



Terms and Conditions 2016 (Non MSA)

## Terms and Conditions – Maser Group

**We, us, our** and similar expressions refer to Maser Technology Group, ABN 74003314510, Maser Communications, ABN 32081065956, Maser Defence, ABN 65144079612 and **you, your** and similar expressions, refer to you, our customer or proposed customer as named in any purchase order, written quotation or document setting out details of the goods and services agreed to be supplied by us.

### 1. Terms and conditions

These terms and conditions apply if we accept any order from you for the supply of goods and/or services. These terms and conditions apply to you as a single contract if you are a repeat customer. You are a repeat customer if you purchase goods and/or services from us by placing more than one (1) order for goods and/or services from us within any twelve (12) month period. The date of the contract is deemed to be the first time we accept an order from you in any twelve (12) month period.

### 2. Orders

You cannot cancel any accepted order unless we agree in writing to the contrary. If we agree that you can cancel an accepted order, you must pay us a reasonable cancellation fee, if any. Each accepted order comprises a separate contract under this agreement.

### 3. Precedence

These terms and conditions together with any purchase order, written quotation, proposal or statement of work form a contract in relation to the sale and purchase of the relevant goods and services. They are the entire agreement and understanding between us and you on everything connected with the supply of the relevant goods and/or services and supersedes all prior discussions, representations, agreements and understandings between you and us in connection with them. These terms and conditions prevail over any other terms and conditions purporting to apply to the supply of the relevant goods and/or services except to the extent of any inconsistency between these terms and conditions, a purchase order, a written quotation, proposal or statement of

work, the order of precedence will be, from the document with the highest order of priority, our statement of work, proposal, written quotation, these terms and conditions and the purchase order.

### 4. Price

Prices for goods and services are based on rates and costs at the date of the contract, or where a contract arises from a written quotation, proposal or statement of work from us ("**Our Quote**"), at the latest date of Our Quote and are exclusive of GST unless stated otherwise in Our Quote. We reserve our right to increase the price for goods and services after we have accepted an order to cover the full amount of any increase in GST, duties, customs or other taxes or cost of materials, labour, insurance or there is any fluctuation in the currency exchange by two (2) percentage points or more in respect of the Australian dollar or the currency used by our supplier for the relevant goods and/or services from the date of Our Quote and the date of the invoice from our supplier for the goods and/or services resulting in increased cost to us.

### 5. Payment

Payment for goods and services must ordinarily be made before we dispatch the goods or commence to provide any services to you unless otherwise agreed by us in writing. If we agree to grant you credit, you must pay us without any deduction or set-off within thirty (30) days of the earlier of the date of delivery of the goods and/or services or the date of receipt of our tax invoice for any goods and/or services. Notwithstanding any credit arrangement we may have granted

you, we reserve the right at any time and in our sole discretion to require payment from you before we dispatch any goods or commence to provide any services to you.

## 6. Interest

You must pay interest at the rate of ten percent (10%) per annum calculated on a daily basis on any moneys that is due and payable but remains unpaid until payment is made in full.

## 7. Title and risk

- (a) Risk in the goods passes to you on delivery.
- (b) We retain title to the goods until we receive payment in full for all goods supplied including any goods we have previously supplied.
- (c) Until such time title passes to you, you are a bailee of the goods and our fiduciary agent.
- (d) Until the goods have been paid in full:
  - (i) you must:
    - (A) store the goods in such manner as to show clearly that they are our property
    - (B) keep the goods fully insured at your cost for full replacement value and hold the proceeds of any insurance claim in respect of the goods to the extent of your debt to us in trust for us
    - (C) not sell the goods (even if mixed with other goods) other than in the ordinary course of business, in which case you grant us a security interest in every payment to you for the goods (both as proceeds of the goods and as original collateral), and
    - (D) not sell, assign, charge or otherwise encumber the goods or grant any interest over any debts and other obligations which any third party may owe you as a result of the use or resale of the goods, and

