

WIDEBAND TECHNOLOGY PTY LTD ~ ACN: 115 637 388 ~ ABN: 79 115 637 388
GENERAL TERMS AND CONDITIONS OF SALE / SUPPLY

General Terms and Conditions of Sale / Supply

These Terms and any document(s) referred to in them constitute the entire agreement about Wideband Technology Pty Ltd's (WBT, us, our, we) supply of the Products and services to the Customer and supersedes all prior understandings, arrangements and agreements relating to such supply. However if the Customer has been granted Extended Payment Terms by WBT then these General Terms and Conditions are to be read in conjunction with WBT's Extended Payment Terms and Conditions. Words with special meanings are defined in clause 1. A reference in these Terms to: (a) the singular includes the plural and vice versa; and (b) the word "including" means "including, but not limited to," and the word "includes" means "includes, without limitation".

1. Definitions

In these Terms: "Customer" means the person, business or company that is the purchaser of the Products; "Products" means the products (including software) supplied to the Customer by WBT and described in WBT's invoice; "Sales Contract" means any Contract of Sale entered into by the Customer and WBT in respect of the Products and services supplied to the Customer in which these Terms are deemed to be incorporated; Terms means these General Terms and Conditions of Sale / Supply. "WBT", "us" "our" and "we" means and includes WBT's Servants, agents and permitted assigns.

2. Orders

(a) All orders for Products placed by the Customer:

(i) must be made in accordance with WBT's order policy as amended by us from time to time; and

(ii) are subject to acceptance by WBT, and no order will be deemed to have been accepted by WBT unless such acceptance has been confirmed in writing by an authorised representative of WBT to the Customer.

(b) WBT may reject any order placed by the Customer if there is an insufficient supply of Products which prevents WBT from being able to fulfil such order.

(c) WBT will not be bound by any terms attaching to the Customer's order and, unless those terms are expressly agreed by an authorised representative of WBT, the Customer agrees that those terms are excluded.

3. Payment

(a) The price of the Products will be WBT's quoted price at the time the Customer's order is accepted by us.

(b) Payment is required prior to delivery of the Products to the Customer unless agreed otherwise by WBT or its authorised representative. If the Customer fails to make payment in accordance with this clause 3(a) after demand for payment by WBT, all amounts owing by the Customer to WBT on any account will immediately become due and payable.

(c) WBT may, in its sole discretion:

(i) suspend the provision of Extended Payment Terms to the Customer until all amounts owing are paid for in full; and

(ii) from time to time and at any time, vary or cancel any Extended Payment Terms facility it makes available to the Customer.

(d) Companies will be liable to pay interest on any overdue amount at the rate prescribed by section 2 of the Penalty Interest Rate Act from time to time. Interest will accrue daily from the date payment became overdue until WBT has received payment of the overdue amount, together with any interest accrued.

(e) Unless stated otherwise in these Terms (or in writing by WBT's authorised representative), all prices quoted for Products are exclusive of all taxes, handling, delivery, agents' charges and any other charge, duty or impost.

(f) The Customer must pay WBT, on demand, any tax (other than income tax) payable under or contemplated by these Terms or arising from the provision of the Products by WBT including any goods and services or value-added tax, customs duty, GST, excise duty, stamp duty, other duty, governmental charge, fee, levy or impost, together with any fine, penalty or interest payable because of a default by the Customer.

(g) The Customer must pay to WBT any amount the Customer must pay under clause 3(f) in full, despite any right of set-off that the Customer may have.

(h) Extended Payment Terms are subject to acceptance of the Extended Payment Terms Application and validation of trade references and are strictly 30 days net from date of invoice (unless otherwise specified in writing by WBT).

(i) The Customer will pay all collection costs including but not limited to legal expenses and debt collection commissions incurred in obtaining payment for any amounts owing to the Company in respect of the Goods.

(j) In consideration of the Company agreeing to and continuing to supply goods and services to the Customer, the Directors jointly and severally guarantee to the Company the payment of the amount due by the Customer for the goods and services, and any other monies or damages payable to the Company by the Customer pursuant to these Conditions.

(k) This Guarantee shall be a continuing Guarantee and shall not be affected or avoided in any way by any agreement or arrangement made between the Customer and the Company at any time or other indulgence given by the Company to the Customer or any composition or arrangement with or release of the Customer or any one or more of the said Directors, or in the event that the Customer becomes bankrupt or insolvent. Any and all Directors who sign the Extended Payment Terms application shall be bound even if any or all of the other Directors fail to do so or there are no other Directors. Any payment received which is subsequently found to be a preferential payment shall not be a payment for the purposes of this Guarantee.

