



CoverTel Pty Ltd  
ABN 85 372 875 466

## Terms and Conditions for Product Sales encompassing goods, materials, equipment and/or parts ("Supplies")

These supply terms and conditions ("Supply Terms") apply to all Supplies provided by CoverTel Pty Ltd ("CoverTel") of 114 Bakehouse Road Kensington, Victoria 3031, Australia.

### 1. General

- 1.1 CoverTel agrees with the Customer to provide Supplies only upon the terms and conditions hereinafter provided and as may be specified in any quotation or proposal. Any terms and conditions that are contained in any purchase order or in any other document that is issued by the Customer or in correspondence or documents passing between CoverTel and the Customer:
- 1.1.1 have no effect, and will not affect any agreement between CoverTel and the Customer pursuant to these Supply Terms, even if CoverTel has had notice of those terms or conditions; and
- 1.1.2 do not constitute an offer or a counter-offer by the Customer.
- 1.2 By ordering Supplies, or receiving delivery, the Customer is deemed to have accepted the terms and conditions set out in these Supply Terms and to have agreed that they apply to the exclusion of all others.
- 1.3 No Variation to these Supply Terms shall be effective unless documented in writing and signed by CoverTel.
- 1.4 CoverTel may accept or reject any order (or part of any order) placed by a Customer for Supplies at its discretion.

### 2. Delivery and Supply

- 2.1 Unless CoverTel agrees in writing to the contrary, the Customer is responsible for any loss, damage or deterioration to the Supplies once the Supplies leave CoverTel's premises. The Customer is responsible for paying transport and associated expenses relating to the transport of the Supplies from CoverTel's premises. If the Customer requests CoverTel to arrange transport of the Supplies on its behalf, all transport and associated expenses incurred will be charged to the Customer as separate items, in addition to the price for the Supplies.
- 2.2 If the Customer returns or fails to accept delivery of any Supplies tendered in accordance with these Supply Terms, CoverTel may invoice the Customer for the Supplies delivered, and treat the remainder of the agreement (if any) as cancelled under clause 8.2. Supplies are deemed delivered when CoverTel advises the Customer that they are ready for collection at CoverTel's premises.
- 2.3 CoverTel may store any Supplies at the Customer's sole risk and expense, if the Customer fails or refuses to take delivery of those Supplies. In the event, in addition to the invoices amount for the Supplies, the Customer will be liable to pay CoverTel a storage fee, together with any expenses incurred by CoverTel (such as any freight charges to return the Supplies to CoverTel's premises).

### 3. Invoicing and Payment

- 3.1 Unless otherwise specified by CoverTel, all prices specified in CoverTel's catalogue or price lists, or in any invoice exclude any tax (including any Goods and Services Tax within the meaning of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) ("GST"), or any duty or impost levied in respect of the Supplies), which the Customer will pay, in addition to the amounts specified for the Supplies. If CoverTel does not receive payment by the due date, then without limiting its rights, CoverTel may:
- 3.1.1 charge the Customer interest on the amount outstanding at the rate for the time being fixed under Section 2 of the Penalty Interest Rates Act 1983 (Vic) (compounding daily); and/or
- 3.1.2 by written notice to the Customer, suspend the provision of any further Supplies, until the Customer has paid the outstanding amount, interest and any amount payable under clause 5.1.4.;
- 3.1.3 retain any amount received from the Customer on account of the Supplies; and
- 3.1.4 retain or resell any particular Supplies.
- The Customer is also liable for all reasonable expenses incurred by CoverTel in the enforcement of the Customer's obligations and the recovery of monies due from the Customer.
- 3.2 The Customer shall pay CoverTel the purchase price specified in the Invoice within 30 days of the date of invoice as long as an Account Application Form has been completed and accepted. CoverTel reserves the right to refuse Account Application to any purchaser. CoverTel may revoke or withdraw any approval previously given to the Customer at any time and for any reason.
- 3.3 Payment terms will be net 14 days of invoice if an Account Application form has not been completed.
- 3.4 In addition to the purchase price specified the Customer agrees to pay CoverTel within 7 days of any payment demand being made, the amount payable to CoverTel for any additional taxes and other government charges (Federal and State), exchange rate variation (where applicable) and any additional freight or insurance cost in relation to the delivery of the goods.
- 3.5 Pricing will be subject to exchange variation if indicated on the official quotation and/or invoice to the Customer. An exchange variation invoice will be issued subsequent to the original invoice. The exchange rate applicable for this exchange rate variation invoice will be that obtained from the National Bank of Australia on the day the original invoice was raised.
- 3.6 CoverTel may vary without notice the price of any Supplies offered for sale, or the specifications, design or construction of the Supplies as CoverTel or its suppliers consider appropriate.
- 3.7 CoverTel is entitled to off-set against any money owing to the Customer, amounts owed to CoverTel by the Customer on any account whatsoever.

