

1 DICTIONARY

In these General Conditions of Sale, the following terms have the following meanings:

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
Conditions means these General Conditions of Sale;
Consumer has the meaning given in the Australian Consumer Law;
Contract means a contract (whether or not in writing) between the Purchaser and the Supplier (and possibly one or more other persons) for the supply of Products by the Supplier to the Purchaser, to which these Conditions apply under clause 2.1;
Manufacturer Warranty Period means, in relation to a Product that is not a Price Book Product, the period commencing on the first to occur of initial use of that Product (whether by the Purchaser or by the Supplier or any other person for the benefit of the Purchaser) and delivery or supply of that Product to the Purchaser, and ending on the expiry of the warranty period under any express warranty for that Product as provided by the manufacturer of that Product (and in the absence of any such express warranty or where the Supplier considers that a claim under that express warranty will be fully or partially unsuccessful, the Manufacturer Warranty Period will be taken to be nil);

PPSA means the *Personal Property Securities Act 2009* (Cth);

PPSR means the Personal Property Securities Register established under the PPSA;

Price Book Products means all Products available for purchase through either the Supplier's price books or the Supplier's website at <https://www.simocowirelessolutions.com>;

Products means any goods and/or services supplied or to be supplied (as the context requires) by the Supplier to the Purchaser (including equipment, software, programming, servicing, maintenance and training);

Purchaser means the person specified in or contemplated by the Contract (or any associated purchase order) as being the purchaser of the Products;

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth);

Regulated Contract means a Consumer Contract (as that term is defined in clause 23(3) of the Australian Consumer Law) or a Small Business Contract (as that term is defined in clause 23(4) of the Australian Consumer Law); and

Supplier means the company specified in or contemplated by the Contract (or any associated invoice) as being the supplier of the Products, being Simoco Wireless Solutions Pty Ltd ABN 29 095 068 429 or a Related Body Corporate of that company.

2 APPLICATION OF THESE CONDITIONS

2.1. Unless otherwise agreed in writing, these Conditions apply to all Products provided or supplied, or to be provided or supplied, by the Supplier to the Purchaser, and are taken to be incorporated in and form part of the Contract (as well as any quotation or tender issued by the Supplier in respect of Products).

2.2. If there is any inconsistency between the terms set out in a purchase order, delivery docket, invoice or other document issued by or on behalf of the Purchaser to the Supplier (on the one hand) and the terms of these Conditions (on the other hand), then the terms of these Conditions prevail to the extent of the inconsistency.

2.3. The Supplier may from time to time vary these Conditions by giving at least 30 days' notice to the Purchaser (with such notice being either published on the Supplier's website or provided to the Purchaser in writing, as relevant and appropriate). If the Contract is a Regulated Contract, then the Purchaser may refuse to accept such a variation by giving written notice to the Supplier within that 30 day notice period, in which case the variation will not apply to the Contract unless otherwise agreed in writing by the Supplier and the Purchaser. If the Purchaser does not make such an election within the relevant 30 day notice period or this Contract is not a Regulated Contract, then the Purchaser agrees that all Products ordered after notification of the variation will be subject to the variation and the placing of such orders will be taken to be an acceptance of the variation by the Purchaser.

3 PURCHASE ORDERS

3.1. The Supplier reserves the right to refuse acceptance of any purchase order at its sole discretion. No purchase order issued by the Purchaser will be taken to have been accepted by the Supplier unless acceptance of that purchase order has been communicated by the Supplier to the Purchaser in writing.

3.2. Once a purchase order has been issued by the Purchaser to the Supplier, it may only be cancelled by the Purchaser before delivery with the written consent of the Supplier. If such consent is given, then the Purchaser must reimburse the Supplier on demand for all losses, damages and expenses directly or indirectly incurred by the Supplier in the preparation and procurement of products and/or services to fulfil the relevant purchase order.

