

## **STANDARD TERMS & CONDITIONS OF TRADE – 1 July 2017**

### **ELECTIX PTY LIMITED [ABN 81619971354]**

#### 1. Definitions

- 1.1. "Seller" shall mean ELECTIX PTY LIMITED [ABN 81619971354] and its successors and assigns.
- 1.2. "Buyer" means the person or organisation that buys or has agreed to buy the Goods. The expression "the Buyer" shall also mean the "grantor" as defined under the Personal Property Securities Act 2009.
- 1.3. "Date of Despatch" means the date on which the Goods leave the Seller's premises to be delivered to the Buyer and includes collection of the Goods by the Buyer (or its duly authorised agent or representative) from the Vendor's premises.
- 1.4. "Delivery" means the transport and delivery of the Goods by the Seller or any other person appointed by the Seller to the Buyer's address.
- 1.5. "Guarantor" means that person, (or persons), or entity who agrees herein to be liable for the debts of the Buyer on a principal debtor basis.
- 1.6. "Goods" shall mean Goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services or Intangibles as hereinafter defined).
- 1.7. "Security Agreement" means a security agreement entered into between the parties, providing for various security interests granted to the Seller.
- 1.8. "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
- 1.9. "Price" shall mean the cost of the Goods as agreed between the Seller and the Buyer subject to clause 4 of these Terms and Conditions of Trade.

#### 2. Acceptance

- 2.1. Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by the Seller shall constitute acceptance of these Terms and Conditions of Trade.
- 2.2. Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for payment of the Price.
- 2.3. Upon formation of a contract, these Terms and Conditions of Trade shall constitute the entire agreement between the Seller and the Buyer for the supply of the Goods. Any terms and conditions contained in any purchase order placed by the Buyer are expressly excluded. A demand for variation to the Terms and Conditions of Sale shall not have any effect unless agreed in writing and signed or directly emailed by an authorised representative of the Seller.
- 2.4. Upon acceptance of these Terms and Conditions of Trade by the Buyer the terms and conditions are irrevocable and create an ongoing and enduring contract which can only be rescinded in accordance with these Terms and Conditions of Trade or with the written consent of the manager of the Seller.
- 2.5. None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.
- 2.6. The Buyer undertakes to give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, or business practice).

### 3. Goods

3.1. The Goods are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Seller to the Buyer.

3.2. The Seller reserves the right to alter any and all of the technical and general specifications of the Goods at any time without prior notification.

### 4. Price and Payment

4.1. At the Seller's sole discretion:

(a) The Price shall be as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or

(b) The Price shall be as indicated on the specific contract or tender provided by the Seller to the Buyer in respect of Goods supplied; or

(c) The Price of the Goods shall be the price quoted in writing by the Seller to the Buyer. Such quoted Price shall only be binding upon the Seller if the Buyer provides written acceptance of the quote to the Seller within thirty (30) days of the date which appears on the Seller's written quote.

4.2. At the Seller's sole discretion a deposit may be required. The amount of the deposit will be stipulated at the time of the order of the Goods and shall become immediately due and payable.

4.3. Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be one (1) day prior to delivery of the Goods.

4.4. At the Seller's sole discretion, standard payment terms for approved Buyers shall be thirty (30) days following the end of the month of the invoice date. Referred to as EOM + 30 days.

4.5. Payment will be made by credit card, or by direct credit, or by telegraphic transfer, or by any other method as agreed to between the Buyer and the Seller.

4.6. The Price shall not include the amount of any GST or other applicable taxes and/or duties, except where such amounts have been expressly included in a quotation provided by the Seller. The amount of any GST and other applicable taxes and/or duties shall be payable by the Buyer to the Seller in addition to the Price and shall be payable on the same terms and conditions as apply to payment of the Price.

### 5. Delivery of Goods

5.1. Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered by the Seller. If the Buyer does not take delivery of the Goods when they are tendered by the Seller, then delivery of the Goods shall be made to the Buyer at the Seller's address and all risk for the Goods shall pass to the Buyer at the time of delivery at the Seller's address.

5.2. The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur shall be reimbursed by the Buyer (without any set-off or other withholding) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Buyer's agent and all risk for the Goods shall pass to the Buyer upon Delivery of the Goods by the Seller to the carrier.

5.3. The Seller may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions of these Terms and Conditions of Trade.

5.4. Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of these Terms and Conditions of Trade.

5.5. The failure of the Seller to deliver shall not entitle either party to treat these Terms and Conditions of Trade as repudiated.

5.6. The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods, (or any of them), promptly or at all.

#### 6. Purchase Money Security Interest/Retention of Title

6.1. The parties agree that, for the purposes of the Personal Property Securities Act 2009:

(a) this agreement is a security agreement; and

(b) by this agreement the Buyer grants to the Seller a security interest in respect of the Goods to secure payment of the purchase price and all outstanding debts and obligations to the Seller from time to time;

(c) the Seller's security interest in the Goods continues until all debts and obligations of the Buyer are discharged; and

(d) the Seller's security interest is a Purchase Money Security Interest (PMSI).

