

**GCOMM Pty Ltd**  
**ABN 16 074 440 841**

### **Terms and Conditions of Sale of Products ("Terms")**

These Terms and any document(s) referred to in them constitute the entire agreement about GCOMM Pty Ltd's (GCOMM) supply of the Products to Customer.

Words with special meanings are defined in clause 1. A reference in these Terms to:

- a. the singular includes the plural and vice versa;
- b. the word "including" means "including, but not limited to," and the word "includes" means "includes, without limitation,";
- c. A reference to a gender includes all genders; and
- d. a reference to a person (including a party) includes an individual, company, other body corporate, partnership, firm, joint venture, or a trust.
- e.

The current version of these Terms may be viewed at GCOMM's website at [www.gcomm.com.au](http://www.gcomm.com.au)

### **1) Definitions**

In these terms:

**"Customer"** means the person, business or company that is the purchaser of the Products;

**"Product"** means any Product (including software) supplied to Customer by GCOMM and described in GCOMM's proposal;

**"Sales Contract"** means any sales contract entered into by Customer and GCOMM in respect of the Products supplied to Customer in which these Terms are deemed to be incorporated;

**"GCOMM's Proposal"** means a proposal from GCOMM to Customer setting out the Products offered to the Customer and the price thereof.

### **2) Orders**

- a. All orders for Products placed by Customer are subject to acceptance by GCOMM and no order will be deemed to have been accepted by GCOMM unless confirmed in writing by an authorised representative of GCOMM to Customer.
- b. GCOMM will not be bound by any terms (with the exception of these Terms) attaching to Customer's order or Customer's acceptance of GCOMM's Proposal and, unless those other terms are expressly agreed to in writing by an authorised representative of GCOMM, Customer agrees that those other terms (with the exception of these Terms) are hereby excluded.

### **3) Payment**

- a. The price of the Products will be the price quoted by GCOMM and set out in the Customer's order and accepted by GCOMM in accordance with clause 2(b).
- b. Payment is required prior to delivery of the Products to Customer unless agreed otherwise in writing by an authorised officer of GCOMM. Where GCOMM agrees to accept payment by credit card from Customer a four percent (4%) administrative charge will be added to the total amount payable by the Customer. GCOMM reserves the right to require the payment by the Customer prior to the order being accepted by GCOMM of a deposit of 30% of the total cost of an order whose total cost exceeds \$1000. If Customer fails to make payment in accordance with this clause 3(b) after demand for payment by GCOMM, all amounts owing by Customer to GCOMM on any account will immediately become due and payable together with legal costs of enforcement.
- c. Where the Customer's order as accepted by GCOMM requires any of the Products to be delivered initially to GCOMM in order to be configured or incorporated by GCOMM into an overall system for the Customer, GCOMM shall be entitled to payment for such Products on or prior to delivery of them by GCOMM's supplier to GCOMM.
- d. GCOMM may, in its sole discretion:

- i. suspend the provision of credit to Customer until all amounts owing are paid for in full; and
  - ii. from time to time and at any time, vary or cancel any credit facility it makes available to Customer.
- e. Customer will be liable to pay interest on any overdue amount at the annual rate of 2% above the prevailing base lending rate quoted by National Australia Bank. Interest will accrue daily from the date payment became overdue until GCOMM has received payment of the overdue amount, together with any interest accrued.
- f. Unless stated otherwise in these Terms (or in writing by GCOMM's authorised representative), all prices quoted for Products are exclusive of all taxes, handling, delivery, agents' charges and any other charge, duty or impost.
- g. Customer must pay GCOMM, on demand, any tax (other than income tax) payable under these Terms, any matter or thing done under these Terms or any payment, receipt or other transaction contemplated by these Terms, including any goods and services or value-added tax, customs duty, sales tax, 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 Customer.
- h. Customer must pay to GCOMM any amount Customer must pay under clause 3(f) in full, despite any right of set-off that Customer may have.
- i. Customer shall pay the full amount due to GCOMM under this clause and shall not deduct from that amount any tax in relation to purchase of the Products. Customer shall reimburse GCOMM for any taxes GCOMM pays on its behalf.

#### **4) Delivery**

Delivery times advised to Customer are estimates only and GCOMM will not be liable for any loss, damage or delay suffered or incurred by Customer or its customers arising from late or non-delivery of the Products.

