

Hyperdriven Australia - Standard Terms and Conditions of Business

These Terms and any document(s) referred to in them constitute the entire agreement about HYPERDRIVEN's supply of the Products and services to Customer and supersedes all prior understandings, arrangements and agreements.

Words with special meanings are defined in clause 1. A reference in these Terms to:

- a. the singular includes the plural and vice versa;
- b. the word "including" means "including, but not limited to," and the word "includes" means "includes, without limitation,";
- c. A reference to a gender includes all genders; and
- d. a reference to a person (including a party) includes an individual, company, other body corporate, partnership, firm, joint venture, or a trust.

Definitions

In these Terms:

"Customer" means the person, business or company that is the purchaser of the Products;

"Products" means any products (including software) supplied to Customer by HYPERDRIVEN and described in HYPERDRIVEN's invoice;

"Sales Contract" means any purchase order, sales contract or distribution agreement entered into by Customer and HYPERDRIVEN in respect of the Products and services supplied to Customer in which these Terms are deemed to be incorporated; and

"HYPERDRIVEN" means Hyperdriven Australia (ABN 54 695 309 289).

2. Orders

- a. All orders for Products placed by Customer:
 - i. must be made in accordance with HYPERDRIVEN's order policy as amended by HYPERDRIVEN from time to time, the current version of which is set out on HYPERDRIVEN's website and
 - ii. are subject to acceptance by HYPERDRIVEN, and no order will be deemed to have been accepted by HYPERDRIVEN unless Products are supplied or a back-order or delivery delay is confirmed in writing by an authorised representative of HYPERDRIVEN to Customer.
- b. HYPERDRIVEN may reject any order placed by Customer if there is an insufficient supply of Products which prevents HYPERDRIVEN from being able to fulfil such order.
- c. HYPERDRIVEN will not be bound by any terms attaching to Customer's order and, unless those terms are expressly agreed to in writing by an authorised representative of HYPERDRIVEN, Customer agrees that those terms are hereby excluded.

Payment

- a. The price of the Products will be HYPERDRIVEN's quoted price.
- b. Payment is required prior to delivery of the Products to Customer unless agreed otherwise in writing by an authorised officer of HYPERDRIVEN. If Customer fails to make payment in accordance with this clause 3(b) after demand for payment by HYPERDRIVEN, all amounts owing by Customer to HYPERDRIVEN on any account will immediately become due and payable.
- c. HYPERDRIVEN may, in its sole discretion:
 - i. suspend the provision of credit to Customer until all amounts owing are paid for in full; and
 - ii. from time to time and at any time, vary or cancel any credit facility it makes available to Customer.
- d. Customer will be liable to pay interest on any overdue amount at the annual rate of 2% above the prevailing base lending rate quoted by the Westpac Banking Corporation. Interest will accrue daily from the date payment became overdue until HYPERDRIVEN has received payment of the overdue amount, together with any interest accrued.
- e. Unless stated otherwise in these Terms (or in writing by HYPERDRIVEN's authorised representative), all prices quoted for Products are exclusive of all taxes, handling, delivery, agents' charges and any other charge, duty or impost.
- f. Customer must pay HYPERDRIVEN, on demand, any tax (other than income tax) payable under these Terms, any matter or thing done under these Terms or any payment, receipt or other transaction contemplated by these Terms, including any goods and services or value-added tax, customs duty, sales tax, excise duty, stamp duty, other duty, governmental charge, fee, levy or impost, together with any fine, penalty or interest payable because of a default by Customer.
- g. Customer must pay to HYPERDRIVEN any amount Customer must pay under clause 3(f) in full, despite any right of set-off that Customer may have.
- h. Any amounts paid to HYPERDRIVEN by Customer under this clause 3 must leave in the hands of HYPERDRIVEN following payment of any relevant tax or other amount, the same amount, whether the tax or other amount is payable or not.

4. Delivery

Delivery times advised to Customer are estimates only and HYPERDRIVEN will not be liable for any loss, damage or delay suffered or incurred by Customer or its customers arising from late or non-delivery of the Products.

5. Part deliveries

HYPERDRIVEN may make part deliveries of any order, and each part delivery will constitute a separate supply of the Products upon these Terms.

6. Software

- a. To the extent that a Product supplied under these Terms is a software Product then, in addition to these Terms, that Product will be supplied subject to the terms and conditions of the relevant licence agreement applicable to it.
- b. Software licence agreements may be packaged with the software, may be separately provided to Customer for execution or may require on-screen acceptance by Customer. Customer agrees to use the software Product in

Hyperdriven Australia - Standard Terms and Conditions of Business

accordance with the terms and conditions of the relevant licence agreement.

- c. Where the term "supply" is used in these Terms to refer to a software Product, such term means the sale and purchase of the licence to use that software Product.

