

## **Terms and Conditions**

This Trading T&C applies to all transactions between You (“**You/Your/the Customer**”) and LSC Control Systems Pty Ltd of 65 – 67 Discovery Road, Dandenong South 3175, Victoria, Australia (“**We/Us/LSC**”) relating to the supply of Goods by LSC to You (unless otherwise agreed in writing). This includes all quotations, contracts and variations.

You acknowledge and agree that credit accounts may be provided to you as means for transacting payments and other amounts payable by You to LSC for the provision of Goods. By applying for a credit account with LSC, You acknowledge and agree to be bound by the LSC Control Systems Credit Application Terms and Conditions these Trading T&Cs and any other relevant terms and conditions as published by LSC from time to time.

### **1. Orders**

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- 1.1 Every order you make for the provision of Goods must be submitted to LSC in writing (unless otherwise agreed) (“**Order**”).
- 1.2 An Order will only be deemed to be placed if the Order clearly identifies the details of the Goods, the price as quoted by LSC, and the proposed delivery date. Any costs incurred by LSC due to reliance on incorrect or inadequate information provided by You in an Order may result in the imposition of an Additional Charge.
- 1.3 Placement of an Order signifies Your acceptance of these Trading T&Cs and the most recent quote provided by LSC relating to that Order.

### **Acceptance**

- 1.4 LSC may in its absolute discretion refuse to provide the Goods where:
  - (a) Goods are unavailable for any reason whatsoever;
  - (b) credit limits cannot be agreed upon or have been exceeded; or
  - (c) payment for Goods previously provided to You or any of Your related corporations or to any other party who is, in the reasonable opinion of LSC, associated with You under the same or another supply contract, has not been received by LSC.

### **Cancellation**

- 1.5 An Order cannot be cancelled without the prior written consent of LSC. Where an Order is cancelled, You indemnify LSC against any losses incurred by LSC as a result of the cancellation.

### **Variation**

- 1.6 An Order may only be varied with the written consent of LSC. LSC reserves the right to vary the Order to include any Additional Charge for any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates.
- 1.7 LSC may vary an Order by written notice to You in order to:

- (a) take account of any rise or fall in the cost of completing the Order; or
- (b) correct any typographical errors in the Order.

### **2. Invoicing and payment**

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- 2.1 LSC will issue an invoice to You for an amount equal to the Order placed and any applicable Additional Charges when the Order is placed.

### **Terms of Payment**

- 2.2 All invoices shall be due and payable prior to shipment unless credit terms have been agreed.
- 2.3 If any invoice is due but unpaid, LSC may withhold the provision of any further Goods until overdue amounts are paid in full.
- 2.4 LSC may in its complete discretion apply any payment received from You to any amount owing by You to LSC.
- 2.5 You are not entitled to retain any money owing to LSC regardless of any default or alleged default by LSC of these Trading T&Cs, including (but not limited to) the supply of allegedly faulty or defective Goods or a delay in the provision of Goods or Services. Nothing in this paragraph affects Your rights for any alleged failure of a consumer guarantee under the Australian Consumer Law (ACL).

### **GST**

- 2.6 You and LSC agree to comply with the obligations in relation to the GST Laws.

### **3. Additional Charges**

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- 3.1 LSC may require You to pay Additional Charges in respect of costs incurred by LSC as a result of reliance on inadequate or incorrect information or material provided by You or information or material supplied later than required by LSC in order for us to provide the Goods within the specified time frame (if any).
- 3.2 The imposition of Additional Charges may also occur as a result of:

- (a) cancellation by You of an Order where cancellation results in loss to LSC;
- (b) photocopying, courier, packing or handling charges not included in the Order;
- (c) Government or council taxes or charges not included in the Order; or
- (d) additional work required by You or any other occurrence which causes LSC to incur costs in respect of the Your Order additional to the quoted cost.

#### **4. Delivery Of Goods**

- 4.1 Goods may be delivered by Australia Post or another reputable courier company. Deliveries are processed promptly upon receipt of full payment, unless credit terms have been agreed.
- 4.2 Digital goods are delivered immediately. Please be aware there are inherent risks associated with downloading any software and digital goods. Should you have any technical problems downloading any of our goods, please contact us so we may try to assist you.
- 4.3 Delay in delivery of the Goods shall not entitle You to terminate the Order. You shall not be excused from paying for the Goods by reason of such delay.
- 4.4 LSC will not be liable for any damage or loss arising, directly or indirectly, out of delay in delivery or non-delivery and whether in respect of the whole or part of the Goods ordered, nor for any loss of profit or consequential loss however arising, whether or not the delay or non-delivery is attributable to LSC or to some cause outside LSC's control. Damaged or lost orders should be resolved with Australia Post or the courier company directly. Replacement of damaged or lost items is made at the discretion of LSC.
- 4.5 Delivery of the Goods is at all times at the risk of You.

