

# TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS BY ACCENTRIC GROUP

## 1. Definitions and Interpretation

In these Terms and Conditions:

1.1 **"Customer"** means the purchaser of the Goods specified on Accentric Group' invoice. The Customer shall upon application and for any use of the Accentric Group website be given a Accentric Group Customer ID. The Customer shall at all relevant times have one login/account Administrator (**"Account Administrator"**). The Account Administrator shall have the sole responsibility for any and all purchases made by the Customer or it's officers and / or employees with Accentric Group and for any and all dealings by the Customer on the Accentric Group website conducted using the Accentric Group Customer ID.

1.2 **"Goods"** means the Goods specified in Accentric Group' invoice;

1.3 **"Price"** means the price specified on Accentric Group' invoice;

1.4 Words importing singular include the plural and vice versa;

1.5 Words importing natural persons include corporations and vice versa;

1.6 Nothing in these terms and conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding restricting or modifying any condition, warranty, guarantee right or remedy implied by law and which by law cannot be excluded, restricted or modified;

## 2. Terms of Sale

### Website

2.1 By confirming acceptance of these terms in the space provided on the Accentric Group website at the time of placing an order for goods the Customer accepts that the within terms and conditions apply to all sales between it and Accentric Group.

### 2.2 Non-Website Purchases

#### Website

2.2 These Terms and Conditions shall apply to and be terms and conditions of any contract formed as a result of acceptance by Accentric Group of an offer made by the Customer and shall in the event and to the extent of any inconsistencies prevail over all terms and conditions contained in any offer, order or other document submitted to Accentric Group by the Customer.

## 3. Delivery

3.1 Accentric Group shall use reasonable endeavours to comply with any reasonable time requested/specified for the delivery of the Goods by the Customer.

3.2 The Customer acknowledges that any delivery times are estimated delivery times only and that Accentric Group shall not be

liable to the Customer for any loss, damage or delay whatsoever occasioned to the Customer or any other person as a direct or indirect result of late delivery or non-delivery of the Goods or any part of the Goods.

3.3 The Customer agrees to pay the delivery charge as charged by Accentric Group for delivering goods.

## 4. Price

4.1 Unless otherwise stated in writing, all prices quoted by Accentric Group shall be in Australian Dollars.

4.2 If the cost to Accentric Group of any Goods increases for any reason whatsoever before the Price is paid to Accentric Group by the Customer, then Accentric Group may increase the Price to cover the increased cost and the Customer shall pay to Accentric Group the increased Price.

## 5. Payment / Retention of Title

5.1 Unless other credit terms have been agreed in writing, the Customer shall pay Accentric Group the Price of the Goods in full prior to despatch of the Goods.

5.2 Where payment is not made by the Customer in accordance with Clause 5.1, or any other payment terms agreed in writing between Accentric Group and the Customer, then notwithstanding and without prejudice to any of its other rights, Accentric Group may do any one or more of the following;

5.2.1 charge interest on the daily outstanding balance of all amounts due and payable at the rate of 1.5% per month from the due date until the payment is received by Accentric Group, such interest to be paid by the Customer forthwith on demand or failing demand contemporaneously with the payment of such outstanding balances;

5.2.2 withhold delivery of the Goods or any part of the Goods not delivered to the Customer;

5.2.3 where Accentric Group has despatched the Goods, stop the Goods in transit;

5.2.4 where the Goods have been delivered to the Customer, enter the premises of the Customer (where the Goods are located) without liability for trespass or any resulting damage and take possession of the Goods;

5.2.5 keep or re-sell any Goods repossessed pursuant to Clause 5.2.4.

5.3 Until payment is made by the Customer in full, the Customer;

5.3.1 must not sell, charge, dispose of or otherwise deal with the Goods in any manner whatsoever save with the express consent in writing of Accentric Group;

5.3.2 must hold the Goods in a dry and safe location as the fiduciary agent and bailee of Accentric Group but at the Customer's own risk;

5.3.3 must keep the Goods so that they can be clearly identified as belonging to the Accentric Group;

5.3.4 must deliver up the Goods to Accentric Group as and when required;

5.3.5 must so long as Accentric Group is entitled to the property in the Goods, store the Goods so that they are clearly identifiable as the property of Accentric Group.