4. Delivery

Delivery times advised to the Customer are estimates only and WBT will not be liable for any loss, damage or delay suffered or incurred by the Customer or its customers arising from late or non-delivery of the Products whether dispatched by WBT or not. If WBT attempts to deliver Products to the Customer but is not able to effect delivery due to the fault or neglect of the Customer then the Customer shall be liable to WBT for the costs of such attempted delivery.

5. Part deliveries

WBT may make part deliveries of any order, and each part delivery will constitute a separate supply of the Products upon these Terms.

6. Software

(a) To the extent that a Product supplied under these Terms is a software Product then, in addition to these Terms, that Product will be supplied subject to the terms and conditions of the relevant licence agreement applicable to it.

(b) Software licence agreements may be packaged with the software, may be separately provided to the Customer for execution or may require on-screen acceptance by the Customer. The Customer agrees to use the software Product in accordance with the terms and conditions of the relevant licence agreement.

(c) Where the term "supply" is used in these Terms to refer to a software Product, such term means the sale and purchase of the licence to use that software Product.

7. Inspection and acceptance

The Customer must:

(a) in the case of all Products ordered (other than software Products), inspect such Products upon delivery to the Customer's premises; or,

(b) in the case of software Products, test or inspect such software Products upon those Products being authorised by WBT for downloading by the Customer, and must, within 7 days of delivery or downloading (as the case may be);

and must forthwith give written notice to WBT of any matter or thing by which the Customer alleges that the Products do not accord with the Customer's order. Failing such notice and to the extent permitted by law, the Products will be deemed to have been accepted by the Customer.

8. Title and risk

(a) Products supplied by WBT to the Customer will be at the Customer's risk immediately upon delivery of the Products to a recognised carrier for transport to the Customer or into the Customer's custody and control (whichever is the sooner).

(b) The Customer must: (i) effect and maintain with a reputable insurance company insurance for the Products, at its cost, against all risks as it thinks appropriate; (ii) note the interest of WBT on the insurance policy; and (iii) produce a certificate of currency of the insurance effected by the Customer under this clause 8(b) to WBT, upon request.

(c) Risk in the Products will remain with the Customer at all times unless WBT retakes possession of the Products in accordance with clause 8(f)(ii).

(d) Title in the Products supplied by WBT to the Customer will not pass to the Customer until those Products are paid for and all funds cleared. Title to those Products which are software remains with WBT and/or the applicable third party licensor(s) at all times.

(e) If the Customer has breached these Terms or the terms of any relevant Sales Contract, the Customer hereby grants to WBT, its employees and agents an irrevocable licence to enter onto any premises upon which WBT's Products are stored at any time to enable WBT to:

(i) inspect the Products; and/or

(ii) retake possession of the Products. The Customer agrees to indemnify WBT and its employees and agents from and against any actions, proceedings or claims arising from such entry onto such premises.

(f) Notwithstanding the foregoing, WBT will be entitled to bring an action against the Customer for the price of the Product and any applicable taxes in the event of non payment by the Customer by the due date as if the property in the Property had already passed to the Customer. (g) The Customer agrees that the provisions of this clause 8 apply despite any arrangement under which WBT grants Extended Payment Terms to the Customer.

9. Returns

Subject to clause 13: (a) The Customer must notify WBT in writing of any Products it wishes to return within 15 days from the date of the invoice relating to those Products. (b) Returns will be subject to WBT's returns policy as advised to the Customer and amended by WBT from time to time. (c) Each claim for the return of Products by the Customer will be dealt with in accordance with the Returns Policy. Any substitute Products to be shipped to the Customer in accordance with the Returns Policy will be sent by WBT to the Customer by ordinary freight pre-paid. (d) WBT will not be liable for any damage or defects in the Products that have been caused by the improper storage, warehousing or transport, or by any neglect, abuse or improper use, installation, maintenance or unauthorised repair of WBT's Products. (e) The provisions of this clause 9 do not extend to any Products which have been added to, or varied by, any person other than WBT.

10. Force majeure

If the performance of WBT's obligations under these Terms or any relevant Sales Contract is prevented, restricted or affected by force majeure including act of war or terrorism, strike, lock out, shortage of raw materials or goods, accident, breakdown of plant, transport or equipment, restrictions imposed by any local municipal or government authority (including Customs Authorities) whether Australian or foreign or any other cause beyond the reasonable control of WBT, WBT will give notice of such cause to the Customer and if the force majeure event has continued unabated for 60 days after the receipt by the Customer of such notice, either party may terminate the relevant Sales Contract without penalty by giving seven days written notice to the other.

