADING TERMS OF CO-OPERATIVE PURCHASING SERVICES LTD

Business Name: _____ Date: _____

Signed by: _____ Signature: _____

1 DEFINITIONS

1.1 In these terms of trade:

- (1) “Associate” has the same meaning as in the Income Tax Assessment Act 1997;
- (2) “Contract” means a contract for the sale of goods by the Supplier to the Customer;
- (3) “Customer” means the entity purchasing the goods under a Contract; and
- (4) “Supplier” means Co-operative Purchasing Services Ltd ABN 89 411 500 151 and any Associate of the Supplier

2 CONTRACTS

2.1 Terms of Contract

The only terms of a Contract which are binding upon the Supplier are:

- (1) those set out in these terms of trade or otherwise agreed to in writing by the Supplier; and
- (2) those, if any, which are imposed by law and which cannot be excluded.

2.2 Acceptance of Orders

The price list of the Supplier is not an offer to sell but is an invitation to treat only and the Supplier reserves the right to accept or reject in its absolute discretion any orders which may be received by it.

2.3 Separate Contract for Each Shipment

The Supplier will be entitled to deliver partial shipments unless expressly prohibited by the terms of an order, and each shipment of goods in respect of which an invoice is raised by the Supplier will be deemed to be part of the same contract between the parties.

3 PRICE

3.1 Price Change

The prices shown in the Supplier’s price list are subject to alteration without notice.

3.2 Price of Goods Sold

If the Supplier accepts an order it will supply the goods at the price shown in the price list current when the Supplier accepts the order, unless otherwise agreed in writing

3.3 GST

The price at which the goods are sold does not (unless otherwise stated or agreed in writing) include goods and services tax or other governmental taxes, which must be added to the price and paid by the customer as part of the price.

4 DELIVERY

4.1 **Delivery Costs**

4.1.1 *Delivery Charges*

Each supplier nominates the cost of delivery to store where applicable. Any such cost must be paid by the receiver.

4.1.2 *Special Delivery*

If the Customer requires delivery by overnight transport, airfreight, or other special delivery, the costs must be added to the price and paid by the Customer as part of the price.

4.1.3 *Delivery Date*

If a delivery date is specified that date is an indication only and the Supplier is not liable for any delay in delivery or any associated costs in such delays.

5 **ACCEPTANCE OF CLAIMS**

5.1 **Time for Acceptance**

The Customer must inspect the goods immediately upon delivery and must within 14 days after date of inspection give written notice to the Supplier, with particulars, of any claim that the goods are not in accordance with the Contract. If the Customer fails to give that notice, then to the extent permitted by statute the goods are deemed to have been accepted by the Customer and the Customer must pay for the goods in accordance with the provisions of these terms of trade.

5.3 **Claims subject to the Supplier's Inspection**

All claims will be subject to inspection of the goods by the Supplier and accordingly acceptance of the return of the goods by the Supplier or its agent will not constitute acceptance of a claim in respect of those goods.

6 **PAYMENT**

6.1 **Payment Terms**

(1) The whole amount of the invoiced price shall be due and payable immediately unless terms of credit have been extended by the Supplier upon completion of the Supplier's official Application for Credit Form.

(2) The terms of credit extended to the Customer (if any) will be 28 Days from end of Month..

6.2 **Timing of Payment**

Payment is deemed to be made:

(1) if cash is tendered – on the date it is tendered; and

(2) if a cheque (bank or otherwise) or other negotiable instrument is tendered – on the date upon which the cheque or other negotiable instrument is negotiated and cleared by the Supplier's bankers.

6.3 **Time of the Essence**

Time is of the essence in respect of the Customer's obligation to make payment for goods sold by the Supplier to the Customer.

6.4 Sanctions for Late Payment

If the customer defaults in making payment to the Supplier in accordance with these terms of trade the Supplier may in its absolute discretion:

- (1) charge the Customer interest calculated on the portion of the Customer's account overdue at the rate of 1.5% per month from the date on which the default arose;
 - (2) require the Customer to reimburse the Supplier for all collection costs including legal costs incurred by the Supplier calculated on a solicitor and client basis as a consequence of the Supplier instructing its solicitor to provide advice to it in connection with the default and/or to institute such recovery process as the Supplier in its discretion decides;
 - (3) withhold supply and dispose of any indent and/or stock order held;
 - (4) institute legal action for recovery of outstanding balance and costs incurred without notice; or
 - (5) terminate credit facilities;
- and the Supplier shall not be liable to the Customer for any loss or damage resulting directly or indirectly from such action.