5.3.6 must not use the Goods in any manufacturing process or otherwise change their character or incorporate them in any item without the prior written consent of Accentric Group;

5.3.7 in the event that the Customer has used the Goods in some manufacturing or construction process of its own or that of some

third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to the Goods in trust for Accentric Group. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to Accentric Group at the time of the receipt of such proceeds;

5.3.8 until payment has been made by the Customer in full, Accentric Group may at any time, on reasonable notice to the Customer, either by its own officers or employees, or by contractors or agents, carry out an inspection of all premises, inventory, accounts and documentation to ensure compliance with the obligation of the Customer to keep separate accounts, records and storage of the Goods.

5.4 Accentric Group shall charge and the Customer agrees to pay to Accentric Group a two percent (2%) surcharge calculated on the value of all payments made by credit card by the Customer for the Goods.

5.5 In the event that the Customer is a sole trader or trustee of a trading trust, Accentric Group reserves the right in addition to its reliance upon the retention of title provisions referred to herein, in its sole discretion, to register a security interest in respect of any goods provided on credit in accordance with its rights pursuant to The Personal Property Securities Act 2009 and the Customer agrees to execute any and all documents to assist with the registration of the relevant security interest.

## 6. Title & Risk

6.1 Title of the Goods shall not pass to the Customer until payment in full of the Price to Accentric Group.

6.2 The Customer shall in the meantime take custody of the Goods and retain them as the fiduciary agent and bailee of Accentric Group.

6.2.1 The Customer may resell the Goods but only as a fiduciary agent of Accentric Group.

6.2.2 Pending resale or utilisation in any manufacturing or construction process, is to be kept separate on its own, properly stored, protected and insured.

6.2.3 The Customer will receive all proceeds whether tangible or intangible, direct or indirect of any dealing with the Goods in trust for Accentric Group and will keep such proceeds in a separate account until the liability to Accentric Group has been discharged.

6.3 Risk of loss or damage to the Goods passes to the Customer upon despatch of the Goods to the Customer.

6.4 Accentric Group shall not be liable to the Customer or any other person for any loss, deterioration of or damage to Goods in transit.

## 7. Limitation of Liability / Indemnity by Accentric Group

7.1 Goods come with guarantees that cannot be excluded under the Australian consumer law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonable foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

7.2 Accentric Group does not exclude or limit the application of any provision of any statute (including the Trade Practices Act) where to do so would;

7.2.1 contravene that statute; or

7.2.2 cause any part of this Clause to be void.

7.3 Subject to clause 7.4, and to the extent permitted by the Trade Practices Act and all relevant State legislation, the sole obligation of Accentric Group under this Agreement is to use its best endeavours to provide the Goods or to repair the Goods or replace (at

Accentric Group' discretion) any part of the Goods which is found to be defective during the period of one year from the date of the supply of the Goods. In no event shall Accentric Group be liable for any other claims or damages including, but not limited to, claims for faulty design, negligent or misleading advice, damages arising from any loss of use of the products and any indirect, special or consequential damages or injury to any person, corporation or other entity where the product is faulty and or where the product has filed. Accentric Group shall be under no obligation to repair or replace the Goods as provided by this clause in the event that the failure arises as a result of any incorrect installation of the Goods or usage of the Goods contrary to any and all specifications and directions given to the Customer.

7.4 If any of the Goods are supplied to the Customer as a "consumer" of Goods and Services within the meaning of that term in the Trade Practices Act 1974 as amended or similar State legislation, the Customer will have the benefit of certain non-excludable rights and remedies in respect of the Goods or Services and nothing in these Terms and Conditions excludes or restricts or modifies any condition, warranty, right or remedy which, pursuant to the Trade Practices Act or similar legislation is so conferred. However, if the product is not a product ordinarily acquired for personal, domestic or household use or consumption pursuant to section 68A of the Trade Practices Act and similar provisions of State legislation, Accentric Group limits its liability to payment of an amount equal to the lowest of: -

7.4.1 The cost of replacing the Goods;

7.4.2 The cost of repair of the Goods;

7.4.3 The cost of having the Goods repaired or replaced.

7.5 Where Goods are subject to a warranty supplied by a manufacturer or supplier other than Accentric Group, the obligation of Accentric Group under this agreement to repair or replace the Goods shall, notwithstanding the provisions of clause 7.3, be limited to the terms of the applicable manufacturer's warranty subject to clause 7.4 which preserves certain non-excludable rights and remedies under the Trade Practices Act 1974 in the appropriate circumstances.

