

## NETCOMM STANDARD TERMS AND CONDITIONS OF SALE

### 1. Application of these Terms and Conditions

- 1.1 These Terms and Conditions apply to all Orders from Customer to NetComm Wireless. By placing an Order with NetComm Wireless, Customer agrees to be bound by these Terms and Conditions.
- 1.2 NetComm Wireless is not bound by any terms or conditions provided by Customer or attached to any documents submitted by Customer, and if any such terms and conditions are provided or submitted, the provisions of these Terms and Conditions will prevail.
- 1.3 Schedule 1 to these Terms and Conditions applies only where Customer is a Large Business.
- 1.4 A reference "\$" or "dollars" in these Terms and Conditions is a reference to Australian currency.

### 2. Interpretation

In these Terms and Conditions:

**Australian Consumer Law** or **ACL** means the law as set out in Schedule 2 of the CCA (as amended and revised from time to time).

**CCA** means the *Competition and Consumer Act 2010* (Cth).

**Customer** means the person or legal entity acquiring Products and/or services from NetComm Wireless.

**Delivery** occurs when the Products pass into the control of Customer or an agent or a carrier of Customer, whichever is earlier.

**GST** means Goods and Services Tax.

**GST Amount** has the meaning given in clause 7.1.

**GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Large Business** means an entity which:

- a) employs 100 or more persons; and
- b) had a turnover of \$10,000,000 or more in its most recent income year,

(with both of these tests to be determined in accordance with sections 23(4)-(7) of the Australian Consumer Law).

**NetComm Wireless** means NetComm Wireless Pty Ltd (ACN 002 490 486).

**Order** means an order for Products by Customer.

**Place of Delivery** means the place designated by the Customer and agreed by to by NetComm Wireless for delivery of the Products.

**PMSI** means a purchase money security interest as set out in section 14 of the PPSA.

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

**Products** means any equipment, material, components, merchandise or other products supplied by NetComm Wireless.

**Terms and Conditions** means these Standard Terms and Conditions of Sale.

### **3. Orders**

- 3.1 Customer may submit an Order to NetComm Wireless to acquire Products.
- 3.2 Each Order is subject to acceptance by NetComm Wireless. Supply of Products is subject to availability. At any time following its receipt of an Order, NetComm Wireless may:
- (a) reject the Order for any reason;
  - (b) negotiate changes to the Order by notifying the Customer of proposed changes to the Order; or
  - (c) accept the Order by providing an invoice in accordance with clause 3.3.
- 3.3 An Order will be deemed to have been accepted by NetComm Wireless on the date on which the Customer receives an invoice for the Products from NetComm Wireless (provided that the value of the invoice is consistent with the number and value of the Products most recently ordered by Customer during the Order process under clause 3.2).

### **4. Price**

- 4.1 NetComm Wireless' price lists exclude the cost of Delivery, insurance, taxes and installation costs unless otherwise agreed in writing by NetComm Wireless and Customer.
- 4.2 Customer must pay the price for the Products as listed in the price lists made available to the Customer by NetComm Wireless, unless otherwise agreed in writing by NetComm Wireless and Customer when NetComm Wireless accepts an Order.
- 4.3 Customer will pay for all applicable shipping and handling charges and will bear all country, provincial, government, state and local sales, use, goods and services, value added, excise, privilege and similar levies/taxes.
- 4.4 NetComm Wireless may increase the prices for Products in the price lists between the date the Order is accepted by NetComm Wireless and Delivery of the Product where such increase is reasonably necessary in order to protect the legitimate interests of NetComm Wireless by providing Customer with written notice of such increase.
- 4.5 If NetComm Wireless notifies Customer of a price increase in accordance with clause 4.4, Customer may either cancel the Order or confirm Customer's acceptance of the increased price, by providing notice in writing to NetComm Wireless.

