



## TERMS AND CONDITIONS OF SALE – DAYTECH PTY LTD

Daytech Pty Ltd | ABN: 84 602 165 024

### 1. DEFINITIONS

- 1.1 "Australia Consumer Law" means the Competition and Consumer Act 2012 (Cth).
- 1.2 "APPs" refers to the Australian Privacy Principles.
- 1.3 "Agreement" means the agreement between the Company and Purchaser and includes these Terms.
- 1.4 "Australian Privacy Principles" has the same meaning as in the Privacy Act.
- 1.5 "Company" means Daytech Pty Ltd
- 1.6 "Goods" means items quoted and any associated Goods, equipment, inventory, accessories, parts, services and tools supplied by the Company to the Purchaser.
- 1.7 "GST" has the same meaning as under the GST Law and means the Goods and Services Tax imposed under the GST law.
- 1.8 "Intellectual Property Rights" means any intellectual or industrial property, including without limitation, any patent, trade mark or service mark, copyright, registered design, trade secret or confidential information or any licence or other right to use or to grant the use of any of the foregoing or to be the registered proprietor or user of any of the foregoing (whether registered or unregistered).
- 1.9 "Order" means any Order placed by the Purchaser with the Company for Goods.
- 1.10 "Personal Information" has the same meaning as in the Privacy Act.
- 1.11 "PPSA" means the Personal Property Securities Act 2009 (Cth) and the terms "attaches", "collateral", "proceeds" "purchase money security interest" and "security interest" have the meanings given to them in the PPSA, and "perfection" and "perfecting" have a meaning corresponding with the definition of "perfected" in the PPSA.
- 1.12 "Privacy Act" means the Privacy Act 1988 (Cth) and any other laws, codes or principles and any amendments thereto that deal with privacy or the collection, use and disclosure of Personal Information.
- 1.13 "Privacy Policy" means the privacy policy of the Company as amended from time to time.
- 1.14 "Privacy Officer" means the person(s) within the Company responsible for privacy related matters.
- 1.15 "Purchaser" means the person to whom any quotation is made and includes any person acquiring Goods or services from the Company.
- 1.16 "Purchaser's Personal Information":
  - 1.16.1 if the Purchaser is an individual, means the Personal Information relating to that individual; or
  - 1.16.2 if the Purchaser is a body corporate, means any Personal Information relating to relevant individuals employed by or connected to the Purchaser.
- 1.17 "Terms" means these Terms and Conditions of Sale.

### 2. INTERPRETATION

- In the interpretation of the Terms unless the contrary intention appears:
- 2.1 headings are for convenience only and do not affect the interpretation of the Terms;
  - 2.2 the words 'includes' or 'including' do not limit whatever follows;
  - 2.3 a reference to a person includes a reference to a corporation, firm, association or other entity, and vice versa; the singular includes the plural and vice versa;
  - 2.4 a reference to any gender includes a reference to all other genders;
  - 2.5 a reference to any legislation includes a reference to any modification or re-enactment;
  - 2.6 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
  - 2.7 A reference to the Company or the Purchaser includes any person acting for or on behalf of the Company or the Purchaser, including its directors, officers, agents, employees or contractors.

### 3. ACCEPTANCE OF AGREEMENT

- 3.1 Any quotation made by the Company is not an offer to sell Goods or to provide services.
- 3.2 Without limiting the way in which the Purchaser may become bound by the Agreement, the Purchaser will become bound by the Agreement by placing an Order with the Company for the supply of Goods.
- 3.3 Where more than one Purchaser has entered into the Agreement, the Purchasers shall be jointly and severally liable for their obligations under the Agreement.