6.2. The Goods are:

(a) Collateral for the purposes of the Personal Property Securities Act 2009; and

(b) Commercial property; and

(c) Of the class "other goods", for the purposes of Personal Property Securities Act 2009 section 153(1), item 4(c), and Personal Property Securities Regulations 2010, Schedule 1, Part, item 2.3(1).

6.3. Further to the Seller's Purchase Money Security Interest in the Goods, to the extent that the Goods are not subject to

a Purchase Money Security Interest, and unless otherwise expressly agreed in writing, the property in the Goods shall not pass to the Buyer until receipt by the Seller of payment of the Price in full in accordance with Clause 4 above. Until such payment has been made, the Buyer shall hold the Goods as bailee for the Seller and shall safely and securely store the Goods separately from the Buyer's other goods in such a manner as to show clearly that the

Goods are the property of the Seller. Where payment is not made on or before the due date the Buyer shall, should the Seller so require, deliver the Goods to the Seller at the Buyer's sole cost failing which the Seller is hereby irrevocably authorised to enter at any time by its servants or agents the place where the Goods are situated and to repossess the Goods, and to remove the Goods from any vessel, vehicle, thing or place whether or not they have at any such time before been fixed to any vessel, vehicle, thing of place and for this purpose the Seller is hereby appointed the Buyer's agent. The Buyer agrees to indemnify the Seller and keep the Seller indemnified against all costs incurred by the Seller in removing the Goods and keep the Seller indemnified against all claims against the

Seller arising from such removal. The Buyer bears the onus of proving that Goods supplied by the Seller in the Buyer's possession (whether mixed with other Goods or not) have been paid in full by the Buyer. If the Buyer is unable to prove to the satisfaction of the Seller, that the Goods identified as the Seller's Goods have been paid in full by the Buyer, then those Goods shall be deemed to relate to unpaid invoices outstanding from time to time and such

Goods are deemed to be the property of the Seller. The Seller reserves the right to repossess those Goods without having to prove that the Goods relate to specific unpaid invoices outstanding at the time of repossession.

#### 7. Risk

7.1. All risk for the Goods (including the risk of any loss of or damage to or deterioration of the Goods from whatever cause) will pass to the Buyer on the Date of Despatch (subject to the terms of clause 5 of these Terms and Conditions of Trade).

7.2. If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right

to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under these Terms and Conditions of Trade. The production of these Terms and Conditions of Trade by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

## 8. Disclaimer

8.1. The Buyer acknowledges that they buy the Goods relying solely upon their own skill and judgement and that the Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Seller or any warranty that cannot be excluded by law which warranty shall be personal to the Buyer and shall not be transferable to any subsequent Buyer.

## 9. Defects / Returns

9.1. The Buyer shall inspect the Goods on delivery and shall within fourteen (14) days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods (including determining if any defect amounts to a "major" or a "minor" failure within the meaning provided by the Australian Consumer Law) within a reasonable time following delivery if the

Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions, the Goods shall be conclusively presumed to be free from any defect, shortage in quantity, damage or failure to comply with the description or quote and:

(i) The Buyer shall have no claim against the Seller in relation to such Goods: and

(ii) The Seller shall have no liability whatsoever in relation to such Goods.

9.2. For Goods, which the Seller has agreed in writing that the Buyer is entitled to reject including on the basis of a "minor failure", the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods or refunding the Price provided that:

(a) the Buyer has complied with the provisions of clause 8.1:

(b) the Goods are returned via the Seller specified carrier at the Buyer's cost within twenty eight (28) days of the delivery date:

(c) the Seller will not be liable for Goods which have not been stored or used in a proper manner;

(d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

9.3. For Goods, which the Seller has agreed in writing that the Buyer is entitled to reject on the basis of a "major failure", the Buyer will be entitled, at their discretion, to have the Goods, repaired, replaced, a refund or payment of the difference in the reduced value of the Goods. The Buyer is not entitled to reject the Goods if the Goods have been damaged, destroyed or lost after delivery due to no fault on the part of the Seller

9.4. The Seller may (in its discretion) accept the Goods for credit if requested by the Buyer but this may incur a minimum handling fee of 25%, (minimum \$25), of the value of the returned Goods, plus any freight.

## 10. Warranty

10.1. Subject to the conditions of warranty set out in Clause 10.2 the Seller warrants that if any defect in any workmanship manufactured by the Seller becomes apparent and is reported to the Seller (in writing) within twelve (12) months of the date of delivery (time being of the essence) then the Seller will either (at the Seller's sole discretion) repair the defect or replace the workmanship. Faulty goods must be returned to our factory at the Buyers expense. Alternatively, our personnel will perform on-site warranty repairs with travel time, transport costs and living expenses charged to the Buyer.