11. The Customer's Cancellation

(a) Unless otherwise agreed in writing, the Customer may not cancel an order which has been accepted by WBT. (b) Unless otherwise agreed between the Customer and WBT, upon cancellation any deposit paid by the Customer will be forfeited to WBT.

12. Default of the Customer

Without prejudice to any of WBT's other rights under these Terms, if the Customer breaches these Terms, fails to make any payment due to WBT under these Terms or becomes insolvent or subject to any form of insolvency administration such as liquidation, receivership or administration then, WBT may, in its sole discretion, and without further liability to the Customer: (a) refuse to make further supplies to the Customer under the relevant Sales Contract; and/or (b) terminate the Sales Contract without notice. In the event that WBT institutes legal proceedings against the Customer in consequence of a breach of these Terms or to recover monies owing by the Customer to WBT then the Customer agrees to indemnify WBT from and against all costs or expenses incurred by WBT in such proceedings including legal expenses on a solicitor own-client basis.

13. Warranties and Exclusions

13.1 For a period of one year from the date of purchase, **or unless specifically stated by us on acceptance of order**, WBT warrants that the Product will be free from material defects in design and manufacture and will be substantially fit for the purpose for which the Products are supplied, such purpose being as set out in:

- (a) these terms and conditions;
 - (b) any specification or product instructions published from time to time by WBT; or
 - (c) any specification of any standards organisation which has certified the Products comply with such specification;
- and in the event of any conflict or difference between the specifications in (b) or (c) and these terms and conditions, these terms and conditions will prevail and in the event of conflict between (b) and (c), (b) will prevail. Description of a product by reference to any name, code, or catalogue reference does not constitute a representation that the product complies with any standard or specification.

13.2 **WBT's Products are not warranted to operate without failure. WBT does not recommend or warrant in any way the use of the Products in life-support, health, aviation, defence or other applications where a failure or malfunction may directly threaten life or cause personal injury. WBT's products have a lifespan based on the quality of their materials, and are not warranted to perform to the standard of other product bearing the same name or described by the same characteristics.**

13.3 WBT's liability under this clause will be limited to inspection of any defective product and, in its discretion, the repair or re-supply of that Product or an equivalent Product having the same or equivalent functionality to the point of original purchase within a reasonable time of receipt of the defective product at point of purchase with proof of purchase by the Customer. WBT does not warrant or represent that repair facilities or parts will be available in respect of the Products.

13.4 WBT makes no other warranties express or implied and excludes all other warranties, representations, terms or conditions whether express or implied, oral or written and whether conferred by statute or otherwise including any implied warranty of merchantability or of fitness for any particular purpose. In particular, WBT expressly excludes all warranties with respect to damage:

- (a) caused or arising out of improper installation, modification, alteration or repair;
- (b) unusual or excessive wear and tear;
- (c) caused by vandalism or other criminal acts;
- (d) resulting from wilful acts, misuse or neglect by the Customer, its servants, agents or third parties;
- (e) caused by use of the Product outside the purpose for which the Products are supplied as set out in :
- (i) these terms and conditions;
- (ii) any specification or product instructions published from time to time by WBT; or
- (iii) any specification of any standards organisation which has certified the Products comply with such specification.

14. Limitation of Liability

14.1 If and only if liability imposed by such legislation may not be excluded by agreement, the liability of WBT for any loss or damage (including consequential or economic loss) arising out of or in relation to the installation or supply of the Products or services to the Customer (whether pursuant to this Agreement or otherwise) shall be limited at the sole option of WBT, to, in the case of Products:

- (a) the replacement of the Products or the supply of equivalent Products;
- (b) the repair of such Products;
- (c) the payment of the costs of replacing the Products or of acquiring equivalent Products; or
- (d) the payment of the cost of having the Products repaired; and

In the case of the supply of services:

- (e) the provision of the services again; or
- (f) the payment of the costs of performing the services again;

but such that the cost to WBT shall not exceed the amount of the price paid to WBT by the Customer.

14.2 WBT will provide the benefit of any warranties (if any) provided to WBT by the supplier of the materials or any services forming part of the Products but such warranties will terminate in the event that the supplier ceases trading.

