

# IPL GROUP OF COMPANIES

## TERMS OF SALE

1. **THESE TERMS OF SALE** govern any sale of goods or services by IPL and are subject to change by IPL from time to time without notice.
2. **IN THIS DOCUMENT** the following interpretations and meanings shall apply:
  - (a) "IPL" or "IPL Group of Companies" means any of IPL Communications Pty Ltd (ACN 094 955 576) or IPL Finance Pty Ltd (ACN 106 439 909).
  - (b) "Buyer" means the party or parties buying goods or services from IPL.
  - (c) "Goods" means the items from time to time supplied by IPL to the Buyer.
  - (d) "Specified Period" means for each invoice:
    - (i) For credit approved accounts such period as IPL specifies from time to time in writing and if not so specified, 30 days from the date on which the Goods were invoiced to the buyer.
    - (ii) Cash on delivery otherwise
3. **EXCLUSION OF LIABILITY**
  - a) Other than terms which are implied by Statute and which may not be excluded, this document constitutes the entire contract between the Buyer and IPL and all representations warranties terms and conditions other than those contained herein are to the extent permitted by law, hereby excluded.
  - b) Without limiting the generality of sub-clause (a) hereof and subject to Clause 3 the conditions and warranties implied by Sections 18, 19 and 20 of the Sale of Goods Act 1923 (NSW) shall not form part of this Agreement.
  - c) Nothing contained in this Agreement shall restrict, exclude or modify any condition warranty obligation or liability which is implied or imposed by virtue of any applicable Statute, Statutory rule or regulations insofar as and to the extent to which such condition warranty obligation or liability cannot lawfully be excluded, restricted or modified.
  - d) Should any liability arise as a result of the preceding sub clause the liability of IPL shall be limited at its option to any one or more of the following:
    - (i) In the case of Goods:
      - 1) the replacement of the goods or the supply of equivalent goods;
      - 2) the repair of the goods;
      - 3) the payment of the cost of replacing the goods or of acquiring equivalent goods.
    - (ii) In the case of Services:
      - 1) the supply of the services again;
      - 2) the payment of the cost of having services supplied again.
  - e) To the extent permitted by the Trade Practices Act or any similar Federal or State legislation:
    - (i) IPL will not accept any liability for any defective material or workmanship in any part of the components supplied to IPL by others and incorporated in the Goods;
    - (ii) For the purpose of Division 2A of Part V of the Trade Practices Act where IPL is to import goods components or other materials into New South Wales to satisfy any order placed by the Buyer such order will be accepted only on the understanding that the goods, components or other material, the subject of the order are to be imported into New South Wales on behalf of the Buyer.
4. **BUYER'S PURPOSE**
  - a) The buyer warrants and agrees that all Goods purchased hereunder are purchased:
    - i) in the ordinary course of the Buyer's business and for the purpose of engaging in such business; and/or for the purpose of reselling or resupplying the Goods in the ordinary course of the Buyer's business or for the purpose of using them up or transforming them in the course of a process of production or manufacture or of treating or repairing other goods or fixtures on land;
  - b) In the case where the Buyer purchases for the purpose of resupplying the Goods, whether by sale, exchange, lease, licence or any other means whatsoever:
    - i) the Buyer shall not apply any description to the Goods in the course of advertising, marketing, distributing or resupplying the Goods or at any other time unless such description has been the subject of prior written approval by IPL; and
    - ii) the Buyer shall not resupply the Goods by reference to any sample without the prior written consent of IPL and then shall ensure that the Goods so resupplied shall correspond with the relevant sample.

5. **PACKAGING AND TRADEMARKS ETC**

The Buyers shall only resell or resupply the Goods in the same condition, packaging and get-up as that originally supplied by IPL and the Buyer shall not alter, remove, conceal, add to or vary any notices, promotional material, trademark or tradename appearing on the Goods or their packaging as supplied by IPL to the Buyer therewith and without limiting the generality of the foregoing the Buyer shall ensure that a "Notice to Consumer" in the following form is attached to all Goods sold or supplied to the Buyer herewith, and resold or resupplied by the Buyer. "It is not promised that facilities for the repair of these Goods or that part for these Goods will be available at any time".