6.5 Application of Payments

Any payments tendered by the Customer to the Supplier must be applied as follows:

- (1) first as reimbursement for any collection costs incurred by the Supplier in accordance with clause 6.4(2);
- (2) secondly, in payment of any interest charged to the Customer in accordance with clause 6.4(1); and
- (3) thirdly, in satisfaction or part satisfaction of the oldest portion of the Customer's account.

7 RETURNS

7.1 Terms Applying to All Returns

The Customer must not return any goods including goods which the Customer claims are not in accordance with the Contract unless the Supplier has first given its approval to their return and supplied a Returns Authorisation Number ("RAN") for the goods. Their return must then be with freight prepaid by the Customer and the shipping documents must quote the RAN.

7.2 Returns where Goods In Accordance with Contract

If the Supplier has given its approval to the return of goods deemed to be accepted under clause 5.1:

- (1) the Supplier will only give credit for the goods returned if they are in a saleable condition and in original packaging; and
- (2) the Supplier may charge a handling charge equivalent to 10% of the price of the goods returned, unless the Customer is a "consumer" for the purposes of the Trade Practices Act 1974 or similar State or Territory legislation.

7.3 Returns where Goods Not in Accordance with Contract

If the Supplier has given its approval to the return of goods which are not deemed to have been accepted by the Customer under clause 5.1 the Supplier must refund the freight to the Customer if the Customer's claim that the goods are not in accordance with the Contract is found to be valid.

7.4 The Supplier's Nominated Carrier

- (1) Returns must be via the Supplier's nominated carrier at normal rates, except that:
 - (a) returns from a Customer outside the ACC Areas may be by the Customer's nominated agent on forwarding to the Supplier's nominated carrier's depot in the nearest ACC Area; or
 - (b) if it is impractical to use the Supplier's carrier the cheapest rail service may be used.
- (2) The Supplier will not accept liability for:
 - (a) insurance of goods returned;
 - (b) freight at express service rates; or
 - (c) freight with carriers not authorized under paragraph 7.4(1).

7.5 Returns Without Authorisation

Goods returned to the Supplier without authorization will be at the risk of the Customer. The Supplier reserves the right to dispose of any goods returned without authorisation within 30 days of notice to the Customer of non-acceptance of credit and the Supplier shall not be obliged to account to the Customer for any disposal of goods under this clause.

8 RISK AND INSURANCE

- 8.1** Goods supplied by the Supplier to the Customer are at the Customer's risk immediately on delivery to the Customer or into the Customer's custody (whichever is the sooner). The Customer must insure the goods at its cost from delivery of the goods until they are paid for in full against fire, theft and other usual risks and produce a certificate to this effect to the Supplier on request.

9 RETENTION OF TITLE

9.1 When Property Passes

Property in any goods sold to the Customer (“the Goods”) will not pass from the Supplier to the Customer until all monies which are owing (whether due and payable now or in the future) to the Supplier by the Customer or its Associate on any account whatsoever have been paid in full.

9.2 Relationship of Bailment

The relationship between the Supplier and the Customer in respect of the Goods will be that of bailor and bailee until property in the Goods passes to the Customer.

9.3 Purchaser’s Obligations until Paid For

The Customer must store the Goods at the Customer’s usual place of business and in a manner so that the Goods may be clearly identified as the goods of the Supplier until property in the Goods passes to the Customer.

9.4 Customer’s Right to Resell

The Customer will be entitled in the ordinary course of its business to resell the Goods before property in the Goods passes to the Customer in which event the Customer will contract as a principal but must hold the proceeds of sale on separate account for the Supplier as a fiduciary obligation. These proceeds of sale must not be intermingled with the Customer’s other monies whilst property in the Goods remains with the Supplier and, in the event that the proceeds of sale are so intermingled, then the Customer acknowledges that the Supplier has a beneficial interest in those intermingled funds to the extent of the monies owing by the Customer to the Supplier at any time.

9.5 Seller’s Authority to Inspect

The Customer irrevocably authorises the Supplier at any time, to enter any premises:

- (1) upon which the Goods are stored to enable the Supplier to inspect the Goods; and
- (2) upon which the Customer’s records pertaining to the Goods are held to inspect and copy the records.

9.6 Seller’s Right to Reclaim

If any monies owing by the Customer to the Supplier are overdue the Supplier may by its employees or agents enter upon the Customer’s premises (or the premises of any Associate or agent where the Goods are stored) and recover and resell the Goods without being liable for trespass or any resultant damage to property. The Customer agrees to indemnify and keep indemnified the Supplier against all costs (including all legal costs on a solicitor client basis) incurred by the Supplier in recovering the Goods and against all claims incurred by the Supplier arising from such recovery of the Goods.

9.7 Notwithstanding the above, the Supplier retains at all times the right to maintain an action against the Customer for the invoiced price of the Goods, when due and payable.