10.2. The conditions applicable to the warranty given by Clause 10.1 are:

(a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

(i) Failure on the part of the Buyer to properly maintain any Goods; or

(ii) Failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller; or

(iii) Any use of any Goods otherwise than for any application specified on a quote or order form; or

(iv) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or

(v) Fair wear and tear, any accident or act of God.

(b) The warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.

(c) The warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the Goods are transferred by the Buyer to a third party or if the Goods are not in the Buyer's possession for any other reason.

10.3. For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturer's warranty.

10.4. Our (the Seller's) Goods come with guarantees that cannot be excluded under the Australian Consumer Law. You (the Buyer) are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You (the Buyer) are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

10.5. The benefits provided to the Buyer under this warranty are in addition to other rights and remedies available to the Buyer under the law.

## 11. The Commonwealth Competition and Consumer Act 2010 and State/Territory Fair Trading Acts

11.1. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Competition and Consumer Act 2010, the Australian Consumer Law or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

## 12. Intellectual Property

12.1. Where the Seller has designed or drawn Goods for the Buyer, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.

12.2. Where any drawings, designs or specifications have been supplied by the Buyer for manufacture, by, or to the order of the Seller then the Buyer warrants that the drawings, designs or specification are correct and the use of those drawings, designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party and the Buyer shall indemnify the Seller for and against all claims brought by any third party against the Seller in this regard. The Seller shall have the right by written notice to the Buyer to correct any errors or omissions in the drawings, designs or specifications made by the Buyer, its servants or agents.

12.3. The Buyer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order and the Buyer shall indemnify the Seller for and against all claims brought by any third party against the Seller in this regard.

## 13. Default & Consequences of Default

13.1. Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.

13.2. If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against the entire of the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's nominees costs of collection.

13.3. Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation, (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under these Terms and Conditions of Trade. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

13.4. If any account remains unpaid at the end of the second month after supply of the Goods or Services an immediate amount of 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.

13.5. In the event that:

(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or

(b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer, then; without prejudice to the Seller's other remedies at law;

(a) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and

(b) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable.

#### 14. Cancellation

14.1. The Seller may cancel these Terms and Conditions of Trade or cancel delivery of Goods at any time before the Goods are delivered by giving written notice in which case the Seller will repay any sums paid by the Buyer in advance to the Seller in respect of the relevant Goods. The Seller will not be liable for any loss or damage whatever arising from such cancellation.

#### 15. Privacy Act 1988

15.1. The Buyer and the Guarantor/s hereby irrevocably authorise the Seller to obtain from a credit-reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller.

15.2. The Buyer and the Guarantor/s agree that the Seller may exchange information about the Buyer and the Guarantor/s with those credit providers named in the Application for Credit Account or named in a consumer credit report issued by a reporting agency for the following purposes:

(a) To assess an application by the Buyer;

(b) To notify other credit providers of a default by the Buyer;

(c) To exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and

(d) To assess the credit worthiness of the Buyer and/or the Guarantor/s.

15.3. The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

15.4. The Buyer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time:

- (a) provision of Goods & Services;
- (b) marketing of Goods and/or Services by the Seller, its agents or distributors in relation to the Goods and Services;
- (c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to provision of Goods/Services;
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Buyer; and
- (e) enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Goods and Services.

15.5. The Seller may give, information about the Buyer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Buyer; and or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.

#### 16. Lien & Stoppage in Transit

16.1. Where the Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:

- (a) a lien on the Goods;
- (b) the right to retain them for the price while the Seller is in possession of them;
- (c) a right of stopping the Goods in transit whether or not delivery has been made or ownership has passed;
- (d) a right of resale; and
- (e) the foregoing right of disposal, provided that the lien of the Seller shall continue despite the commencement of proceedings or judgement for the price having been obtained.

#### 17. General

17.1. If any provision of these Terms and Conditions of Trade shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

17.2. All Goods supplied by the Seller are subject to the laws of New South Wales and the Seller takes no responsibility for changes in the law which affect the Goods supplied.

17.3. The Seller shall be under no liability whatsoever to the Buyer for any indirect loss and/or expense, (including loss of profit), suffered by the Buyer arising out of a breach by the Seller of these Terms and Conditions of Trade.

17.4. In the event of any breach of these Terms and Conditions of Trade by the Seller the liability of the Seller shall be limited to the Price of the Goods. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.

17.5. The Buyer shall have no right to set off any amounts owed to it by the Seller against the total amount outstanding from time to time from the Buyer to the Seller.

17.6. The Seller may transfer, assign, license or sub-contract all or any part of its rights or obligations under this agreement without the Buyer's consent.

17.7. The Seller reserves the right to review and amend these Terms and Conditions of Trade at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Seller notifies the Buyer of such change.

17.8. Any change will not void, or invalidate the ongoing and enduring nature of the contract between the Buyer and the Seller as set out in Clause 2.2.

17.9. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.