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## TERMS AND CONDITIONS

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THESE TERMS AND CONDITIONS GOVERN THE SALE OF ALL PRODUCTS AND SERVICES ("PRODUCTS") BY CREATIVE POWER TECHNOLOGIES P/L ("CREATIVE") AND APPLY NOTWITHSTANDING ANY CONFLICTING, CONTRARY OR ADDITIONAL TERMS AND CONDITIONS IN ANY PURCHASE ORDER OR OTHER DOCUMENT OR COMMUNICATION ("PURCHASE ORDER") FROM A CUSTOMER. THESE TERMS AND CONDITIONS MAY ONLY BE WAIVED OR MODIFIED IN A WRITTEN AGREEMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF CREATIVE. NEITHER CREATIVE'S ACKNOWLEDGEMENT OF A PURCHASE ORDER NOR CREATIVE'S FAILURE TO OBJECT TO CONFLICTING, CONTRARY OR ADDITIONAL TERMS AND CONDITIONS IN A PURCHASE ORDER SHALL BE DEEMED AN ACCEPTANCE OF SUCH TERMS AND CONDITIONS OR A WAIVER OF THE PROVISIONS HEREOF.

- 1. ORDERS.** Orders shall be initiated by a Customer issuing a Purchase Order or otherwise placing an order by electronic means acceptable to Creative (E-mail or Facsimile). Orders shall identify the Products, unit quantities, part numbers, descriptions, applicable prices and requested delivery dates. All orders are subject to acceptance by Creative. No orders for standard Products ("Standard Products") may be cancelled or rescheduled without Creative's consent, which consent may be given by Creative in its sole discretion. Creative reserves the right to allocate sales of Products among its customers in its sole discretion. Notwithstanding any provision of these Terms and Conditions to the contrary, orders for special, custom, value-added and other non-standard Products, including Products to be assembled in kit form, Products of manufacturers which do not appear on Creative's line card, work-in-process and Products otherwise identified by Creative as "NCNR" or "Non-Cancellable and Non-Returnable" ("Non-Standard Products") shall be non-cancellable and non-returnable.
- 2. PRICES.** Prices shall be as specified by Creative and shall be applicable for the period specified in Creative's quote. If no period is specified, prices shall be applicable for thirty (30) days. Notwithstanding the foregoing, prices shall be subject to increase in the event of an increase in Creative's costs or other circumstances beyond Creative's reasonable control. Prices are exclusive of taxes, impositions and other charges, including: sales, use, excise, GST, value added and similar taxes or charges imposed by any government authority, international shipping charges, forwarding agent's and broker's fees, consular fees, document fees and import duties. If Creative shall be liable for or shall pay any of the foregoing, same shall be paid by Customer to Creative in addition to the price of the Products.
- 3. TERMS OF PAYMENT.** Payment shall be net thirty (30) days from date of invoice or as otherwise specified by Creative. Customer agrees to pay the entire net amount of each invoice from Creative pursuant to the terms of each such invoice without offset or deduction. Orders are subject to credit approval by Creative, which may in its sole discretion at any time change the terms of Customer's credit, require payment in cash, bank wire transfer or by bank cheque and/or require payment of any or all amounts due or to become due for Customer's order before shipment of any or all of the Products. If Creative believes in good faith that Customer's ability to make payments may be impaired or if Customer shall fail to pay any invoice when due, Creative may suspend delivery of any order or any remaining balance thereof until such payment is made or cancel any order or any remaining balance thereof, and Customer shall remain liable to pay for any Products already shipped and all Non-Standard Products ordered by Customer. Cheques are accepted subject to collection and the date of collection shall be deemed the date of payment. Any cheque received from Customer may be applied by Creative against any obligation owing from Customer to Creative, regardless of any statement appearing on or referring to such cheque, without discharging Customer's liability for any additional amounts owing from Customer to Creative, and the acceptance by Creative of such cheque shall not constitute a waiver of Creative's right to pursue the collection of any remaining balance. Customer shall pay interest on any invoice not paid when due from the due date to the date of payment at the rate of 1.5% percent per month or such lower rate as may be the maximum allowable by law. If Customer fails to make payment when due, Creative may pursue any legal or equitable remedies, in which event Creative shall be entitled to reimbursement for costs of collection and reasonable attorneys fees.
