



## GENERAL TERMS AND CONDITIONS OF TRADE

### 1. Application of these Conditions of Trade

- (a) Unless otherwise agreed in writing, these Conditions of Trade apply to all Products supplied (or to be supplied) by or on behalf of Mondo Electronics to the Customer, and are taken to be incorporated in and form part of this Contract.
- (b) This Contract constitutes the whole contract and understanding between Mondo Electronics and the Customer in relation to the relevant Products.
- (c) If there is any inconsistency between the terms set out in a Purchase Order or other document issued by or on behalf of the Customer to Mondo Electronics (on the one hand) and the terms of these Conditions of Trade (on the other hand), then the terms of these Conditions of Trade prevail to the extent of the inconsistency.
- (d) The Customer is taken to have acknowledged and accepted these Conditions of Trade by doing any one or more of the following:
  - (i) submitting a Credit Application;
  - (ii) ordering Products from Mondo Electronics;
  - (iii) taking delivery of Products;
  - (iv) making and/or facilitating payment to Mondo Electronics in respect of ordered Products; or
  - (v) by agreeing to any other document provided by Mondo Electronics that incorporates these Conditions of Trade by reference.

### 2. Prior contracts terminated

This Contract terminates and supersedes all prior contracts between the parties in respect of the sale and purchase of Products, however this clause does not affect the Customer's obligation to pay Mondo Electronics any amounts outstanding under, or Mondo Electronics' rights in respect of any breach by the Customer of, any prior contracts between the parties.

### 3. Product ordering process

#### 3.1 Quotes

- (a) If the Customer wishes to purchase Products from Mondo Electronics, then the Customer must request a Quote from Mondo Electronics.
- (b) Any Quote given by Mondo Electronics to the Customer:
  - (i) is subject to change or withdrawal by Mondo Electronics giving written notice to the Customer at any time before a Purchase Order relating to the Quote is accepted (or taken to have been accepted) by Mondo Electronics in accordance with clause 3.3; and
  - (ii) unless Mondo Electronics states otherwise in the Quote, will be taken to have been rejected by the Customer if the Customer does not within 30 days after the date of the Quote submit to Mondo Electronics a Purchase Order corresponding to the Quote.

### 3.2 Purchase Orders

- (a) The Customer must order Products from Mondo Electronics by submitting Purchase Orders to Mondo Electronics.
- (b) Once submitted, a Purchase Order cannot be cancelled or varied, or delivery deferred, without Mondo Electronics' prior written consent.
- (c) Each Purchase Order must be for:
  - (i) a minimum quantity of Products within each SKU referred to in the Purchase Order that equates to a total Price of at least \$100 (exclusive of GST) for that SKU; and
  - (ii) a minimum quantity of Products across all SKUs in the Purchase Order that equates to a total Price of at least \$250 (exclusive of GST).
- (d) If Mondo Electronics receives a Purchase Order, then Mondo Electronics may send the Customer an Order Acknowledgement.

### 3.3 Acceptance of Purchase Orders

- (a) Mondo Electronics is not bound by a Purchase Order unless and until it accepts (or is taken to have accepted) the Purchase Order under clause 3.3(b).
- (b) A Purchase Order will only be:
  - (i) accepted by Mondo Electronics, if Mondo Electronics notifies the Customer in writing of that acceptance; or
  - (ii) taken to have been accepted by Mondo Electronics, if Mondo Electronics gives the Customer an Order Acknowledgement in response to the Purchase Order, but does not (within 2 Business Days after the Order Acknowledgement was given) notify the Customer that Mondo Electronics rejects the Purchase Order.
- (c) To the maximum extent permitted by law, Mondo Electronics is not obliged to accept any Purchase Order.
- (d) Once Mondo Electronics accepts (or is taken to have accepted) a Purchase Order, the parties must comply with that Purchase Order in accordance with this Contract.

