

Unique Micro Design Pty Ltd A.C.N. 007-419-490 ("UMD") agrees to supply the Customer UMD Customised goods and services subject to the terms and conditions set out below. The Customer in placing an order with UMD for the Customised goods and/or services specified on the order agrees to the said terms and conditions.

**Customisation**

1. Customised goods and services are developed by UMD to meet customer specific requests. These developments include, but are not limited to:

- (a) modification of existing product (hardware, software or firmware)
- (b) development of new product (hardware, software or firmware)
- (c) packaging design, including cosmetic (eg colour) and Customer specific graphic elements (e.g. logo)

**Placement of orders**

2. The Customer shall order Customised goods and services from UMD in writing. The order shall specify:

- (a) The date of the placement of the order;
- (b) The goods and services ordered;
- (c) A preferred delivery date for the goods;
- (d) Prices;
- (e) For goods shipment, courier details (UMD's or Customer nominated).

**Declining Order**

3. UMD may decline to accept any order received from the Customer.

**Cancellation of orders**

4.1 If the Customer requests UMD to cancel or postpone delivery of an order for goods or services, UMD may agree to the requested cancellation or postponement if the Customer pays UMD a cancellation/postponement fee for all direct or indirect losses or expenses that UMD has suffered as a result of the cancellation or postponement including without limitation:

- (a) the costs and expenses incurred by UMD in processing the order up to the date that UMD receives the Customer's request for cancellation or postponement of the order;
- (b) moneys paid or payable by UMD to third parties for goods or services ordered and/or received from third parties on behalf of the Customer for the purpose of fulfilling the order;
- (c) any penalties or cancellations or other fees payable to third parties for cancellation and/or postponement of delivery for goods or services ordered by UMD on behalf of the Customer;
- (d) any claims for losses or expenses made by third parties from UMD for cancelled or postponed order of goods or services ordered on behalf of the Customer;
- (e) pre-production and production costs incurred by UMD up to the date it receives the request for cancellation or postponement of the order.

4.2. UMD shall be entitled to cancel or suspend an order for goods or services, without liability to the Customer, by giving the Customer written notice.

4.3 UMD shall not be liable in any way for loss or damage (including loss of trade or profit and economic loss) incurred by the Customer in the event that delivery or supply of the goods or service ordered is frustrated or delayed by, strikes, riots, disasters, trade disputes, acts of restraint of Governments, the imposition of export restrictions, default of suppliers and sub-contractors unavailability or shortage of supply of components used in the manufacture of the goods or any other circumstances beyond the reasonable control of UMD.

**Packing of Goods**

5. UMD shall ensure goods are safely and securely packed for transportation to the Customer having regard to:

- (a) The fragility of the goods;
- (b) The distance the goods are likely to travel; and
- (c) The method of transportation used to transport the goods.

**Delivery of Goods**

6. Delivery of goods shall be ex UMD's premises. UMD shall notify the Customer if required when the goods are available for collection by the Customer or the Customer's nominated carrier from UMD's premises. If requested by the Customer, UMD can arrange delivery to the Customer's address by UMD's carrier. The cost of delivery of the goods and of any special packing and packing materials used in relation to the goods shall be at the Customer's expense, notwithstanding that such costs may have been omitted from any original quotation by UMD.

**Missing Goods**

7. The Customer shall notify UMD within five (5) working days of delivery of the goods to the Customer of any missing items from the shipment.

**Loss or Damage in Transit**

8. UMD is not responsible for any loss or damage:

- (a) to the goods during loading and unloading of the goods by the carrier or the Customer, whilst the goods are in transit;
- (b) suffered by the Customer due to a delay in delivery of the goods by UMD's nominated carrier or the Customer's nominated carrier.

Freight insurance for loss and damage to the goods during loading/unloading and whilst in transit or otherwise is the responsibility of the Customer. UMD shall at the Customer's request provide the Customer with copies of all documents evidencing proof of collection by the nominated carrier.

