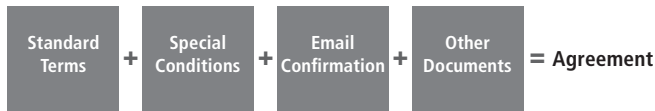


## AFL Terms and Conditions

This document sets out the standard terms and conditions of sale for all goods and services provided to the Purchaser by AFL Telecommunications Australia Pty Ltd ABN 98 104 136 629 (AFL).

### 1. Quotations and Agreement



- (a) To the extent permitted by law, the only terms and conditions which apply in connection with the supply of goods and services by AFL to the Purchaser are:
- (i) the terms and conditions set out in these Standard Terms (**Standard Terms**);
  - (ii) the terms and conditions set out in any Special Conditions (**Special Conditions**) which the parties expressly agree in writing form part of the agreement;
  - (iii) the particulars set out in the **Confirmation Email**, including the delivery lead-time; and
  - (iv) any other documents (**Other Documents**) the parties expressly agree in writing form part of the agreement.
- (b) The parties agree that any quotation provided by AFL:
- (i) is provided for information only and does not form part of the agreement;
  - (ii) is not an offer by AFL to sell the goods and services;
  - (iii) may be withdrawn at any time in AFL's discretion before acceptance of the order by the Purchaser;
  - (iv) is valid for 30 days unless another validity period is set out in the quotation;
  - (v) is subject to and conditional on any necessary licence being obtained by AFL or the Purchaser;
  - (vi) is based on the quantities referenced therein and if there is any change in the quantity of goods from that quoted then AFL may change the price and delivery information quoted.
- (c) No agreement shall arise until AFL issues a Confirmation Email to the Purchaser to accept the order. If the Purchaser does not receive a Confirmation Email, the Purchaser agrees to contact AFL to request a Confirmation Email.
- (d) The parties agree that the documents described in clause 1(a):
- (i) shall be the entire agreement between AFL and the Purchaser and all other terms and conditions (whether express or implied) are hereby expressly excluded to the extent permitted by law;
  - (ii) shall supersede all prior negotiations, communications and representations between AFL and the Purchaser;
  - (iii) take precedence over any other terms and conditions, including any terms and conditions of the Purchaser whether provided to AFL via a purchase order, made available on-line by the Purchaser or provided to AFL by any other means;
  - (iv) are intended to be mutually explanatory but in the event of any inconsistency, ambiguity or discrepancy between the Standard Terms and the Special Conditions then the Special Conditions will prevail.
- (e) The parties agree that any purchase order (or similar document) issued by the Purchaser is an offer by the Purchaser to enter into an agreement on the terms and conditions described in clause 1(a).

### 2. Credit and Security for Performance

- (a) The parties agree that a quotation does not amount to an offer:
- (i) to provide credit and any application for credit terms must be made as per the credit application process.
  - (ii) of credit terms of a value above and beyond the Purchaser's current credit limit with AFL (if any) and the credit limit may be changed by AFL at any time without notice.
- (b) If the Purchaser is a company, AFL may in its discretion, require that the Directors of the Purchaser give a guarantee and indemnity in the form required by AFL. AFL reserves the right to require a guarantee and indemnity to be given by any person in any other circumstances.

### 3. Title and Risk

- (a) Risk in the Goods shall pass at the start of loading the goods for the purpose of carriage to the agreed delivery location.
- (b) Title to the goods shall remain with AFL until all money owing by the Purchaser to AFL has been paid in full.
- (c) Pending payment in full, the Purchaser may sell the goods in the ordinary course of business as agent for AFL and the proceeds shall be held in trust for and as the property of AFL.
- (d) Prior to any such sale, the Purchaser shall hold possession of the goods for and on behalf and as bailee for AFL and shall return the goods to AFL on demand. The Purchaser shall store the goods separate and identify the goods as AFL's property.
- (e) The Purchaser irrevocably authorises AFL to enter any premises under the Purchaser's control and to take possession of the goods in which title remains with AFL and for which payment has not been received. The Purchaser releases AFL from liability for any loss or damaged caused by recovery of the goods under this clause.