## 4. Price

### 4.1 Price as quoted

Subject to the other provisions of this clause 4 and clause 9, all prices payable by the Customer to Mondo Electronics for Products supplied (or to be supplied) by Mondo Electronics to the Customer (Prices) are as set out in the relevant Quote provided under clause 3.1, or if not specified in that Quote, as notified to the Customer by Mondo Electronics from time to time.

### 4.2 Price variations

- (a) Any Price or other terms specified in a Quote or Purchase Order may be varied by Mondo Electronics

notifying the Customer at any time before the Purchase Order is accepted (or taken to have been accepted) by Mondo Electronics.

(b) If under clause 4.2(a) Mondo Electronics varies the Price or other terms specified in a Purchase Order, then the Customer will be given an opportunity to either confirm or reject that Purchase Order.

(c) All Products ordered after notification of any Price variation under clause 4.2(a) will be subject to that variation, and any submission by the Customer of a Purchase Order (or any confirmation of a Purchase Order under clause 4.2(b)) will be taken to be an acceptance by the Customer of the Price variation.

#### 4.3 Additional charges

(a) Unless otherwise expressly stated in this Contract, Prices do not include any of the following in relation to the sale and/or delivery of the Products:

(i) further to the requirements of clause 14, any taxes (other than income tax), duties, levies and other government fees and charges (**Taxes**);

(ii) any delivery, packaging, freight, insurance, installation and/or commissioning costs, expenses or surcharges incurred by Mondo Electronics (**Delivery Charges**);

(iii) any bank, Escrow Agent Facility, credit card or other merchant or financial institution charges, fees, levies or other costs incurred by Mondo Electronics (**Bank Charges**).

(b) Unless otherwise expressly stated in this Contract, the amount of any applicable Taxes, Delivery Charges and Bank Charges will be added to the Price of the relevant Products, and must be paid by the Customer to Mondo Electronics, in the same way and at the same time as the Price for those Products is payable under or in connection with this Contract.

### 5. Invoicing and Terms of Payment

#### 5.1 Invoicing

For each delivery of Products, Mondo Electronics must provide an invoice to the Customer for the amount payable under this Contract for those Products (**Invoice**).

#### 5.2 Terms of payment

(a) The Customer must pay Mondo Electronics the full amount for each delivery of Products on receipt of the Invoice relating to those Products, except to the extent clause 5.2(b) or 5.2(e) applies.

(b) If Mondo Electronics supplies Products under this Contract at a time when a Credit Application has been accepted with the Customer and is still in force, then to the extent that the sum of all amounts (including the amount of the Invoice relating to those Products) owing by the Customer to Mondo Electronics at that time (whether under this Contract or otherwise and whether or not actually payable at that time) does not exceed the Approved Credit Limit, the Customer must pay Mondo Electronics the full amount of the Invoice relating to those Products within 30 days after the date of that Invoice.

(c) Clause 5.2(b) does not apply if clause 9.2(b) applies or for so long as the Customer or the Guarantor (if any) is the subject of an Event of Default.

(d) Subject to clause 5.2(e), each payment under this clause 5 must be made without set-off or counterclaim and by cash, bank cheque, electronic

funds transfer, credit card or by any other method specified in the relevant Invoice.

(e) If Products are to be delivered to the Customer at a location outside Australia, then:

(i) the Customer must pay Mondo Electronics for the Products in advance, prior to delivery, by electronic funds transfer or through an Escrow Agent Facility; and

(ii) the Bank Charges payable by the Customer under clause 4.3 will include (possibly among other charges) any fees associated with use of an Escrow Agent Facility and, where the total Price of the Products is less than US\$5000, an additional fee of US\$35.

### 6. Delivery

#### 6.1 Method of delivery

(a) Delivery of the Products will be effected by:

(i) Mondo Electronics arranging delivery of the Products to the Delivery Address; or

(ii) if specified in this Contract, the Customer or its carrier collecting the Products from the Delivery Address (unless Mondo Electronics nominates an alternative address, in which case the Products must be collected from that alternative address).

