

LEYTON CONSULTING PTY LIMITED
A.B.N. 79 062 893 887
STANDARD TERMS AND CONDITIONS OF SALE

1. APPLICATION AND ACCEPTANCE

- a) These terms and conditions apply to the sale of products and services by Leyton Consulting Pty Ltd (the "Vendor") to the Customer and are in addition to the terms of any other Agreement between the Vendor and the Customer.
- b) No term or condition contained in the Customer's order adds to, amends or deletes these Terms and Conditions and if there is conflict between these Terms and Conditions and any separate agreement between the Vendor and the Customer, the terms of that separate agreement will prevail.
- c) All orders must be in writing and are subject to review and acceptance by the Vendor. Orders may also be sent by email where they are submitted in the form approved by the Vendor.
- d) The Customer accepting the Vendor's offer to produce products or provide services is deemed to have accepted the terms and conditions contained herein.

2. PRICES AND PAYMENT

- a) All prices are in Australian currency and will be as specified by the Vendor from time to time. Prices for services are generally charged at the Vendor's specified hourly rate.
- b) All quotations for goods and services provided to the Customer by the Vendor are estimates only. If the Vendor is required to do further work because the scope of the work required by the Customer varies, the Customer's instructions change, or work unforeseen at the time of the quote is necessary to ensure that the viability of the work already conducted is preserved, the Vendor reserves its right to charge for that additional work at its hourly rate. Where the Services provided by the Vendor are technical consulting services, the Customer will be charged a minimum service charge equivalent to two hours.
- c) Where any Order placed by a Customer is for work to be conducted for a fixed price over stages agreed in writing by the parties, the Vendor will be entitled to invoice the Customer for each stage of the work within seven (7) days of the Customer and/or the Vendor completing acceptance testing.
- d) The Customer must reimburse the Vendor for all reasonable incidental expenses incurred by the Vendor in delivery of goods and/or services to the Customer including but not limited to the costs of travel (in Sydney, in NSW, interstate or international), telephone charges, accommodation, venue rental and/or computer consumables (eg.) Wherever possible, the Vendor will obtain the Customer's prior approval before the expenses are incurred.
- e) All new account Customers (which include a new owner of an existing business with which the Vendor is dealing) must complete a new client application form and submit it to the Vendor.
- f) All payments must be made by cash, cheque or EFT and all such payments are due and payable to the Vendor within fourteen (14) days of the date of the Vendor's invoice.
- g) Where the Customer fails to pay for products or services and associated amounts, charges or surcharges in accordance with clauses 2(c), the Vendor may charge (and the Customer must pay) interest on the total amount unpaid at the rate equivalent to the prime rate charged by the Vendor's nominated bank

from time to time plus 2% from the date for payment until actual payment calculated on daily rests and compounded monthly.

- h) The Customer must reimburse the Vendor for all costs (including legal costs) it incurs in the collection of overdue monies or all costs and fees the Vendor incurs where the Customer's cheques are returned to the Vendor by the Vendor's bank as dishonoured or for any reason whatsoever.
- i) Prices quoted exclude all Government taxes (except GST); installation and other add on services unless otherwise stated.

3. ORDERS

- a) The Customer may place orders for the Vendor's products and services directly through the Vendor's sales representatives or online by logging into the Vendor's website <http://www.leyton.com.au>. The Customer may also place orders by email where such orders are submitted in a form approved by the Vendor.
- b) The Vendor may accept or refuse to accept (at its discretion) any order placed by the Customer and where the Vendor delivers products or services in installments, these Terms and Conditions apply to each installment as if there was a separate contract in relation to each installment.

4. DELIVERY AND INSTALLATION

- a) All delivery dates are estimates only and the Vendor may amend the delivery schedule as necessary. The delivery schedule will be extended to the extent of any time lost through causes beyond the Vendor's reasonable control.
- b) The Vendor will deliver the products to the Customer, at the Customer's nominated premises, and at the Customer's cost, and may, at its own discretion, appoint an Agent to deliver the same.
- c) At its discretion, the Vendor may install the products for the Customer and provide Training Services to the Customer, to be conducted by the Vendor at the Customer's site and chargeable on a time and cost basis at the Vendor's standard rate. Such Training and Installation Services will be negotiated between the Vendor and the Customer on a case-by-case basis.

5. RISK AND PROPERTY

- a) Risk in the products passes to the Customer once the products are picked from the shelves of the Vendor's premises.
- b) Property in the products passes to the Customer only on full payment of all monies owing to the Vendor.
- c) In the event of receivership, liquidation or bankruptcy of the Customer, all of the Vendor's products which have not been paid for in full, are to be set aside and must not to be included as assets of the Customer but are to be made available for immediate return to the Vendor.

6. CANCELLATION OF ORDERS

- a) Cancellation of any order by the Customer other than for default by the Vendor will result in a charge to the Customer:
 - (i) within 5 days of order – 5% of total order value;
 - (ii) within 10 days of order – 20% of total order value;

No cancellation may be made by the Customer after 10 days from the date the order is made.

- b) No returns will be accepted by the Vendor without the Vendor's prior written approval and the Vendor reserves the right to return any returned goods to the Customer at the Customer's cost.

7. DELAY

The Vendor is not liable for any delay in or failure to perform any of its obligations hereunder in a timely manner.