### 4. Returns

- (a) Goods classified as 'Stock Items' by AFL may be returned up to 12 weeks following the Goods being invoiced with a 30% restocking fee plus all costs associated with freight.
  - (i) To confirm if an item you are purchasing is classified as a 'Stock Item' the Purchaser should enquire with their AFL representative prior to placing any Purchase Order for such items.
  - (ii) AFL will not accept any return of Goods for any reason after a period of 12 weeks from the date of invoice of the Goods.
  - (iii) AFL does not accept any returns of cut cables (that is, cables where AFL has to cut a full drum length down to fulfil your order, or where the customer has cut the cable), customised leads, made-to-order cable assemblies and patch-leads and loaded enclosures.
  - (iv) The Purchaser must inform AFL in writing of the intent to return Goods, at which time AFL will provide an RMA (Return Material Advice) form, which the Purchaser must complete and return with 2 days of its receipt. Upon acceptance of the RMA by AFL the Purchaser may return the Goods, and must do so no later than 2 weeks following the acceptance of the RMA. Providing the Goods are returned in the original condition and packaging and pass any relevant inspections AFL will issue the Purchaser with a credit for the invoiced amount of the Goods (less a 30% restocking fee plus any costs associated with freight).
- (b) Where AFL has incorrectly supplied Goods the Purchaser must inform AFL in writing within 5 days of taking receipt of the Goods. AFL will provide an RMA (Return Material Advice) form, which the Purchaser must complete and return with 2 days of its receipt. Upon acceptance of the RMA by AFL the Purchaser may return the Goods, and must do so no later than 2 weeks following the acceptance of the RMA. Providing the Goods are returned in the original condition and packaging and pass any relevant inspections AFL will issue the Purchaser with a credit for the invoiced amount of the Goods.

## AFL Terms and Conditions

### 5. Tolerances and Technical Information

- (a) The Purchaser acknowledges and agrees that it must take manufacturing length tolerances into account when ordering. All quantities of cable referred to in any quotation are subject to manufacturing length tolerances. The quantity delivered and invoiced may be within a tolerance of -1%/+2% of the ordered and/or quoted amount.
- (b) The Purchaser acknowledges and agrees that AFL has given no advice in relation to the possibility that termite attack has been reduced or eliminated by the use of nylon in the process of manufacturing some goods.
- (c) The Purchaser acknowledges and agrees that:
  - (i) in entering into this agreement, the Purchaser does not (except to the extent expressly stated in any Special Conditions) rely on any representation, statement, information or advice which may have been made or given by AFL, whether of a technical nature or not;
  - (ii) any assessment made by AFL of compliance of the goods to their specification is based on nominal results obtained in tests and measurements conducted in accordance with the relevant specification and does not apply measurement uncertainty;
  - (iii) AFL has given no advice to the Purchaser on the suitability of the goods for the Purchaser's intended purpose;
  - (iv) the Purchaser is the sole decision maker in purchasing the goods or services;
  - (v) the Purchaser has read the documents listed in clause 1(a);
  - (vi) the Purchaser has made all necessary and independent enquiries in relation to all matters relevant to the entry into this agreement.

### 6. Price and Exchange Rates

- (a) The Purchaser must pay the price (plus GST) for the goods and services supplied by AFL as set out in the Confirmation Email, as adjusted in accordance with this agreement.
- (b) The parties agree that the price set out in the Confirmation Email is subject to upwards adjustment for exchange rates in accordance with clause 5(d), 5(f) and 7(b).
- (c) Unless otherwise agreed in writing, payment must be made by the Purchaser on or before the earlier of 30 days from the date of AFL's payment claim.
- (d) If the Purchaser fails to make payment in accordance with clause 5(b), AFL may charge interest at such rates as shall be charged from time to time to AFL by its bankers for overnight accommodation, in addition to any other rights AFL may have.
- (e) All prices quoted for imported goods are based on the exchange rate prevailing at the date of AFL's quote. Where a price is quoted for goods which are to be imported into Australia, the price is subject to upward adjustment for changes in the exchange rate between the date of AFL's quote and the date on which the goods are imported.
- (f) All prices quoted are ex AFL's premises. Unless otherwise agreed in writing, prices exclude transport ex AFL's premises and offloading the goods after transportation.
- (g) Unless otherwise agreed in writing, prices quoted exclude duties, taxes, service charges (and similar costs) levied or charged on the goods. Any amount quoted for imported goods is based on the rate of duty and insurance rates prevailing at the date of the Confirmation Email. Should there be any variation for any reason, the rates may be amended by AFL in its discretion.
- (h) Unless otherwise agreed in writing, prices quoted exclude any request:
  - (i) to supply certificate of inspection, testing or compliance with any national, international or other standard;
  - (ii) for non-standard packaging;
  - (iii) a non-standard drum size, spools or non-standard put ups of cutting, and any such request will be the subject of additional charge at AFL's discretion.