(b) Mondo Electronics will be taken to have delivered Products under clause 6.1(a)(i) once the Products have been placed at the disposal of the Customer on the arriving means of transport ready for unloading at the Delivery Address. The Customer must comply with the reasonable directions of Mondo Electronics or its carrier in relation to the delivery and unloading of the Products at the Delivery Address.

(c) Mondo Electronics will be taken to have delivered Products under clause 6.1(a)(ii) once the Products have been placed at the disposal of the Customer at the Delivery Address (or alternative address) and the Customer will be responsible for loading the Products onto the collecting vehicle. The Customer must, and must cause its carrier to, comply with the reasonable directions of Mondo Electronics (or its agent) in relation to the collection and loading of the Products at the Delivery Address (or alternative address).

#### 6.2 Other delivery requirements

(a) If the Customer does not or is unable to take delivery of the Products when Mondo Electronics is endeavouring to do so under clause 6.1, then Mondo Electronics may charge the Customer a reasonable fee for redelivery and/or storage of the Products and the Customer must pay that charge to Mondo Electronics on demand.

(b) Delivery may be by separate instalments. Each separate instalment must be accepted and fully paid for by the Customer, notwithstanding any late delivery or any non-delivery of any other instalment.

(c) Any times quoted for delivery are estimates only. Mondo Electronics will not be liable to the Customer for any delay outside the control of Mondo Electronics or any other reasonable delay in delivery of the Products. Any delay in delivery does not entitle the Customer to terminate this Contract.

(d) The Customer must ensure that its duly authorised representative signs Mondo Electronics' copy of the delivery docket accompanying each delivery of Products, as confirmation that the Products specified in it have been delivered.

## 7. Risk

Risk in each Product will pass to the Customer at the time delivery to the Customer occurs (or is taken to have occurred) in accordance with clause 6.1.

## 8. Title and PPSA

### 8.1 Interpretation

Capitalised terms used in this clause 8 that are not otherwise defined in these Conditions of Trade have the meaning given in the PPSA.

### 8.2 Retention of title and Security Interest

(a) The Customer agrees that legal title and property in Products is retained by Mondo Electronics (and that Mondo Electronics retains a Security Interest in those Products and all Proceeds relating to those Products) until:

(i) payment is received in cleared funds from the Customer of all sums owing to Mondo Electronics in relation to those Products; and

(ii) the Customer has complied with all obligations under this Contract (including those relating to any Credit Application) in relation to those Products.

(b) The Customer acknowledges and agrees that:

(i) the Security Interest granted to Mondo Electronics is also a Purchase Money Security Interest;

(ii) the Customer consents to the registration of that Security Interest on the Personal Property Securities Register; and

(iii) this Contract constitutes a Security Agreement under the PPSA and secures Mondo Electronics' right to receive the Price of all Products sold under this Contract and all other amounts from time to time owing by the Customer to Mondo Electronics under this Contract or any other contract.

### 8.3 Customer's obligations

(a) The Customer must promptly do anything required by Mondo Electronics to ensure that the relevant Security Interest is a perfected Security Interest, has priority over all other Security Interests in the relevant Products and any Proceeds relating to those Products, and is otherwise enforceable.

(b) Until legal title and property in any Product has passed to the Customer, the Customer must:

(i) ensure that Product is kept separate from other goods and is readily identifiable as being supplied by Mondo Electronics, unless and until, in the ordinary course of the Customer's business, the Product is either used or resold by the Customer or becomes part of other goods of the Customer for use or resale by the Customer;

(ii) where that Product is either resold by the Customer or becomes part of other goods which are then sold by the Customer, hold such part of the proceeds of any such sale as represents the amount payable by the Customer to Mondo Electronics for that Product in a separate identifiable account as the beneficial property of Mondo Electronics, and the Customer must pay that amount to Mondo Electronics on demand; and

(iii) not grant or create (or purport to grant or create) any Security Interest, lien or other encumbrance over or in connection with or otherwise purport to offer or use as security or deal with in any other way, that Product or any other Personal Property that Mondo Electronics has an interest in (other than any Security Interests, liens or other encumbrances granted or created in favour of Mondo Electronics), provided that this clause 8.3(b)(iii) does not prevent the Customer from selling that Product in the ordinary course of the Customer's business.