#### **4. ORDER**

- 4.1 The Purchaser acknowledges that once an Order has been placed, the Company is under no obligation to accept any variation to that Order requested by the Purchaser. If the Company does accept a variation to an Order, the Purchaser acknowledges and agrees that the Company may vary the delivery date for the Goods and the price as a result of that variation.
- 4.2 The Purchaser may request an Order's cancellation prior to the Order's dispatch. The decision to cancel any Order is entirely at the Company's sole discretion.
- 4.3 No Order will be cancelled after dispatch.
- 4.4 Any agreement to cancel or vary a Quotation or an Order pursuant to clauses 4.2 and 4.3 shall be subject to the Company being compensated for any costs incurred with respect to the Order prior to the cancellation or variation.
- 4.5 Any Order for customised Goods or Goods which must be specially sourced by the Company for the Purchaser (not regular stock) cannot be cancelled once the sourcing of these Goods has commenced.
- 4.6 The Company may in its sole discretion refuse to supply any Order for any reason whatsoever.
- 4.7 Each Order placed by the Purchaser shall be a representation to the Company that the Purchaser is solvent and able to pay the Company's accounts as and when they are due.
- 4.8 A Purchaser's Order placed with reference to a quotation provided by the Company will not bind the Company until the Company accepts the Purchaser's Order which will be evidenced by the supply of Goods and services by the Company to the Purchaser, or by the commencement of supply of Goods. The Company reserves the right to refuse at its absolute discretion any Order based on a quotation within seven (7) days after the Order is received and at any time to refuse to accept or proceed with any Order should the Purchaser's trade or financial reference be unsatisfactory to the Company.

#### **5. PRICES**

- 5.1 Any quotation made by the Company will remain valid for a period of thirty (30) days from the date on which it was made.
- 5.2 The prices for the supply of any Goods or services will be the price charged by the Company at the date of delivery plus the amount which the Company is required to pay on account of (as applicable) freight, transportation, exchange, insurance premiums and any customs duties, excise, taxes or charges which may be levied by any governmental authority (domestic or foreign). Unless otherwise agreed in writing, in the event of any increase in these rates or in the price of the Goods quoted to the Company by its suppliers before acceptance of an Order or prior to delivery of the Goods to the Purchaser, then the cost to the Company entailed by such increase will be added to the purchase price and be payable by the Purchaser.
- 5.3 All items of equipment that require packaging and dispatch by the Company, come with a standard \$15.00+GST packaging and handling fee, per unit item. This cost is in addition to the individual item price, freight costs and any other fees and charges. Where multiple items of equipment are purchased in the same order, the standard packaging and handling fee is multiplied by the quantity of items.

#### **6. DESCRIPTION**

- To the maximum extent permitted by law:
- 6.1 Any representation, promise, statement or description made by or on behalf of the Company is expressly excluded and the Purchaser acknowledges that it has relied solely upon its own inspection, skill and judgement to place the Order for the supply of Goods from the Company.
- 6.2 All photographs, weights, illustrations, dimensions and any other particulars given in or accompanying a quotation or contained in descriptive literature provided by or on behalf of the Company are approximate only and given by way of identification only. The use of such material will not constitute a sale by description between the Company and the Purchaser and any deviations from such material will not vitiate these Terms or entitle the Purchaser to make any claim made against the Company.
- 6.3 Clerical errors are subject to correction.
- 6.4 The Purchaser warrants to the Company that any designs, drawings or specifications supplied to the Company by or on behalf of the Purchaser will not infringe any third party's Intellectual Property Rights. The Purchaser irrevocably and unconditionally agrees to indemnify and keep indemnified the Company from and against any loss, damage, expense, cost or other liability suffered or incurred by the Company arising out of any allegation by a third party that the designs, drawings or specifications supplied to the Company by or on behalf of the Purchaser infringe its Intellectual Property Rights.

## **7. TERMS OF PAYMENT**

- 7.1 For Purchaser's holding an approved Credit Account, payment for invoiced amounts is to be made in full within thirty (30) days following month of invoicing (unless otherwise agreed to in writing).
- 7.2 For Purchaser's without an approved Credit Account, payment for goods and services must be made in advance of order prior to the Company accepting the order and commencing order processing.
- 7.3 All payments will be made by direct debit, electronic funds transfer or credit card. The Company does not accept cash or cheque.
- 7.4 Any agreement by the Company to extend the terms of credit or other indulgence granted to the Purchaser shall not affect the Purchaser's liability to account to the Company.
- 7.5 If the Purchaser defaults in making payment in accordance with these Terms, the Company may in its absolute discretion and without notice:
  - 7.5.1 charge the Purchaser compound interest calculated on that portion of the Purchaser's account overdue at two per cent (2%) above the penalty rate fixed under the Penalty Interest Rates Act 1983 (Vic) from time to time, calculated and payable daily from the due date until the date on which the invoice is paid in full; and
  - 7.5.2 require the Purchaser to reimburse the Company for all collection costs including legal costs incurred by the Company, calculated on a solicitor and client basis, as a consequence of the Company instructing its solicitor to provide advice to it in connection with the default and/or to institute such recovery process as the Company in its absolute discretion decides, and any other costs, expenses, losses or damages arising out of a breach of the Agreement.
- 7.6 Unless specifically agreed by the Company in writing before dispatch of Goods, no deduction is to be made from payment for any reason including retention monies to guarantee performance of a contract.