#### **5) Part deliveries**

GCOMM 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 Customer for execution or may require on-screen acceptance by Customer. 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**

Customer must

- a. in the case of all Products ordered (other than software Products), inspect such Products upon delivery to Customer's premises; or,
- b. in the case of software Products, test or inspect such software Products upon those Products being authorised for downloading by Customer, and must, within 7 days of delivery or downloading (as the case may be), give written notice to GCOMM of any matter or thing by which Customer alleges that the Products do not accord with Customer's order. Failing such notice and to the extent permitted by law, the Products will be deemed to have been accepted by Customer; or
- c. Once the Products have been accepted or deemed to have been accepted by the Customer, all services required by the Customer in respect of such Products shall, where requested by Customer, be provided by GCOMM and paid for by the Customer at GCOMM's rates for such services from time to time.

#### **8) Title and risk**

- a. Products supplied by GCOMM to Customer will be at Customer's risk immediately upon the earlier of:
  - i. delivery of the Products to the Customer, Customer's agent or into the Customer's custody or control; or
  - ii. delivery of the Products to a recognised carrier for the transport to the Customer;accordingly GCOMM will not be liable for any loss or damage to the Products in transit.
- b. 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 GCOMM on the insurance policy; and
  - iii. produce a certificate of currency of the insurance effected by Customer under this clause 8(b) to GCOMM, upon request.
- c. Risk in the Products will remain with Customer at all times unless GCOMM retakes possession of the Products in accordance with clause 8(f)(ii).
- d. Title in the Products supplied by GCOMM to Customer will not pass to Customer and will remain the absolute property of GCOMM until such time as GCOMM has been paid by Customer all monies due and owing to it by the Customer in relation to any account. Title to those Products which are software remains with GCOMM and/or the applicable third party licensor(s) at all times.
- e. Until the Products have been paid for:
  - i. Customer must properly segregate and store the Products in such manner as to clearly indicate that they are the property of GCOMM; and
  - ii. Customer may sell the Products and shall keep records of the Products in the ordinary course of its business as fiduciary agent for GCOMM and Customer agrees to deposit all proceeds of any such sale (including any proceeds received from any insurance claims) in a separate bank account and agrees not to mix the proceeds with any other monies and hold the monies on trust for GCB and shall immediately account for such proceeds to GCOMM.
- f. If Customer has breached these Terms or the terms of any relevant Sales Contract, Customer authorises GCOMM, at any time, to enter onto any premises upon which GCOMM's Products are stored to enable GCOMM to:
  - i. inspect the Products; and/or
  - ii. reclaim the Products.
- g. If Customer sells, disposes of or otherwise deals with Products or any part thereof before full payment has been received by GCOMM, Customer must advise GCOMM in writing, at such times as GCOMM may request, specifying full details of the Products sold, disposed of, utilised or otherwise dealt with.
- h. Customer acknowledges that in the case of software Products, any refusal or failure to pay may result in cancellation of the licence to use the software Product.
- i. Customer agrees that the provisions of this clause 8 apply despite any arrangement under which GCOMM grants credit to Customer.

## **9) Returns**

- a. Customer must notify GCOMM in writing of any Products it wishes to return within five (5) days from the earlier of date of the invoice relating to those Products or the date of delivery of those Products to Customer (or such earlier time as the supplier of the Products may require).
- b. Returns will be subject to GCOMM's returns policy as amended by GCOMM from time to time.
- c. GCOMM will endeavour to persuade the supplier to accept returns provided that the Product is in pristine condition with all seals in tact and the Customer notifies GCOMM and returns the Product to GCOMM within seven (7) days of delivery of the Products to the Customer (or such shorter period as GCOMM's supplier may require). The Customer acknowledges that the terms governing the extent to which and the terms upon which returns are permitted are governed by the returns policy of GCB's supplier of the Product in question. Software cannot be returned.

- d. Any substitute Products to be shipped to Customer in accordance with the returns policy will be sent by GCOMM to Customer by ordinary freight pre-paid.
- e. GCOMM 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
- f. The provisions of this clause 9 do not extend to any Products which have been added to, varied, or otherwise modified by, any person other than GCOMM.

#### **10) Force majeure**

If the performance of GCOMM's obligations under these Terms or any relevant Sales Contract or the performance of GCOMM's supplier's obligations to GCOMM in relation to the Products is prevented, restricted or affected by force majeure including strike, lock out, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the reasonable control of GCOMM or such supplier, GCOMM will give notice of such cause to Customer and after 60 days from the receipt by Customer of such notice, either party may terminate the relevant Sales Contract without penalty.