- (i) In the event of resale of the goods by the Purchaser, the prices set out in AFL's price list or any other AFL document are recommended only and there is no obligation on the Purchaser to comply with the recommended pricing.

### 7. Rebates

- (a) The Purchaser acknowledges that it is not AFL's practice to offer rebates in respect of any order.
- (b) No rebates will be paid unless agreed in writing by AFL.

### 8. Freight and Insurance

- (a) All prices quoted by AFL for freight and insurance are estimates only based on the prevailing rates for freight and insurance at the date of the quote. The estimate is not binding on AFL.
- (b) If the rates for freight and insurance are varied for any reason, the price may be adjusted to reflect the rates for freight and insurance prevailing at the time of delivery.

### 9. Goods and Services Tax

- (a) In this clause, GST and Tax Invoice have the meanings defined in the A New Tax System (Goods and Services) Act 1999, Cth.
- (b) Unless otherwise stated, all prices quoted are exclusive of GST.
- (c) For each supply made by AFL under this agreement on which GST is imposed the amount payable for that supply (GST Exclusive Price) will be increased by, and the Purchaser must also pay to AFL, an amount equal to the GST Exclusive Price multiplied by the prevailing rate of GST (GST Amount), subject to provision of a valid Tax Invoice by AFL.
- (d) If and to the extent an adjustment event (including an error or omission in the calculation in the GST Amount) arises in respect of a supply by AFL made under this agreement, then an adjustment note will be issued to the Purchaser and:
  - (i) if the corrected GST Amount is less than the amount previously attributed GST Amount, AFL must refund the difference to the Purchaser; or
  - (ii) if the corrected GST Amount is more than the amount previously attributed GST Amount, the Purchaser must pay the difference to the Purchaser.

### 10. Delivery

- (a) Any delivery time and date stated in the quote or Confirmation Email is an estimate only. The delivery time and date may be changed at AFL's discretion for any reason whatsoever. AFL makes no representation regarding the time or date of delivery and accepts no liability to the Purchaser whatsoever arising out of the time or date of delivery.
- (b) Unless otherwise agreed in writing, the Purchaser shall take possession of the goods at AFL's warehouse on which the order is placed and this shall be the place of delivery.
- (c) If it is agreed that delivery shall take place at a different place, risk shall pass to the Purchaser at the start of loading the goods for the purpose of carriage to the agreed place and all costs of and incidental to carriage shall be for the Purchaser's account.

### 11. Acceptance

- (a) The Purchaser shall inspect the goods forthwith upon delivery and shall give written notice to AFL of any defect within 7 days of the date of delivery.
- (b) To the extent permitted by law, if the Purchaser fails to give such notice then the goods shall be deemed to have been accepted by the Purchaser.