6. **RETENTION OF TITLE**

The Buyer shall assume the risk of loss or damage to the Goods immediately upon delivery but until such time as the Buyer shall have paid to IPL all monies owing to IPL under this and any other contract:

- a) Notwithstanding delivery of the Goods to the Buyer the full legal and equitable title in the Goods to be supplied to the Buyer shall be retained by IPL and will only be transferred to the Buyer when all such monies shall have been paid.
- b) Pending sale of the Goods by the Buyer, the Buyer shall hold the goods on behalf of IPL as its fiduciary agent.
- c) IPL authorises the Buyer to sell the Goods as IPL's fiduciary agent for the account of IPL only. The proceeds of such sales are the property of IPL and the Buyer shall hold such proceeds for and on behalf of IPL in a fiduciary capacity. The Buyer shall pay such proceeds of sale into a separate account for IPL and keep separate records as to the Goods sold and the amount received.
- d) The Buyer shall ensure that the Goods are stored in such a way that they are clearly identifiable as property of IPL and are not intermingled with the property of the Buyer or of any other person.
- e) If the Goods are intermingled with or affixed to other materials, the totality thereof shall be the sole and exclusive property of IPL until payment has been made in full to IPL unless the other materials are the property of a party or parties other than the Buyer in which case the totality thereof (and any sale proceeds) shall be deemed to be owned by IPL with such other parties as tenants in common in shares corresponding to the respective amounts paid or payable by the Buyer to IPL for the Goods and to the other party or parties for the other materials.
- f) The Buyer shall not in any way use, alter or treat the Goods so as to change their quality or nature in any way.
- g) The Buyer shall notify IPL in writing of any intended sale of the Buyer's business which includes or purports to include the Goods as part of the Buyer's stock.
- h) The Buyer shall not bail, pledge, mortgage, charge, provide a lien over, lease or assign by any other way of security or deal in any other way with the Goods. Only sales pursuant to Clause 6 (c) are allowed.
- i) The Buyer will indemnify IPL against any loss or damage to the Goods after delivery and prior to full payment and against any liability to any third party for any expenses or damages incurred by IPL in enforcing its rights under this Agreement.
- j) This clause shall apply notwithstanding any Agreement at any time under which IPL provides credit to the Buyer.

7. **PRICE AND PAYMENT**

- a) The prices payable by the Buyer for the Goods shall be as agreed from time to time by the parties and shall be paid within the Specified Period. IPL may vary the Specified Period for payment by giving written notice to the Buyer.
- b) Subject to subclause ( c ) of this clause 7, payment of the amount of Buyer owes IPL under this contract shall be deemed only to have been made when cash has been received by IPL or cheques for the price have been met and honoured in full. Price shall include any interest due under subclause (e) below.
- c) IPL shall accept payment for Goods provided to a Buyer under this contract by credit card, in which event the Buyer shall pay to IPL an administration charge at the rate of 3% of the GST inclusive price payable for the Goods for invoice amounts greater than \$1,000.00 with an overall limit of \$10,000 per payment. Payment of the amount the Buyer owes IPL under this contract (including the administration charge) shall be deemed to have been made by credit card at the time the credit transaction is processed by IPL. The amount so paid must be the total amount due, partial payment by credit cards are not permitted.
- d) The Buyer shall not be entitled to make any deductions or set off any amounts against monies owing to IPL under this contract without the prior written approval of IPL.
- e) The Buyer shall be liable to pay interest for any monies payable by the Buyer to IPL which remain outstanding after 60 days following delivery of the Goods to the Buyer, at the rate of 1% per month of the amount outstanding from time to time (or pro-rata for part of a month), such interest amount to be payable at the same time as payment of the invoice price of the Goods is made.