4 QUOTATIONS AND TENDERS

Any quotations and/or tenders sent by the Supplier to the Purchaser, prior to receipt by the Supplier of written acceptance by the Purchaser, are subject to change or withdrawal at any time by the Supplier in writing, and (unless the Supplier states otherwise in the relevant quotation or tender) will be taken to have been rejected by the Purchaser if not accepted by the Purchaser in writing before the date that is 30 days from the date of the relevant quotation or tender (as applicable).

5 PRICES

5.1. All prices payable by the Purchaser to the Supplier for Products purchased under the Contract (**Prices**) are as set out in the Contract, or if not specified in the Contract, as notified to the Purchaser by the Supplier from time to time.

5.2. Subject to this clause 5, all Prices are subject to change by the Supplier from time to time, on the Supplier giving the Purchaser written notice of any such change.

5.3. Prices for equipment are based on the rates of exchange, marine freight and insurance, customs and duties, the cost of components and the cost of manufacturing, at the date of tender or quotation. Any increase or decrease in costs resulting from changes in these rates affecting the equipment as delivered, will be to the Purchaser's account if that change is notified to the Purchaser before the equipment has been supplied or provided to the Purchaser.

5.4. If the Contract is a Regulated Contract, then the Purchaser may refuse to accept any Price change referred to in this clause 5 for the relevant Products by giving written notice to the Supplier within 30 days of receiving notice from the Supplier under

clause 5.2 (or in respect of a Price change under clause 5.3, before the Products have been supplied or provided to the Purchaser), in which case the Price change will not apply in respect of any such Products ordered (and not delivered) before notification of the Price change. If the Purchaser does not make such an election within the relevant 30 day period (or in respect of a Price change under clause 5.3, before the Products have been supplied or provided to the Purchaser) or this Contract is not a Regulated Contract, then the Purchaser agrees that all Products ordered, supplied or provided after notification of the Price change will be subject to the Price change and the placing of such orders and acceptance of the Products supplied or provided will be taken to be an acceptance of the Price change by the Purchaser.

5.5. Unless otherwise stated in the Contract, the Prices do not include any costs, expenses or surcharges associated with delivery, packaging, insurance, installation and/or commissioning of the Products. If required by the Supplier, the Purchaser must pay the Supplier the amount of any such costs, expenses and surcharges as calculated in accordance with the Supplier's applicable pricing documentation and notified to the Purchaser from time to time (or where such costs, expenses or surcharges are not contemplated by the Supplier's pricing documentation, an additional amount determined by the Supplier that is reasonable in the circumstances).

6 DELIVERY

6.1. Where the Products are goods, the Products will be delivered or taken to be delivered, when they are delivered to the delivery place nominated by the Purchaser in the relevant purchase order. If no such address is nominated in the relevant purchase order, then delivery will be taken to occur at the time when the Products are ready for collection at the Supplier's premises.

6.2. Delivery may be made in 1 or more lots and at different times and by separate deliveries or shipments. Each lot must be accepted and paid for, notwithstanding any late delivery or non-delivery of any other lot.

6.3. Any times quoted for delivery are estimates only. The Supplier will use reasonable endeavours to meet any quoted delivery times, but will not be liable to the Purchaser for any failure to deliver or for delay in the delivery of the Products.

7 TERMS OF PAYMENT

7.1. Payment must be made in full to the Supplier within 30 days after the date of the relevant invoice issued by the Supplier, notwithstanding the fact that the relevant Products may not have been delivered, supplied, installed or commissioned by that date.

7.2. Invoices may be issued progressively as Products are supplied or delivered to the Purchaser and as any required work is carried out by the Supplier.

7.3. Where the Contract provides for installation and/or commissioning, additional invoices may be issued after the work has been completed.

7.4. The Supplier may require that a deposit be paid by the Purchaser before any Products are delivered or supplied by the Supplier. The Purchaser authorises the Supplier to deduct and offset from any deposit moneys held by the Supplier, the amount of any invoice issued by the Supplier for Products delivered or supplied to the Purchaser.