## **5. Payment**

- 5.1 Unless credit terms have been expressly agreed by NetComm Wireless, payment for the Products and/or services must be made in full within 30 days from the date of the invoice, but in any event before physical Delivery of Products and/or services.
- 5.2 Time for payment is of the essence. If Customer fails to pay the price or any other amount when due, without prejudice to NetComm Wireless' other rights and remedies, Customer will reimburse NetComm Wireless for its reasonable costs (including solicitors' fees) relating to collection of past due amounts and NetComm Wireless reserves the right to charge interest on the overdue amount at the rate of 2% above the base commercial floating rate for the Commonwealth Bank in Sydney.
- 5.3 If:
- (a) Customer fails to make a payment to NetComm Wireless within 30 days of the date the
  - (b) payment was due; and
  - (c) NetComm Wireless has notified the Customer with at least 14 days' written notice that, unless the Customer makes payment by the end of the 30 day period referred to in clause 5.3(a), NetComm Wireless will take the action set out in this clause 5.3, then NetComm Wireless may (in its absolute discretion) cancel the relevant Order or the remaining part of the relevant Order placed by Customer (regardless of whether this Order has been accepted by NetComm Wireless) which has not yet been Delivered.
- 5.4 In the event that NetComm Wireless cancels an Order or the remaining part of an Order pursuant to clause , Customer remains obligated to pay NetComm Wireless the unpaid value of the cancelled Order or part.
- 5.5 The amount of any payment under clause 5.4 will be reduced by the amount of the unpaid value which NetComm Wireless, using reasonable efforts, is able to recoup by reselling the relevant item(s) to another customer within 14 days from the date of cancellation.

## **6. Security Interests (PPSA)**

- 6.1 The Customer acknowledges and agrees that these Terms and Conditions constitute a security agreement for the purposes of the PPSA. The Customer grants to NetComm a security interest under the PPSA in all goods (and any proceeds of those goods) supplied by NetComm to the Customer on credit at any time, to secure the payment of all amounts, and the performance of all obligations, owing by the Customer to NetComm in connection with any goods or services so supplied on credit.
- 6.2 The security interest granted under these Terms and Conditions includes a purchase money security interest ("PMSI") to the extent that it secures the Customer's obligation to pay for any goods supplied to the Customer on credit. In all other cases, the security interest extends to a charge over all of the Customer's present and after-acquired personal property, as security for the payment and performance of the Customer's other obligations to NetComm.
- 6.3 NetComm may (but is not obliged to) register any security interest (including any PMSI) arising under these Terms and Conditions on the Personal Property Securities Register ("PPSR") at any

time. The Customer expressly consents to any such registration and agrees to promptly do all things (including executing documents and providing information) that NetComm may reasonably require to register, perfect, maintain or enforce its security interest. The Customer must indemnify and upon demand reimburse NetComm for all costs and expenses (including legal fees on a full indemnity basis) incurred in connection with the registration, maintenance or enforcement of any security interest under these Terms and Conditions.

- 6.4 To the maximum extent permitted by law, the Customer waives any right to receive a verification statement under section 157(3) of the PPSA. Neither party will disclose any information of the kind mentioned in section 275(1) of the PPSA in relation to any security interest created under these Terms and Conditions, except as required by sections 275(7)(b) - (e) of the PPSA. For the purposes of this clause 6, terms defined in the PPSA have the same meanings as in the PPSA, unless the context otherwise requires.
- 6.5 This clause 6 survives termination or expiry of any agreement for the supply of goods or services by NetComm to the Customer, to the extent that any obligations of the Customer remain unpaid or outstanding.

## **7. GST**

- 7.1 Except as otherwise provided in this clause, all consideration payable under these Terms and Conditions in relation to any supply is exclusive of GST. If GST is payable in respect of any supply made by NetComm Wireless under these Terms and Conditions ("GST Amount"), the Customer must pay to NetComm Wireless an amount equal to the GST payable on the supply. The Customer must pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under these Terms and Conditions in full and without deduction, set off, withholding or counterclaim (unless otherwise provided in these Terms and Conditions). NetComm Wireless must provide a Tax Invoice to the recipient before NetComm Wireless will be entitled to payment of the GST Amount under this clause.
- 7.2 For the purpose of this clause, words and expressions that are not defined in these Terms and Conditions but which have a defined meaning in the GST Law have the same meaning as in the GST Law.