7.6 Accentric Group shall indemnify the Customer and save the Customer harmless from any loss, damage or expense (including, without limitation costs, whether or not the subject of a Court order) incurred by the Customer in respect of direct loss suffered by the Customer arising solely from the failure of the Goods. Accentric Group shall not indemnify the Customer in respect of any loss, damage or expense incurred or suffered by the Customer in respect of the failure of the Goods arising from any incorrect installation of the Goods or incorrect usage of the Goods contrary to the terms and specifications relevant to those Goods.

7.7 It is acknowledged and agreed by the parties that the extent of the indemnity provided by Accentric Group to its Customers pursuant to these terms and conditions shall only extend directly to the Customer and any and such indemnity shall only extend to any and all damage based solely on an assessment and proof of the failure of the Goods supplied by Accentric Group to the Customer and only any and all direct loss and or damage associated with the Goods failure and no consequential damage whatsoever.

## **8. Expiration of Provision of Credit**

Any agreement for the provision of credit to the Customer agreed to by Accentric Group shall expire if any of the following events occur: -

8.1 Any money owing by the Customer to Accentric Group is not paid on or before its due date;

8.2 The Customer being a company - any application is made for the winding up or the appointment of a receiver and/or administrator and/or controller to the Customer;

8.3 The Customer being an individual - enters into a composition of its creditors or any execution on a judgment is not satisfied in full;

8.4 The Customer does anything that is a fundamental breach of the agreement between the parties.

Upon the happening of any of the above events, any and all credit granted by Accentric Group to the Customer will automatically expire and any and all monies due by the Customer to Accentric Group at that time shall become immediately due and payable.

## Warranties

9. Accentric Group' liability shall extend only to the repair or replacement of goods under warranty consistent with clause 7.1 above.
10. Accentric Group shall not be liable in any manner whatsoever either to repair or replace goods if the goods purchased by the Customer from Accentric Group have been used incorrectly or misused.
11. Accentric Group' liability under any warranty will be automatically discharged if the static sensitive devices in the goods supplied have been tampered with, whether by the Customer or any third party and it is Accentric Group' opinion that any and all failure of the goods supplied has occurred as a result of the static sensitive device having been tampered with.
12. Any warranty in relation to the anti-static nature of the goods will be automatically discharged if goods previously supplied in anti-static protection and packaging and the subject of a warranty claim are not returned to Accentric Group in their packaging.

## 13. Insurance

Accentric Group warrants that it has and will maintain with a reputable insurance company and keep in effect at all times during the term of this agreement, insurance with a reputable insurer to cover every event giving rise to any liability or obligation imposed upon or arising from any breach of these terms and conditions by Accentric Group.

## Cancellation of Orders

Upon cancellation of a written order, the Customer must put same in writing and forward to Accentric Group immediately.

## Returns

15. Returns for credit of goods supplied will be accepted at the sole discretion of Accentric Group and must be received within 7 days
16. In certain circumstances, a restocking charge may apply for returned goods or should goods be returned for repair and are found to be non-faulty, a AU\$40 per half hour service fee may be charged
17. To be entitled to a return for credit, the returned goods must be in a complete format with unmarked packaging and manuals.

Note: All requests for repair and credit are to be made via [www.legendpower.com.au](http://www.legendpower.com.au)

18. Payment of monies due is not to be withheld in expectation of credits.

## Complaints - Time Limits (Wholesale)

19. Any complaint as to the goods supplied must be made in writing to Accentric Group within 48 hours of delivery of the goods. Any complaint made after the expiry of 48 hours will not be accepted by Accentric Group.

20. If the complaint by the Customer is accepted by Accentric Group, Accentric Group has the sole discretion as to whether to replace the goods the subject of the claim or to credit the appropriate proportion of the purchase price of the goods relevant to the complaint.