- 4. DELIVERY AND TITLE.** All shipments by Creative are F.O.B. point of origin and all transportation charges shall be paid by Customer in addition to the price of the Products. Subject to Creative's right of stoppage in transit, delivery of the Products to the carrier shall constitute delivery to Customer and risk of loss shall thereupon pass to Customer. Selection of the carrier and delivery route shall be made by Creative unless specified by Customer. Creative shall use reasonable efforts to initiate shipment and schedule delivery as close as possible to Customer's requested delivery dates. Customer acknowledges that delivery dates provided by Creative are estimates only and that Creative is not liable for failure to deliver on such dates. Creative reserves the right to make deliveries in installments. Delivery of a quantity that varies from the quantity specified shall not relieve Customer of the obligation to accept delivery and pay for the Products delivered. Delay in delivery of one installment shall not entitle Customer to cancel other installments.
- 5. RETENTION OF TITLE:** Unless otherwise agreed, risk shall pass to the customer upon delivery. Notwithstanding that risk may have passed to the customer, property and title in any Products sold by Creative shall remain with Creative until receipt by Creative of the purchase price of the Products as invoiced by Creative. Until such time as property and title in the Products passes to the customer, the customer shall hold the Products as bailee for Creative. If the customer sells the Products to a third party prior to paying Creative the purchase price thereof, Creative shall be entitled to and be paid so much of the price paid by that third party as is necessary to satisfy the monies owing to Creative. The customer shall not otherwise in any way part with possession or dispose of the Products until payment has been received by Creative for those Products. The customer shall at all times keep the Products insured and maintain the Products in a safe and marketable condition and in a manner so that the Products are readily identifiable. In the event the customer defaults in payment of any monies owing to Creative or any term hereof or of any contract between the parties or any credit facility is terminated by Creative, Creative shall be entitled at its election to the immediate return of the Products and shall have the right to enter, and is hereby expressly authorized to enter, upon the premises of the customer or any other premises at which the Products are stored to re-possess the Product. In the event the permission of any third party is required for access to repossess the Products the customer shall obtain that permission at its own expense. Upon the repossession of the Products by Creative, Creative shall be entitled to re-sell the Products for the best price it can obtain and to be paid by the customer any and all shortfall between that sale price and the debt owing to Creative together with the damages suffered by Creative as a result of the default by the customer, such damages to include but not be limited to the legal costs and other expenses incurred in obtaining possession of the Product. The customer shall have no claim against Creative for any damages or other monies whatsoever if Creative repossesses or attempts to repossess the Product. The rights of Creative hereunder are in addition to any other claim or rights Creative has under any other term hereof or under any other contract between the parties.
- 6. ACCEPTANCE OF PRODUCTS AND PRODUCT RETURNS.** Inspection and acceptance of the Products shall be Customer's responsibility. Customer is deemed to have accepted the Products unless written notice of rejection is received by Creative within ten (10) days after delivery of the



Products. Customer waives any right to revoke acceptance thereafter. Customer shall report any discrepancy in shipment quantity or damage within ten (10) days after delivery. No return of Products shall be accepted by Creative without prior notification to Creative giving a complete description of the nature of the return.. All Products for return shall be returned freight prepaid. Products not eligible for return shall be returned to Customer, freight collect.

7. CLAIM FOR DEFECTS: The Customer is required to give Creative written notice of any claim of defects no later than fifteen (15) days after the date of delivery of the Product.
8. FORCE MAJEURE. Creative shall not be liable for failure to fulfil its obligations herein or for delays in delivery due to causes beyond its reasonable control, including, but not limited to, acts of God, natural disasters, acts or omissions of other parties, acts or omissions of civil or military authority, Government priorities, changes in law, material shortages, fire, strikes, floods, meteor strikes, epidemics, quarantine restrictions, riots, war, acts of terrorism, delays in transportation or inability to obtain labour or materials through its regular sources. Creative's time for performance of any such obligation shall be extended for the time period of such delay or Creative may, at its option, cancel any order or remaining part thereof without liability by giving notice of such cancellation to Customer.