## **8. Delivery**

- 8.1 NetComm Wireless will deliver the Products to the Place of Delivery.
- 8.2 Customer acknowledges and agrees that NetComm Wireless' ability to deliver the Products by the Delivery date and time may be dependent on factors which are outside of NetComm Wireless' control (including the actions of third parties). NetComm Wireless will use all reasonable commercial endeavours to deliver the Products by the delivery date and time; however, delivery dates and times provided by NetComm Wireless for the Delivery of the Products are estimates only and will not form part of the Order. NetComm Wireless will not be liable for any delay in Delivery of the Products and/or services which is outside of NetComm Wireless' control.

- 8.3 NetComm Wireless will use all reasonable commercial endeavours to deliver Products in an Order as part of one Delivery (unless Delivery by instalments is agreed in the Order); however, NetComm Wireless may deliver Products in instalments where required, as determined by NetComm Wireless (acting reasonably). Except as provided in clause 8.4, the Customer may not cancel an Order where Products are delivered by instalments.
- 8.4 Customer may cancel an Order for Products if NetComm Wireless is unable to deliver the Products within 14 days from the estimated delivery date (or such other time as may be agreed between NetComm Wireless and Customer).
- 8.5 NetComm Wireless may revise, suspend or discontinue Products at any time provided that:
- (a) NetComm Wireless must provide Customer with reasonable prior written notice of the revision, suspension or discontinuing of the Products;
  - (b) Customer may, within 7 days of receipt of the written notice under clause 8.5(a), terminate the relevant Products or Order to which the Products relate by providing written notice to NetComm Wireless; and
  - (c) if Customer provides notice of termination pursuant to clause 8.5(b), NetComm Wireless will reimburse Customer for any payments made in advance to NetComm Wireless for the terminated Products or Order.
- 8.6 Subject to clause 8.5, where Products ordered under an Order have been revised and/or discontinued and the Customer has not terminated the Products ordered in accordance with clause 8.5, NetComm Wireless will supply revised or updated Products with the same or better functionality and performance of the Products ordered. The Customer accepts that NetComm Wireless' policy may result in differences between the specification of Products delivered to the Customer and the specification of Products ordered.

## **9. Risk and title**

- 9.1 Risk and title in the Products transfers to Customer on Delivery, unless credit terms have been expressly agreed by NetComm Wireless. If credit terms have been expressly agreed by NetComm Wireless, title in the Products transfer to Customer on receipt of the full purchase price by NetComm Wireless for such Products. Customer bears all risk in the Products upon Delivery, including loss, damage or deterioration to the Products due to any cause whatsoever.

## **10. Inspection of Products**

- 10.1 Customer must inspect and, to the extent possible, test the Products within 5 days of receiving the Products.
- 10.2 For a claim of damaged or defective Products at Delivery, notice to NetComm Wireless must be in writing and contain a supporting survey or other documentary evidence as required by Customer's and/or NetComm Wireless' insurance company or delivering carrier. If Customer's shipment is insured under a floating policy it must notify its insurance company of any claim.
- 10.3 Customer agrees to inform NetComm Wireless of all actual or suspected complaints, defects or adverse events associated with the Products and to provide information and assistance as

reasonably required by NetComm Wireless to address any such complaints, defects or adverse events.

## **11. Returned Goods**

- 11.1 Subject to clauses 10 and 12, NetComm Wireless will accept returns at its sole discretion. Customer must notify NetComm Wireless regarding any return of Goods and obtain NetComm Wireless' approval to return any Products before doing so.