## 21. Goods on Evaluation

Goods may be supplied "on approval" at the sole discretion of Accentric Group. Any and all goods supplied on approval will be done so only on the provision of a Customer order number. Any and all goods supplied on approval shall be returned to Accentric Group within 14 days failing which the invoice rendered at the time of the supply of the goods on approval will become payable in accordance with the invoice account terms referred to above. Any and all goods supplied on approval shall be subject to the conditions as to risk referred to above.

## 22. Force Majeure

Accentric Group shall not be liable to the Customer for any delay or failure to perform all or part of Accentric Group' obligations to the Customer under the contract where such a delay or failure is due to any cause whatsoever beyond reasonable control of Accentric Group including but not limited to, acts of God or public enemy, insurrection or riot, war or military operation, national or local emergency, act or omissions of government, industrial disputes of any kind (whether or not involving Accentric Group' employees), fire, lightning, explosion, flood subsidence, inclement weather, quarantine, epidemic, regulation or order affecting materials, act or omissions of third persons (including any supplier of the goods or parts of the Goods and any supplier of services) or any other cause whether similar or dissimilar outside of Accentric Group' reasonable control.

## 23. Applicable Law

These terms and conditions shall be governed by and construed in accordance with South Australian law and the Customer hereby submits to the exclusive jurisdiction of the courts of South Australia.

## 24. Variation

These Terms and Conditions may be varied by Accentric Group by notice in writing to the Customer. Notice will be deemed to have been given to the Customer 48 hours after any varied Terms and Conditions posted on the Accentric Group website.

## 25. Severance

If any part of these Terms and Conditions is invalid or unenforceable the remaining valid and enforceable Terms and Conditions shall remain in full force and effect.



## 26. Indemnity by Customer

Without prejudice to any other rights Accentric Group may have against the Customer, and to the extent permitted by the law, the Customer shall indemnify Accentric Group for, and save it harmless from, any loss, damage or expense (including, without limitation costs, whether or not the subject of a Court order) incurred by Accentric Group should the Customer breach any of these Terms and Conditions.

## 27. Goods and Services Tax

Should any Goods and Services Tax as levied under the A New Tax System (Goods and Services Tax) Act 1999 and any other tax, fee, levy or duty imposed by any competent authority be payable on any of the Goods supplied by Accentric Group, such tax, fee, levy or duty will be to the Customer's account and shall be calculated using the rates and methods of assessment in force at the time of delivery. The Customer is liable for any other applicable tax, including, without limitation, withholding tax.

## TERMS AND CONDITIONS FOR THE USE OF ACCENTRIC GROUP WEBSITE

### Content of Website

28. All text, graphics, user interfaces, visual interfaces, photographs, trademarks, logos, sounds, music, artwork and computer code (collectively, "Content"), including but not limited to the design, structure, selection, coordination, expression, "look and feel" and arrangement of such Content, contained on the Site is owned, controlled or licensed by or to Accentric Group, and is protected by trade dress, copyright, patent and trademark laws, and various other intellectual property rights and unfair competition laws.

29. Except as expressly provided in these Terms of Use, no part of the Site and no Content may be copied, reproduced, republished, uploaded, posted, publicly displayed, encoded, translated, transmitted or distributed in any way (including "mirroring") to any other computer, server, Web site or other medium for publication or distribution or for any commercial enterprise, without Accentric Group' express prior written consent.

30. Additional terms and conditions may apply to purchases of goods or services (as per clauses 1-25 of these Terms and conditions above) and to specific portions or features of the Site, including contests, promotions or other similar features, all of which terms are made a part of these Terms and Conditions of Use by this reference.

31. The Customer/User agrees to abide by such other terms and conditions, including where applicable representing that it/ they are of sufficient legal age to use or participate in such service or feature.

32. If there is a conflict between these Terms and Conditions and the terms posted for or applicable to a specific portion of the Site or for any service offered on or through the Site, the latter terms shall control with respect to your use of that portion of the Site or the specific service.

33. Accentric Group may make changes to any products or services offered on the Site, or to the applicable prices for any such products or services, at any time, without notice. The materials on the Site with respect to products and services may be out of date, and Accentric Group makes no commitment to update the materials on the Site with respect to such products and services.

### Customers' Responsibilities

34. The Customer/User utilising the Accentric Group Customer ID is responsible for all contracts for purchase entered into with Accentric Group via the Website and for its conduct whilst using the Website.