## **8. CREDIT INFORMATION**

- 8.1 The Purchaser irrevocably authorises the Company, its servants and agents to make such enquiries as it deems necessary to investigate the credit worthiness of the Purchaser and/or its directors from time to time including the making of enquiries with persons nominated as trade references, the bankers of the Purchaser, any other credit provider or a credit reporting agency (hereinafter called "the Information Sources").
- 8.2 To the fullest extent permitted by the relevant privacy laws, the Purchaser:
  - 8.2.1 authorises the Information Sources to disclose to the Company such information concerning the Purchaser which is within their possession and which is required by the Company; and
  - 8.2.2 agrees that the information provided on any credit application signed by the Purchaser concerning the Purchaser may be disclosed by the Company to a credit reporting agency or any other interested person.
- 8.3 The Purchaser acknowledges that any credit application approved by the Company for the Purchaser related to trading between the Company and the Purchaser is granted by the Company on the basis of its reliance on information supplied by and representations made on behalf of the Purchaser and, in particular, on the information disclosed by the Purchaser in relation to the ownership of the Purchaser.
- 8.4 Any credit facility granted by the Company to the Purchaser shall continue until terminated by the Company at its sole discretion. Termination by the Company of any credit facility shall be either verbal or in writing.
- 8.5 The Credit Information Policy shall be made available free of charge to all credit-approved Purchasers on approval of their application for trade credit.

## **9. ACCEPTANCE AND DELIVERY**

- 9.1 Unless otherwise specified by the Purchaser in the Order, the point of delivery of the Goods will be at the Purchaser's premises.
- 9.2 The Purchaser shall provide, or cause to be provided, full and clear access for delivery and will at its own expense provide all necessary assistance in unloading the Goods at the nominated place of delivery.
- 9.3 If delivery of the Goods by the Company is delayed by a cause other than its own negligence, the Purchaser shall not be entitled to cancel this contract by reason thereof.
- 9.4 The Purchaser must inspect the Goods immediately on the arrival and must notify the Company in writing within seven (7) days from the date of delivery of any Goods alleged not to be in accordance with these Terms. If the Purchaser fails to give such notice, the Goods will be deemed to be in all respects in accordance with these Terms and the Purchaser must accept and pay for the Goods.

- 9.5 Insurance, packaging & freight handling (IPH) will be charged to the Purchaser.
- 9.6 A delivery docket, certificate or equivalent signed by a representative of the Purchaser shall be conclusive evidence of delivery of the Goods.
- 9.7 If delivery of the Goods by the Company is delayed by the Purchaser, the Purchaser shall be liable for any extra charges, losses or expenses incurred by Company as a direct result of same.
- 9.8 The Company may resell any Goods not taken by the Purchaser within seven (7) days from the date of delivery and at its option deem the contract repudiated or by subsequently substituting other Goods treat the contract as subsisting.