## **12. Liability**

- 12.1 The exclusions and limitations of liability in these Terms and Conditions, including this clause 12, do not apply to any liability to the extent the same may not be excluded or limited as a matter of law and this clause 12 is subject always to clause 13.
- 12.2 NetComm Wireless' liability for any claim, action, proceeding or dispute, whether in contract, tort (including negligence), breach of statutory duty or otherwise, under or in connection with these Terms and Conditions is limited to: (i) in the case of a supply of goods, NetComm Wireless doing any one or more of the following (at NetComm Wireless' election): replacing the goods or supplying equivalent goods; repairing the goods; paying the cost of replacing the goods or of acquiring equivalent goods; or, paying the cost of having the goods repaired; and (ii) in the case of a supply of services, NetComm Wireless doing either or both of the following (at NetComm Wireless' election): supplying the services again; or, paying the cost of having the services supplied again.
- 12.3 If, notwithstanding the above, NetComm Wireless is liable to any person, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, under or in connection with these Terms and Conditions, then NetComm Wireless' liability is limited to the purchase price paid under the Order which is the subject of the relevant claim, action, proceeding or dispute.
- 12.4 Customer's liability to any person, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, under or in connection with these Terms and Conditions is limited to the purchase price paid under the Order which is the subject of the relevant claim, action, proceeding or dispute.
- 12.5 In no circumstances will either party be liable to any person, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, under or in connection with these Terms and Conditions, for any special, indirect or consequential loss, damage or expense, even if the other party advises a party of any special circumstances, or for any loss of profits, loss of sales, loss of business or agreements, loss of goodwill, loss of or wasted management of staff time or loss of anticipated savings.
- 12.6 If a Product acquired by the Customer pursuant to these Terms and Conditions has a manufacturer's warranty, and the Customer is a 'consumer' as that term is defined in the ACL, then the manufacturer's warranty shall apply to the Product in accordance with the terms and conditions of such manufacturer's warranty.

12.7 In the event of any claim by a customer of the Customer to NetComm Wireless under the manufacturer's warranty of a Product supplied to the Customer, the Customer must provide such assistance as is reasonably required by NetComm Wireless in the circumstances.

### **13. Statutory Rights**

13.1 To the fullest extent permitted by applicable law, NetComm Wireless excludes all implied representations, warranties, terms and conditions of any kind whatsoever (whether implied by common law, statute or otherwise) and the application or availability of any statutory rights (including any statutory guarantees that any goods or services supplied under these terms and conditions are of satisfactory quality or fit for their purpose).

13.2 Nothing in these Terms and Conditions is intended to exclude, restrict or modify any rights that Customer may have under the CCA or any other applicable legislation which may not be excluded, restricted or modified by agreement.

13.3 If the CCA or any other applicable legislation provides Customer with any non-excludable statutory rights (including any implied representations, warranties, terms or conditions or any statutory guarantees) in respect of any Products or services supplied under these Terms and Conditions, then the exclusions of and limitations on NetComm Wireless' liability in these Terms and Conditions do not apply in respect of such non-excludable statutory rights, however, where NetComm Wireless' liability with respect to such non-excludable statutory rights may be restricted or modified, then, without prejudice to any non-excludable statutory rights that Customer may have which may not be restricted or modified by agreement, NetComm Wireless' liability is limited in the manner set out in clause 12.2.

### **14. Cancellation**

14.1 If Customer cancels an Order without NetComm Wireless' prior written consent, NetComm Wireless is entitled to claim, as a genuine loss arising from such breach by Customer of these Terms and Conditions, the full purchase price of such Products or such lesser amount reasonably determined by NetComm Wireless, as reasonably necessary in order to protect the legitimate interests of NetComm Wireless.

