



Phase Pacific Terms and Conditions of Supply

ABN 48 104 026 191

Terms and Conditions for Product Sales encompassing goods, materials, equipment and/or software licenses ("Goods") and the provision of Professional Services ("Services")

1. General

- 1.1. Comdate Pty Ltd, trading as Phase Pacific ("Supplier") supplies hardware, software, software licenses ("Goods"), and/or Professional Services ("Services") to the Customer based on the following terms and conditions and the Customer's acceptance of this is evidenced by their purchase and/or use of the Goods and Services.
- 1.2. By ordering Goods and/or Services, or receiving delivery, the Customer is deemed to have accepted the terms and conditions set out in these Terms and Conditions and to have agreed that they apply to the exclusion of all others.
- 1.3. No Variation to these Terms and Conditions shall be effective unless in written agreement by Phase Pacific.
- 1.4. These Terms constitute the entire agreement between the Supplier and the Customer and supersede any previous communications, representations, or agreements between the parties, whether oral or written, regarding transactions hereunder. Customer's additional or different terms and conditions will not apply. Customer's purchase order will constitute Customer's acceptance of these Terms, which may not be changed except by an amendment signed by an authorised representative of each party.
- 1.5. The Parties agree that this Agreement and the provisions hereof shall be construed in accordance with the Laws of Victoria.

2. Delivery and Supply

- 2.1. Unless Phase Pacific agrees in writing the Customer is responsible for any loss, damage or deterioration to the Supplies once the Supplies leave Phase Pacific's premises.
- 2.2. The Customer is responsible for paying transport and associated expenses relating to the transport of the Goods from Phase Pacific's premises. If the Customer requests Phase Pacific to arrange transport of the Goods on its behalf, all transport and associated expenses incurred will be charged to the Customer as separate item, in addition to the price for the Goods.
- 2.3. If the Customer returns or fails to accept delivery of any Goods tendered in accordance with these Terms and Conditions, Phase Pacific may invoice the Customer for the Goods delivered.

3. Invoicing and Payment

- 3.1. The payment falls due and payable as stated in the payment terms on the invoice
 - 3.1.1. If Phase Pacific does not receive payment by the due date, then without limiting its rights, Phase Pacific may:
 - 3.1.1.1. charge the Customer interest on the amount outstanding at the rate for the time being fixed under Section 2 of the Penalty Interest Rates Act 1983 (Vic)(compounding daily);and/or



- 3.1.1.2. by written notice to the Customer, suspend the provision of any further Goods and Services, until the Customer has paid the outstanding amount, interest and any amount payable.
- 3.1.1.3. retain any amount received from the Customer on account of the Goods and Services; and
- 3.1.1.4. retain or resell any particular Goods.

4. Supply of Software and Software Licenses

- 4.1. The Customer agrees that its use by an authorised user of any licensed product provided by Phase Pacific will be governed by our supplier's **End User License and Maintenance Agreement (EULM) and Services Agreement**. The customer agrees that it will be bound by the terms of our suppliers EULM and Services Agreement. Phase Pacific can provide a copy of the suppliers EULM upon request by the customer.
- 4.2. "Licensed Product" means the specific products (including hosted products designated as "Subscription Services" in the Purchasing Agreement) provided by Phase Pacific and listed in a Purchasing Agreement and (a) all related Documentation, and (b) all updates (including Licensed Product Updates), modifications and maintenance services provided to Customer.
- 4.3. "Authorized User" means a Customer's, and its Affiliate's employees or authorized contractors: (a) whose duties require access to or use of the Licensed Product or Confidential Information for the benefit of that party; and (b) whose legal obligations to protect confidential and proprietary information require protection of the Licensed Product and Confidential Information to at least the same extent as set out in this Agreement.
- 4.4. Subject to the customer's compliance with this Agreement, Phase Pacific grants the customer a nonexclusive, non-transferable license, solely during the license term and in the Territory set out in the applicable Purchasing Agreement, to (a) use and operate the Licensed Product to the extent permitted by Customer's payment of applicable fees, and solely for the intended purpose of the software license.

5. Ownership of the Products

- 5.1. Passes to the customer only when all the products in that delivery are paid for in full.
- 5.2. Risk in the Goods shall pass to the Customer on delivery.
- 5.3. Delivery shall occur upon physical delivery to the customer if the goods are hardware or in the case of software only when licenses and software are delivered to the customer via appropriate electronic means.
- 5.4. Software Licenses, which are subscription based are only usable by the customer for the term of the subscription (see 4.4).

6. Returns

- 6.1. The Customer must notify the Supplier in writing of Goods they wish to return and await the Supplier agreement for the goods to be returned. The value of goods will only be credited to the Customer's account if the goods are returned in the same condition as delivered to the Customer initially and received by the Supplier within 14 days from the initial delivery.
- 6.2. Returns do not apply to software whether perpetual or subscription based.



7. Warranty

- 7.1. Each product purchased will include a warranty in accordance with the manufacturer's specification; if any. Product warranty information is available with Products, or upon request. The warranty period begins on delivery, or the date of installation if installed by The Supplier.
- 7.2. Warranties do not apply to defects resulting from improper use, inadequate maintenance, poor installation, unauthorised modification, or repair undertaken by the Customer, improper use or operation outside of the specifications for the Product abuse negligence, accidental loss or damage.

8. Intellectual Property Rights

- 8.1. Any information furnished by Phase Pacific to the Customer is confidential and remains the sole property of Phase Pacific. Such information is to be held in confidence and safe keeping by the Customer for the sole use of the Customer in performing obligations and receiving benefits pursuant to the contract.
- 8.2. The provision of Goods will not confer any right upon the Customer to use any intellectual property of Phase Pacific or any of its suppliers.

9. General Provisions

- 9.1. The failure by Phase Pacific to exercise or enforce any rights detailed in these Terms and Conditions shall not be deemed as a waiver of any such right and does not bar the exercise or enforcement of such right at any time or time thereafter.
- 9.2. Phase Pacific will not be liable to the Customer or to any third party for any non-performance or delay in the performance of its obligations under these Terms and Conditions, if a Force Majeure causes the non-performance or delay, and Phase Pacific gives the Customer notice of it. In no event will this provision affect the Customer's obligation to make payments to Phase Pacific except in respect of Supplies that Phase Pacific is unable to provide, until they can be provided. For purposes of this clause 13.2 "Force Majeure" means a circumstance beyond Phase Pacific's reasonable control which results in Phase Pacific being unable to observe or perform on time any obligation under these Terms and Conditions. Those circumstances include acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution and strikes.
- 9.3. If any license of consent of any Government or authority is required for the importation and/or acquisition of and/or to use any supplies, the Customer shall obtain the same at its own expense and produce evidence of same to Phase Pacific on request.
- 9.4. These Terms and Conditions and any order made under it are governed by and will be interpreted according to the laws of Victoria. Phase Pacific and the Customer consent and submit to the jurisdiction of the courts of Victoria.