### 8.4 Mondo Electronics' rights

(a) If the Customer fails to pay any amount to Mondo Electronics in relation to any Products by the due date required under this Contract for that payment, then Mondo Electronics may (without limiting any of its other rights and remedies) do any one or more of the following:

(i) recover those Products, any Proceeds relating to those Products and any other Products in which title has not yet passed to the Customer;

(ii) retain for its own benefit absolutely any of those Products, any Proceeds relating to those Products and any other Products in which title has not yet passed to the Customer; and

(iii) resell any of those Products and any other Products in which title has not yet passed to the Customer and apply the proceeds of sale against amounts owed by the Customer to Mondo Electronics under this Contract.

(b) In exercising any of its rights under clause 8.4(a) and in addition to any rights Mondo Electronics may have under Chapter 4 of the PPSA, Mondo Electronics may, without notice, enter any premises where it suspects the relevant Products and/or any Proceeds in respect of those Products may be located and remove them without committing a trespass, and the Customer authorises Mondo Electronics to enter on to those premises to take possession of those Products and/or Proceeds for that purpose at any time.

### 8.5 Other requirements

(a) The Customer agrees to waive any right to receive any notice or statement from Mondo Electronics under the PPSA, except to the extent that the giving of that notice or statement is required by the PPSA and cannot be excluded by agreement.

(b) To the maximum extent permitted by law:

(i) for the purpose of sections 115(1) and 115(7) of the PPSA:

(A) Mondo Electronics need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) or 135; and

(B) sections 142 and 143 are excluded;

(ii) for the purpose of section 115(7) of the PPSA, the Customer need not comply with sections 132 and 137(3); and

(iii) if the PPSA is amended after the date of this Contract to permit Mondo Electronics and the Customer to agree to not comply with or to exclude

other provisions of the PPSA, then Mondo Electronics may notify the Customer that any of those provisions are excluded, or that Mondo Electronics need not comply with any of those provisions, as notified to the Customer by Mondo Electronics, and that notice will be binding on the Customer.

(c) If Mondo Electronics exercises a right, power or remedy in connection with this Contract, then that exercise is taken not to be an exercise of a right, power or remedy under the PPSA, unless Mondo Electronics states otherwise at the time of exercise. However, this clause 8.5(c) does not apply to a right, power or remedy that can only be exercised under the PPSA.

(d) The Security Interests arising under this clause 8 attach to the relevant Products when the Customer obtains possession of those Products. The parties confirm that they have not agreed that any Security Interest arising under this clause 8 attaches at any later time.

(e) All fees and costs associated with the exercise of Mondo Electronics' rights under this clause 8 must be paid or reimbursed by the Customer to Mondo Electronics (or as directed by Mondo Electronics) on demand.

## 9. Default and termination

### 9.1 Default notice

Subject to clause 9.3, if an Event of Default, other than an Insolvency Event, occurs in relation to a party (**Relevant Party**), any other party may give a notice (**Default Notice**) to the Relevant Party specifying the Event of Default and requiring the Relevant Party to remedy the default within 10 Business Days after the Default Notice is given to the Relevant Party.

### 9.2 Termination notice

Subject to clause 9.3, if a party (**Defaulting Party**):

(a) receives a Default Notice and does not comply with the notice within the relevant period referred to in clause 9.1;

(b) receives a Default Notice on 2 or more occasions in any period of 12 months; or

(c) is the subject of an Insolvency Event, then any other party, without limiting its other rights and remedies, may terminate this Contract by giving to the Defaulting Party notice with immediate effect (**Termination Notice**). A party's right to terminate this Contract under clause 9.2(c) on account of another party being the subject of an Insolvency Event is subject to the Ipsa Facto Amendments, if the same are applicable.