- (ii) without prejudice to any other rights we may have, you irrevocably consent and authorise us by our employees, agents or contractors to enter any premises or vehicle owned, leased or otherwise occupied or controlled by you, or by any of your agents or associates for the purpose of inspecting, recovering or taking possession of the goods (even if mixed with other goods) if we have reasonable grounds to expect that we may find any part of the goods there and you consent and authorise us by our employees, agents or contractors to use all reasonable force to exercise our rights as owner conferred by common law, contract or statute. If we exercise our rights, we may dispose the goods removed and claim from you the loss to us on such disposal and you release us from all liability and indemnify us against all liability incurred by us in connection with us exercising our rights.
- (e) You agree our agreement incorporating these terms and conditions constitutes a security agreement and clauses 7(b) to (d) create purchase money security interests in all present and after acquired goods and any proceeds as security for your obligations to us.
- (f) We are a secured party in relation to the goods and any proceeds of the goods and we are entitled to and you authorise us to register our interest on the Personal Property Securities Register as a purchase money security interest.
- (g) We may by notice to you require you to take all steps requested by us to ensure our purchase money security interest in the goods and the proceeds are enforceable and to perfect or better secure our position and you must comply with that notice. We are not obliged to

give you any notice, document or information under the *Personal Property Securities Act 2009* (Cth) (**PPSA**) unless the provision of the notice, document or information is required by the PPSA and cannot be excluded. You consent to waive any right you may have to receive such notice, copy of document or information.

- (h) Until the goods have been paid in full and any other money owing by you to us has been repaid, every payment you make to us will be taken to be a payment:
- (i) firstly, of any amount owed by you to us that is not subject to a security interest
  - (ii) secondly, of any amount owed by you to us that is subject to a security interest, to the extent that the security interest is not a purchase money security interest, and
  - (iii) thirdly, of any amount owed by you to us that is subject to a security interest, to the extent that it is a purchase money security interest.

An ordinary acknowledgment by us to you that an invoice has been paid is not, and must not be treated as, an agreement by us to amend the order of priority set out in this paragraph (h).

## **8. Delivery**

- (a) We will deliver the goods to the place indicated in Our Quote, and if no place is so indicated, the delivery place is deemed to be at our principal place of business.
- (b) You must take or accept delivery of the goods when we first attempt to deliver the goods in accordance with the estimated delivery times given in Our Quote.
- (c) If you refuse or fail to take or accept delivery, then the goods are deemed to be delivered to you on our first attempt of delivery.
- (d) You must pay for all charges relating to delivery in addition to the price for the goods including storage and transportation costs and expenses.

- (e) Time of delivery is not of the essence. Delivery times are estimates only and we will not be liable for any delay in delivery.
- (f) If the delay in delivery or any goods and/or services is by reason of or a result of an act, omission, default or request by you, you must pay us such portion of the price for the goods and/or services which represents the extent to which we have performed our obligations under the contract for the goods and/or services together with any additional costs and expenses (including any legal costs and expenses on a full indemnity basis) we incur in relation to the delay.

## **9. Specifications**

- (a) Any specifications contained in or referred to in any advertising, marketing or promotional material (in any material form) or in Our Quote are subject to change without notice.
- (b) You acknowledge and agree we rely on the accuracy and completeness of any information you provide us for the purpose of providing you with the goods and/or services.
- (c) We will not be responsible for goods and/or services that do not meet your requirements or fit your purposes if the goods and/or services were provided on the basis of information provided by you that are inaccurate or incomplete.

## **10. Warranty**

- (a) If we provide any warranty in relation to the goods and/or services, subject to paragraph (b), our warranty will be in accordance with any warranty provided by the manufacturer or supplier of the goods and/or services or in Our Quote.
- (b) However, you may not make a warranty claim in relation to the goods and/or services if:
  - (i) you still owe us money for the relevant goods and/or services
  - (ii) you do not return the goods to us or we are unable to investigate or verify the alleged defect

- (iii) the goods have been installed or used improperly or unreasonably
- (iv) you have not installed, used or maintained the goods in accordance with our recommended operating instructions
- (v) you have used a person not authorised by us to carry out installation, maintenance or repair
- (vi) you fail to promptly notify us of any defect or failure in the goods
- (vii) the claim arises out of fair wear and tear
- (viii) the claim arises out of incorrect or inaccurate information provided by you
- (ix) you continue to use the goods after you became or aware of or should reasonably have become aware of the defect
- (x) the goods have been altered or modified unless you notified us at the time of purchase of your intention to alter or modify the goods and we agreed in writing that you would be covered by our warranty
- (xi) the goods have been attached to other property and cannot be detached without damaging the goods
- (xii) the goods are lost, destroyed or disposed of so we are unable to investigate or verify the alleged defects, or
- (xiii) further damage is caused to the goods in transit from you to us when you returned the goods to us to the extent we are unable to investigate and verify the alleged defects.