Subject to any express written warranty otherwise given by Creative, and subject to any statutory warranties express or implied which by law cannot be excluded all warranties conditions and representations whether express or implied are expressly negated. Where a warranty or condition is implied by law, Creative's liability to the extent that same can be so limited is limited to one of the following at the election of Creative in the case of Product:

- (a) Replacement of Products or supply of equivalent Product;
- (b) Repair of Product;
- (c) Payment of costs of replacing the Products or acquiring equivalent Product; or
- (d) Payment of the cost of having the Products repaired.

And in the case of services:

- (a) The supply of the service again; or
- (b) The payment of the cost of the service.

Any claim against Creative does not extend to consequential loss or damage. In particular Customer shall not in any event be entitled to, and Creative shall not be liable for indirect, special, incidental or consequential damages of any nature including, without limitation, business interruption costs, removal and/or reinstallation costs, procurement costs, loss of profit or revenue, loss of data, promotional or manufacturing expenses, overhead, injury to reputation or loss of customers, even if Creative has been advised of the possibility of such damages. Customer's recovery from Creative for any claim shall not exceed Creative's purchase price for the product giving rise to such claim irrespective of the nature of the claim, whether in contract, tort, warranty, or otherwise. Creative shall not be liable for and Customer shall indemnify, defend and hold Creative harmless from any claims based on Customer's compliance with Creative's designs, specifications or instructions, or modification of any products by parties other than Creative, or use in combination with other products.

9. USE OF PRODUCTS IN LIFE SUPPORT, NUCLEAR AND CERTAIN OTHER APPLICATIONS. Products sold by Creative are not designed, intended or authorized for use in life support, life sustaining, nuclear, or other applications in which the failure of such Products could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. If Customer uses or sells the Products for use in any such applications: (1) Customer acknowledges that such use or sale is at Customer's sole risk; (2) Customer agrees that Creative and the manufacturer of the Products are not liable, in whole or in part, for any claim or damage arising from such use; and (3) Customer agrees to indemnify, defend and hold Creative and the manufacturer of the Products harmless from and against any and all claims, damages, losses, costs, expenses and liabilities arising out of or in connection with such use or sale.
10. CANCELLATION: Cancellation of an order will be accepted only if received by Creative in writing prior to dispatch of products. A cancellation fee, amounting to the value of the Products completed at the time of cancellation, will be charged. The cancellation of non-standard items, manufactured to special requirements, will not be accepted.
11. EXPORT CONTROL. The sale, resale or other disposition of Products and any related technology or documentation are subject to the export control laws, regulations and orders of Australia and may be subject to the export and/or import control laws and regulations of other countries. Customer agrees to comply with all such laws, regulations and orders and acknowledges that it shall not directly or indirectly export any Products to any country to which such export or transmission is restricted or prohibited. Customer acknowledges its responsibility to obtain any license to export, re-export or import as may be required.
12. SERVICE AND MAINTENANCE: If the products are maintained or serviced by Creative or its authorized representatives after delivery, these Conditions of Sale shall apply (with such changes as are necessary).
13. INTELLECTUAL PROPERTY. If an order includes software or other intellectual property, such software or other intellectual property is provided by Creative to Customer subject to the intellectual property licence, the terms and conditions of which are set forth in the licence agreement or contract accompanying such software or other intellectual property. Nothing herein shall be construed to grant any rights or licence to use any software or other intellectual property in any manner or for any purpose not expressly permitted by such contract or license agreement.
14. GENERAL. The obligations, rights, terms and conditions hereof shall be binding on the parties hereto and their respective successors and assigns. The waiver of any provision hereof or of any breach or default hereunder shall not be deemed a waiver of any other provision hereof or breach or default hereunder. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction or affecting the validity or enforceability of such provision in any other jurisdiction. These Terms and Conditions shall be governed by and construed in accordance with the laws of Australia excluding any law or principle which would apply the law of any other jurisdiction. The United Nations Convention for the International Sale of Goods shall not apply.