#### **Acceptance of Goods**

- 4.6 If You fail to notify LSC in writing of any fault in Goods or failure of Goods to accord with the Order within 24 hours of delivery, the Goods are deemed to have been accepted. Nothing in this paragraph affects Your rights for any alleged failure of a consumer guarantee under the ACL.

#### **5. Title and Risk**

- 5.1 Risk in the Goods passes to You upon dispatch of the Goods from LSC's premises.
- 5.2 Property and title in Goods supplied to You under this Trading T&C do not pass to You until all money (including money owing in respect of other transactions between LSC

and You) due and payable have been fully paid.

- 5.3 Where Goods are supplied without payment in full, You:

- (a) are a bailee of the Goods until title in them passes to You;
- (b) irrevocably appoint LSC to be your attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in favour of LSC with respect to the Goods under applicable law;
- (c) must be able upon demand by LSC to separate and identify as belonging to LSC the Goods supplied by LSC from other goods which are held by You;
- (d) must not allow any person to have or acquire any security interest in the Goods;
- (e) agree that LSC may repossess the Goods if payment is not made within 7 days after due (or such longer time as LSC may, in its complete discretion, approve in writing); and
- (f) grant an irrevocable license to LSC or its agent to enter Your premises in order to recover possession of Goods pursuant to this paragraph. You indemnify LSC for any damage to property or personal injury which occurs as a result of LSC entering Your premises.

#### **6. Exclusion of liability**

- 6.1 Subject to LSC Standard Warranty, You agree that, to the full extent permitted by law, neither LSC nor any dealer, previous owner of the Goods, or any person purporting to act with the authority of LSC has given any condition, warranty, or representation whatsoever in Your favour:
  - (a) as to the condition or quality of the Goods including, without limitation, latent and other defects and whether or not discoverable by LSC or You; or
  - (b) as to the suitability or fitness for ordinary or any special use or purpose of the Goods.
- 6.2 Any covenant or provision that is deemed by statute to be incorporated into these Trading T&Cs but can lawfully be excluded, restricted, or modified by agreement between You and LSC, or otherwise, is hereby excluded, restricted, or modified to the maximum extent permitted by law.
- 6.3 Subject to the LSC Standard Warranty and to the extent permitted by law, in no event will LSC be liable (whether before or after the expiry or termination of these Trading T&Cs) for any loss or damage which You suffer arising from, or caused or contributed to by, LSC's negligence or the negligence of LSC's servants or agents. Nor will LSC be

liable for special, indirect or consequential loss or damage as a result of a breach by LSC of these Trading T&Cs including, but not limited to, loss of profits or revenue, the costs arising from the loss of use of the Goods and the costs of any substitute Goods which You acquire.

## **7. Covenants regarding possession and use of Goods**

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- 7.1 You must at all times ensure that the Goods are kept properly in proper working order and condition and in good and substantial repair during the warranty period.
- 7.2 You must only operate the Goods in accordance with recognised methods and standards for Goods of their type and only by competent and (where appropriate) properly qualified, trained and licensed personnel and by appropriate methods and standards of operation. Without limiting the generality of this clause, You must comply in all respects with the instructions and recommendations of the manufacturer or other supplier relating to the Goods and to their use.
- 7.3 You must not modify, alter, decompile or reverse engineer, tamper with or damage the Goods.

## **8. Indemnities**

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- 8.1 You agree to use, operate and possess the Goods at Your risk. You agree that LSC will have no responsibility or liability for any loss or damage to any of Your property. To the full extent permitted by law You release and discharge LSC and its agents and employees from:
- (a) all claims and demands on LSC in relation to the Goods; and
- (b) any loss or damage whatsoever and whenever caused to You or your agents or employees whether by way of death of, or injury to, any person of any nature or kind, accident or damage to property, delay, financial loss or otherwise, arising directly or indirectly from or incidental to a breakdown of, or defect in, the Goods or any accident to or involving the Goods or their use, operation, repair, maintenance or storage (whether occasioned by the negligence of LSC or otherwise) or which may otherwise be suffered or sustained in, upon or near the Goods.