#### **10. DELAY IN DELIVERY AND FORCE MAJEURE**

- 10.1 The time of delivery in any quotation represents the time at which the Goods are to be ready for dispatch from the Company's premises and the Company is to be allowed the further time necessary to cover transit points of delivery. The Company does not accept Orders under penalty for late delivery.
- 10.2 Delivery and availability dates are estimates and approximate only and although the Company will make all reasonable efforts to maintain these estimates, the Company will not be liable in any way should delivery not be made on the estimated delivery and availability dates.
- 10.3 If the Company does not receive forwarding instructions sufficient to enable it to dispatch the Goods within fourteen (14) days of the Company notifying the Purchaser that the Goods are ready, the Company will be entitled to issue an invoice for the full purchase price from that date and the Purchaser will be liable for storage charges payable monthly on written demand. The Purchaser acknowledges that any such storage will be at the Purchaser's risk.
- 10.4 If for any cause beyond the Company's control, including but without limitation, any act of God, war, strike, lock out, industrial dispute, governmental or semi-governmental award, enactment, priority or restriction, fire, flood, storm or tempest, delay in obtaining licences, transport, labour, or materials, accidents, damage to the Company's works or business of those of its suppliers, the Company is prevented from delivering Goods at the time stipulated or performing an obligation under these Terms, the Company will be entitled at its option either to extend the time for delivery or performance for a reasonable period or to rescind the contract and the Purchaser will not have any claim for damages of whatsoever nature and must pay to the Company the cost for all Goods delivered prior to the date of such rescission including all expenses incurred and monies paid by the Company in connection with the Agreement without set-off or deduction.

#### **11. TITLE AND RISK**

- 11.1 Title to the Goods to be delivered will not pass to the Purchaser until payment in full for those Goods (together with any other money owing by the Purchaser to the Company) is received by the Company.
- 11.2 Until payment is made in accordance with clause 11.1, any Goods in the Purchaser's possession will be held as bailee and the Purchaser shall not create or allow to be created any security interest as defined by PPSA or any other form of encumbrance over the Goods.
- 11.3 Notwithstanding that the title to the Goods has not passed to the Purchaser, all Goods will be at the Purchaser's risk upon delivery and the Purchaser will hold the Company indemnified against any claim, liability, damage or injury of whatsoever nature relating to the Goods until payment is made in accordance with clause 11.1
- 11.4 Where the Purchaser has requested special delivery arrangements (i.e. other than delivery to premises of Purchaser) risk in respect of Goods shall pass to the Purchaser upon the Goods leaving the premises of the Company in Adelaide or, in the event of a drop-shipping arrangement, of the supplier. The Company will not in any circumstances accept liability for damage, shortage or loss during transit.
- 11.5 Until the Goods are paid for in full, the Purchaser:
  - 11.5.1 must protect and insure the Goods;
  - 11.5.2 must separately store the Goods and clearly mark the Goods as being the property of the Company; and
  - 11.5.3 may sell the Goods in the ordinary course of business, but only in its capacity as fiduciary agent of the Company. All proceeds received directly or indirectly from any dealing with the Goods are held by the Purchaser on trust for the Company until the Purchaser's liability to the Company is fully discharged.
- 11.6 The Purchaser irrevocably authorises and licenses the Company to enter any premises owned or occupied by the Purchaser, or any other place where Goods are stored, to inspect or repossess Goods in accordance with these Terms.

## **12. PPSA**

- 12.1 The Purchaser acknowledges that The Company has, under these Terms, security interests in the Goods until title in the Goods passes to the Purchaser in accordance with clause 10, subject to the PPSA. Each such security interest secures payment by the Purchaser of all amounts owing from time to time by the Purchaser to the Company, whether on account of the supply of Goods or otherwise. To avoid any doubt, each such security interest attaches to the proceeds of collateral constituted by the Goods, notwithstanding that the Purchaser may have dealt in any way with the Goods (including by selling as expressly permitted under clause 11.5.3).
- 12.2 Each security interest arising under these Terms attaches to Goods when the Purchaser obtains possession of the Goods. The Company and the Purchaser acknowledge that they have not agreed that any such security interest attaches at any later time.
- 12.3 The Purchaser agrees to implement, maintain and comply in all material respects with, procedures for the perfection of each security interest arising under these terms and conditions and the PPSA, including taking all steps necessary:
- 12.3.1 for the Company to obtain the highest ranking priority possible in respect of each such security interest (such as perfecting a purchase money security interest); and
- 12.3.2 to reduce as far as possible the risk of a third party acquiring an interest free of the Company's security interests in the Goods.
- 12.4 Any time the Purchaser makes a payment to the Company, irrespective of whether the payment is made under or in connection with Goods or otherwise under these Terms, the Company may apply that payment:
- 12.4.1 to satisfy any obligation that is not secured;
- 12.4.2 to satisfy an obligation that is secured, but not by a purchase money security interest; and
- 12.4.3 to satisfy an obligation that is secured by a purchase money security interest for that obligation and using proceeds from the sale of the collateral subject to that purchase money security interest; and
- 12.4.4 to satisfy an obligation that is secured by a purchase money security interest using funds or proceeds from any source; or
- 12.4.5 in any manner the Company sees fit.
- 12.5 If chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising under these Terms, the Purchaser agrees that following provisions of the PPSA will not apply to the enforcement of that security interest: Sections 95 (to the extent that it requires The Company to give a notice to the Purchaser), 120, 121(4), 125, 128, 130 (to the extent that it requires the Company to give a notice to the Purchaser), 132(3)(d), 132(4), 135, 142 and 143.
- 12.6 Without limiting the operation of subclause (e):
- 12.6.1 the Company need not give any notice under the PPSA (including a notice of verification statement) unless the notice is required by the PPSA and cannot be excluded; and
- 12.6.2 if The Company is required to give a notice to the Purchaser under the PPSA, and the Purchaser may, under the PPSA, waive the Purchaser's right to receive that notice, then the Purchaser hereby waives that right.