## 11. Liability

- (a) Where legislation implies in these terms and conditions any condition or guarantee which cannot be excluded or modified, the condition or guarantee is deemed to be included in these terms and conditions.
- (b) To the fullest extent permitted by law, our liability for breach of any non-excludable

condition or guarantee is limited as follows:

- (i) in relation to goods, at our option, to replace or repair the goods or supply equivalent goods or pay for the cost of replacement or repair of the goods or supply of equivalent goods and
- (ii) in relation to services, at our option, to re-supply the services again or pay the cost for the re-supply of the services again.

## 12. Exclusions and Limitations

To the fullest extent permitted by law:

- (a) we exclude all liability for:
  - (i) loss or corruption of data
  - (ii) any indirect, consequential or special loss
  - (iii) loss of profit, goodwill, business opportunity or anticipated savings or benefits, and
  - (iv) any damage or injury of any kind howsoever arising, and
- (b) our aggregate liability in connection with our agreement with you (whether under statute, contract or in tort including for negligence) and any other agreement we have with you in relation to the supply of our goods and/or services is limited to the price you have or should have paid for goods and/or services ordered in the twelve (12) month period immediately before the date of your claim.

## 13. Indemnity

Subject to clause 12, each party indemnifies and keeps indemnified the other party against all loss and damage suffered as a direct result of any breach of any of these terms and conditions except to the extent the loss or damage is caused or contributed to by the indemnified party, its employee, agent or contractor.

## 14. Termination

- (a) You or we may terminate this agreement at any time for convenience by giving the other party at least 30 days' notice provided the party giving the notice does

- not owe any monies (whether or not the monies have become due and payable at the time the notice is given) to the other party.
- (b) We may suspend or terminate any contract with you or this agreement with you by notice with immediate effect if you:
- (i) have a liquidator, receiver or receiver and manager, an administrator or provisional liquidator appointed over all or any part of your property
  - (ii) enter into any composition of arrangement with your creditors generally or take or suffer any similar action in consequence of debt
  - (iii) commit an act of bankruptcy or become insolvent
  - (iv) go into administration (voluntary or otherwise)
  - (v) have a change in the direct or indirect legal or beneficial ownership or control to fifty percent (50%) or more of the voting power among your shareholders
  - (vi) fail to comply with an essential term being the obligation to pay for the goods and/or services and associated delivery charges, and take or accept delivery of the goods and/or services
  - (vii) are in breach of a material term which is not capable of rectification, or
  - (viii) are in breach of a material term which is capable of rectification and after being a reasonable opportunity to rectify the breach having regard to the nature of the breach, which in any event will not exceed a period of thirty (30) days, you fail to remedy or rectify the breach to our satisfaction in our absolute discretion.
- (c) Our right to suspend or terminate any contract or this agreement with you is without prejudice to any other right or remedy in respect of the breach or default.
- (d) You may terminate any contract or this agreement by notice if we:
- (i) become insolvent and legal proceedings have been commenced to wind up us
  - (ii) are in breach of a material term which is not capable of rectification, or
  - (iii) are in breach of a material term which is capable of rectification and after being given a reasonable opportunity to rectify the breach having regard to the nature of the breach we fail to remedy or rectify the breach to your satisfaction (acting reasonably).
- (e) Termination of a contract will not affect any other valid or subsisting contract or this agreement.
- (f) Termination of this agreement will not affect any valid and subsisting contract unless the termination relates to a breach under that contract.
- (g) Termination of any contract or this agreement does not affect any accrued rights or remedies we or you may have against the other party.
- (h) Clauses 3, 5, 6, 7, 11, 12, 13, 14, 15, 16, 17, 18 and 19 will continue to apply after termination of our agreement with you.
- 15. Confidentiality**
- (a) In relation to any confidential information we and you disclose to each other, each of you and us must:
- (i) keep the confidential information confidential and not disclose it or allow it to be disclosed
  - (ii) take adequate measures in relation to the handling, physical security and technical security of the confidential information to maintain confidentiality of the confidential information, and
  - (iii) not reproduce or copy any confidential information without our prior written consent.