### 9.3 Default by the Customer or Guarantor

(a) If the Customer or a Guarantor (if any) fails to pay to Mondo Electronics any amount as and when due under this Contract, then Mondo Electronics may (at its sole discretion and without limiting any of its other rights and remedies):

(i) suspend performance of its obligations under or in connection with this Contract until the amount outstanding is paid in full; and

(ii) charge interest on the amount outstanding at the Prescribed Rate, calculated from and including the date on which the relevant payment became due until but excluding the date on which the relevant payment is made, which interest is payable by the

Customer to Mondo Electronics on demand.

(b) Neither a Default Notice nor a Termination Notice can be issued by the Customer, if the Guarantor (if any) is the Relevant Party or Defaulting Party.

(c) Neither a Default Notice nor a Termination Notice can be issued by the Guarantor (if any), if the Customer is the Relevant Party or Defaulting Party.

## 10. Consequences of termination

### 10.1 Consequences generally

On termination of this Contract, this Contract is at an end as to its future operation except for the enforcement of any right or claim that arises on, or has arisen before, the termination.

### 10.2 Mondo Electronics' rights on termination

(a) On termination of this Contract, Mondo Electronics may exercise any one or more of the following rights (in addition to any other rights it may have under this Contract or at law):

(i) suspend deliveries of further Products to the Customer;

(ii) withdraw any credit facilities which may have been extended to the Customer and require immediate payment of all moneys owed to Mondo Electronics by the Customer from time to time (and the Customer must comply with that requirement);

(iii) issue an Invoice for Products ordered by the Customer but not delivered and demand immediate payment of that Invoice (and the Customer must comply with that demand); and

(iv) exercise any rights that Mondo Electronics has under clause 8.4, the PPSA and any other applicable law.

(b) On termination of this Contract and without limiting Mondo Electronics' other rights and remedies, the Customer 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 Mondo Electronics in connection with the termination, which fees, costs and charges must be paid by the Customer to Mondo Electronics on demand.

### 10.3 Obligations surviving termination

Despite any other provision of this Contract, this clause 10, clauses 4, 5, 7, 8, 11, 12, 14, 15 and 16 of these Conditions of Trade and the terms of any guarantee and indemnity set out in any Credit Application, survive termination of this Contract.

## 11. Defects and return of Products

### 11.1 Inspection by Customer

(a) The Customer must inspect Products on delivery and must notify Mondo Electronics within 5 Business Days after delivery setting out details and evidence of any alleged defect, shortage in quantity, damage or other failure to comply with this Contract.

(b) If the Customer does not notify Mondo Electronics of any issues with any Product within this 5 Business Day period, then, subject to clause 12.3 and to the maximum extent permitted by law, that Product will be taken to comply with this Contract and be free from any defect or damage.

## 11.2 Manufacturers' warranties

(a) Mondo Electronics and the Customer acknowledge and agree that if a Product is defective and that Product was not manufactured by Mondo Electronics, then the Customer may be entitled to the benefit of any express warranty provided by the Manufacturer of that Product (**Manufacturer's Warranty**).

(b) If the Customer or Mondo Electronics wishes to make a claim under a Manufacturer's Warranty, then the Customer must comply with the terms of the Manufacturer's Warranty and any reasonable directions of Mondo Electronics in relation to the claim.

(c) Mondo Electronics does not make any representation or warranty as to whether the Customer will be able to make a successful claim under any Manufacturer's Warranty, and subject to clause 12, Mondo Electronics is not liable to the extent that any such claim is unsuccessful.

## 11.3 Product returns

(a) Subject to clause 12.3, the Customer must, prior to returning any Products to Mondo Electronics (or any other location as required by Mondo Electronics) obtain Mondo Electronics' written authorisation in respect of the return of those Products. This clause 11.3(a) applies to the maximum extent permitted by law.

(b) For the purposes of clause 11.3(a), Mondo Electronics reserves the right to inspect any Products before authorising or declining to authorise their return.

