

**PC SYSTEMS LIMITED  
TERMS OF SALE**

All present and after acquired products, ("Goods") supplied by PC Systems Ltd ("the Company") are supplied to the PERSON, PARTNERSHIP OR COMPANY ("the Customer") for sale on the following terms and conditions:

**1. Terms of Contract between Company and Customer**

**1.1 The Company and the Customer shall acknowledge that these terms of sale constitute a Security Agreement as defined by the Personal Property Securities Act 1999 ("PPSA"). For the purposes of the PPSA, Collateral shall include all and any Goods supplied and the proceeds thereof. The Customer shall agree not to allow any person to file a finance statement over any of the Collateral secured by this Security Agreement without the prior written consent of the Company.**

**1.2** These terms of contract between the Company and Customer shall apply to all orders accepted by the Company or quotations approved by the Customer and that these terms and conditions shall prevail and take precedence over any written document or oral message from the Customer and in the case of conflict or dispute between the parties these terms and conditions shall prevail. Where the Company fails to enforce any of the terms and conditions of this contract or fails in any way to exercise its rights under this contract the Company will not be deemed to have waived these rights with respect to any term or condition or right.

**2. Payment**

**2.1** Payment is to be made by the 20<sup>th</sup> of the month following the date of invoice and is to be made in full without deduction or setoff.

**2.2** The Customer shall agree that the Company has sole discretion to apply payments from the Customer to any transaction or Company invoice notwithstanding that the Customer may have applied the payment to a particular transaction or invoice.

**2.3** If payment is not made in full by the due date, the Company is entitled to charge the Customer interest on the unpaid overdue balance at the rate of 5% per annum above the current rate charged by the Company's bank calculated from the due date of payment down to the actual date of payment, and the Company may at its option suspend the sale and secure the Goods in its possession regardless of the term of this contract until the overdue amounts are paid in full.

**2.4** If at any time the Company reasonably deems the credit of the Customer to be unsatisfactory, it may require the Customer to provide security for payment and/or the Company may suspend performance of any of its obligations under this contract until security is provided to the Company's satisfaction and the Company may require the Customer to pay all costs incurred as a result of suspension and re-commencement of supply including debt collection and legal costs.

**3. Risk, Conditions for the use Goods, Company Ownership and Title**

**3.1** Risk of any loss, damage or deterioration of or to the Goods shall be borne by the Customer from the time of delivery of the Goods into the Customer's care and control and the Customer shall insure the Goods for fire and loss damage. Where the Customer fails to insure the Goods upon delivery by the Company and the Goods suffer damage or loss the Customer agrees to pay the Company in full for the cost of the Goods.

**3.2** The Customer agrees that the Company has legal and equitable right to title in the Goods and ownership shall only pass to the Customer when the contract price is paid. For as long as ownership in the Goods is retained by the Company the Customer will store the Goods separately and in such a way that they are identifiable as the property of the Company.

**3.3** In the event where Goods remain unpaid by the Customer, the Company has unreserved right to enter the property of the Customer or its agents during normal business hours and remove Goods relating to the unpaid amount and the Customer will not hold the Company responsible for any economic or consequential loss that the Customer may suffer as a result, whether the Goods are attached to other goods owned by the Customer, or not. For Goods supplied within New Zealand repossession will be conducted in accordance with the Credit (repossession) Act.

**4. Retention of Title upon resale of the Goods**

**4.1** Where Goods in respect of which title has not passed to the Customer are sold by the Customer any book debt created upon sale of such Goods and the proceeds of sale of such Goods, when received by the Customer, shall be held upon trust by the Customer for the Company and any proceeds of sale so received by the Customer shall be placed in a separate bank account and shall first be applied towards the satisfaction of all indebtedness of the Customer to the Company.

**5. Personal Property Securities Act (PPSA)**

**5.1** Upon signing these terms the Customer acknowledges that:

- (a) these terms are security agreement for purposes of section 36 of the PPSA, and
- (b) a security interest is taken in all Goods previously supplied to the Customer and in any and all Goods that will be supplied in the future by the Company to the Customer during the continuance of the parties relationships.

The Customer undertakes to:

- (a) Sign any further documents and/or provide any further information which the Company may reasonably require to register financing statements or financing change statements on the personal Properties Securities Register,
- (b) Give the Company not less than 14 days prior written notice of any proposed change to the Customer's name and will use its best endeavours to ensure that a financing change statement is registered disclosing its new name; and
- (c) Immediately advise the Company of any material change in its business practices of selling the Goods which would result in a change of the nature of proceeds derived from such sales.

- (d) Unless otherwise agreed in writing by the Company The Customer shall inform its creditors of the terms upon which it buys Goods from the Company and that the Company may create and register a Purchase Money Security Interest under the PPSA for the Goods and that the Customer agrees to waive the right to receive a verification statement for purposes of s.148 of the Act. The Customer shall also inform any Trustee in Bankruptcy or Liquidator of the Customer or any Receiver of the Customer's business or assets of the rights of the Company and title to the proceeds of sale.

5.2 The Security Agreement is a continuing security and will operate irrespective of any intervening payment or settlement of account until a release has been signed by the Company. The security interest granted in the Collateral has the same priority in relation to all and any Goods supplied to the Customer by the Company at any time.

## 6. Variations

Any variations regarding price or supply to that agreed in the quotation or order that may be agreed between the parties during the period of supply shall be in writing and take precedence over that part of the quotation or order so affected.

## 7. Warranty and Guarantees

7.1 The warranty on Goods supplied by the Company shall be the warranty of the original manufacturer and not less than a period of twelve (12) months following delivery.

7.2 Where the Customer requires the Company to supply non stock Goods or import special Goods for the exclusive use of the Customer the Company warrants that it will supply the Goods as the description defined in the labelling of the Goods but that it will not be held responsible for the fitness of the Goods intended by the Customer except that it will repair, or at its option replace, Goods supplied under this contract that are defective provided that the Customer notifies the Company in writing of any defect within (14) fourteen days of the defect occurring and subject to the warranty conditions.

7.3 The Company shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Customer or any other person arising directly or indirectly from any breach of any of the Company's obligations arising under or in connection with the contract including delays in the delivery of Goods or from any cancellation of the contract.

## 8. Claims for Damaged or Defective Goods.

8.1 The Company will provide a form for any claims for damaged or defective Goods but will not accept any claim by the Customer for any reasons where the Customer may be prejudiced by the defect or failure of the Goods including economic loss, consequential loss or any other form of loss whatsoever and this guarantee will **not** apply, where:

- (a) the Goods have not been paid in full and according to the terms of payment..
- (b) the defect is due to or resulting from damage of misuse
- (c) the defect or failure is caused by the Customer or a third party on behalf of the Customer
- (d) the Customer or any third party altering the Goods in any way different to the condition in which they were supplied.
- (e) the defect or failure is due to environmental conditions of the Customer's site.

8.2 If the Customer does not comply with the above requirements, the Customer will be deemed to have accepted the Goods and the Company will not incur any liability whatsoever in relation to the Goods.

## 9. Consumer Guarantees Act 1993

9.1 It is acknowledged that where the acquisition of Goods by the Customer from the Company is deemed to be for the business purposes of a business, these terms shall have the affect of contracting out of the provisions of the Consumer Guarantees Act 1993 to the extent permitted by that Act and all provisions of these terms shall be read as modified to the extent necessary to give effect to that intention.