35. The Customer/ User agrees to notify Accentric Group immediately of any unauthorized use of their account or password, or any other breach of security. The Customer may be held liable for losses incurred by Accentric Group or any other User of or visitor to the Site due to someone else using your Accentric Group Customer ID, password or account as a result of your failing to keep your account information secure and confidential. Responsibility for safeguarding the Accentric Group Customer ID rests solely with the Customer Account Administrator.

36. The Customer may not use anyone else's Accentric Group ID password or account at any time without the express permission and consent of the holder of that Accentric Group ID password or account. Accentric Group cannot and will not be liable for any loss or damage arising from your failure to comply with these obligations.

## Links to Other Sites and to the Accentric Group Site

37. Sites are provided solely as a convenience to our visitors. Such Linked Sites are not under Accentric Group' control, and Accentric Group is not responsible for and does not endorse the content of such Linked Sites, including any information or materials contained on such Linked Sites. The Customer/User will need to make their own independent judgment regarding your interaction with these Linked Sites.

## Limitation of Liability - Website

38. Except where prohibited by law, in no event will Accentric Group be liable to you for any indirect, consequential, exemplary, incidental or punitive damages, including lost profits, even if Accentric Group has been advised of the possibility of such damages.

39. If, notwithstanding the other provisions of these Terms and Conditions, Accentric Group is found to be liable to you for any damage or loss which arises out of or is in any way connected with your use of the Site or any Content, Accentric Group' liability shall in no event exceed the greater of (1) the total of any subscription or similar fees with respect to any service or feature of or on the Site paid in the six months prior to the date of the initial claim made against Accentric Group (but not including the purchase price for any Accentric Group hardware or software products or similar support program), or (2) AUD\$10,000.00. Some jurisdictions do not allow limitations of liability, so the foregoing limitation may not apply to you.

## Disclaimers

40. Accentric Group does not promise that the site or any content, service or feature of the site will be error-free or uninterrupted, or that any defects will be corrected, or that your use of the site will provide specific results. The site and its content are delivered on an "as-is" and "as-available" basis. All information provided on the site is subject to change without notice. Accentric Group cannot ensure that any files or other data you download from the site will be free of viruses or contamination or destructive features. Accentric Group disclaims all warranties, express or implied, including any warranties of accuracy, non-infringement, merchantability and fitness for a particular purpose. Accentric Group disclaims any and all liability for the acts, omissions and conduct of any third parties in connection with or related to your use of the site and/or any Accentric Group services. The Customer/User assumes total responsibility for their use of the site and any linked sites. The sole remedy against Accentric Group for dissatisfaction with the site or any content is to stop using the site or any such content. This limitation of relief is a part of the bargain between the parties.

41. The above disclaimer applies to any damages, liability or injuries caused by any failure of performance, error, omission, interruption, deletion, defect, delay in operation or transmission, computer virus, communication line failure, theft or destruction of or unauthorized access to, alteration of, or use, whether for breach of contract, tort, negligence or any other cause of action.

42. Accentric Group reserves the right to do any of the following, at any time, without notice: (1) to modify, suspend or terminate operation of or access to the Site, or any portion of the Site, for any reason; (2) to modify or change the Site, or any portion of the Site, and any applicable policies or terms; and (3) to interrupt the operation of the Site, or any portion of the Site, as necessary to



perform routine or non-routine maintenance, error correction, or other changes.

## **Indemnity by Customer**

The Customer/User agrees to indemnify and hold Accentric Group, its officers, directors, shareholders, predecessors, successors in interest, employees, agents, subsidiaries and affiliates, harmless from any demands, loss, liability, claims or expenses (including attorneys' fees), made against Accentric Group by any third party due to or arising out of or in connection with your use of the Site.

## **ALTERATIONS/CHANGES TO TERMS AND CONDITIONS**

Accentric Group reserves the right, at its sole discretion, to change, modify, add or remove any portion or portions of the Terms and Conditions at any time. It is the responsibility of the Customer/User to check these Terms and Conditions periodically for any changes. Your continued purchase of Goods/use of the Website following the making of any changes will mean that you accept and agree to be bound to the changes