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### 12. Warranty

- (a) AFL warrants that all goods supplied shall be free of material and workmanship defects at the date of delivery to the Purchaser.
- (b) For a period of one (1) year from the date of delivery to the Purchaser (**Warranty Period**) AFL may at its option, repair, resupply or replace any defective goods which are of AFL manufacture, provided the Purchaser notifies AFL of the defect in writing within 30 days of discovery of the defect.
- (c) During the Warranty Period, following notification, AFL may inspect the goods at the Purchaser's location or require the goods are returned to a designated location FOB for inspection.
- (d) To the extent permitted by law, AFL offers no warranty in relation to goods which are not of AFL manufacture, except to the extent of any third party manufacturer's warranty available to AFL.
- (e) For the purpose of this clause, AFL accepts no liability in relation to any defect in goods which:
  - (i) have been repaired or altered in such a way, in AFL's reasonable opinion, as to adversely affect the goods;
  - (ii) have not been properly stored by the Purchaser;
  - (iii) is due to normal wear and tear;
  - (iv) is due to termites or other insects or animals;
  - (v) is due to deliberate or accidental damage;
  - (vi) is due to failure to install or operate the goods in accordance with good engineering practice and the recommended and published specifications of the Purchaser; or
  - (vii) is due to a cause outside the Purchaser's reasonable control.
- (f) TO THE EXTENT PERMITTED BY LAW THE WARRANTIES CONTAINED IN THIS CLAUSE 11 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. EXCEPT FOR THE WARRANTIES CONTAINED IN THIS SECTION 11, AFL MAKES NO OTHER WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, AND ANY SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED AND EXPRESSLY EXCLUDED.

### 13. Export and Trade Compliance

- (a) The Purchaser agrees that it will not export, transfer or transmit the goods except in compliance with all Australian and international laws (including United States regulations) or other export laws or guidelines.
- (b) AFL's US Export and Trade Compliance terms and conditions (**Export Terms**) are hereby incorporated by reference and are available at <http://www.aflglobal.com/Resources/Trade-Compliance/US-Export-and-Trade-Compliance.aspx>. The Purchaser shall at all times comply with the Export Terms: <https://www.aflglobal.com/Resources/Other-Resources/Trade-Compliance/US-Export-and-Trade-Compliance.aspx>

### 14. Intellectual Property and Trade Marks

- (a) The Purchaser agrees that it will not alter, remove, erase or change any trade marks on the goods;
- (b) The Purchaser agrees that it will not use any other trade mark or trade names in relation to the goods.
- (c) The Purchaser must notify AFL immediately if it becomes aware of any potential infringement of AFL's trademarks.
- (d) Ownership of intellectual property rights (other than third party intellectual property rights) associated with the goods and any documentation provided by AFL pursuant to this agreement is vested and shall vest in AFL. AFL grants the Purchaser a royalty free, non exclusive, transferable, perpetual licence to use the intellectual property rights associated with the goods and any documentation provided pursuant to this agreement for the installation, use, support, repair, maintenance or alteration of the goods by or on behalf of the Purchaser.

- (e) If the Purchaser receives a third party allegation that non-customised goods made and generally commercially available for sale by AFL at the time AFL supplies such goods to the Purchaser infringe a patent, the Purchaser shall immediately notify AFL in writing and provide AFL with the opportunity (at AFL's option and expense) to defend, settle or dispose of such infringement claim. If the allegation results in a final and binding judgment of patent infringement preventing the Purchaser from using the goods then AFL's sole liability and the Purchaser's exclusive remedy is expressly limited at AFL option to obtaining for the Purchaser the right to continue using such goods, replacing the goods with non-infringing goods, modifying the goods so they become non-infringing or removing the goods and refunding the price.

Under no circumstances will AFL be obliged to provide the foregoing remedy or to otherwise indemnify, defend, settle or otherwise dispose of any third party claim of patent infringement if such claim is based in whole or in part:

- (i) on customisation of the goods (as required by the Purchaser), on compliance with the Purchaser's specifications or instructions or on inclusion of Purchaser supplied materials;
- (ii) on Purchaser's marketing, advertising, promotion, or sale of any product containing the goods;
- (iii) on Purchaser's use of the goods or use of the goods in combination with any products, materials or equipment supplied by a person other than AFL;
- (iv) on Purchaser's use of the goods or use of the goods in combination with any products, materials, or equipment supplied by a third party;
- (v) modification by the Purchaser or a third party and the infringement would have been avoided without such modification;
- (vi) on products or assemblies manufactured or designed in whole or in part by the Purchaser; or
- (vii) to the extent the claim pertains to Purchaser's continued use of the goods after AFL demands that Purchaser discontinue such use.