14.3 To the maximum extent permitted by law, WBT will not be liable to the Customer or any other person under any circumstances for any loss of use, profit, goodwill or data or for any death or injury to any person or for any economic loss, whether such liability arises directly or indirectly as a result of:

- (a) any negligent act or omission or wilful misconduct of WBT, its servants or agents;
- (b) the supply, performance or use of the Products;
- (c) any breach by WBT of these terms or any relevant terms of sale of the Product.

14.4 The Vienna Convention for the Sale of Goods nor the terms of the Goods Act of any Australian State or Territory apply to the sale or supply under these terms and conditions.

15. Privacy

(a) The Customer agrees to WBT collecting, using and disclosing information about the Customer for its purposes including rights to:

- (i) assess the Customer's capacity to pay our invoices
- (ii) supply the Products and services to the Customer and manage the Customer's account;
- (iii) communicate with the Customer about the Products and services which WBT or its partners or affiliates may provide to the Customer;
- (iv) implement these Terms and any Sales Contract; and
- (v) comply with relevant laws.

(b) WBT, at the written request of the Customer, will:

- (i) provide the Customer with access to any personal information relating to the Customer held by WBT; and
 - (ii) correct or amend any personal information relating to the Customer held by WBT which is inaccurate or out of date.
- (c) WBT will handle Customer's personal information in accordance with relevant laws and in accordance with WBT' Privacy Policy.

16. Intellectual property

(a) The Customer acknowledges that:

- (i) all trademarks, copyright and other intellectual property rights ("Intellectual Property") embodied in or in connection with the Products and any related documentation, parts or software are the sole property of WBT or its suppliers; and

(ii) all Intellectual Property of WBT or its suppliers may only be used by the Customer with the consent of WBT or its suppliers, during the continuance of any relevant Sales Contract, and such consent extends only to use essential for the purposes stated in it. Any licensing of Intellectual Property rights in any software Products supplied to the Customer will immediately cease upon expiry or termination of the relevant licence agreement that governs their use.

(b) The Customer must not, during or after the expiry or termination of any relevant Sales Contract, without the prior written consent of WBT or its suppliers, register or use any trade marks, trade name, domain name, trading style or commercial designation or design used by WBT or its suppliers in connection with the Products.

(c) The Customer will indemnify WBT against all liabilities, damages, costs and expenses which WBT may suffer or incur as a result of work done in accordance with the Customer's specifications or as a result of the combination or use of the Products with other equipment, parts or software not supplied by WBT, and which results in the infringement of any Intellectual Property of any person.

17. Confidentiality

(a) The Customer acknowledges that WBT has disclosed and may from time to time disclose to the Customer certain confidential information and documentation of WBT relating to the Products, their marketing, use, maintenance and software, including technical specifications ("Confidential Information").

(b) Subject to clause 17(e), The Customer must: (i) only use the Confidential Information solely for the purposes contemplated under any relevant Sales Contract; and (ii) not, during the continuation of such Sales Contract or thereafter, disclose (whether directly or indirectly) to any third party the Confidential Information, other than is required to carry out such purposes.

(c) If disclosure of Confidential Information to third parties is necessary, the Customer will obtain from such third parties binding agreements to maintain in confidence the Confidential Information disclosed at least to the same extent as the Customer is bound to protect WBT's Confidential Information under this clause 17.

(d) Upon the expiry or termination of any relevant Sales Contract, the Customer must cease to use and must return or destroy (as WBT may instruct) WBT's Confidential Information in its possession or control.

(e) The provisions of this clause 17 do not extend to any information which is: (i) at the time of disclosure, rightfully known to or in the possession or control of the Customer and which is not subject to an obligation of confidentiality; (ii) public knowledge (otherwise than as a result of a breach of this clause 17 or any other obligation of confidentiality); (iii) approved to be disclosed by WBT; or (iv) required to be disclosed by a government authority or by relevant laws.

18. General

(a) WBT may amend these Terms at any time, by posting a notice on WBT's public website. By continuing to place orders for Products, the Customer will be deemed to have accepted the revised Terms.

(b) Any provision of these Terms which is invalid or unenforceable will be read down to the extent necessary, and the remaining provisions will continue unaffected.

(c) The Customer may not assign or attempt to assign any of its rights and obligations under these Terms without the written consent of WBT.

(d) These Terms are governed by the laws of the State of Victoria and the parties unconditionally submit to the jurisdiction of the courts of Victoria and courts entitled to hear appeals from these courts.