### 4. Risk and Title

- 4.1 In the event that the Customer fails to pay any money owing to CoverTel within the time specified herein then in addition to any other right hereby conferred CoverTel may recover and resell the goods.
- 4.2 Title in the Supplies will not pass to the Customer until the Customer has paid CoverTel in full for the Supplies, together with any other sums payable in respect of those supplies, and the risk will then pass to the Customer:
- 4.2.1 the Customer must hold the Supplies as bailee for CoverTel (and return the Deliverable to CoverTel on request);
- 4.2.2 the Customer is only authorised to sell the Deliverable (or any portion of it) to third parties as the fiduciary agent of CoverTel;
- 4.2.3 the Customer must hold all payment (direct or indirect) received from such third parties for the Deliverable (or any portion of it) on trust for CoverTel pursuant to that fiduciary relationship;
- 4.2.4 if the Customer incorporates or transforms the Supplies (or any portion of them) into any other goods or products the Customer must hold a portion of any payment (the "Relevant Portion") received by the Customer for such goods or products on trust for CoverTel. The Customer expressly acknowledges that the relevant portion must be equal to the dollar value of the portion of the Supplies that is incorporated or transformed, and that the Customer receives part payment (not exceeding the relevant portion) for those goods and products, it does so as payment first of the relevant portion; and
- 4.2.5 CoverTel is irrevocably authorised to enter any premises where the Supplies is located and to act on behalf of, or in the name of, the Customer to recover possession of them.

### 5. Delivery Delay

- If the delivery of any goods is delayed for any reason: fire; strike; lockout; industrial disputation; delay on the part of a supplier to CoverTel; flood; delay by any carrier; fuel shortage; demand or request by government or state authority; inability to obtain materials and/or labour; any other cause reasonably beyond the control of CoverTel- then, in the event of any such delay, the date or dates for performance of this contract by CoverTel shall be extended for a period equal to the time lost by the delay.

### 6. Returns, Cancellation and Complaints

- 6.1 The Customer may not return any Supplies to CoverTel without obtaining CoverTel's prior consent, and then only on such terms as CoverTel determines. The Customer may request in writing to return Supplies for Credit within 7 days of receipt of the delivered Supplies. Return of the Supplies will only be accepted if in a new condition. No credits will be granted for return Supplies unless the Customer supplies a copy of the original invoice. Supplies that are returned will be subject to a restocking charge payable by the Customer, calculated as a percentage of the invoice.