8. **IPL'S RIGHT TO RECOVER GOODS**

- a) Should the Specified Period expire before payment of the Goods is completed as herein provided or if IPL has reasonable grounds to believe that the Goods may be destroyed, damaged, endangered or removed from the Buyer's normal place of business or location, IPL and its agents and employees have the right to enter the premises in which the Goods are stored and take such of the Goods which are in the possession of the Buyer or any agent of the Buyer.
- b) IPL shall not be liable for any damage or injury incurred in exercising its rights hereunder unless solely caused by the wilful negligence of IPL or its agents. Production of a copy of this Agreement shall constitute evidence of IPL's authority to enter any such premises and remove the Goods at its discretion.

- c) Buyer hereby authorises IPL or its servants or agents to enter upon Buyer's premises at any time to inspect the Goods and if Buyer shall be in breach of any term or condition of these Terms of Sale, or if Buyer shall fail to pay for the Goods in accordance with IPL's Terms of Payment, IPL may without notice take possession of such Goods without prejudice to its rights to claim damages for breach of contract.

9. **GST**

All amounts payable by the Buyer to IPL for Goods (or services) referred to in these Terms of Sale or otherwise quoted by IPL to a Buyer are exclusive of GST and represent the GST exclusive supply price. Apart from any amounts payable by the Buyer to IPL pursuant to these Terms of Sale, if GST is payable in relation to any Goods (or services) supplied to a Buyer by IPL, an amount for GST (less any savings as a result of removal of sales tax) will be added to the GST exclusive supply price attributable to any supply and is payable by the Buyer at the same time as that amount to which the relevant GST liability relates is payable.

10. **CREDIT APPLICATION**

- a) The Buyer acknowledges that the information contained in the Credit Application form will be used by IPL to decide whether or not credit is to be provided to the Buyer and warrants that all such information is correct.
- b) The Buyer acknowledges that IPL shall have an absolute discretion as to:
  - (i) whether or not credit is to be provided to the Buyer, and
  - (ii) the extent of the credit, if any, in the absence of any Agreement in writing between the parties.
- c) The buyer shall notify IPL immediately in writing of any change in the details contained in the Credit Application.
- d) IPL reserves the right to withdraw credit facilities at its discretion at any time.
- e) The Buyer acknowledges that the information in the application may be passed on to a credit agency and consents to the Buyer's credit status being disclosed.

11. **MISCELLANEOUS**

- a) If there is more than one Buyer then each and every reference to the Buyer shall mean all such Buyers jointly and each of them severally.
- b) The creation, construction, performance and enforcement of this Agreement shall be governed in accordance with the laws of the State of New South Wales and the parties hereto submit to the non-exclusive jurisdiction of the Courts of that State.
- c) It is acknowledged by the Buyer that there is no exclusive arrangement between the Buyer and IPL, or undertaking by IPL for the exclusive supply of the Goods.

12. **RETURNED GOODS**

In the event that the Buyer wishes to return any Goods supplied by IPL for any reason other than that the Goods are faulty, IPL may in its absolute discretion agree to the return of the Goods if:

- a) Goods may be refunded only after an authorisation number (RA number) has been allocated. An RA number will only be considered in the following circumstances:
  - (i) goods shipped incorrectly;
  - (ii) orders cancelled with 24 hours;
  - (iii) faulty products.
- b) The Goods are returned in the same condition (including all packaging promotional material and get-up) as that in which they were supplied to the Buyer.
- c) The Goods have been fully paid for by the Buyer, in which case IPL shall not be under any obligation to pay any monies whatsoever to the Buyer but shall credit the account of the Buyer with 85% of the net invoice values of the relevant Goods to be offset against future purchases made by the Buyer and IPL shall be entitled to retain the remaining 15% to cover IPL's costs and handling expenses.

**Accepted for and on behalf of the Buyer:**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_  
(Please print)

Title: \_\_\_\_\_