## **9. PPSA**

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- 9.1 All capitalised terms in this clause have the same meaning as defined in the PPSA.
- 9.2 If chapter 4 of the PPSA does apply to the enforcement of a Security Interest arising under or in connection with these Trading T&Cs, You agree the following provisions of

the PPSA will not apply to the enforcement of that Security Interest:

- (a) sections 96, 121(4), 125, 130, 132(3)(d), 132(4), 142, 143; and
- (b) sections 95 and 130, to the extent that LSC is required to give You notice.
- 9.3 Where a person is a controller in relation to the Goods, the parties agree that Part 4.3 of the PPSA will not apply to the enforcement of any Security Interest in the Goods by that controller.
- 9.4 Notices or documents required or permitted to be given to LSC for the purposes of the PPSA must be given in accordance with the PPSA.
- 9.5 You consent to LSC effecting a registration on the PPSR (in any manner LSC considers appropriate) in relation to any Security Interest arising under or in connection with these Trading T&Cs and You agree to provide all assistance reasonably required by LSC to facilitate this.
- 9.6 You waive your right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- 9.7 You acknowledge that if LSC's interest under these Trading T&Cs is a Security Interest for the purposes of the PPSA:
- (a) that Security Interest relates to the Goods and all Proceeds of any kind; and
- (b) these Trading T&Cs are a security agreement for the purposes of the PPSA.

## **10. Termination**

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- 10.1 Each party may terminate these Trading T&Cs immediately by notice to the other party if an Event of Default occurs in respect of the other party.
- 10.2 If a party commits any material or persistent breach of these Trading T&Cs (**the Defaulting Party**), the other party may (but is not obliged to) provide the Defaulting Party with a notice of breach in writing. If the Defaulting Party fails to remedy the breach within 20 Business Days, or such other period as agreed, after the date of its receipt of such notice, the other party may terminate these Trading T&Cs with immediate effect upon providing the Defaulting Party with a further notice of termination in writing.
- 10.3 You acknowledge that failure to make any payment under these Trading T&Cs or any other relevant terms and conditions between You and LSC by its due date shall constitute a material breach of these Trading T&Cs for the purposes of this clause.

## Effect of termination

- 10.4 In the event of any termination of these Trading T&Cs in any circumstances and for any reason whatsoever:
- (a) You will remain liable to pay all Charges accrued up to and including the date of termination, whether or not invoiced prior to the date of termination; and
  - (b) LSC will send to You a final invoice for the balance of any unbilled Charges accrued up to and including the date of termination.

## During notice period

- 10.5 In the event that LSC's engagement under these Trading T&Cs is terminated upon notice by either party, LSC may, at its absolute discretion, suspend the supply of the Goods during the relevant notice period.

## Legislation

- 10.6 If any provision of these Trading T&Cs is otherwise unenforceable by virtue of the operation of the *Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017* (Cth), upon the occurrence of an Insolvency Event in respect of a particular party, notwithstanding any other provision of these Trading T&Cs, to the maximum extent permitted by law:
- (a) time is of the essence in respect of all obligations of that party under these Trading T&Cs (whether falling due for performance before, upon or after the occurrence of that Insolvency Event); and
  - (b) any breach of these Trading T&Cs by that party (whether occurring before, upon or after the occurrence of that Insolvency Event), however minor, will (alone or, severally, in combination with the occurrence of that Insolvency Event) be deemed to be a material breach of these Trading T&Cs, and, if any such material breach has occurred or occurs, the parties acknowledge and agree that such provision will instead be enforceable by virtue of the occurrence of that material breach.

## Accrued rights

- 10.7 Termination of these Trading T&Cs will not affect any rights or liabilities that the parties have accrued under it prior to such termination.

## 11. General

- 11.1 Each party must (at its own expense, unless otherwise provided in these Trading T&Cs) promptly execute and deliver all such documents, and do all such things, as any other party may from time to time reasonably require for the purpose of giving full effect to the provisions of these Trading T&Cs.

- 11.2 these Trading T&Cs contain the entire understanding between the parties in relation to its subject matter and supersede any previous arrangement, understanding or agreement relating to their subject matter. There are no express or implied conditions, warranties, promises, representations, obligations or other terms, written or oral, in relation to these Trading T&Cs other than those expressly stated in it or necessarily implied by statute.
- 11.3 If a provision or the application of a provision of these Trading T&Cs is invalid, prohibited, void, illegal or unenforceable in a jurisdiction:
- (a) it is to be read down or severed or be ineffective in that jurisdiction to the extent of the prohibition, invalidity voidness, illegality or unenforceability; and
  - (b) this will not affect the validity or enforceability of that provision in another jurisdiction, or the remaining provisions.
- 11.4 Any waiver of a right under these Trading T&Cs must be in writing and signed by the party granting the waiver.
- 11.5 No failure, delay, relaxation, forbearance or indulgence by a party in exercising any power or right conferred upon it under these Trading T&Cs will operate as a waiver of that power or right in any subsequent matter or prejudice or restrict the rights of the party. No single or partial exercise of any power or right precludes any other or future exercise of it, or the exercise of any other power or right under these Terms and Conditions.
- 11.6 You must not assign or otherwise transfer, create any charge, trust or other interest in, or otherwise deal in any other way with, any of its rights under these Trading T&Cs without the prior written consent of LSC.
- 11.7 LSC may assign or otherwise transfer, create any charge, trust or other interest in, or otherwise deal in any other way with, any of its rights under this Trading T&C without Your prior written consent and You must execute any necessary documents to give effect to the transfer.
- 11.8 these Trading T&Cs and any disputes or claims arising out of or in connection with their subject matter or formation (including non-contractual disputes or claims) are governed by, and shall be construed in accordance with, the laws of Victoria, Australia.
- 11.9 The parties irrevocably agree that the courts of Victoria, Australia have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, these Trading T&Cs or their subject matter or formation (including non-contractual disputes or claims).

