

Terms & Conditions of Sale

Definitions

- a) “Customer” means the person or entity acquiring the Goods and/or Services from **Victory Net Pty Ltd**.
- b) “Goods”, unless the context specifies otherwise, means all goods supplied by **Victory Net Pty Ltd** to the Customer.
- c) “Goods Return Authority” means an authority to return the goods to **Victory Net Pty Ltd** in the form determined by **Victory Net Pty Ltd** from time to time.
- d) “Invoice” means the Tax Invoice issued by **Victory Net Pty Ltd** to the Customer for the Goods and/or Services.
- e) “Victory Net Pty Ltd” means Victory Net Pty Ltd ABN 16 149 877 421
- f) “PPSA” means the Personal Property Securities Act (2009) and ‘purchase money security interest’, ‘register’, ‘security agreement’ ‘security interest’ and ‘verification statement’ will have the meanings for those terms as defined in the PPSA.
- g) “Purchase Order” means the purchase order issued by the Customer to **Victory Net Pty Ltd** for the supply of the Goods and/or Services.
- h) “Services” means all services supplied by **Victory Net Pty Ltd** to the Customer and includes delivery and installation of Goods.

GENERAL CONDITIONS

Unless otherwise agreed in writing by **Victory Net Pty Ltd**, these terms and conditions may not be waived or modified. Neither **Victory Net Pty Ltd**’s acknowledgement of a Purchase Order nor **Victory Net Pty Ltd**’s failure to object to conflicting, contrary or additional conditions in a Purchase Order will be deemed an acceptance of such conditions or a waiver of the provisions hereof. The Customer, by its submission of a Purchase Order, acceptance of quote or instructions to carry out work to **Victory Net Pty Ltd**, adopts and accepts these terms and conditions in relation to the supply of Goods and/or Services by **Victory Net Pty Ltd** to the Customer. These terms and conditions are governed by the laws of the State of New South Wales, Australia, and the parties submit to the non-exclusive jurisdiction of the Courts of that State.

1. PRICES

Unless otherwise agreed by **Victory Net Pty Ltd** in writing :-

- a) The price of Goods and/or Services will be that ruling at the date of delivery thereof notwithstanding that delivery may be delayed by agreement or otherwise. All Purchase Orders are accepted under these conditions and prices may be changed at any time without notice.
- b) All quoted prices are ex **Victory Net Pty Ltd**. A freight surcharge may be applied
- c) The Customer will pay to or reimburse **Victory Net Pty Ltd** (except where such payment or reimbursement is expressly prohibited by statute) all stamp duty and Government duties, taxes and expenses which **Victory Net Pty Ltd** may be liable to pay from time to time in connection with the supply of Goods and/or Services to the Customer.

2. TERMS OF PAYMENT

Unless otherwise agreed by **Victory Net Pty Ltd** in writing:-

- a) Invoices are payable by the Customer on or before the due date and in accordance with the payment terms shown on the Invoice. **Victory Net Pty Ltd** reserves the right to terminate any credit account or payment arrangements at any time and any monies owing to **Victory Net Pty Ltd** will then become immediately due and payable by the Customer.

- b) In all other circumstances terms of payment are cash with Purchase Order or cash prior to delivery or on completion of work. There is no discount for cash payment or early settlement.
- c) Should the Customer default or delay making payment to **Victory Net Pty Ltd, Victory Net Pty Ltd** shall have the right to charge interest on the outstanding amount at the rate of 12%, compounded half yearly.
- d) Should **Victory Net Pty Ltd** send the outstanding amount to a collection agency, **Victory Net Pty Ltd** reserves the right to pass on to the customer any associated costs in addition to "c" above and the outstanding amount.

3. Retention of Title

- a) Property in all the Goods supplied remains with **Victory Net Pty Ltd** and shall not pass to the Customer until all monies owing to **Victory Net Pty Ltd** by the Customer together with all collection, repossession and/or legal costs incurred, have been paid in full.
- b) The Goods, whether as separate chattels or as components, shall be stored in such a manner as to be clearly identifiable as the property of **Victory Net Pty Ltd** until title has passed to the Customer.
- c) **Victory Net Pty Ltd** may demand at any time until title has passed to the Customer that the Customer returns the Goods or any part of them.
- d) Where the Customer disposes of the Goods before payment to **Victory Net Pty Ltd**, the sale proceeds of such disposal are the property of **Victory Net Pty Ltd** and the Customer holds the proceeds on trust for **Victory Net Pty Ltd**.
- e) In the event that the Customer defaults in the payment of any monies owing to **Victory Net Pty Ltd, Victory Net Pty Ltd** and its employees or agents shall have the right to enter without notice upon the Customer's premises or any other premises where the Goods are known to be stored to repossess the Goods and for this purpose the Customer shall grant reasonable access rights and **Victory Net Pty Ltd**, its employees or agents shall be entitled to do all things required to secure repossession.