## **13. RETURN OF GOODS**

- 13.1 To the maximum extent permitted by law, it is a condition of sale of the Goods that the Company may elect to, but is not otherwise obligated to accept in any case, the return of Goods for credit. The following conditions relating to the return of Goods for credit apply to all Goods returned with the approval of the Company:
- 13.1.1 Prior arrangements must be made for all Goods to be returned for any reason. Authorisation must be obtained from the Company in the form of a Goods Return Authorisation (GRA) number issued by the Company.
- 13.1.2 The Purchaser's request for credit or other documentation accompanying the Goods must quote the GRA number, the original invoice number and the date on which the Goods were supplied.
- 13.1.3 Goods not accompanied by a GRA number and or proof of purchase will not be accepted and will be returned to the Purchaser with freight charged to the Purchaser.
- 13.1.4 Goods returned must be in a clean and sterile condition.

- 13.1.5 Where Goods were originally supplied in a special manufacturer's carton, any return must be made in that original carton and the Goods must be in their original and unmarked condition, complete with any instruction sheets supplied.
- 13.1.6 Outward and inward freight and transport charges are the responsibility of the Purchaser. If not prepaid by the Purchaser, freight will be deducted from the amount of credit.
- 13.1.7 The following Goods cannot be returned for credit under any condition:
  - 13.1.7.1 any merchandise specially obtained;
  - 13.1.7.2 any Goods altered or damaged by the Purchaser;
  - 13.1.7.3 any Goods that have been exposed to hazardous materials and substances, dangerous chemicals, poisons, waste material, pesticides, pollutants (whether airborne or engaged by touch), viruses, bacteria, diseases, blood, bodily fluids or any other dangerous matter; or
  - 13.1.7.4 any Goods having an invoice value of ten dollars or less.
  - 13.1.7.5 No responsibility will be accepted for any delays in passing credit caused by Goods being incorrectly branded or returned without adequate identification of both sender and Goods returned.
- 13.2 Nothing in this clause 12 affects the statutory obligations of the Company (and corresponding rights of the Purchaser) which may not be lawfully excluded.

#### **14. INTELLECTUAL PROPERTY RIGHTS**

The parties acknowledge and agree that all Intellectual Property Rights developed by the Company or which may be developed by the Company remain the property of the Company.

- 14.1 The intellectual property owned by Daytech Pty Ltd and used in connection with the supply of goods and services, remains vested in Daytech Pty Ltd.
- 14.2 The Purchaser assigns to Daytech Pty Ltd all Intellectual Property rights that may be produced or developed in relation to or as a result of the provision of the Services from Daytech Pty Ltd, effective immediately upon the creation of such rights.
- 14.3 The Purchaser warrants that anything produced in the course of implementing the Goods and Services will not infringe the Intellectual Property rights of any third party.

#### **15. LIMITATION OF LIABILITY**

- 15.1 To the maximum extent permitted by law, the Company excludes its liability (including, but not limited to, liability in tort, contract and for breach of statute) to the Purchaser or any other person for:
  - 15.1.1 any loss or damage, consequential or otherwise (whether contractual, tortious, statutory or otherwise) for any special, incidental, indirect or consequential damages or injury including, but not limited to, any loss of profits, contracts, or revenue arising out of or in connection with the provision of the Goods and whether as a result of any breach, default, negligence or otherwise by the Company suffered or incurred by the Purchaser or any other person in relation to the Goods; and
  - 15.1.2 in particular, but without limitation, any loss or damage, consequential or otherwise, suffered or incurred by the Purchaser or any other person caused by or resulting directly from any failure, defect or deficiency of any kind of or in the Goods.

