

STANDARD CONDITIONS OF SALE

The Standard Conditions of Sale of Memo Communications Co Pty Ltd (Memo) ABN 70 008 980 550 will apply to all sales contracts with the Buyer, unless otherwise agreed in writing.

1. APPLICATION

(a) These terms and conditions constitute the whole contract between Memo and the Buyer and supersede all previous communications either oral or written. Any quotation or tender by Memo shall be deemed to be subject to these terms and conditions. No term or condition contained in the Buyer's order shall add to amend or delete these terms and conditions or any of them unless expressly agreed in writing by Memo.

(b) Any quotation by Memo is not and shall not be construed as an offer capable of acceptance or as creating an obligation of the contract.

(c) It is the Buyer's responsibility to obtain all approvals licenses or permits necessary for the performance of the contract.

(d) All descriptive specifications, performance figures, drawings, data, dimensions and weights furnished by Memo or contained in catalogues, price lists or advertisements are by way of general description only of the equipment and shall not form part of the contract.

(e) It is the Buyer's responsibility to provide all information necessary to enable performance of the contract and the Buyer shall be responsible for any costs arising directly or indirectly from any error or omission in that information or any delay in providing that information.

2. ACCEPTANCE

All orders are to be in writing and are subject to review and acceptance by Memo. An order shall be binding on Memo and Buyer if either:-

(a) A written Order Acknowledgment and Acceptance is forwarded by Memo to the Buyer; or

(b) The equipment the subject of the order is wholly or partially manufactured by Memo; or

(c) The equipment the subject of the order is delivered by Memo to the Buyer, its servants, agents or carrier: or

(d) Memo accepts payment from the Buyer in part or whole for the equipment.

3. PRICE AND PAYMENT

(a) All prices are in Australian currency and shall be payable without discount by Buyers with approved credit standing within 30 days from the date of Memo's invoice. Unless otherwise agreed in writing, all other Buyers shall pay in full on delivery.

(b) If deliveries are made in instalments each instalment shall be separately invoiced and paid for when due without regard to other deliveries.

(c) Prices for imported equipment are based on exchange rates and customs and primage duties at the date of quotation. Any variation in these rates between the date of the quotation and date of invoicing shall be to the Buyer's account and shall be calculated by applying the percent variation to the quotation price.

(d) Prices for delivery more than three months from the date of order or where order includes frequency sensitive products or equipment for which the Buyer does not have a frequency allocation are subject to variation in accordance with variation in labour and material costs occurring between the date of quotation and date of invoice.

(e) All additional costs incurred by Memo in delivery installation or commissioning resulting from delays due to reasons other than neglect or default on the part of the Memo shall be to the Buyer's account.

(f) Goods and Services Tax, where applicable, will be charged at the appropriate rate at the date of invoice. Any change in the Australian taxation Laws relating to this contract will be enforced and payable by the contract user named.

(g) Interest shall be paid by the Buyer on overdue accounts calculated on daily balances from the day following the date upon which payment should have been made at the current overdraft rate, plus a percentage to be determined for administration costs.

(h) Invoices shall be issued upon delivery or upon the equipment becoming available for delivery to the Buyer.

(i) Charges for shipping shall be in accordance with Memo's current Price Book provisions.

4. DELIVERY RISK AND PROPERTY

(a) Delivery of the equipment shall be F.O.B the Buyer's carrier at Memo's plant. Memo may arrange shipment to the Buyer's nominated site at the Buyer's sole risk and expense.

(b) All delivery dates are estimates only and Memo may amend the delivery schedule as necessary in accordance with Memo's applicable shipping sequence or in the event of delay through clearance of engineering detail, channel frequency allocation or availability of landline.

(c) Memo reserves the right to make deliveries in instalments and the order shall be severable as to any such instalment.

(d) Delay in delivery or other default of any instalment shall not relieve the Buyer of its obligation to accept and pay for remaining deliveries nor shall any delay give rise to any liability on the part of Memo.

(e) Liability for risk of loss or damage with respect to the equipment passes from Memo to the Buyer on delivery of the equipment to the Buyer, its servants or agents or carrier.

(f) Title of the equipment shall not pass to the Buyer until payment in full is received by Memo. Memo reserves the right to recover equipment in the case of failure of the Buyer to meet payment terms.

