

# TERMS AND CONDITIONS

## FOR THE SALE AND SUPPLY OF GOODS



### 1. Definitions

- 1.1 **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **"PLCH"** means PLCH Hardware Pty Ltd ACN 140 948 296, its successors and assigns or any person acting on behalf of and with the authority of PLCH Hardware Pty Ltd.
- 1.3 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's licence details, electronic contact (email or Facebook details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.4 **"Core Products"** means products listed on the PLCH website.
- 1.5 **"Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting PLCH to provide the Goods as specified in any quotation, order, invoice or other documentation, and:
- if there is more than one customer, is a reference to each Customer jointly and severally; and
  - if the Customer is a partnership, it shall bind each partner jointly and severally; and
  - if the Customer is part of a Trust, shall be bound in their capacity as a trustee; and
  - includes the Customer's executors, administrators, successors and permitted assigns.
- 1.6 **"Delivery"** means the date that PLCH provides the Goods to the Customer
- 1.7 **"Delivery Notification"** means the date that the Customer receives a notification that the Goods, or part of the Goods, are ready for delivery.
- 1.8 **"Estimated Price"** means the approximate cost of the Goods as provided by PLCH to the Customer in the Quotation.
- 1.9 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.10 **"Goods"** means all goods and services provided by PLCH to the Customer at the Customer's request from time to time, as specified in any quotation or otherwise.
- 1.11 **"Invoice"** means the final document provided by PLCH to the Customer, outlining the Goods ordered and total price payable by the Customer for the Goods, Delivery and any other costs that may apply to the Purchase Order.
- 1.12 **"Price"** means the total amount payable by the Customer to PLCH, as determined on the Invoice.
- 1.13 **"Purchase Order"** means the written request provided by the Customer from PLCH for the Goods, including detailed information such as series versions and firmware levels.
- 1.14 **"Quotation"** means the estimate provided by PLCH to the Customer in respect of the Purchaser Order, establishing the Goods to be provided for the price payable (plus any GST where applicable) as agreed between PLCH and the Customer in accordance with clause 6 below and subject to the Quote Validity Period.

### 2. Acceptance

- 2.1 The Customer acknowledges that any quotation provided by PLCH is not to be construed as an offer or obligation to provide the Goods and PLCH reserves the right to accept or reject any orders, in response to a quotation, or otherwise, received by the Customer.
- 2.2 The Customer further acknowledges that, due to fluctuating market pricing, quote validity will vary between suppliers. PLCH will provide a specific period on all quotations for the validity of the cost and delivery dates of the Goods (**"Quote Validity Period"**). Any quotations or contractual delivery dates that fall outside the Quote Validity Period will be subject to further confirmation between the Customer and PLCH before acceptance.

- 2.3 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.4 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties, this provision does not affect PLCH's rights to amend these Terms for any subsequent or future Quotations and orders with the Customer in accordance with clause 3.7 hereof.
- 2.5 The Customer acknowledges that PLCH reserves the right to vary the price and delivery date for orders that fall outside the Quote Validity Period and as per clause 2.2. In all such cases, PLCH will notify the Customer in advance of any such amendment and also reserves the right to place the Customer's order on hold until such time as PLCH and the Customer agree to such changes.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the *Electronic Transactions Act 2000* (NSW) or any other applicable provision of that Act or any Regulations referred to in that Act.
- 2.7 PLCH (at their sole discretion) shall only provide the Goods after receipt of the executed Quotation from the Customer, confirming their acceptance of the Quotation.