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- 6.2 The Customer may not cancel any order for Supplies accepted by CoverTel, or any part of that order without obtaining CoverTel's prior written consent, and then only on such terms (including as to the payment of an appropriate charge) as CoverTel may determine. CoverTel reserves the right to refuse or withhold that consent.
- 6.3 The Customer must submit all complaints, claims, or notifications in respect of the Supplies that does not comply with an order in writing to CoverTel within 7 days of the date of CoverTel's invoice for the Supplies. Otherwise the Customer is deemed to have accepted the Deliverable.
- 7. Limitations on Liability**  
Except to the extent contained herein, the Customer agrees that CoverTel shall not be liable and indemnifies CoverTel in relation to any claim for loss of profits or other economic loss, direct or indirect, special, consequential or other similar damages to the Customer or to any third party arising out of, or any claimed breach of obligations which have arisen from or are alleged to have arisen from the negligent acts or omissions in whole or in part whether active or passive of CoverTel, its employees and/or non company personnel in connection with the sale of the goods pursuant to this contract.
- 8. Warranties**
- 8.1 CoverTel Group warrants that Supplies are in accordance with the original manufacturer's specification, if any.
- 8.2 In the event any defect or fault due to bad workmanship or materials is proved within the specified manufacturer's warranty period and the article is returned, CoverTel will at its discretion, ensure that the goods are either repaired or replaced at no additional cost to the Customer.
- 8.3 To claim under the warranty, the Customer must within the warranty period, return the defective Supplies to CoverTel at the Customer's expense, together with a copy of the original invoice, for evaluation by CoverTel. Only after CoverTel has made its evaluation will the appropriate action be taken at CoverTel's discretion. Transport to and from CoverTel's premises will be at the Customer's expense.
- 8.4 The Customer acknowledges that all warranties herein will be void if it or any person on its behalf modifies, or alters in any way, the goods without the express written approval of CoverTel.
- 8.5 The Customer agrees that no liability shall attach to CoverTel in respect of any malfunction or defect in the goods which results from data supplied by the Customer; or, defects, limitations, conditions or deficiencies in equipment and materials not supplied by the original equipment manufacturer.
- 8.6 To the extent that the Trade Practices Act, the Fair Trading Act and the Sales of Goods Act permit CoverTel to exclude or limit its liability for breach of condition or warranty implied by any of those Acts, CoverTel's liability for breach of condition or warranty, including any consequential loss which the Customer or any third party may sustain or be liable for is limited to the following:
- 8.6.1 The cost of rectifying any defect or fault in the goods; or
- 8.6.2 The cost of replacing such goods;
- Whichever is the lesser.
- 8.7 It is agreed that all conditions and warranties express or implied whether arising by virtue of statute or otherwise are hereby expressly excluded other than those implied by law and not capable of exclusion.
- 8.8 CoverTel is not liable for any defects arising out of mishandling or misuse, incorrect installation, vandalism, ill treatment, accident, or any cause out of CoverTel's reasonable control.
- 8.9 CoverTel is not liable for any indirect, punitive, special, incidental or consequential damage, which the Customer may suffer or incur or which may arise in connection with any Supplies supplied to the Customer pursuant to these Supply Terms, or in respect of a failure or omission on the part of CoverTel to comply with its obligations under these Supply Terms.
- 9. Intellectual Property Rights**
- 9.1 Any information furnished by CoverTel to the Customer is confidential and remains the sole property of CoverTel. Such information is to be held in confidence and safe keeping by the Customer for the sole use of the Customer in performing obligations and receiving benefits pursuant to the contract.
- 9.2 The provision of Supplies will not confer any right upon the Customer to use any intellectual property of CoverTel or any of its suppliers.
- 10 Termination**
- 10.1 CoverTel may at any time for no disclosed reason;
- 10.1.1 decline any order for Supplies and/or cancel any order previously accepted but as yet supplied; and/or
- 10.1.2 stop supplying Supplies to a Customer.
- 11 Copyright**  
The Customer shall not remove, and shall use its best endeavors to ensure that no third party shall remove any copyright notice from the goods, or any information supplied by CoverTel to the Customer, as it existed at the time of delivery of such goods or information; and shall not copy in whole or in part the goods, or information provided by CoverTel, without express consent in writing by CoverTel.
- 12 Forum**  
The contract shall be governed by the laws applicable in the Victoria and any dispute shall be heard or determined in the Victoria unless the parties otherwise agree.
- 13 General Provisions**
- 13.1 The failure by CoverTel to exercise or enforce any rights detailed in these Supply Terms shall not be deemed as a waiver of any such right and does not bar the exercise or enforcement of such right at any time or time thereafter.
- 13.2 CoverTel will not be liable to the Customer or to any third party for any non-performance or delay in the performance of its obligations under these Supply Terms, if a Force Majeure causes the non-performance or delay, and CoverTel gives the Customer notice of it. In no event will this provision affect the Customer's obligation to make payments to CoverTel except in respect of Supplies that CoverTel is unable to provide, until they can be provided. For purposes of this clause 13.2 "Force Majeure" means a circumstance beyond CoverTel's reasonable control which results in CoverTel being unable to observe or perform on time any obligation under these Supply Terms. Those circumstances include acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution and strikes.
- 13.3 If any license of consent of any Government or authority is required for the importation and/or acquisition of and/or to use any supplies, the Customer shall obtain the same at its own expense and produce evidence of same to CoverTel on request.
- 13.4 These Supply terms and any order made under it are governed by and will be interpreted according to the laws of Victoria. CoverTel and the Customer consent and submit to the jurisdiction of the courts of Victoria.
- 13.5 If any provision of these Supply Terms proves to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason, that provision is deemed omitted without affecting the remaining provisions, and the remaining provisions of these Supply Terms shall continue in full force and effect.
- 13.6 Any notice required or contemplated by these Supply Terms is deemed to have been properly given if it is in writing, properly addressed and delivered personally, or mailed postage prepaid or by fax to the Customer's principle place of business or last known address.
- 13.7 In these Terms and any Quotation, unless the contrary intention appears;
- 13.7.1 clause headings are for ease of reference only and are not relevant to interpretation;
- 13.7.2 a reference to a clause number includes a reference to its sub clauses;
- 13.7.3 words in the singular include the plural and vice versa;
- 13.7.4 words importing a gender include any other gender;
- 13.7.5 a reference to a person includes bodies corporate and unincorporated associations and partnerships;
- 13.7.6 where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings, and;
- 13.7.7 monetary references are references to Australian Currency.