**Payment**

9.1 Unless the Customer has been granted credit facilities by UMD, payment terms in respect of each order are strictly Cash Before Delivery ("CBD"). For CBD Customers, UMD shall issue the Customer with a tax invoice upon delivery of the goods.

9.2 To apply for credit facilities with UMD the Customer must complete a *UMD Trading Account Application Form*. The granting of credit facilities to the Customer and the determining of payment terms and limit of credit to the Customer is at the sole discretion of UMD and will be confirmed in writing. UMD reserves the right to cancel credit facilities granted to a Customer without notice and for any reason whatsoever.

9.3 Where credit facilities have been granted by UMD to the Customer, UMD shall invoice the Customer for goods and services delivered and the Customer shall pay each invoice issued within the trading terms as agreed in writing.

**Price**

10.1 The price of the goods shall be the price published in UMD's published price list issued from time to time by UMD unless the parties have agreed otherwise in writing.

10.2 Unless otherwise stated, all prices quoted by UMD are exclusive of Goods and Service Tax (GST). The cost of the GST will be included in the invoice total.

**Intellectual Property Rights**

11.1 Intellectual Property Rights means all intellectual property rights including:

- (a) patents, copyright, rights in circuit layouts, registered designs, trade marks and the right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of those rights.

11.2 This agreement does not transfer to Customer any intellectual property rights in the Customised Product, except in licence granted in clause 11.3

11.3 Where the Customer provides intellectual property, which is incorporated into the Customised Product, UMD grants an exclusive licence to distribute the Customised product by the Customer. Specifically UMD:

- (a) must supply, where possible, Customised product to Customer
- (b) grants to Customer an exclusive licence to Distribute including the ability to sub-distribute the Customised product.
- (c) grants Customer ability to Assign these rights to a third party

11.4 UMD is not restricted in developing similar or same Customised products provided;

- (a) Customer's confidentiality is not breached
- (b) Customer's Intellectual Property is not used.

**Ownership of Goods**

12.1 Ownership of the goods only passes to the Customer when UMD has been paid in full by the Customer in cash, bank cheque or cleared bank funds. Until such payment is made by the Customer to UMD for the goods, the relationship between the parties is a fiduciary relationship and the Customer holds the goods as bailee and is authorised by UMD to sell the goods in the ordinary course of its business. The Customer shall pay the proceeds of the sale into a identifiable bank account and keep separate sales records of the said goods, pending payment to UMD for the goods.

12.2 If payment for the goods is not received by UMD within seven (7) days of the due date, or the Customer becomes insolvent, the Customer licences UMD or its agent to enter any premises owned, occupied, leased or controlled by the Customer or any associated company or agent to repossess the goods. UMD shall apply towards satisfying the outstanding indebtedness of the Customer to UMD;

- (a) the value of any goods repossessed; or
- (b) if the repossess goods are sold by UMD, the proceeds of sale less the cost of repossession (including legal costs on a solicitor/client basis) and sale.

**Passing of Risk**

13. Risk of loss or damage of the goods shall pass to the Customer upon delivery of the goods to the Customer or his agent.

**Returned Goods**

14.1 The Customer must obtain a Return Authorisation Number (RAN) from UMD before returning any goods to UMD for credit or repair or replacement. The RAN must appear on the packing boxes of the goods being returned.

14.2 Goods may not be returned for credit to UMD without written prior consent of UMD. UMD may grant its consent for the return of goods for credit requested by the Customer subject to condition including the payment by the Customer to UMD of a re-stocking fee. UMD in calculating the amount of the re-stocking fee shall have regard to the following:

- (a) When the original goods had been invoiced to the Customer;
- (b) The condition of the returned goods including the original packing and merchandisability; and
- (c) Whether the goods are part of UMD's product range or have been specifically procured or manufactured for the Customer.

**Warranties**

15.1 The benefits conferred by the warranties set out in sub-clause 15.2 below are in addition to all other rights and remedies that the Customer has in respect of the goods and services under the Trade Practices Act 1974 (Cth) and similar laws of the states and Territories of the Commonwealth of Australia and any other laws applicable to these terms and conditions which may not be modified or excluded.