(c) If any Products are returned to Mondo Electronics:

(i) without prior authorisation by Mondo Electronics under this clause 11.3 on the basis that they are alleged by the Customer to be defective or not otherwise in compliance with this Contract; and

(ii) the Products are later found by Mondo Electronics (or the Manufacturer) not to be defective and are otherwise in compliance with this Contract, then Mondo Electronics may charge the Customer, and the Customer must pay, any freight and storage costs incurred by Mondo Electronics and an administration fee in the amount reasonably specified by Mondo Electronics.

(d) Subject to clause 12.3, Products must be returned to Mondo Electronics (or any other location as required by Mondo Electronics) in their original packaging, in the same condition as when initially supplied by Mondo Electronics, and otherwise in accordance with any reasonable directions specified by Mondo Electronics.

## 11.4 Refund or replacement

If any Products are returned by the Customer under clause 11.3, the Products are defective (or otherwise not in compliance with this Contract) and the Customer complies with its obligations under clause 11.3(d), then Mondo Electronics will:

(a) at its option either refund to the Customer the Price paid by the Customer for those Products or deliver replacement Products to the Customer; and

(b) reimburse the Customer for any reasonable freight costs incurred by Customer in returning the Products to Mondo Electronics (or any other location as required by Mondo Electronics), and this will be the Customer's sole and exclusive remedy in relation to

those Products. This clause 11.4 is subject to clause 12.3 and in any case applies to the maximum extent permitted by law.

## 12. Liability

### 12.1 Limitations on liability

Subject to this clause 12.3 and to the maximum extent permitted by law, Mondo Electronics is not liable to the Customer or to any other person for:

(a) any loss or damage of any kind caused by or resulting from any act or omission of the Customer or any of its employees, agents or contractors; or

(b) any loss of profits or anticipated profits, economic loss, loss of business opportunity, loss or damage resulting from wasted management time or any special, incidental, indirect or other consequential loss or damage, even if Mondo Electronics was notified of the possibility of that potential loss or damage and irrespective of whether it is due to negligence, breach of contract or any other cause.

### 12.2 Exclusion of implied warranties

Any representation, warranty, condition or undertaking that would be implied in this Contract by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.

### 12.3 Non-excludable statutory rights

If any Products supplied under this Contract are supplied to the Customer as a "consumer" of goods or services within the meaning of that term in the Australian Consumer Law or any relevant State legislation, the Customer will have the benefit of certain non-excludable rights and remedies in respect of the Products. Nothing in this Contract excludes or restricts or modifies any non-excludable condition, warranty, right or remedy which pursuant to the Australian Consumer Law or similar legislation is so conferred. If the Products supplied are products not ordinarily acquired for personal, domestic or household use or consumption, under section 64A of the Australian Consumer Law, Mondo Electronics limits its liability, at the option of Mondo Electronics, to:

(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.

## 13. Force Majeure

Subject to clause 12.3, where any failure or delay by Mondo Electronics in the performance of its obligations under this Contract is caused, directly or indirectly, by a Force Majeure Event, Mondo Electronics is not liable for that failure or delay and Mondo Electronics' obligations under this 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.

## 14. GST

### 14.1 Definitions

In this clause 14:

(a) the expressions **Consideration**, **Input Tax Credit**, **Recipient**, **Supply**, **Tax Invoice** and **Taxable Supply** have the meanings given to those expressions in the GST Act; and

(b) **Supplier** means any party treated by the GST Act as making a Supply under or in connection with this Contract.

### 14.2 Consideration is GST exclusive

Unless otherwise expressly stated, all Prices or other sums payable under or in connection with this Contract are exclusive of GST

### 14.3 Payment of GST

(a) If GST is imposed on any Supply made under or in connection with this Contract, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the

Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply.

(b) Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Contract.

## 15. General

In this Contract:

(a) Headings are used for convenience only and do not affect the interpretation of this Contract.

(b) Any notice to be given by Mondo Electronics to the Customer under this Contract may be given personally, by post, by fax or by email.

(c) Words importing natural persons include partnerships, bodies corporate, associations, governments, and governmental and local authorities and agencies.

(d) A reference to either Mondo Electronics, the Customer or the Guarantor includes their respective executors, administrators, successors and permitted assigns.