#### **16. INDEMNITY**

By accessing the website at [www.daytech.io](http://www.daytech.io), you agree to indemnify, defend, and hold harmless Daytech, its officers, directors, employees, agents, licensors and suppliers from and against all losses, expenses, damages and costs, including reasonable legal fees on a solicitor-client basis, resulting from any breach of these terms and conditions or any activity related to your account (including negligent or wrongful conduct) by you or any other person accessing the site using your Internet account.

## **17. WARRANTIES**

- 17.1 The Company warrants to the Purchaser that hardware, instruments and accessories supplied by it will be free from defects in material and workmanship for a period of 12 months from the original date of purchase of the product. The warranty will include the repair or replacement of a defective product. The benefits provided by this warranty are in addition to other rights and remedies which you may have under a law in relation to the product to which this warranty relates.
- 17.2 The warranty in clause 17.1 shall be extended by a further 12 months for all purchases of Goods if agreed expressly in writing, prior to purchase, under certain circumstances such as an extended warranty purchase with the sale of the product, as agreed.
- 17.3 If the Purchaser is a consumer as defined in the Australia Consumer Law, nothing in this warranty restricts, limits or modifies the Purchaser's rights or remedies against the Company for failure of a statutory guarantee under the Australia Consumer Law.
- 17.4 If clause 17.3 does not apply, any liability under this warranty is expressly limited at the sole discretion of the Company to the replacement of the Goods, the supply of equivalent Goods, the repair of the Goods or provision of credit; and the warranty does not cover:
- 17.4.1 electronic tubes and components, illumination sources, items wholly or partly of glass, silica or ceramic material, fuses, thermocouples, batteries, electrical elements and reconditioned replacement parts, such as exchange circuit boards, any accessories considered to be consumables such as lithium-ion battery modules;
  - 17.4.2 faults caused by unsuitable or use other than in accordance with technical specifications, user manuals, instructions or directions provided by the manufacturer or the Company;
  - 17.4.3 faults caused by incorrect installation, short circuiting, incorrect wiring or testing, misuse, abuse, mechanical damage, unauthorised modification, normal wear and tear and inadequate or complete lack of maintenance;
  - 17.4.4 negligence or malpractice by the user; or
  - 17.4.5 loss or theft, nor does coverage extend to damage caused by improper storage conditions, or natural disasters.
- 17.5 All warranties, express or implied, are null and void, where the product has been installed by unqualified personnel. Qualified personnel, need to demonstrate suitable vocational or academic qualifications as well as adequate experience in the field of electronics, communications and software.
- 17.6 During the warranty period, defective products will be repaired, replaced or credit will be provided if:
- 17.6.1 the Purchaser has contacted the Company, notified the Company in writing of the alleged default and obtained a Goods Return Authorisation (GRA) number, within the warranty period; and
  - 17.6.2 the original product is returned to the Company in its original packaging at the below address, together with a dated proof of purchase, the GRA number and details of the Purchaser's return address, within the warranty period; and
  - 17.6.3 A detailed description of the reported defect is provided, in addition to photos of the installation, a record of the conditions and parameters of the use of the product, such as electrical and environmental conditions. Daytech's service team will review the reported defect and determine if the product has been used within the boundaries of the technical specifications as set out in the datasheet and the user manual, before accepting and issuing a GRA.
- 17.7 The cost of freight of a defective product to and from the Company or any other such expense is the Purchaser's responsibility. If the freight is not prepaid the cost of the freight shall be deducted from the amount of credit.
- 17.8 All queries relating to warranties should be made using one of the following methods:
- Address: Daytech Pty Ltd  
Customer Service  
3/614-616 Marion Road  
Park Holme SA 5043
- Email: [sales@daytech.io](mailto:sales@daytech.io)
- Website: [www.daytech.io](http://www.daytech.io)

## **18. END USER LICENCE AGREEMENT (EULA)**

The Purchaser acknowledges and agrees that all firmware and software products are purchased under licence and are subject to Daytech's End User License Agreement ("EULA") between You and Daytech Pty Ltd. This EULA covers Your use of the Software and Cloud Services. You agree to be bound by the terms of this EULA through:

- (a) Your download, installation, or use of the Daytech Pty Ltd Hardware and Software (Daytech Technology); or
- (b) Your express agreement to this EULA.