## 12. Definitions and interpretation

12.1 The following definitions apply in these Trading T&Cs unless the context requires otherwise:

**Additional Charge** means fees or charges for additional work performed at Your request or reasonably required as a result of Your conduct, calculated in accordance with LSC's then current prices, expenses incurred by LSC, at Your request or reasonably required as a result of Your conduct and any other Charges as set out in clause 3.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) when banks in Melbourne, Victoria are open for business.

**Charges** means all amount payable by You to LSC under these Trading T&Cs, including the Additional Charges.

**Default Interest** means a rate of interest of 10.00% per annum.

**Event of Default** means any of the following on the part of a party:

- (a) committing any material or persistent breach of these Trading T&Cs, the LSC Control Systems Credit Application terms or any other relevant terms and conditions;
- (b) repudiating or, in the reasonable opinion of LSC, evincing an intention to repudiate, these Trading T&Cs, the LSC Control Systems Credit Application terms or any other relevant terms and conditions;
- (c) if You are a company, undergoing a change of control without the prior written consent of LSC;
- (d) an Insolvency Event occurring in respect of You.

**Goods** means all and any of the goods supplied or requested to be supplied by LSC to You.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as in force from time to time.

**GST Law** has the same meaning given to that expression in the GST Act.

**Insolvency Event** means, in respect of a party any of the following events or any analogous event:

- (a) where the party is an individual, that party commits an act of bankruptcy or is declared bankrupt or insolvent or that party's estate otherwise becomes liable to be dealt with under any law relating to bankruptcy or insolvency;

- (b) where the party is a company, a resolution is passed or court order made for the winding up of that party or an administrator is appointed to that party pursuant to any relevant law;
- (c) a receiver or manager or receiver and manager is appointed to the assets or undertaking of the party or any part thereof; or
- (d) the party is otherwise unable to pay its debts as and when they fall due.

**LSC Standard Warranty** means the product warranty provided by LSC. A copy of the terms are published here:

<https://www.lsccontrol.com.au/warranty.html>

**PPSA** means *Personal Property Securities Act 2009* (Cth).

12.2 The following rules of interpretation apply in these Trading T&Cs unless the context requires otherwise:

- (a) headings in these Trading T&Cs are for convenience only and do not affect its interpretation or construction;
- (b) no rule of construction applies to the disadvantage of a party because these Trading T&Cs are prepared by (or on behalf of) that party;
- (c) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (d) a reference to a document (including these Trading T&Cs) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;
- (e) references to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to these Trading T&Cs;
- (f) in each schedule to these Trading T&Cs, a reference to a paragraph is a reference to a paragraph in that schedule;
- (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- (h) an expression importing a natural person includes any individual, corporation or other body corporate, partnership, trust or association and any Governmental Agency and that person's personal representatives, successors, permitted assigns, substitutes, executors and administrators;

- (i) a reference to writing includes any communication sent by post, facsimile or email;
- (j) a reference to time refers to time in Melbourne, Victoria and time is of the essence;
- (k) all monetary amounts are in Australian currency;
- (l) a reference to a "liability" includes a present, prospective, future or contingent liability;
- (m) the word "month" means calendar month and the word "year" means 12 calendar months;
- (n) the meaning of general words is not limited by specific examples introduced by "include", "includes", "including", "for example", "in particular", "such as" or similar expressions;
- (o) a reference to a "party" is a reference to a party to these Trading T&Cs and a reference to a "third party" is a reference to a person that is not a party to these Terms and Conditions;
- (p) a reference to any thing is a reference to the whole and each part of it;
- (q) a reference to a group of persons is a reference to all of them collectively and to each of them individually;
- (r) words in the singular include the plural and vice versa; and
- (s) a reference to one gender includes a reference to the other genders.