4. Risk

- a) Notwithstanding Retention of Title provisions as per clause 3 hereof, the risk in Goods purchased shall pass to the Customer upon delivery to the Customer or its agent or a carrier nominated by the Customer.
- b) If any of the Goods are damaged or destroyed prior to the title passing to the customer, the Company is entitled, without affecting any other rights and remedies under any agreement, to any insurance proceeds payable for the Goods.

5. LIABILITY

To the fullest extent permitted by law, any liability of **Victory Net Pty Ltd** to the Buyer including but not limited to the liability for special, consequential or incidental damages or for breach of any term, condition, warranty, undertaking, inducement, guarantee or representation whether express, implied, statutory or otherwise relating to these terms and conditions or to the Goods or Services shall be limited at **Victory Net Pty Ltd's** option, to any one or more of the following:-

if the breach related to the Goods:-

- a) The replacement of Goods or the supply of equivalent goods
- b) The repair of the Goods;
- c) The payment of the cost of replacing the Goods or acquiring equivalent Goods; or
- d) The payment of the cost of having the Goods repaired,

If the breach related to the Services:-

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- a) The supply of the Services again; or
- b) the payment of the cost of having the Services supplied again.
- c) To the fullest extent permitted by law and subject to clause 4(a), **Victory Net Pty Ltd** will under no circumstances be liable to the Buyer for any loss, damage or expense, sustained or incurred by the Buyer or any other party, whether direct or indirect, special, consequential, incidental or punitive losses or damages whether in contract, tort (including without limitation negligence), equity, under statute or on any other basis, and whether or not such loss or damage was foreseeable. The term “consequential damages” shall include, but not be limited to, economic loss including actual or anticipated profits, business interruption, loss of use, revenue, reputation and/or data, costs incurred, and loss or damage to property or equipment

6. Intellectual Property Rights

1. **Victory Net Pty Ltd** retains all rights, title and interest subsisting in any design(s), documentation, diagrams plans, or other information and materials supplied to the Customer in relation to this Agreement.
2. All intellectual property rights in materials supplied by the Customer at the commencement of this Agreement remains the property of the Customer but the Customer grants **Victory Net Pty Ltd** a perpetual, irrevocable, royalty free, non-exclusive licence to use, reproduce and modify the Customer’s materials for any purpose related to this Agreement.
3. The Customer agrees to accept full responsibility for the Customer’s materials and to indemnify **Victory Net Pty Ltd** for any action, claim, liability, cost or expense arising out of any threatened or actual claim of intellectual property infringement arising out of **Victory Net Pty Ltd**’s use of the Customer’s materials

7. Quotation validity

Unless otherwise agreed in writing, a quotation provided by **Victory Net Pty Ltd** may be accepted up to 30 days from the quotation date, after which **Victory Net Pty Ltd** reserves the right to amend or withdraw it. If any amounts are quoted in a foreign currency, the applicable exchange rate (as published by the Reserve Bank of Australia) shall be as at the date of the quotation.

8. Credit Information

The Customer acknowledges and agrees that if **Victory Net Pty Ltd** requires financial information about the Customer for any credit application which attracts the operation of the Privacy Act 1988 (Cth), **Victory Net Pty Ltd** may:

1. Disclose and collect commercial credit information about the Customer (and if the Customer is a company, about its directors and officers) for the purpose of determining the Customer’s credit worthiness;
2. Obtain a credit report from a credit reporting agency (which may contain personal credit information, information about commercial activities or commercial worthiness) for the purpose of assessing an application for credit and any later request for credit;
3. Provide to, or obtain from any credit provider(s) named in a credit report information about the Customer’s personal or commercial credit arrangements (including information relating to credit worthiness, credit standing, credit history and credit capacity); and
4. Disclose personal information about the Customer to a credit provider other than **Victory Net Pty Ltd** or to a credit reporting agency, for the purpose of collecting outstanding amounts owed by the Customer to **Victory Net Pty Ltd**.

Victory Net Pty Ltd 's obligations hereunder are subject to satisfactory credit evaluation and **Victory Net Pty Ltd** reserves the right to withdraw any quotation, cancel the services, and terminate this Agreement should such credit evaluation be or become unsatisfactory.

9. Force majeure

Victory Net Pty Ltd will not be in breach of this Agreement or liable to the Customer if it fails to perform or delays in performance of an obligation as a result of an event beyond its reasonable control, including but not limited to strikes, industrial disputes, fire, flood, acts of God, war, insurrection, vandalism, sabotage, riot, national emergency, piracy, hijack, terrorism, embargoes or restraints, extreme weather or traffic conditions, temporary closure of roads, legislation, regulation, order or other act of government or governmental agency.

DISPUTES RESOLUTION

Should a dispute develop between the parties then either party may give to the other party a written notice of dispute clearly setting out the details of the dispute. The parties shall then confer to attempt to resolve the dispute. Should the parties fail to resolve the dispute in seven days (7), either party may refer the dispute to arbitration, to be carried out by the Australian Commercial Disputes Centre.