7. Inspection and acceptance

Customer must:

- a. in the case of all Products ordered (other than software Products), inspect such Products upon delivery to Customer's premises; or,
- b. in the case of software Products, test or inspect such software Products upon those Products being authorised by HYPERDRIVEN for downloading by Customer, and must, within 7 days of delivery or downloading (as the case may be), give written notice to HYPERDRIVEN of any matter or thing by which Customer alleges that the Products do not accord with Customer's order. Failing such notice and to the extent permitted by law, the Products will be deemed to have been accepted by Customer.

8. Title and risk

- a. Products supplied by HYPERDRIVEN to Customer will be at Customer's risk immediately upon:
 - i. delivery of the Products to the Customer, Customer's agent or into the Customer's custody or control; or
 - ii. collection of the Products by the Customer's nominated carrier or agent.
- b. Customer must:
 - i. effect and maintain with a reputable insurance company insurance for the Products, at its cost, against all risks as it thinks appropriate;
 - ii. note the interest of HYPERDRIVEN on the insurance policy; and
 - iii. produce a certificate of currency of the insurance effected by Customer under this clause 8(b) to HYPERDRIVEN, upon request.
- c. Risk in the Products will remain with Customer at all times unless HYPERDRIVEN retakes possession of the Products in accordance with clause 8(f)(ii).
- d. Title in the Products supplied by HYPERDRIVEN to Customer will not pass to Customer and will remain the absolute property of HYPERDRIVEN until such time as HYPERDRIVEN has been paid by Customer all monies due and owing to it by the Customer in relation to any account. Title to those Products which are software remains with HYPERDRIVEN and/or the applicable third party licensor(s) at all times.
- e. Until the Products have been paid for:
 - i. Customer must properly segregate and store the Products in such manner as to clearly indicate that they are the property of HYPERDRIVEN; and
 - ii. Customer may sell the Products and shall keep records of the Products in the ordinary course of its business as fiduciary agent for HYPERDRIVEN and Customer agrees to deposit all proceeds of any such sale (including any proceeds received from any insurance claims) in a separate bank account and agrees not to mix the proceeds with any other monies and hold the monies on trust for HYPERDRIVEN and shall immediately account for such proceeds to HYPERDRIVEN.
- f. If Customer has breached these Terms or the terms of any relevant Sales Contract, Customer authorises HYPERDRIVEN, at any time, to enter onto any premises upon which HYPERDRIVEN's Products are stored to enable HYPERDRIVEN to:
 - i. inspect the Products; and/or
 - ii. reclaim the Products.
- g. If Customer sells, disposes of or otherwise deals with Products or any part thereof before full payment has been received by HYPERDRIVEN, Customer must advise HYPERDRIVEN in writing, at such times as HYPERDRIVEN may request, specifying full details of the Products sold, disposed of, utilised or otherwise dealt with.
- h. Customer acknowledges that in the case of software Products, any refusal or failure to pay may result in cancellation of the licence to use the software Product.
- i. Customer agrees that the provisions of this clause 8 apply despite any arrangement under which HYPERDRIVEN grants credit to Customer.

9. Returns

- a. Customer must notify HYPERDRIVEN in writing of any Products it wishes to return within 30 days from the date of the invoice relating to those Products.
- b. Returns will be subject to HYPERDRIVEN's returns policy as advised to Customer and amended by HYPERDRIVEN from time to time, the current version of which is set out on HYPERDRIVEN's website.
- c. Each claim for the return of Products by Customer will be dealt with in accordance with the Returns Policy. Any substitute Products to be shipped to Customer in accordance with the Returns Policy will be sent by HYPERDRIVEN to Customer by ordinary freight pre-paid.
- d. HYPERDRIVEN will not be liable for any damage or defects in the Products that have been caused by the improper storage, warehousing or transport, or by any neglect, abuse or improper use, installation, maintenance or unauthorised repair of HYPERDRIVEN's Products.
- e. The provisions of this clause 9 do not extend to any Products which have been added to, varied, or otherwise modified by, any person other than HYPERDRIVEN.

10. Force majeure

If the performance of HYPERDRIVEN's obligations under these Terms or any relevant Sales Contract is prevented, restricted or affected by force majeure including strike, lock out, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the reasonable control of HYPERDRIVEN, HYPERDRIVEN will give notice of such cause to Customer and after 60 days from the receipt by Customer of such notice, either party may terminate the relevant Sales Contract without penalty.

11. Customer's cancellation

- a. Unless otherwise agreed in writing by an authorised officer of HYPERDRIVEN, Customer may not cancel an order which has been accepted by HYPERDRIVEN.
- b. If Customer's right of cancellation is agreed to by an authorised officer of HYPERDRIVEN in writing, the right must be exercised by notice in writing from Customer to HYPERDRIVEN not later than 7 days before the estimated date

Hyperdriven Australia - Standard Terms and Conditions of Business

of shipment by the manufacturer or HYPERDRIVEN (as the case may be).