#### **11) Customer's cancellation**

- a. Unless otherwise agreed in writing by an authorised officer of GCOMM, Customer may not cancel an order which has been accepted by GCOMM.
- b. If Customer's right of cancellation is agreed to by an authorised officer of GCOMM in writing, the right must be exercised by notice in writing from Customer to GCOMM not later than 7 days before the estimated date of shipment by GCOMM or GCOMM's supplier of the Products (as the case may be).
- c. Unless otherwise agreed between Customer and GCOMM, upon cancellation prior to shipment, any deposit paid by Customer will be forfeited to GCOMM.

#### **12) Default of Customer**

- a. Without prejudice to any of GCOMM's other rights under these Terms, if Customer fails to make any payment due to GCOMM under these Terms, GCOMM may, in its sole discretion, and without further liability to Customer:
  - i. refuse to make further supplies to Customer under the relevant Sales Contract; and/or
  - ii. terminate the Sales Contract without notice.
- b. The Customer agrees that these Terms shall give rise to an interest in land thereby enabling GCOMM to lodge a caveat against the title to any land owned partly or wholly by the Customer, in order to protect and secure the interests of GCOMM under these Terms.
- c. In the event that GCOMM lodges a caveat against any land owned partly or wholly by the Customer, the Customer hereby irrevocably agrees to endorse its consent upon any relevant forms or documents to enable the lodgement and timely registration of any such caveat by GCOMM.

#### **13) Warranty**

- a. Products are covered by manufacturers' warranty. To the extent permitted by law, GCOMM's entire responsibility with respect to warranties for the Products is to pass on to Customer the benefit of any such warranties. Subject to clause 13(c), software Products are not warranted by GCOMM under these Terms. Such software Products are warranted in accordance with the relevant licence agreements governing their use.
- b. To the extent permitted by law, the manufacturers' warranties referred to in clause 13(a) are in substitution for all other terms, conditions and warranties, whether implied by statute or otherwise (including implied warranties with respect to merchantability and fitness for purpose) and all such terms, conditions and warranties are expressly excluded.
- c. Certain legislation may imply warranties or conditions or impose obligations upon GCOMM which cannot be excluded, restricted or modified or cannot be excluded, restricted or modified except to a limited extent. These Terms must be read subject to those statutory provisions. If those statutory provisions apply, to the extent to which GCOMM is able to do so, its liability will be limited, at its

option, to the replacement of the Products or resupply of equivalent Products; repair of the Products; payment of the cost of replacing the Products or acquiring equivalent Products; or the payment of the cost of having the Products repaired.

- d. GCOMM does not warrant that repair facilities or parts will be available in respect of any of the Products.

#### **14) Liability**

- a. To the extent permitted by law, GCOMM will not be liable to Customer or any other person under any circumstances for any loss of use, profit, revenue, interest, goodwill or data, or for any injury or death to any person, or for any indirect, incidental or consequential damages sustained or incurred by Customer, whether such liability arises directly or indirectly as a result of:
  - i. any negligent act or omission or wilful misconduct of GCOMM or its employees or agents;
  - ii. the supply, performance or use of any Products or services; or
  - iii. any breach by GCOMM of its obligations under these Terms or any relevant Sales Contract.

#### **15) Credit assessment**

- a. If any Products are supplied to Customer on credit, GCOMM may need to disclose to a credit reporting agency certain information referred to in clause 15(c) about Customer when assessing Customer's application for credit and managing Customer's account with GCOMM. Customer authorises GCOMM to disclose such information to a credit reporting agency for these purposes.
- b. Subject to GCOMM's obligations under the Privacy Act 1988 (Cth) as amended and any other applicable laws, GCOMM may provide the information referred to in clause 15(c) to a credit reporting agency to obtain a consumer credit report about Customer or to allow the credit reporting agency to create or maintain a credit information file about Customer. Customer agrees that GCOMM may disclose a credit report about it to any credit provider, debt collecting agency or GCOMM's insurers for the purposes of assessing Customer's creditworthiness or to collect any overdue payments (as the case may be).
- c. GCOMM may disclose the following information relating to Customer in accordance with clauses 16(a) and (b):
  - i. Customer's name and address;
  - ii. credit limits on Customer's accounts;
  - iii. the amount of any payments which are overdue for at least 60 days;
  - iv. where an overdue payment has been previously reported, advice that the payment is no longer overdue;
  - v. Any method of payment including, but not limited to, cheques, electronic funds transfer, Bpay, credit card payments which have been dishonoured;
  - vi. information that, in the opinion of GCOMM, Customer has committed a serious credit infringement; and
  - vii. information that GCOMM has ceased to supply the Products and services to Customer.
- d. Customer agrees that GCOMM may obtain information about Customer from any business which provides information about the commercial creditworthiness of persons for the purposes of assessing Customer's application to purchase the Products on credit and collecting any overdue amounts.
- e. GCOMM may refuse to supply the Products to Customer on credit on the basis of GCOMM's credit assessment of Customer.