8 PROVISION OF SERVICES

8.1. Where a Product (or any part of that Product) includes services to be provided by the Supplier

(such as in relation to installation, commissioning, servicing, training, maintenance and programming), the date(s) on which those services will be provided by the Supplier will be the date(s) determined by the Contract or as otherwise agreed by the Supplier and the Purchaser. If for any reason whatsoever, other than the negligence or wilful default of the Supplier, the Supplier is unable to proceed with the relevant work on the required date, then the Supplier may delay the provision of those services until the Supplier and the Purchaser have agreed on any necessary variations to the Prices resulting from that delay.

- 8.2. Where the Product includes installation and/or commissioning services and unless the Contract specifies otherwise, the obligation of the Supplier to provide those services to the Purchaser is subject to the Supplier and the Purchaser agreeing on any necessary variations to the Prices relating to materials that will be required by the Supplier to provide those services and any water, electricity or other utility charges that the Supplier may incur.
- 8.3. Unless otherwise specified in the Contract, all Prices associated with the services have been quoted by the Supplier based on the assumption that:
- (i). the services will be provided during the normal working hours of 9am to 5pm (in the place where the services are to be provided);
 - (ii). the services will be provided from the locations specified in the Contract; and
 - (iii). the Purchaser will provide the Supplier and its employees, agents and contractors with ready access to any required site or premises to carry out the services.

Any variation to these assumptions may result in additional costs being incurred by the Supplier, and the Supplier may delay the provision of the relevant services until the Supplier and the Purchaser have agreed on any necessary variations to the Prices as a result of those additional costs.

9 INSPECTION AND TESTING

Before delivery of any Products that are goods, the Supplier will carry out any inspection and testing procedure that the Supplier determines to be appropriate in relation to those Products. The Supplier may agree to allow representatives of the Purchaser to be present at any such inspection or test, provided that the Purchaser has given the Supplier notice in writing at least 14 days before the proposed date of delivery or supply of that Product. Any variation to the Supplier's inspection/testing program required by the Purchaser must be agreed between the Supplier and the Purchaser in writing and any resulting additional costs to the Supplier will be payable by the Purchaser at the rate agreed.

10 DEFAULT

- 10.1. Without limiting any other right or remedy the Supplier may have, whether under these Conditions, statute or otherwise, the Supplier may terminate the Contract and any purchase order from the Purchaser with immediate effect by providing written notice to the Purchaser if the Purchaser:
- (i). breaches any obligation of the Purchaser under the Contract (including the obligation of the Purchaser to pay any amounts when due under the Contract) and if the breach is capable of remedy, the Purchaser does not remedy the breach within 7 days after being notified in writing by the Supplier; or
 - (ii). has a receiver, receiver and manager, liquidator, provisional liquidator, trustee, mortgagee in possession, administrator, controller or inspector appointed under any law (or any similar official is appointed in respect of the Purchaser or any of its assets) or the Purchaser

is unable to pay its debts when due or otherwise is, becomes or is deemed to be insolvent or bankrupt.

- 10.2. On termination under clause 10.1, the Supplier may at its option exercise any or all of the following rights (in addition to any other rights it may have under the Contract or at law):
- (i). suspend deliveries of further Products to the Purchaser;
 - (ii). terminate the Contract in relation to Products that have not been delivered or supplied to the Purchaser;
 - (iii). withdraw any credit facilities which may have been extended to the Purchaser and require immediate repayment of all moneys owed to the Supplier by the Purchaser;
 - (iv). issue an invoice for, and demand immediate payment of, Products ordered by the Purchaser but not delivered;
 - (v). in respect of Products already delivered or otherwise supplied to the Purchaser, enter onto the Purchaser's premises to recover and resell those Products; and
 - (vi). exercise any rights that the Supplier has under the PPSA.