(b) Each of us and you must return all of each other's confidential information including all copies of them to the other once it is no longer required for any approved purpose or request, or at the requesting party's election destroy the confidential information and confirm in writing to the requesting party that it has been done except that we may retain a copy for risk management purposes.

## 16. Intellectual property rights

If we expressly agree to assign any intellectual property rights in the goods and/or services to you, you acknowledge and agree that, despite any representation our sales agents might make to the contrary, we may only assign all such intellectual property rights that are owned by us in the goods and/or services supplied by us. However, we agree to use reasonable endeavours (at your cost and expense) to procure the assignment of intellectual property rights requested by you in writing.

## 17. Personal information

Each of you and us agree to comply with our obligations under the *Privacy Act 1988* (Cth) (the **Act**) in relation to any personal information (as defined in the Act) relevant to our contract with you.

## 18. Non-solicitation

(a) For the duration of our agreement with you and for a period of twelve (12) months after the end of our agreement with you, you must not, and you must ensure that your personnel do not solely or with any other person, as principal, agent, employee, director, shareholder, beneficiary or in any other capacity either in your (or their) own right or with or on behalf of or in connection with any other person or entity:

(i) discuss or consult with or advise any person or organisation that was a customer or supplier of ours during the agreement or at the date of the termination

(ii) solicit, interfere with or endeavour to entice away from us any employee, contractor or consultant of ours or any person or organisation that was a customer or supplier of ours during our agreement or at the date of the termination, or

(iii) counsel, induce or conspire with any person to perform any of the acts specified in paragraphs (i) or (ii) above.

(b) You acknowledge (and you must ensure that your personnel acknowledges) that any breach by you of this clause 18 would cause irreparable harm and significant damage to us and accordingly that we have the right to seek and obtain immediate injunctive relief in relation to any such breach.

(c) You acknowledge (and you must ensure that your personnel acknowledges) that the covenants in respect of non-solicitation contained in this clause 18 are fair and reasonable and are not greater than reasonably necessary for the protection of our legitimate business interests and that we are relying upon this acknowledgement in entering into our agreement with you.

## 19. General

(a) If a dispute arises between us and you, either party may notify the other party of the dispute and without prejudice to any other right or entitlement a party may have, the parties must explore resolution of the dispute informally by negotiation, mediation, independent expert appraisal or some means before commencing legal proceedings.

(b) If we are delayed or interrupted in, or prevented from, performing any obligation under these terms and conditions by any cause beyond our control (and that cause was not originally and directly caused by the act or omission of ours), we will not be in breach of these terms and conditions and the time for



- performance of the obligation will be extended by a period of time equal to the duration of the cause of the delay, interruption or prevention.
- (c) No failure, delay, relaxation or indulgence on the part of a party in exercising any right, power, privilege or remedy in connection with this document operates as a waiver of that right, power, privilege or remedy nor does any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise of that or any other right, power, privilege or remedy. A waiver is not valid or binding on the party granting that waiver unless in writing and duly signed on behalf of that party.
- (d) We may set off any amount owed by you to us against any amount owed by us to you and pay only the net amount remaining.
- (e) Any notice or approval given pursuant to these terms and conditions must be in writing and duly signed on behalf of that party.
- (f) You may not assign your rights under these terms and conditions without our prior written consent. We may assign our rights under these terms and conditions and if we do so, we will inform you to that effect.
- (g) You agree to do all things and sign all documents necessary or desirable to give full effect to the provision of our agreement with you.
- (h) If any term or condition in these terms and conditions is found to be void or unenforceable at law, that term or condition will not affect any other term of these terms and conditions and, as far as possible, will be read down to the extent required to make it enforceable. If necessary, the parties will, in good faith, negotiate a valid and enforceable replacement term to express their intention.
- (i) These terms and conditions may only be amended in writing and signed by you and us.
- (j) The rule of interpretation which sometimes requires that an agreement be interpreted to the disadvantage of the party which put the agreement forward, does not apply.
- (k) These terms and conditions are governed by and to be interpreted according to the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts in New South Wales.