- c. Unless otherwise agreed between Customer and HYPERDRIVEN, upon cancellation prior to shipment, any deposit paid by Customer will be forfeited to HYPERDRIVEN.

12. Default of Customer

- a. Without prejudice to any of HYPERDRIVEN's other rights under these Terms, if Customer fails to make any payment due to HYPERDRIVEN under these Terms, HYPERDRIVEN may, in its sole discretion, and without further liability to Customer:
 - i. refuse to make further supplies to Customer under the relevant Sales Contract; and/or
 - ii. terminate the Sales Contract without notice.
- b. The Customer agrees that these Terms shall give rise to an interest in land thereby enabling HYPERDRIVEN to lodge a caveat against the title to any land owned partly or wholly by the Customer, in order to protect and secure the interests of HYPERDRIVEN under these Terms and under any Sales Contract.
- c. In the event that HYPERDRIVEN lodges a caveat against any land owned partly or wholly by the Customer, the Customer hereby irrevocably agrees to endorse its consent upon any relevant forms or documents to enable the lodgement and timely registration of any such caveat by HYPERDRIVEN.

13. Warranty

- a. HYPERDRIVEN will notify Customer of any applicable manufacturers' warranty in relation to the Products. To the extent permitted by law, HYPERDRIVEN's entire responsibility with respect to warranties for the Products is to pass on to Customer the benefit of any such warranties. Subject to clause 14(c), software Products are not warranted under these Terms. Such software Products are warranted in accordance with the relevant licence agreements that govern their use.
- b. To the extent permitted by law, the manufacturers' warranties referred to in clause 14(a) are in substitution for all other terms, conditions and warranties, whether implied by statute or otherwise (including implied warranties with respect to merchantability and fitness for purpose) and all such terms, conditions and warranties are expressly excluded.
- c. Certain legislation may imply warranties or conditions or impose obligations upon HYPERDRIVEN which cannot be excluded, restricted or modified or cannot be excluded, restricted or modified except to a limited extent. These Terms must be read subject to those statutory provisions. If those statutory provisions apply, to the extent to which HYPERDRIVEN is able to do so, its liability will be limited, at its option, to:
 - i. in the case of products: the replacement of the products or resupply of equivalent products; repair of the products; payment of the cost of replacing the products or acquiring equivalent products; or the payment of the cost of having the products repaired; and
 - ii. in the case of services: the supply of the services again; or the payment of the cost of having the services supplied again.

14. Liability

- a. To the extent permitted by law, HYPERDRIVEN will not be liable to Customer or any other person under any circumstances for any loss of use, profit, revenue, interest, goodwill or data, or for any injury or death to any person, or for any indirect, incidental or consequential damages sustained or incurred by Customer, whether such liability arises directly or indirectly as a result of:
 - i. any negligent act or omission or wilful misconduct of HYPERDRIVEN or its employees or agents;
 - ii. the supply, performance or use of any Products or services; or
 - iii. any breach by HYPERDRIVEN of its obligations under these Terms or any relevant Sales Contract.
- b. HYPERDRIVEN does not warrant that repair facilities or parts will be available in respect of any of the Products.

15. Credit assessment

- a. If any Products are supplied to Customer on credit, HYPERDRIVEN may need to disclose to a credit reporting agency certain information referred to in clause 16(c) about Customer when assessing Customer's application for credit and managing Customer's account with HYPERDRIVEN. Customer authorises HYPERDRIVEN to disclose such information to a credit reporting agency for these purposes.
- b. Subject to HYPERDRIVEN's obligations under the Privacy Act 1988 (Cth) as amended and any other applicable laws, HYPERDRIVEN may provide the information referred to in clause 16(c) to a credit reporting agency to obtain a consumer credit report about Customer or to allow the credit reporting agency to create or maintain a credit information file about Customer. Customer agrees that HYPERDRIVEN may disclose a credit report about it to any credit provider, debt collecting agency or HYPERDRIVEN's insurers for the purposes of assessing Customer's creditworthiness or to collect any overdue payments (as the case may be).
- c. HYPERDRIVEN may disclose the following information relating to Customer in accordance with clauses 16(a) and (b):
 - i. Customer's name and address;
 - ii. credit limits on Customer's accounts;
 - iii. the amount of any payments which are overdue for at least 60 days;
 - iv. where an overdue payment has been previously reported, advice that the payment is no longer overdue;
 - v. Any method of payment including, but not limited to, cheques, electronic funds transfer, Bpay, credit card payments which have been dishonoured;
 - vi. information that, in the opinion of HYPERDRIVEN, Customer has committed a serious credit infringement; and
 - vii. information that HYPERDRIVEN has ceased to supply the Products and services to Customer.
- d. Customer agrees that HYPERDRIVEN may obtain information about Customer from any business which provides information about the commercial creditworthiness of persons for the purposes of assessing Customer's application to purchase the Products on credit and collecting any overdue amounts.
- e. HYPERDRIVEN may refuse to supply the Products to Customer on credit on the basis of HYPERDRIVEN's credit assessment of Customer.