10.3. On termination of the Contract for any reason and without limiting the Supplier's other rights and remedies, the Purchaser will be responsible for any storage, repossession and recovery fees, including administrative and legal costs of recovery, in relation to the Products and all other reasonable costs and charges incurred by the Supplier in connection with the termination, which fees, costs and charges will be payable by the Purchaser to the Supplier on demand.

11 WARRANTY

11.1. Our Products and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with a service that is part of the Products, the Purchaser is entitled: (i) to cancel the Contract with us; and (ii) to a refund for the unused portion, or to compensation for its reduced value. The Purchaser is also entitled to choose a refund or replacement for major failures with any goods that is part of the Products. If a failure with the Products does not amount to a major failure, the Purchaser is entitled to have the failure rectified in a reasonable time. If this is not done the Purchaser is entitled to a refund for the Products and to cancel the Contract for any services provided and obtain a refund of any unused portion. The Purchaser is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Products. These benefits are in addition to any other rights and remedies available to the Purchaser at law in relation to the Products, subject to clause 17. This clause 11.1 only applies where the Purchaser is a Consumer.

11.2. The Supplier warrants to the Purchaser that each Product will: (i) at the time of delivery or supply of that Product to the Purchaser, correspond to any written specifications for that Product, as provided by the Supplier to the Purchaser at or before that time of delivery or supply (or as otherwise agreed between the Supplier and the Purchaser); and (ii) be free from defects in materials and workmanship for the duration of any warranty period for that Product (**Warranty Period**), as specified in the table below (or any longer period required by law) and commencing on the first to occur of initial use of that Product (whether by the Purchaser or by the Supplier or any other person for the benefit of the Purchaser) and delivery or supply of that Product to the Purchaser.

Product	Warranty Period
Terminals and base stations that are Price Book Products in the Simoco Price Book	2 years
Velocity devices that are Price Book Products in the Velocity Price Book	1 year
Batteries and accessories that are Price Book Products	1 year
Services	1 year
Repairs	3 months
Software and applications	3 months
Any other goods that are not Price Book Products	Manufacturer Warranty Period

11.3. If the Purchaser considers that it is entitled to make a claim under this clause 11 (**Warranty Claim**), then the Purchaser must (at its cost):

- (i). notify the Supplier (by email or post) of the details of the Warranty Claim before the end of the relevant Warranty Period;
- (ii). provide the Supplier with a copy of the invoice relating to the Product; and
- (iii). subject to clause 11.5 and where applicable, cause the Product to be delivered or sent to the address notified by the Supplier.

11.4. Subject to clause 11.5, if the Supplier is satisfied that the Purchaser has the right to make a Warranty Claim, then the Supplier will (at the Supplier's option and as the Purchaser's sole remedy) take any action contemplated by clauses 17.5(i) or 17.5(ii).

11.5. Where requested by the Supplier, Warranty Claims relating to base stations and control equipment will be assessed by the Supplier at the Purchaser's premises, if the premises are within the Supplier's normal service area and subject to the Supplier and the Purchaser agreeing on responsibility for any additional costs that the Supplier may incur. Enquiries as to the Supplier's normal service area may be made by telephoning or contacting the local branch office or service depot of the Supplier.

11.6. The warranties and other requirements contained in this clause 11 do not cover defects in material or workmanship which the Supplier determines to have been caused by improper use, fire, water, lightning, frost or accidental damage, by any neglect or omission of the Purchaser or any other person not acting under the direction or control of the Supplier, or by the fitting or use of parts or accessories not approved by the Supplier.

12 PRODUCT SPECIFICATIONS AND DESIGN CHANGE

The Supplier may make any changes or improvements to the design or specifications of the Products at any time without prior written notice to the Purchaser, unless otherwise agreed in writing.

13 INTELLECTUAL PROPERTY

Any technical information, knowledge or processing methods at any time given or transmitted either orally or in writing by the Supplier to the Purchaser (or otherwise obtained by the Purchaser directly or indirectly from the Supplier) will remain the property of the Supplier and must be treated by the Purchaser as confidential information of the Supplier. Except to the extent expressly permitted by the Contract, the Purchaser must not use any such information, knowledge or processing methods for any purpose nor sell, transfer or divulge any of it in any manner to anyone without the prior written consent of the Supplier.