If You do not have authority to enter into this EULA or You do not agree with its terms, do not use the Daytech Technology. You may request a refund for the Software within 30 days of Your initial purchase provided You return the Software to the Approved Source and disable or uninstall it.

Further details of the EULA are available upon request.

## **19. PRIVACY**

The Purchaser acknowledges and agrees that:

- 19.1 The Company collects and will use and disclose the Purchaser's Personal Information for the primary purpose of supplying the Order to the Purchaser and for the secondary purposes of marketing to the Purchaser about other products and services that may be offered by the Company from time to time and for other purposes specified in the Privacy Policy;
- 19.2 The Purchaser's Personal Information may be disclosed to other organisations where required to facilitate the purposes specified in clause 16 (a);
- 19.3 The Privacy Policy contains information about how the Purchaser may access the Purchaser's Personal Information held by the Company and information about how to seek correction of such information if necessary. The Privacy Policy also contains information about how the Purchaser may complain about a breach of the APPs, and how the Company will deal with such a complaint; and
- 19.4 The Privacy Policy can be viewed without charge at [www.controlsonline.com.au](http://www.controlsonline.com.au).

## **20. GENERAL**

- 20.1 These terms and conditions apply to each and every Order or request from a Purchaser for the Company's Goods.
- 20.2 If these Conditions differ in any respect from the Purchaser's Order or the Company's acceptance or confirmation of the Purchaser's Order, then these Conditions will prevail to the extent of the inconsistency.
- 20.3 No agency, partnership, joint venture or independent contractor relationship is intended or created by these Conditions.
- 20.4 Waiver of any of the Company's rights arising from a breach of these Conditions by the Purchaser must be in writing and signed by the Company. A failure or delay in exercise by the Company of a right conferred by these Conditions does not result in a waiver of that right.
- 20.5 No agent or employee of the Company has the authority to waive or vary these Terms and Conditions unless the Company approves such waiver or variation in writing.
- 20.6 Neither this Agreement nor any part of it is to be construed against a party on the basis that the party was responsible for its drafting.
- 20.7 GST if and when applicable is an extra charge for the Purchaser's account. If not applicable, a GST exemption certificate must be signed by the Purchaser and accompany the Purchaser's official Order.
- 20.8 If by any reason of any legislation, regulation, government action or other cause beyond the Company's control any charge import duty or expenditure of any kind which is not at present chargeable or applicable, is imposed, becomes payable or applicable, or is incurred upon, to, or in respect of the Goods hereby sold, such additional cost will be added to the purchase price and payable by the Purchaser.
- 20.9 This Agreement is subject to the laws of South Australia. The parties submit to the non-exclusive jurisdiction of the courts of South Australia and any courts competent to hear appeals from those courts.
- 20.10 Any provision of these Conditions which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remainder



of these Conditions which will continue to operate in full force and effect in that or any other jurisdiction.

- 20.11 Clerical errors in computations, typing or otherwise of catalogue; quotation; acceptance; offer; invoice; delivery docket; credit note; specification of the Company shall be subject to correction.

**20. GOVERNING LAW**

This Agreement is governed by the laws of the State of South Australia and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the courts of that State for all disputes arising in connection with this Agreement.

**21. ENTIRE AGREEMENT**

This Agreement sets out the entire agreement and understanding between the parties relating to its subject matter. All prior agreements and negotiations, representations and communications relating to the same subject are superseded by this Agreement.

**22. AMENDMENTS**

Amendments to this Agreement can only be made by agreement between the parties and must be recorded in writing and signed on behalf of both Daytech Pty Ltd and the Purchaser.

**23. WAIVERS**

Any waiver of a party's rights or consent under this Agreement will only be effective and binding if it is given in writing.

**24. COSTS**

Each Party shall pay its own costs of preparing and executing this Agreement.