16. Privacy

- a. Customer agrees to HYPERDRIVEN collecting, using and disclosing information about Customer of the kind

Hyperdriven Australia - Standard Terms and Conditions of Business

referred to in clause 16(c) for various purposes, including to:

- i. assess creditworthiness as outlined in clause 16;
 - ii. supply the Products and services to Customer and the management of Customer's account;
 - iii. communicate with Customer about the Products and services which HYPERDRIVEN or its partners or affiliates may provide to Customer;
 - iv. implement these Terms and any Sales Contract; and
 - v. comply with relevant laws.
- b. HYPERDRIVEN, at the written request of Customer, will:
- i. provide Customer with access to any personal information relating to Customer held by HYPERDRIVEN; and
 - ii. correct or amend any personal information relating to Customer held by HYPERDRIVEN which is inaccurate or out of date.
- c. HYPERDRIVEN will handle Customer's personal information in accordance with relevant laws.

17. Intellectual property

- a. Customer acknowledges that:
- i. all trademarks, copyright and other intellectual property rights ("Intellectual Property") embodied in or in connection with the Products and any related documentation, parts or software are the sole property of HYPERDRIVEN or its suppliers; and
 - ii. all Intellectual Property of HYPERDRIVEN or its suppliers may only be used by Customer with the express written consent of HYPERDRIVEN or its suppliers, during the continuance of any relevant Sales Contract, and such consent extends only to use essential for the purposes stated in it. Any licensing of Intellectual Property rights in any software Products supplied to Customer will immediately cease upon expiry or termination of the relevant licence agreement that governs their use.
- b. Customer must not, during or after the expiry or termination of any relevant Sales Contract, without the prior written consent of HYPERDRIVEN or its suppliers, register or use any trade marks, trade name, domain name, trading style or commercial designation or design used by HYPERDRIVEN or its suppliers in connection with the Products.
- c. Customer will indemnify HYPERDRIVEN against all liabilities, damages, costs and expenses which HYPERDRIVEN may suffer or incur as a result of work done in accordance with Customer's specifications or as a result of the combination or use of the Products with other equipment, parts or software not supplied by HYPERDRIVEN, and which results in the infringement of any Intellectual Property of any person.

18. Confidentiality

- a. Customer acknowledges that HYPERDRIVEN has disclosed and may from time to time disclose to Customer certain confidential information and documentation of HYPERDRIVEN relating to the Products, their marketing, use, maintenance and software, including technical specifications ("Confidential Information").
- b. Subject to clause 19(e), Customer must:
- i. only use the Confidential Information solely for the purposes contemplated under any relevant Sales Contract; and
 - ii. not, during the continuation of such Sales Contract or thereafter, disclose (whether directly or indirectly) to any third party the Confidential Information, other than is required to carry out such purposes.
- c. If disclosure of Confidential Information to third parties is necessary, Customer will obtain from such third parties binding agreements to maintain in confidence the Confidential Information disclosed at least to the same extent as Customer is bound to protect HYPERDRIVEN's Confidential Information under this clause 19.
- d. Upon the expiry or termination of any relevant Sales Contract, Customer must cease to use and must return or destroy (as HYPERDRIVEN may instruct) HYPERDRIVEN's Confidential Information in its possession or control.
- e. The provisions of this clause 19 do not extend to any information which is:
- i. at the time of disclosure, rightfully known to or in the possession or control of Customer and which is not subject to an obligation or confidentiality;
 - ii. public knowledge (otherwise than as a result of a breach of this clause 19 or any other obligation of confidentiality);
 - iii. approved in writing by an authorised officer of HYPERDRIVEN to be disclosed; or
 - iv. required to be disclosed by a government authority or by relevant laws provided that notice of any such required disclosure is first given to HYPERDRIVEN..

19. General

- a. HYPERDRIVEN may amend these Terms at any time, by giving Customer notice by mail, e-mail or by posting a notice on HYPERDRIVEN's public website. By continuing to place orders for Products, Customer will be deemed to have accepted the revised Terms.
- b. Any provision of these Terms which is invalid or unenforceable will be read down to the extent necessary, and the remaining provisions will continue unaffected.
- c. Customer may not assign or attempt to assign any of its rights and obligations under these Terms.
- d. These Terms are governed by the laws of the State of New South Wales and the courts of the state of New South Wales shall have exclusive jurisdiction to hear any disputes arising from or relating to this agreement.