14 RISK

Risk in each Product will pass to the Purchaser at the time delivery to the Purchaser occurs (or is taken to have occurred) in accordance with clause 6.1 notwithstanding that the Supplier may be required to install, set up or perform any service in connection with the Product after that time.

15 PASSING OF PROPERTY

- 15.1. Capitalised terms used in this clause 15 that are not otherwise defined in these Conditions have the meaning given in the PPSA.
- 15.2. The Purchaser acknowledges and agrees that the Contract constitutes a Security Agreement under the PPSA and secures the Supplier's right to receive the Price of all Products sold under the Contract and all other amounts from time to time owing to the Supplier under the Contract or any other contract and the Purchaser consents to the registration of any such Security Interest on the PPSR.
- 15.3. The Purchaser agrees that legal title and property in the Products is retained by the Supplier until payment is received in cleared funds from the Purchaser of all sums owing to the Supplier, whether under the Contract or otherwise. The Purchaser must promptly do anything required by the Supplier to ensure that the Supplier's Security Interest is a perfected Security Interest and has priority over all other Security Interests in the Products (including executing any and all documents required to enable the Supplier to register a Financing Statement or a Financing Charge Statement as may be required from time to time under the PPSA).
- 15.4. Until legal title and property in any Product has passed to the Purchaser, the Purchaser must keep that Product separate from other products and must store the Products so that they are readily identifiable as being supplied by the Supplier, and the Purchaser must not sell the Products except in the ordinary course of the Purchaser's business.
- 15.5. If the Purchaser fails to pay by the due date any amount owing to the Supplier, then the Supplier may (without prejudice to any of its other rights and remedies) recover and resell any of the Products in which property has not passed to the Purchaser. In addition to any rights the Supplier may have under Chapter 4 of the PPSA, the Supplier may, without notice, enter any premises where it suspects the Products may be located and remove them without committing a trespass, and the Purchaser authorises the Supplier to enter on to the premises where the Products are located to take possession of the Products for that purpose at any time.
- 15.6. To the extent permitted under the PPSA, the Purchaser acknowledges and agrees that sections 142 and 143 of the PPSA will not apply to the Contract or any Security Interests granted under the Contract, and agrees to waive any right to receive any notice or statement from the Supplier, except to the extent that the giving of that notice or statement is required by the PPSA and cannot be excluded by agreement.
- 15.7. The Security Interest arising under this clause 15 attaches to the Products when the Purchaser obtains possession of the Products and the parties confirm that they have not agreed that any Security Interest arising under this clause 15 attaches at any later time.

16 FORCE MAJEURE

- 16.1. Where any failure or delay by the Supplier in the performance of its obligations under this Contract is caused, directly or indirectly, by an event or occurrence that is beyond the reasonable control of the Supplier (**Force Majeure Event**), the Supplier is not liable for that failure or delay and the Supplier's obligations under the Contract are suspended, to the extent to which they are affected by the relevant Force Majeure Event, for the duration of the Force Majeure Event.

16.2. A Force Majeure Event includes the failure or inability of any suppliers of the Supplier to supply or provide any goods or services required by the Supplier to supply or provide the Products to the Purchaser.

16.3. A Force Majeure Event also includes a failure by the Department of Broadband, Communications and the Digital Economy to notify the Supplier of any required channel frequency allocations before the required date for the delivery or supply of relevant Products. If a Force Majeure Event occurs under this clause 16.3, then any required testing of the Products will be conducted using standard test frequencies and any obligation of the Supplier to conduct further testing or adjustment subsequent to the channel frequency allocation will be subject to the Purchaser and the Supplier agreeing on any additional amounts to be paid by the Purchaser to the Supplier in relation to that testing or adjustment.