8. WARRANTY

- a) The Vendor may be required to provide the Customer with proposals for the provision of goods and services from time to time. While the Vendor exercises all reasonable care in collating the proposals, the Vendor does not warrant the accuracy or validity of any information provided therein.
- b) Notwithstanding anything else in these Terms and Conditions or otherwise, the Vendor makes no warranty in relation to the products or services (including where the Vendor provides the Customer with proposals or consultants to provide products and/or services) and, subject to clause 8(b), all conditions and warranties implied by statute or otherwise (including but not limited to implied warranties of merchantability, fitness for a particular purpose, title, non infringement and any warranties relating to viruses with respect to any software supplied under these Terms and Conditions) are expressly negated and excluded or, in the case of non-excludable warranties or conditions, limited to the maximum extent permitted by the relevant statute or otherwise.
- c) In the event that these Terms and Conditions constitute a supply of goods or services to a consumer as defined in the Trade Practices Act, 1974 or any equivalent state or territory legislation as amended (Act), nothing contained in these Terms and Conditions restricts or modifies in relation to these Terms and Conditions and/or the goods or services to be supplied hereunder any condition, warranty, right or remedy which pursuant to the Act applies to these Terms and Conditions or is conferred on the Customer, provided that to the extent that the Act permits the Vendor to limit its liability for breach of condition or warranty implied by the Act, then the Vendor's liability for such breach including any consequential loss which the Customer may sustain or incur shall be limited to:
 - (i) in the case of goods, any one or more of the following acts as determined by the Vendor:
 - (A) the replacement of the goods or the supply of equivalent goods; or
 - (B) the repair of the goods; or
 - (C) the payment of the cost of replacing the goods or acquiring equivalent goods; or
 - (D) the payment of the cost of having the goods repaired.
 - (ii) in the case of services any cost of the following as determined by the Vendor:
 - (A) the supplying of the services again; or
 - (B) the payment of the cost of having the services supplied again.
- c) Any warranty herein is void if the failure of or defects in the products or services has resulted from:

- (i) the Customer's abuse or misapplication of the products; or
 - (ii) the Customer's failure to follow any instructions provided by the Vendor.
- d) In no event is the Vendor liable for any special, indirect, incidental or consequential loss or damages.
- e) The Customer indemnifies the Vendor against all damages, losses, costs and expenses (including legal costs on an indemnity basis and whether incurred by or awarded against the Vendor) incurred by the Vendor arising out of:
 - (i) any breach by the Customer of its obligations under these Terms and Conditions; and
 - (ii) the negligence of the Customer, its agents, employees or subcontractors or of any other person for whose acts the Customer is vicariously liable.
- f) These warranty conditions may vary dependant upon contractual obligations or other warranty agreements. The Customer must confirm specific Vendor warranties with documentation supplied with the products.

9. CUSTOMER WARRANTY

The Customer warrants that it is not insolvent has not committed any act of bankruptcy or being a company knows of no circumstances entitling the appointment of a receiver, manager or liquidator, nor of the presentation of any petition of winding up nor is there any unsatisfied judgment debt against the Customer.

10. COPYRIGHT

The copyright and all other intellectual property rights of whatever nature in the products, Vendor's systems, any new versions of the products and any manuals or other documentation relating to the products provided to the Customer (but excluding any third party software used by the Vendor) are and shall remain the property of the Vendor and nothing in these Terms and Conditions effects a transfer of title or sale of the copyright and intellectual property rights comprised in the products to the Customer.

11. SUCCESSORS IN TITLE

A successor to the business of the Customer, or the Customer where there is or has been (in the opinion of the Vendor) a change in ownership or control of the Customer will continue to be bound by these Terms and Conditions for so long as the Vendor continues to supply products to the successor or the Customer as the case may be.

12. RESTRAINTS

The Customer recognises that all consultants introduced to the Customer by the Vendor are introduced in good faith to assist in the provision of goods and services. The Customer must not, for a period of 18 months, 12 months, 6 months approach any such consult to work for the Customer either as a contractor or as an employee. The Customer agrees to pay the Vendor a placement fee of \$25,000 plus GST for each consultant that the Customer approaches and successfully retains.

13. GENERAL

- a) Any statement, representation, warranty, condition or other term or provision made or given before the Customer became a customer of the Vendor and not expressly set out in these Terms and Conditions will have no force or effect.
- b) The Vendor reserves the right to vary the Terms and Conditions and fix, give or vary any price, pricing schedule, amount, rate of interest, direction or term referred to or set out in these Terms and Conditions which variation, change or update is to take place thirty (30) days from the date the Vendor notifies the Customer of such change.
- c) These Terms and Conditions are to be construed according to the laws of the State of N.S.W Australia and the parties agree to submit to the exclusive jurisdiction of the Courts of the State of NSW Australia.
- d) Any notice demand or other document under or relating to these Terms and Conditions must be in writing and shall be sufficiently served if delivered personally, by email, facsimile or prepaid ordinary mail addressed to the party to be served at the address of the Customer, or at such other address that may from time to time be notified in writing and such notice, demand or other document shall be deemed to have been delivered at the time of delivery or, if services is effected in any other manner set out above, at the time when it would in the ordinary course be delivered.