

# Terms and Conditions of Supply (SALE of Quokka)

Eigensystems Pty Ltd

## Scope

No terms and conditions other than the terms and conditions contained herein shall be binding upon Seller unless accepted by the Seller in writing by an officer of Seller. All terms and conditions contained in any prior oral or written communication, including, without limitation, Buyer's purchase order, which are different from or in addition to the terms and conditions herein are hereby rejected and shall not be binding on Seller, whether or not they would materially alter this document, and Seller hereby objects thereto, unless agreed in writing by the Seller. All prior proposals, negotiations and representations, if any, are merged herein.

## Buyer Cancellation

Upon acceptance of the purchase order by the Seller the Buyer may not cancel the purchase order under any circumstances.

## Seller's Cancellation

Seller shall have the right to cancel any unfilled order without notice to Buyer in the event that Buyer becomes insolvent, adjudicated bankrupt, petitions for or consents to any relief under any bankruptcy reorganization statute, enters receivership or external administration or becomes unable to meet its financial obligations in the normal course of business.

## Shipment and Risk of Loss

Unless otherwise agreed in writing all shipments are Ex Works (Incoterms 2000) Seller's facility Brisbane, Australia. Seller's liability for delivery shall cease and all risk of loss or damage shall pass to the Buyer upon delivery to Carrier. Products held for Buyer shall be at Buyer's risk and expense. Unless otherwise agreed in writing Seller shall not be held liable for any damages or expenses caused by delay in delivery. The parties acknowledge that the delivery dates are approximate. The acceptance of the products by the Buyer shall deem a waiver of all claims for delay. On international shipments, air freight shipment is the only form of shipping acceptable to the Seller. Title to the products will pass to Buyer once the purchase price has been paid in full.

## Delays

Time is NOT OF THE ESSENCE and Seller will not be responsible for any damages arising from delay in delivery. Seller will make commercially reasonable efforts to meet any delivery date(s) quoted in the agreement. However, under no circumstance shall Seller be liable to Buyer for any delay in shipment or failure to meet any quoted delivery date(s) or for any delay in performance hereunder. Seller shall have the right to indefinitely postpone the time for delivery due to unforeseen circumstances or due to a cause beyond its control. Examples of such causes are acts of God, wars, riots, embargoes, acts of civil or military authorities, fires, floods, accidents, strikes, transportation delays or shortages, inability to obtain material or supplies, excessive demand for products over available supply, interruption for any reason in the manufacture of products by Seller's supplies, or other causes not within Seller's control, whether of the class of causes herein before enumerated or not.

## Support & Installation Services

Seller will provide installation, testing and support services according to the description of the offering, eligibility requirements, service limitations, and Buyer responsibilities described in this document. Additional services performed by Seller at Buyer's request that are not included in an accepted purchase order for services will be chargeable at the applicable published service rates for the country where the service is performed.

## Price

Except as otherwise specified by Seller in writing the price of the Products, as set forth in the Quote does not include sales, use, excise, value added or any other taxes or assessments levied by any federal, state, municipal or other governmental authority, unless Seller expressly agrees otherwise. Seller reserves the right to increase the prices contained herein by an amount equal to any additional duty, tariff, tax or other charge.

## Payment

Except where otherwise specifically agreed, payment must be made to the Seller's address stated on its invoice net 30 days following the date of invoice. Unless agreed in writing, all payments are to be in United States Dollars. For certain contracts Seller may require payment to be secured by a Letter of Credit or bank guarantee. Where partial delivery is made the Buyer shall be obliged to pay for each instalment separately if the Seller so requires. Time for payment is of the essence and if payment is not made on the due date the Seller shall be entitled to: (i) Charge interest on the outstanding amount at the rate of 12% per annum on the unpaid balance, calculated daily; (ii) Require payment in advance of delivery of undelivered goods; (iii) Refuse to make delivery of any undelivered goods whether ordered under the contract or not and without incurring any liability whatever to the Buyer for non delivery or any delay in delivery; (iv) To terminate the contract. Unless otherwise agreed in writing by the Seller the Buyer shall not be entitled to exercise any right of set-off or counterclaim against monies owed to the Seller for goods invoiced and delivered to it.

## Warranty

SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OTHER WARRANTIES THAT MIGHT ARISE FROM COURSE OF DEALING OR CUSTOM OF TRADE OTHER THAN THAT SELLER WARRANTS ONLY THAT THE PRODUCT COMPLIES WITH SELLER'S SPECIFICATION SHEET FOR THE PRODUCT AT THE TIME OF DELIVERY, PROVIDED THAT DEVIATIONS FROM SPECIFICATIONS WHICH DO NOT MATERIALLY AFFECT PERFORMANCE OF SUCH PRODUCT IN THE SYSTEM AND CONFIGURATION IN OR FOR WHICH IT IS INITIALLY INSTALLED OR QUALIFIED BY BUYER SHALL NOT BE DEEMED TO CONSTITUTE FAILURE TO COMPLY WITH SUCH SPECIFICATIONS. SELLER SHALL NOT IN ANY CASE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE DAMAGES, LOST PROFIT, OR REVENUE EVEN IF THE SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER SUCH LOSS ARISES UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE.