### **15. Dealing with Products**

15.1 Customer acknowledges and agrees that:

- (a) all trade marks, patents and other intellectual property rights in or relating to the Products are the property of NetComm Wireless, related entities of NetComm Wireless or NetComm Wireless' suppliers or manufacturers and the Customer will not and will not attempt to directly or indirectly make any claim of or to the intellectual property rights in the Products;
- (b) Customer must not, and must not do anything to enable or facilitate any other person or entity to do anything or deal with the Products in any way that infringes, impairs or otherwise diminishes the intellectual property rights of NetComm Wireless, NetComm Wireless' related entities or NetComm Wireless' suppliers or manufacturers;

- (c) a breach of Customer's obligations in this clause 15 may cause irreparable harm to NetComm Wireless and that damages may not be an adequate remedy for such breach; and
  - (d) Customer acknowledges and agrees that NetComm Wireless may seek injunctive relief or specific performance, in addition to any other remedies available to NetComm Wireless.
- 15.2 All resale prices are recommendations only. The Customer agrees only to resell Products in the original packaging and condition, and not to resell used or defective Products as new Products.
- 15.3 The Customer agrees not to export the Products from Australia without the prior written consent of NetComm Wireless (such consent may be withheld in NetComm Wireless' absolute discretion).

## **16. Privacy disclosure and consent**

- 16.1 Customer acknowledges and agrees that Customer must comply with its obligations under the *Privacy Act 1988* (Cth) in relation to its acquisition, use and/or resupply of the Products.
- 16.2 NetComm Wireless will comply with its obligations under the *Privacy Act 1988* (Cth) including its Privacy Policy accessed via <https://www.netcomm.com/legal> at all times when collecting, using or disclosing Customer personal information.

## **17. Force Majeure**

- 17.1 Neither party is liable for any delay in performing any of its obligations under these Terms and Conditions if such delay is caused by circumstances beyond its reasonable control, and the affected party will be entitled to a reasonable extension of time for the performance of such obligations.

## **18. Governing law and Compliance**

- 18.1 These Terms and Conditions are governed by the laws applicable in the State of New South Wales, Australia. Customer irrevocably agrees to submit to the non-exclusive jurisdiction of the Courts of New South Wales, Australia.
- 18.2 The *Sale of Goods (Vienna Convention) Act 1986* (NSW) (and any similar legislation relating to the Vienna Convention in other States or Territories) does not apply. The United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) does not apply to this Agreement.
- 18.3 Customer specifically acknowledges that it understands that the supply of the Products may be subject to the jurisdiction of the U.S. Export Administration Regulations ("EAR") (Title 15 of the U.S. Code of Federal Regulations, Part 730 et seq.) and the U.S. trade sanctions regulations (Title 31 of the U.S. Code of Federal Regulations, Part 500 et seq.). Customer shall comply with applicable export controls and trade sanctions, laws, rules, and regulations, including, but not limited to the EAR (including the Restrictive Trade Practices or Boycotts provisions of Part 760 of the EAR) and U.S. trade sanctions, laws, rules, and regulations (together "Trade Restrictions"), relating the performance of its obligations under these Terms and Conditions.

18.4 Customer further agrees that no Products supplied under these Terms and Conditions will be exported, re-exported, or sold, distributed, or otherwise transferred to countries outside of Australia without first obtaining all necessary written consents, permits, and authorisations and completing such formalities as may be required under applicable Trade Restrictions.

## **19. General**

19.1 Neither party may assign or otherwise transfer its rights and/or obligations under these Terms and Conditions whether in whole or in part without the prior written consent of the other party, except to a successor in connection with a re-organisation or acquisition of all or substantially all of its capital stock or its business assets to which these Terms and Conditions relates.

19.2 If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and Conditions and the remainder of the provisions in question will not be affected.

19.3 No failure or delay by a party's in exercising any power or right under these Terms and Conditions operates as a waiver, nor does any single or partial exercise of any power or right preclude any other or further exercise of any other power or right.