10 INSOLVENCY OF PURCHASER

10.1 When Breach Occurs

If before property in the Goods passes the Customer becomes an insolvent under administration or an externally-administered body corporate as defined in the Corporations Act 2001, all monies owing by the Customer become due and payable immediately without further notice and the Contract for the sale of the Goods shall be deemed to be repudiated by the Customer and the repudiation to be accepted by the Supplier (but without prejudice to any of the Supplier’s rights under these terms of trade), subject at all times to the provisions of Part 5.3A of the Corporations Act 2001.

10.2 Right of Set –Off

Notwithstanding that a Customer may become insolvent, if the Supplier is at any time indebted to the Customer for any reason, the Supplier will be entitled to set-off the sum of that debt against any monies owed by the Customer under a Contract.

11 GOODS SUPPLIED ON CREDIT

11.1 The provisions of Clause 9 and Clause 10 apply despite any arrangement between the parties under which the Supplier grants the Customer credit

12 EXCLUSION OF IMPLIED CONDITIONS AND WARRANTIES

12.1 Imposed by Statute

The only conditions and warranties which are binding on the Supplier in respect of:

- (1) the state, quality or condition of the goods supplied by it to the Customer; and/or
 - (2) advice, recommendation(s), information or services supplied by it, its employees, servants or agents to the Customer regarding the Goods, their use and application;
- are those imposed and required to be binding by statute (including the Trade Practices Act 1974).

12.2 Limitation on Liability

To the extent permitted by statute the liability, if any, of the Supplier arising from the breach of the conditions or warranties referred to in Clause 12.1 are, at the Supplier's option, limited to and completely discharged by either:

- (1) the supply by the Supplier of equivalent Goods; or
- (2) the replacement by the Supplier of the Goods supplied to the Customer.

12.3 Exclusion of Other Conditions and Warranties

Except as provided in the Clause 12 all conditions and warranties whether express or implied by law in respect of the state, quality or condition of the Goods which may apart from this Clause be binding on the Supplier are excluded.

12.4 Acknowledgements by Purchaser

The Customer acknowledges that the Customer does not rely, and it unreasonable for the Customer to rely, on the skill or judgement of the Supplier as to whether the goods supplied are reasonably fit for any purpose for which they are being acquired.

12.5 Exclusion of Consequential Loss

Except to the extent provided in this Clause 12 the Supplier has no liability (including liability in negligence) to any person for:

- (1) any loss or damage consequential or otherwise suffered or incurred by that person in relation to the goods; and
- (2) in particular without limiting Clause (1) any loss or damage consequential or otherwise suffered or incurred by that person caused by or resulting directly or indirectly from any failure, defect or deficiency of any kind of or in the Goods.

13 PRIVACY

13.1 Where goods are supplied to the Customer on credit the Customer irrevocably authorises the Supplier, its employees and agents to make such enquiries as it deems necessary to investigate the credit worthiness of the Customer including (without limitation) making enquiries from persons nominated as trade referees, the bankers of the Customer or any other credit providers (“**Information Sources**”) and the Customer authorises the Information Sources to disclose to the Supplier all information concerning the Customer which is within their possession and which is requested by the Supplier.

13.2 The Supplier will comply with its obligations under the Privacy Act 1988 and its privacy policy may be viewed at www.cpshardware.com.au

14 CLERICAL ERRORS

14.1 Errors and omissions in the Supplier's invoices will not be binding upon the Supplier and may be corrected by the issue of a supplementary invoice or revised invoice which is otherwise in the same terms including the due date for payment.

15 FORCE MAJEURE

15.1 If a party is prevented from or delayed in complying with an obligation by an event beyond its reasonable control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is prevented or delayed.

16 WAIVER

16.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right, and the exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

16.2 A waiver is not effective unless it is in writing and is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

17 GOVERNING LAW AND JURISDICTION

17.1 The law of Western Australia will apply.

17.2 The parties submit to the non-exclusive jurisdiction of the courts of that State or Territory.

18 VARIATION OF TERMS

18.1 The Supplier reserves the right to replace or vary these terms of trade from time to time upon 30 days notice. All contracts from order received by the Supplier after the expiry of 30 days notice shall be deemed to be subject to the replacement or varied terms. For the sake of clarity, it is acknowledged that this Clause does not limit the Supplier's right to vary prices without notice under Clause 3.1.

19 ILLEGALITY

19.1 If any provision contained in these terms of trade is ineffective, void, voidable, illegal or unenforceable or, if these terms of trade would, if a particular provision were not omitted, be ineffective, void, voidable, illegal or unenforceable that provision shall (without in any way affecting the effectiveness, validity, legality, and enforceability of the remainder of the terms of trade) be severable and these terms of trade shall be read and construed and take effect for all purposes as if that provision were not contained in it.