### 15. Termination

- (a) AFL may terminate this agreement (or any order thereunder) on 7 days written notice for its convenience.
- (b) AFL may terminate this agreement (or any order thereunder) immediately with effect from the date of the notice if:
  - (i) the Purchaser suffers an Insolvency Event;
  - (ii) the Purchaser breaches AFL's intellectual property rights;
  - (iii) the Purchaser fails to make payment to AFL in accordance with the terms of this agreement or the law.
- (c) For the purpose of this clause, Insolvency Event includes where the Purchaser becomes insolvent, bankrupt or goes into administration or liquidation or makes any arrangement with creditors.

### 16. Limit of Liability and Consequential Loss

- (a) To the extent permitted by law, AFL has no liability to the Purchaser or any third party in respect of Consequential Loss arising out of or in connection with this agreement. For the purpose of this clause, **Consequential Loss** means any:
  - (i) loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of investment return, loss of business or business opportunity, loss of agreement, loss of goodwill, loss of data, loss of production (whether such loss is direct or indirect);
  - (ii) increase in direct or indirect financing costs; or
  - (iii) loss, damage, cost, expense or liability that does not arise naturally from the breach or relevant matter.

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- (b) To the extent permitted by law, notwithstanding anything to the contrary in this agreement, AFL's maximum liability to the Purchaser:
- (i) under this agreement;
  - (ii) in tort (including negligence or otherwise);
  - (iii) under any statute to the extent it is possible to exclude such liability; or
  - (iv) otherwise in law or in equity,
- arising out of or in connection with this agreement or the supply of the goods and services shall be limited to five (5) percent of the price of the relevant goods and to the extent the relevant goods are defective, repair, resupply or replacement of any defective goods in accordance with clause 11.

### 17. Personal Property Securities Act, 2004 (PPSA) Cth

- (a) In this clause 16:
- (i) 'amendment demand' has the meaning given to it in the PPSA;
  - (ii) 'collateral' has the meaning given to it in the PPSA;
  - (iii) 'encumbrance' means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust or title retention or flawed deposit arrangement and any security interest;
  - (iv) 'financing change statement' has the meaning given to it in the PPSA;
  - (v) 'financing statement' has the meaning given to it in the PPSA;
  - (vi) 'PPS Register' means the register established under section 147 of the PPSA;
  - (vii) 'security interest' has the meaning given to it in the PPSA; and
  - (viii) 'Transaction Document' means:
    - (A) this agreement;
    - (B) any agreement which AFL and the Purchaser agree is a Transaction Document for the purposes of the agreement;
    - (C) any agreement or instrument created under any of the above documents; and
    - (D) any document entered into for the purpose of amending, novating, restating or replacing any of the above documents.
- (b) If AFL determines that a Transaction Document (or a transaction in connection with a Transaction Document) is or contains a security interest, AFL will give notice to the Purchaser and the Purchaser agrees to do anything that AFL reasonably requires (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) for the purposes of:
- (i) ensuring that the security interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;
  - (ii) enabling AFL to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by AFL. This includes registration under the PPSA for whatever collateral class AFL thinks fit. The Purchaser consents to any such registration or notification and agrees not to make an amendment demand; or
  - (iii) enabling AFL to exercise rights in connection with the security interest.
- (c) The Purchaser must comply with the requirements of the notice given by AFL under clause 16(b) within the time stipulated in the notice.
- (d) The parties agree that, despite any other provision in the agreement and to the extent permitted by law, in relation to any security interests that arise in AFL's favour:

- (i) sections 142 and 143 of the PPSA are excluded and AFL need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and any other section(s) of the PPSA notified to the Purchaser by AFL after the date of the Confirmation Email; and
- (ii) neither AFL nor any receiver need give any notice required under any provision of the PPSA (except section 135).

### 18. Amendments

- (a) AFL may update or replace these Standard Terms at any time and without notice.
- (b) Any such amendment to the Standard Terms will not amend the terms of existing agreements to supply goods, unless otherwise agreed.

### 19. Law

- (a) The laws of Victoria govern this agreement.
- (b) Each party submits to the exclusive jurisdiction of the courts of Victoria.

### SPECIAL CONDITIONS AND ADDITIONAL DOCUMENTS

The parties can agree to the inclusion of Special Conditions and these will form part of the agreement when they are attached to these Standard Terms and signed by both parties.

The parties can agree to the inclusion of Other Documents and these will form part of the agreement when they are attached to these Standard Terms and signed by both parties.