**Goods**

15.2 UMD warrants the goods manufactured and supplied by UMD to the Customer are free from defects in material and workmanship of the period specified in the UMD Equipment Service and Maintenance Policy.

15.3 The warranty referred to in sub-clauses 15.2 does not extend to or include:

- (a) defects that have been caused by misuse, mishandling, neglect, adjustments, damage caused by accident, non adherence to operating and maintenance instructions and/or improper voltage;
- (b) failure resulting from use of the goods under arduous or unreasonable climatic or operating conditions.
- (c) the goods have been serviced by unauthorised personnel;
- (d) failure resulting from installation errors or incorrect installation procedure;
- (e) failure caused by consumables not complying with manufacturer's recommendation or acceptable industry standards;
- (f) goods that have had identification marks and numbers altered or removed;
- (g) paper jams in printers;
- (h) normal maintenance and service adjustment as part of goods operating instructions;
- (i) Consumables. This includes, but not limited to, the following items: belts, cathode ray tubes, diskettes, lamps, laser tubes, lenses, magnetic heads, print ribbons, print heads, protective stationary and windows;
- (j) goods that have been returned to UMD in inadequate or unsuitable packaging.

15.4 UMD does not warrant that where the goods comprise of or include software that the software will be completely error free.

15.5 Warranty repairs of goods shall be undertaken by UMD or on its behalf by an Authorised Service Centre in accordance with the UMD Equipment Service and Maintenance Policy.

15.6 The Customer can purchase from UMD hardware maintenance, such as extended warranty, for the goods. The hardware maintenance terms and conditions are contained in the UMD Equipment Service and Maintenance Policy.

**Services**

15.7 UMD warrant that the service will be rendered with due care and skill and that any material supplied in connection with those services will be reasonably fit for the purpose for which they are supplied.

15.8 UMD give no express warranties other than those set out in clause 15.2 above and the UMD Equipment Service and Maintenance Policy.

15.9 Except where:

- (a) conditions or warranties are implied into these terms and conditions for the supply or services by UMD to the Customer, by the Trade Practices Act 1974 (Cth), other similar laws of the state and Territories of the Commonwealth of Australia or any other applicable laws; and
- (b) such implied conditions or warranties cannot lawfully be excluded.

UMD excludes all implied condition and warranties, including, but not limited to, implied conditions or warranties with respect to merchantability or fitness for particular purpose.

**Fitness for Purpose**

16 Given the complexities of developing customised goods or services, no fitness for purpose is provided by UMD. It is therefore the responsibility of the Customer to:

- (a) verify the customised goods or services meets their functional requirements; and
- (b) establish their merchantability and fitness for purpose of the customised goods or service.

**Limitation of Liability**

17.1 Subject to the provisions of clause 17.2 and where such limitation of liability is not prohibited or avoided by the Trade Practices Act 1974 (Cth) as amended, other similar laws of the States and Territories of the Commonwealth of Australia or any other applicable laws the liability of UMD or:

- (a) any breach of any implied or express conditions and warranties (other than implied conditions and warranties as to title, encumbrances and quite enjoyment of the goods supplied by UMD); and/or
- (b) any loss or damage (including economic loss and special and consequential damages)

arising out of or in relation to the supply of any goods or services by UMD to the Customer shall be limited, at UMD's option to any one or more of the following:

- (a) in the case of goods -
  - (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of the goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;
  - (iv) the payment of the cost of having the goods repaired; or
- (b) in the case of services -
  - (i) the supplying of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

17.2 The Customer agrees that to the extent that such liability may be limited under the Trade Practices ACT 1974 (Cth) as amended, other similar laws of the states and Territories of the Commonwealth of Australia or and any other applicable laws, UMD shall not be liable for any special, direct or indirect incidental and/or consequential damages or loss including but not limited to economic loss, loss of use of goods or loss of data or information of any kind arising out of the supply of the goods and/or services or the negligence of UMD, its employees or agents or however otherwise caused or failure of the goods to work or perform in any way or any liability to End Users, Dealers or third parties except as set out in clause 17.1.