Any claim against Seller must be made within one year from the date of shipment and Seller has no liability thereafter. To the extent permitted by law, Seller's liability is limited to repair or replacement of the defective product or credit of the price paid for the defective product. Allegedly nonconforming product shall be returned as provided herein to Seller, transportation charges prepaid. All warranties cover only defects arising under normal use in compliance with Seller's specifications and do not include malfunctions or failures resulting from misuse, abuse, neglect, alteration, modification, or improper installation, or repairs by anyone other than Seller. All warranties contained herein shall be void upon the Buyer using non-approved parts or as a result of damages caused by Buyers or third-party installation, expansion, modifications or maintenance, or added components via nonauthorized, non-approved parts. No agent, employee or representative of Seller has any authority to bind Seller to any affirmation, representation or warranty relating the products other than

as specifically provided herein. To the extent permitted by law, Seller offers no warranty or support in respect of any unauthorised application of Seller's product.

The design, development or manufacture by Seller of a product for Buyer shall not be deemed to produce a work made for hire and shall not give to Buyer any copyright or other intellectual property right or interest in the product. All such rights shall remain the property of Seller. No license, express or implied, with regard to any trademark of Seller or its affiliated companies is granted to a Buyer under this agreement. Sale of products or any part thereof does not convey to Buyer any license, express or by implication, estoppels or otherwise, under any patent or patent claim with respect to which Seller can grant licenses covering completed equipment, or any assembly, circuit, combination, method or process in which any such products are used as components (notwithstanding the fact that such products may have been designed for use in or may only be useful in such patented equipment, assembly, circuit, combination, method or process, and that such products may have been purchased and sold for such use). Seller expressly reserves all rights under such patent or patent claim. The Seller retains the copyright in all documents, catalogues, specifications and plans supplied to Buyer pursuant to or ancillary to the contract.

#### **Reverse Engineering**

Buyer covenants that it will not attempt to "reverse engineer" or otherwise discover Seller's intellectual property, patentable, patented or non-patented invention, trade secrets, secret processes, or other confidential information embodied or contained in Seller's products.

#### **Export**

The goods may be subject to export controls and regulations of the country of manufacture, or the country of shipment. Export may require a valid export license. Seller's acceptance of Buyer's order and delivery of goods is conditioned on compliance with applicable export controls. Seller will have no obligation to sell or deliver any product until all export licenses have been granted and there are no other impediments arising from any applicable export regulations. No goods sold to Buyer may be exported or re-exported unless such export or re-export complies fully with all applicable export regulations.

#### **Assignment**

Buyer may not assign, delegate, or transfer, by operation of law or otherwise, any of its rights or obligations under this contract to any third party without the prior written approval of Seller. Any attempted assignment, delegation, or transfer in violation of this paragraph will be null and void.

#### **Waiver**

No failure of Seller to insist upon compliance by Buyer with any of these terms and conditions, or to promptly exercise any right accruing from any default by Buyer, will impair Seller's rights or remedies with respect to that breach or default or any subsequent breach or default. All waivers must be in writing and signed by the party to be charged. Waiver of any breach or failure to enforce any term of this contract will not be deemed a waiver of any other breach or right to enforce that may thereafter occur.

#### **Entire Contract**

This contract contains the entire understanding of the parties with respect to the subject matter contained herein, may be amended only by a written instrument executed by Buyer and Seller, and supersedes any prior or contemporaneous understandings, statements, or agreements (whether oral or in writing). There are no restrictions, promises, warranties, covenants, or undertakings arising from usage in the trade, course of dealing, or course of performance. The paragraph headings in this contract are for reference purposes only and will not affect in any way the meaning or interpretation of this contract.

#### **Severability**

Should any provisions of this contract to be invalid, illegal, or unenforceable, such provision will be changed and interpreted to accomplish the objectives of the provision to the greatest extent possible under applicable law and the unaffected provisions of this contract will remain in full force and effect.

#### **Applicable Law**

Unless, otherwise agreed in writing, this contract shall be governed by the laws of the State of NSW, Australia without applying conflict of laws rules. Buyer hereby consents to the jurisdiction of the courts of NSW, Australia. The Parties agree hereby acknowledge and agree that the provisions of the UN Convention on Contracts for the International Sale of Goods and any legislation implementing that convention are expressly excluded and shall not apply to this contract.

#### **Notices**

All notices, consents, or reports permitted or required under this contract must be in writing and must be delivered by personal delivery, private courier, or certified or registered mail, return receipt requested, and will be effective upon receipt. Notices to Seller must be sent to the address set forth below or such other address as Seller may specify in writing.