(g) No delivery may be deferred without Memo's written consent.

5. INSTALLATION AND COMMISSIONING

(a) Where installation or commissioning by Memo is required, the date of such work will be fixed after consultation with Memo. However, if for any reason whatsoever, other than the neglect or default of Memo, it is not possible to proceed with the required work on the agreed date, then any additional costs incurred by Memo as a result of this delay may be charged to the Buyer.

(b) Where the installation involves the provision of ancillary services such as electricity, accommodation or messing, these shall be provided by and at cost to the Buyer in accordance with Memo's requirements.

(c) Unless otherwise specified, prices quoted for installation and/or commissioning are on the basis that the work may proceed continuously in normal working hours and that ready access to the site is provided by the Buyer. Any work conducted by Memo outside of normal working hours as requested by the Buyer will be charged at a separate rate.

6. CHANGES OR CANCELLATION

(a) The Buyer may, with the written consent of Memo and subject to agreement in the price adjustment, by written order make changes within the general scope of the contract in the drawings, designs or specifications or method of delivery or packing.

(b) In the case of such changes there shall be an equitable adjustment to the contract price, delivery schedule or other contract provisions affected by the changes.

(c) All works shall be suspended pending agreement on all adjustments to be made to the contract resulting from such changes.

(d) No cancellation by the Buyer for default of Memo shall be effective unless and until Memo shall have failed to correct such alleged default within 30 days or, if such default requires the importation to Australia of equipment or parts, within 3 months, after receipt by Memo of a written notice specifying such default in detail.

(e) Cancellation of any order by the Buyer other than for default of Memo will result in a charge being made to the Buyer's account.

i Cancellation and return of equipment/parts within 15 days shall incur a restocking fee of 15% of total order value.

ii Cancellation of order and/or return of equipment/parts within 30 days of the date of order shall incur a charge of 25% of total order value.

iii No cancellation or return shall be permitted after 30 days from date of order or at all for equipment or parts not

manufactured by Memo, or Customer specific orders.

7. FORCE MAJEURE

(a) Memo shall not be liable for any delay in or failure to perform any of its obligations hereunder and such delays or failures of performance shall likewise not be considered defaults hereunder if the delay or failure is due to causes beyond Memo's control

(b) Such causes may include, but are not necessarily limited to, compliance with any laws, regulations, orders, act, instructions or priority requests of any Government, or any department or agency thereof; civil or military authority; acts of God; acts of the public enemy; acts or omissions of insurrections; defaults of Memo's suppliers or sub-contractors; delays in transportation; and loss or damage to goods in transit, and other causes beyond Memo's control.

(c) The delivery schedule shall be considered extended by a period of time proportional to the time lost because of any delay in performance due to reasons beyond Memo's control.

(d) If Memo is unable to perform or complete performance of this contract wholly or in part due to causes beyond its control, Memo may unilaterally rescind this contract or the outstanding portion thereof without any further liability to Memo or the Buyer.

(e) In no event will Memo be liable for any incidental, special or consequential damages.

8. WARRANTY

(a) Memo warrants that all products and equipment of its own manufacture will be free from defects in material and workmanship for the period specified for the particular product or equipment or if not otherwise specified for the period of 12 months during normal business hours, from the date of delivery at which time all products and equipment will conform to Memo's applicable specifications therefore, or, if appropriate, to the specifications accepted by Memo therefore.

(b) Memo's sole obligation hereunder shall be limited to, at Memo's discretion and option, either:-

- i Refunding the purchase price; or
- ii Replacing the particular equipment;
or
- iii Otherwise correcting the

non-conformance of any equipment for which written notice of the non-conformance under this warranty is received by Memo within the applicable warranty period.

(c) Non-conforming equipment must be returned to Memo's plant within 30 days of the written notice aforesaid at the Buyer's sole risk and expense. Equipment installed in remote locations shall be dealt with in accordance with Clause 8 (b) above provided always that all travel, transport, accommodation and other such expenses incurred by Memo shall be to the Buyer's account.

(d) This warranty shall not apply to any developmental equipment or to any equipment in other than its original condition or to any equipment which Memo determines has been subjected to operating or environmental conditions in excess of maximum limits established therefore or otherwise have been subjected to misuse, improper installation, repair, alteration, or accidental damage, whether or not caused by the Buyer.