(e) Wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)".

(f) If:

(i) a provision of this Contract is void, voidable, unenforceable or illegal (including by virtue of it being deemed an 'unfair term' for the purposes of Part 2-3 of the Australian Consumer Law), but would not be void or voidable or unenforceable or illegal if it were read down, and it is capable of being read down, it must be read down accordingly; and

(ii) despite clause 15(f)(i) above, a provision of this agreement is still void, voidable, unenforceable or illegal:

(A) if the provision would not be void, voidable, unenforceable or illegal if a word or words (as the case may be) were omitted, that word or those words are hereby severed; and

(B) in any other case, the whole provision is hereby severed, and the remainder of this Contract has full force and effect.

(g) A failure or delay by Mondo Electronics in exercising any right conferred on Mondo Electronics under this Contract does not operate as a waiver of the right. Any waiver by Mondo Electronics must be in writing.

(h) The Customer must not transfer, assign, create an interest in or deal in any other way with any of its rights under this Contract without the prior written consent of Mondo Electronics.

(i) An obligation, covenant, warranty or representation given or entered into by more than one person binds them jointly and severally.

(j) This Contract is governed by and must be construed in accordance with the laws in force in Western Australia. The Customer 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 this Contract.

(k) The United Nations Convention on Contracts for the International Sale of Goods and associated legislation is excluded from this Contract.

(l) If the Customer enters into this Contract in the capacity as trustee of a trust (whether or not disclosed to Mondo Electronics), then:

(i) each reference to the Customer is a reference to it in that capacity and its own personal capacity; and

(ii) the Customer warrants to Mondo Electronics that:

(A) it is the only trustee of the trust;

(B) no action has been taken or proposed to remove it as trustee of the trust or terminate the trust;

(C) it has power under the trust deed to enter into and observe its obligations under this Contract and it has entered into them in its capacity as trustee of the trust and for the benefit of the beneficiaries of the trust;

(D) it has a right to be fully indemnified out of the trust fund in respect of obligations incurred by it under this Contract;

(E) it is not in default under the terms of the trust; and

(F) the Customer has complied with its obligations in connection with the trust, including obtaining any beneficiaries' or other person's consent or approval required under the trust before the Customer may enter into this Contract.

(m) A reference to a statute, regulation, or provision of a statute or regulation ("statutory provision") includes a reference to:

(i) that statutory provision as amended or re-enacted from time to time; and

(ii) a statute, regulation or provision enacted in replacement of that statutory provision.

## 16. Definitions

In this Contract:

**\$** means Australian dollars unless otherwise specified in this Contract;

**Approved Credit Limit** means the dollar amount specified by Mondo Electronics in its notice to the Customer accepting any Credit Application, which dollar amount may be varied from time to time by Mondo Electronics by giving written notice to the Customer;

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (as amended),

**Bank Charges** has the meaning set out in clause 4.3(a)(iii);

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Western Australia;

**Change of Control** means, in relation to a body corporate, the occurrence of an event or circumstance where a person or entity who is not presently able to do any of the following things becomes able to do one of the following things (whether directly or indirectly or through one or more intervening persons, entities, companies or trusts):

(a) control the composition of more than one half of the body's board of directors;

(b) be in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the members of the body; or

(c) hold or have a beneficial interest in more than one half of the issued share capital of the body;

**Contract** means the contract between or involving the Customer and Mondo Electronics for the supply of Products by Mondo Electronics to the Customer, to which these Conditions of Trade apply under clause 1, and is taken to incorporate each Quote given by Mondo Electronics to the Customer for the supply of Products (to the extent that Quote is accepted by the Customer), each Purchase Order received from the Customer (to the extent that Purchase Order is accepted or taken to

have been accepted by Mondo Electronics), each Invoice issued by Mondo Electronics to the Customer and any Credit Application accepted by Mondo Electronics;