17 LIABILITY

- 17.1. Subject to this clause 17, and to the maximum extent permitted by law, the Supplier is not liable to the Purchaser or to any other person for any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data or loss or damage resulting from wasted management time, irrespective of whether the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise or the Supplier or any other person was previously notified of the possibility of the loss or damage.
- 17.2. Any warranty, guarantee, condition, representation, undertaking or other right that would be implied in or otherwise required in connection with these Conditions by legislation, common law, equity, trade, custom or usage, is excluded to the maximum extent permitted by law.
- 17.3. Notwithstanding the other provisions in these Conditions, the Supplier does not exclude, restrict or modify any warranty, guarantee, condition, representation, undertaking or other right under any statute (including the *Competition and Consumer Act 2010* (Cth)) where to do so would contravene that statute or cause any part of these Conditions to be void (**Non-excludable Condition**).
- 17.4. Subject to this clause 17, the maximum aggregate liability of the Supplier for all proven losses, damages and claims arising out of these Conditions, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the sum of the amounts paid by the Purchaser to the Supplier under the specific purchase order(s) to which the relevant breach, negligence, tort or common law or statutory action relates.
- 17.5. To the maximum extent permitted by law, the liability of the Supplier for a breach of a Non-excludable Condition is limited, at the Supplier's option, to:
- (i). in the case of goods, any one or more of the following:
 - (A). the replacement of the goods or the supply of equivalent goods;
 - (B). the repair of the goods;
 - (C). the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (D). the payment of the cost of having the goods repaired; or
 - (ii). in the case of services:
 - (A). the supplying of the services again; or
 - (B). the payment of the cost of having the services supplied again.

18 INDEMNITY

- 18.1. The Purchaser must indemnify the Supplier and each of its Related Bodies Corporate (**Indemnified**

Parties) on demand in respect of all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against the Indemnified Parties or which the Indemnified Parties may pay, sustain or incur as a direct or indirect result of any breach or non-performance of the Contract by the Purchaser, or as a result of any act or omission of the Purchaser or any employees, directors or agents of the Purchaser.

- 18.2. To the extent that the indemnity in this clause 18 is expressed to be for the benefit of a Related Body Corporate of the Supplier, the Supplier enters into the Contract in its own capacity and in its capacity as trustee and agent for that Related Body Corporate, and the Supplier is entitled to enforce the indemnity for the benefit of itself and that Related Body Corporate.

19 TAXES AND DUTIES

Without limiting clause 20, the Purchaser is liable for all taxes (other than income tax imposed on the Supplier), duties, levies and other government fees and charges in relation to the Products. Unless specified otherwise, prices quoted do not include such taxes, duties, levies, fees or charges.

20 GST

Except where expressly stated, all amounts payable under or in connection with the Contract are exclusive of any GST (as that term is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**)). The amount of any applicable GST will be added to and paid in the same way and at the same time as the relevant amount payable under or in connection with the Contract, subject to the Purchaser receiving a valid tax invoice in accordance with the GST Act.

21 GENERAL

- 21.1. Headings are used for convenience only and do not affect the interpretation of the Contract.
- 21.2. Any notice to be given by the Supplier to the Purchaser under these Conditions may be given personally, by post, by fax, by email or by displaying that notice on the Supplier's website.
- 21.3. Words importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies.
- 21.4. A reference to either the Supplier or the Purchaser includes its respective executors, administrators, successors and permitted assigns.
- 21.5. Wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)".
- 21.6. A failure or delay by the Supplier in exercising any right conferred on the Supplier under the Contract does not operate as a waiver of the right.
- 21.7. The Purchaser must not transfer, assign, create an interest in or deal in any other way with any of its rights under the Contract without the prior written consent of the Supplier.
- 21.8. Except to the extent the Contract provides otherwise, nothing in this Contract may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.
- 21.9. The Contract is governed by and must be construed in accordance with the laws in force in Victoria. The Purchaser submits to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to the Contract.