#### **16) Privacy**

- a. Customer agrees to GCOMM collecting, using and disclosing information about Customer of the kind referred to in clause 15(c) for various purposes, including to:
  - i. assess creditworthiness as outlined in clause 15;
  - ii. supply the Products and services to Customer and the management of Customer's account, including suppliers;

- iii. communicate with Customer about the Products and services which GCB or its partners or affiliates may provide to Customer;
  - iv. implement these Terms; and
  - v. comply with relevant laws.
- b. GCOMM, at the written request of Customer, will:
- i. provide Customer with access to any personal information relating to Customer held by GCOMM; and
  - ii. correct or amend any personal information relating to Customer held by GCOMM which is inaccurate or out of date.
- c. GCOMM will handle Customer's personal information in accordance with relevant laws.

## **17) Intellectual Property**

- a. 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 GCOMM or its suppliers or their suppliers; and
  - ii. all Intellectual Property of GCOMM or its suppliers or their suppliers may only be used by Customer with the express written consent of GCOMM or its suppliers or their suppliers, during the continuance of any relevant Sales Contract, and such consent extends only to use essential for the purposes stated in it.
- b. Customer must not register or use any trade marks, trade name, domain name, trading style or commercial designation or design used by GCOMM or its suppliers or their suppliers in connection with the Products.
- c. Customer will indemnify GCOMM against all liabilities, damages, costs and expenses which GCB may suffer or incur as a result of any work performed by GCOMM in accordance with Customer's specifications or as a result of the combination or use of the Products with other equipment, parts or software not supplied by GCOMM, and which results in the infringement of any Intellectual Property of any person.

## **18) Confidentiality**

- a. Customer acknowledges that GCOMM has disclosed and may from time to time disclose to Customer certain confidential information and documentation of GCOMM or its suppliers relating to the Products, their marketing, use, maintenance and software, including technical specifications ("Confidential Information").
- b. Subject to clause 18(e), 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, Customer will obtain from such third parties binding agreements to maintain in confidence the Confidential Information disclosed at least to the same extent as Customer is bound to protect GCOMM's or its suppliers Confidential Information under this clause 18.
- d. Upon the expiry or termination of any relevant Sales Contract, Customer must cease to use and must return or destroy (as GCOMM may instruct) GCOMM's or its suppliers Confidential Information in its possession or control.
- e. The provisions of this clause 18 do not extend to any information which is:
- i. at the time of disclosure, rightfully known to or in the possession or control of Customer and which is not subject to an obligation or confidentiality;
  - ii. public knowledge (otherwise than as a result of a breach of this clause 18 or any other obligation of confidentiality);

- iii. approved in writing by an authorised officer of GCB to be disclosed; or
- iv. required to be disclosed by a government authority or by relevant laws provided that notice of any such required disclosure is first given to GCOMM.

**19) General**

- a. GCOMM may amend these Terms at any time, by giving Customer notice by mail, e-mail or by posting a notice on GCOMM's public website. By continuing to place orders for Products, 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. Customer acknowledges that some Products may be controlled under export laws in force at the time of the Sales Contract. Customer shall not export, re-export, or distribute Products, in violation of any such export control laws or regulations.
- d. Customer acknowledges that certain Products may be subject to license requirements or other restrictions specific to certain transactions. Where applicable, Customer agrees to be bound by any such terms and conditions and/or restrictions and shall indemnify Ingram for any liability suffered by it arising from Customer's breach.
- e. Customer may not assign or attempt to assign any of its rights and obligations under these Terms.
- f. These Terms are governed by the laws of the State of Queensland and the courts of the state of Queensland shall have exclusive jurisdiction to hear any disputes arising from or relating to this agreement.