**Conditions of Trade** means these "General Terms and Conditions of Trade";

**Controller** means, in relation to a person:

- (a) a receiver, receiver and manager, administrator or liquidator (whether provisional or otherwise) of that person or that person's property;
- (b) anyone else who (whether or not as agent for the person) is in possession, or has control, of that person's property to enforce an encumbrance;

**Corporations Act** means the *Corporations Act 2001 (Cth)*;

**Credit Application** means any "Mondo Electronics Credit Application" as submitted by the Customer to Mondo Electronics;

**Customer** means the person specified in (or contemplated by) this Contract as being the purchaser of the Products;

**Delivery Address** means the address for delivery of the Products as stated in the relevant Purchase Order;

**Escrow Agent Facility** means a payment facility approved by Mondo Electronics involving payment of funds by the Customer to an escrow agent or other similar person who holds those funds on trust, and releases those funds to Mondo Electronics on delivery of the relevant Products to the Customer and/or on satisfaction of one or more other conditions;

**Event of Default** means, in relation to a party to this Contract, the occurrence of any one or more of the following events or circumstances:

- (a) the party fails to comply with any of its obligations under this Contract;
- (b) an Insolvency Event occurs in relation to the party;
- (c) a Change of Control occurs in relation to the party, other than with the consent of each other party;
- (d) a notice of deregistration of the party is given under sections 601AA(5) or 601AB(5) of the Corporations Act;
- (e) the party fails to pay by the due date any amount due and payable by it under this Contract;
- (f) the party becomes unable to perform all of its obligations and take all actions contemplated under this Contract;
- (g) the party ceases or threatens to cease to carry on business or a substantial part of it; and
- (h) in the case of the Customer, if any representation or warranty provided in any Credit Application is or becomes incomplete, untrue, incorrect, misleading or deceptive or the Customer breaches any of its obligations under any Credit Application.

**Force Majeure Event** an event or occurrence that is beyond the reasonable control of Mondo Electronics, including the failure or inability of any Manufacturer to supply any goods or services required by Mondo Electronics in order to supply Products to the Customer;

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

**Guarantor** means the person(s) (if any) specified as such in a Credit Application;

**Insolvency Event** means, in relation to a party to this Contract, any one or more of the following events or circumstances occurring in relation to the party:

- (a) being in liquidation or provisional liquidation or under administration;
- (b) having a Controller or analogous person appointed to it or any of its property;
- (c) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) being unable to pay its debts or being otherwise insolvent;
- (e) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;
- (f) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; and

(g) any analogous event or circumstance under the laws of any jurisdiction;

**Invoice** has the meaning given in clause 5.1;

**Ipsa Facto Amendments** means:

- (a) the amendments to the Corporations Act set out in Part 2 of Schedule 1 the *Treasury Laws Amendment (2017 Enterprise Incentives No.2) Act 2017 (Cth)*; and
- (b) any regulations, declarations or legislative instruments, prescribed, made or declared pursuant to sections 415D, 434J or 451E of the Corporations Act.

**Manufacturer** means the manufacturer, distributor or supplier of Products and from which Mondo Electronics sources Products for the Customer (and other customers of Mondo Electronics);

**Manufacturer's Warranty** has the meaning given in clause 11.2(a);

**Mondo Electronics** means Mondo Electronics 2000 Pty Ltd ABN 96 093 557 254;

**Order Acknowledgement** means any written acknowledgement sent by Mondo Electronics to the Customer acknowledging receipt of a Purchase Order from the Customer;

**Price** means the purchase price payable by the Customer to Mondo Electronics for a Product;

**Prescribed Rate** means 2% above the percentage (or maximum percentage) specified by the Reserve Bank of Australia as the Cash Rate Target, expressed as a per cent per annum, at the time an Invoice is issued;

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

**Products** means any products supplied (or to be supplied) by Mondo Electronics to the Customer;

**Purchase Order** means an order for Products that is in the form specified by Mondo Electronics from time to time, whether written, verbal or otherwise;

**Quote** means a written quotation given by Mondo Electronics to the customer for the supply of Products to the Customer; and

**SKU** means stock keeping unit.