(e) All other warranties or representations whether statutory or otherwise and whether express or implied or oral or written as to the state quality or fitness of the products or equipment are hereby expressly excluded save and except any conditions and warranties which are by a relevant statute expressed to be incapable of exclusion.

(f) Except as expressly stated above, Memo shall not be liable in contract or otherwise for any loss, damage, expense or injury of any sort whatsoever, consequential, indirect or otherwise, arising out of or in connection with the installation, use or failure of the products or equipment sold or any defect in them or from any other cause.

(g) Non-Memo manufactured products are excluded from this warranty and Memo's sole liability shall be extended to the Buyer any warranty received from the original manufacturer so far as Memo is permitted to do so.

9. LEASED EQUIPMENT

If at any time before the delivery of any equipment, the Buyer informs Memo that lease finance is to be arranged in respect of such equipment or any item thereof the following shall apply:

(a) The Buyer agrees that it will procure a leasing company to purchase the equipment and provide Memo with written confirmation from the leasing company of its unqualified commitment to purchase the said

equipment. For these purposes a broker's letter shall not constitute an acceptable confirmation.

(b) Memo shall address its invoice for the equipment to the leasing company and all payments by the leasing company shall discharge for that amount the Buyer's obligations for payment but all other provisions of the Standard Conditions of Sale shall remain in full force and effect.

(c) If there shall be any breach by the Buyer of this Clause 9 or if the nominated leasing company shall for any reason (other than default of Memo) fail within the times stated in Clause 3 to pay the full amount of any invoice addressed to it, then Memo may address or re-address an invoice to the Buyer who shall thereupon be bound to purchase the equipment or item thereof from Memo and to pay for the same in accordance with Clause 3 that time of payment shall commence to run from the time of issue of the invoice to the leasing company.

(d) The Buyer acknowledges that no discussions, correspondence or other communications between the parties concerning the sources or availability of lease finance shall in any way affect the Buyer's obligations under this clause.

(e) Memo shall not make deliveries in instalments unless specifically authorised by the leasing company and unless each sub instalment shall be subject to separate payments.

10. GENERAL

(a) Returns of equipment shall not be accepted by Memo unless authorised in writing by Memo.

(b) Memo shall indemnify the Buyer in relation to any proceedings for infringement of any Australian Letters Patent arising from the Buyer's use of Memo equipment.

(c) All packaging and packing shall be in accordance with Memo's usual Standards for such equipment.

(d) The Buyer agrees that no product or equipment nor any technical data nor any other portion of the subject matter of this contract shall, in any form, be resold or otherwise diverted to any ultimate destination contrary to the law of Australia or of the United States.

(e) The Buyer hereby acknowledges that Memo has all proprietary rights in all documents, designs, plans and the like supplied by Memo.

(f) The Buyer agrees that it shall not, without the prior written consent of Memo, copy use or disclose to any third party any such documents, design, plan or the like or any technical data obtained from Memo except for the purposes of using the products or equipment sold by Memo to the Buyer.

(g) The rights and duties of the parties hereunder and the terms and conditions hereof shall be governed and interpreted according to the laws of the State of Western Australia.

11. RISE AND FALL VARIATION

For the purposes of Clause 3 (c) and 3 (d) prices variation shall be calculated as follows:

(a) Overseas Content (Labour and Material Costs) The overseas content of the quoted price shall be adjusted by the percentage variation in the Memo published price book in the country of origin between the date of quotation and the date of invoice. The published price book variations can be certified through the Australian Consulate with the country of origin.

(b) Australian Content (Local Labour and Material Costs) The Australian content of the quoted price shall be adjusted by the percentage variation in the Australian Bureau of Statistics Index of Articles of Manufacturing Industry Group 332. The latest monthly index published by the Australian Bureau of Statistics, between the date of quotation and the date of invoice, shall be used to determine the percentage variation.

(c) Exchange Variation Exchange rate variation shall be applied to the overseas content of the quoted price, in accordance with the rate upon which the quoted prices are based, and the rate at the date of invoice. The rate upon which the quoted and invoiced prices are based is the daily published ANZ Bank telegraphic transfer selling rate.

(d) Non-Memo Communications Parts The whole of any price variation on non Memo parts and equipment (identified in the quotation as Drop Ship Items,) as applied by the suppliers of this equipment, shall be to the Buyer's account