## Schedule 1 - Large Business Contracts

This Schedule 1 applies only where Customer is a Large Business. Where this is the case, clauses 1 to 19 of the Terms and Conditions apply, except that the following provisions apply instead of the clauses of the Terms and Conditions identified in such provisions:

- (a) **Clause 1.2:** Unless otherwise agreed in writing by duly authorised representatives of each party, these Terms and Conditions form the entire understanding between NetComm Wireless and Customer regarding the subject matter and supersede all prior communications between the parties. NetComm Wireless is not bound by any terms or conditions provided by Customer or attached to any documents submitted by Customer, and if any such terms and conditions are provided or submitted, the provisions of these Terms and Conditions will prevail.
- (b) **Clause 5.1:** Unless credit terms have been expressly agreed by NetComm Wireless, payment for the Products and/or services must be made in full by the date for payment set out in the invoice, but in any event before physical Delivery of Products and/or services.
- (c) **Clause 5.3:** If Customer fails to make a payment to NetComm Wireless within 30 days of the date the payment was due, then NetComm Wireless may (in its absolute discretion) cancel any Orders placed by Customer (regardless of whether these Orders have been accepted by NetComm Wireless) which have not yet been Delivered.
- (d) **Clause 5.5:** Not used.
- (e) **Clause 8.2:** Delivery dates and times provided by NetComm Wireless for the Delivery of the Products are estimates only and will not form part of the Order. NetComm Wireless will not be liable for any delay in delivery of the Products and/or services, however caused.
- (f) **Clause 8.3:** NetComm Wireless may deliver Products in instalments where required, as determined by NetComm Wireless. The Customer may not cancel an Order where Products are delivered by instalments.
- (g) **Clause 8.4:** Not used.
- (h) **Clause 8.5:** NetComm Wireless may revise, suspend or discontinue Products at any time without notice.
- (i) **Clause 8.6:** Not used.
- (j) **Clause 10.1:** Customer must inspect and, to the extent possible, test the Products promptly upon receipt. The Products will be deemed accepted unless Customer notifies NetComm Wireless in writing within 7 days of Delivery of any defects or discrepancies in the quality or quantity of the Products received. Customer agrees that such time-frame is a reasonable time-frame to diligently inspect and provide written notice to NetComm Wireless. Customer waives any right to reject the Delivery or revoke acceptance thereafter.
- (k) **Clause 12.3:** If, notwithstanding the above, NetComm Wireless is liable to any person, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, under or in connection with these Terms and Conditions, then NetComm Wireless' liability is limited to the purchase price paid for the Product the subject of the relevant claim, action, proceeding or dispute.

- (l) **Clause 12.4:** Not used.
- (m) **Clause 12.5:** In no circumstances will NetComm Wireless be liable to any person, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, under or in connection with these Terms and Conditions, for any special, indirect or consequential loss, damage or expense, even if Customer advises NetComm Wireless of any special circumstances, or for any loss of profits, loss of sales, loss of business or agreements, loss of goodwill, loss of or wasted management of staff time or loss of anticipated savings.
- (n) **Clause 15.1(d):** Customer consents to any injunctive relief or specific performance sought by NetComm Wireless, in addition to any other remedies available to NetComm Wireless.
- (o) **Clause 16.2:** NetComm Wireless will comply with its Privacy Policy accessed via <https://www.netcomm.com/legal> at all times when collecting, using or disclosing Customer personal information.
- (p) **Clause 17.1:** NetComm Wireless is not liable for any delay in performing any of its obligations under these Terms and Conditions if such delay is caused by circumstances beyond its reasonable control, and NetComm Wireless will be entitled to a reasonable extension of time for the performance of such obligations.
- (q) **Clause 19.1:** Customer must not assign or otherwise transfer its rights and/or obligations under these Terms and Conditions whether in whole or in part without the prior written consent of NetComm Wireless. NetComm Wireless may assign or otherwise transfer its rights and/or obligations under these Terms and Conditions whether in whole or in part without the prior written consent of Customer.
- (r) **Clause 19.3:** No failure or delay in NetComm Wireless' part in exercising any power or right under these Terms and Conditions operates as a waiver, nor does any single or partial exercise of any power or right preclude any other or further exercise of any other power or right.