### 3. General

- 3.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, arbitration in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 3.2 The failure of either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 3.3 These terms and conditions and any contract to which they apply shall be governed by the law of the state of New South Wales, which PLCH has its principal place of business, and are subject to the jurisdiction of the courts in Sydney, New South Wales.
- 3.4 Subject to clause 14, PLCH shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach of PLCH of these terms and conditions (alternatively, PLCH's liability shall be limited to damages which under no circumstances shall exceed the price of the Goods).
- 3.5 PLCH may licence and/or assign all or any part of its rights and/or obligations under this Contract and the Schedule without the Customer's consent.
- 3.6 The Customer cannot licence or assign without the written approval of PLCH.
- 3.7 The Customer agrees that PLCH may amend their general terms and conditions for subsequent future Quotations with the Customer by disclosing such to the Customer in writing. These changes will be deemed to take effect from the date on which the Customer accepts such changes, or otherwise, at such time as the Customer makes a further request for PLCH to provide Goods to the Customer.
- 3.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc., (**"Force Majeure"**) or other event beyond the reasonable control of either party.
- 3.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.

### 4. Errors and Omissions

- 4.1 The Customer acknowledges and accepts that PLCH shall, without

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- prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s) in the Goods:
- (a) resulting from an inadvertent mistake made by PLCH in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any document (hard copy and/or electronic) supplied to or by PLCH in respect of the Goods.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of PLCH; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 5. Change in Control**
- 5.1 The Customer shall give PLCH not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by PLCH as a result of the Customer's failure to comply with this clause.
- 6. Estimate and Payment**
- 6.1 At PLCH's sole discretion, the Estimated Price shall be:
- (a) as indicated on any Quotation provided by PLCH to the Customer;
  - (b) unless specifically stated in writing by PLCH, exclusive of any freight charges or other costs; and
  - (c) unless otherwise stated in the Quotation, the Estimated Price will include packing in accordance with PLCH's standard practice. Any other specific packing and marking requirements will not otherwise be included in the Quotation and will be charged in addition to the Estimated Price.
- 6.2 PLCH will charge the Customer a Delivery charge per order, charged at the rate applicable at the time of Delivery, on all orders that are delivered to a Customer's Premises, or as directed by the Customer, which will be shown as a separate item on all Quotations and Invoices.
- 6.3 PLCH reserves the right to vary the Quotation and the Customer acknowledges the following:
- (a) subject to clause 2.2, the Estimated Price is subject to change and all orders are accepted by PLCH on the condition that they will be invoiced at the prices applying at the date of dispatch of the Goods from PLCH's premises;
  - (b) if the price of Goods changes in accordance with clause 6.3(a), following PLCH's receipt of a Purchaser Order or the Customer's request to re-validate a Quotation, PLCH will notify the Customer of any variation to the Quotation. The Customer may then request a new Quotation or vary their Purchaser Order;
  - (c) Goods are sold on an ex-warehouse/ex-works basis and unless specified otherwise, prices do not include any transport costs and will be separately noted on the Quotation. Where the Customer requires freight to be prepaid, all expenses will be added to the Customer's account, at cost;
  - (d) all prices shown in any of PLCH's publications including price lists, brochures, catalogues, electronic media, and other advertising material are recommended selling prices only and there is no obligation on the part of any re-seller to maintain the same prices;
  - (e) Goods that are quoted as 'ex-stock' are subject to prior sale and any delivery time quoted is made without commitment;
  - (f) all price lists and Quotations are issued in accordance with clause 2;
  - (g) time and material services will be provided in accordance with PLCH's published service rates (including applicable overtime and travel expenses) in effect as of the date such Goods are provided unless otherwise confirmed by PLCH's Quotation or order acknowledgement; and
  - (h) billable service time includes travel time to and from the job site and all time the PLCH's representatives are waiting for work and waiting (whether on or off the job site) to provide the Goods.
- 6.4 PLCH will issue Invoices within the following time periods:
- (a) upfront upon receipt of a Purchaser Order for first-time customers or non-account customers, which must be paid in accordance with clause 6.16; and
  - (b) following dispatch of the Goods, for a Customer with an established trading account, with payment to be made in accordance with clause 6.5.
- 6.5 For established trading accounts with credit facilities, the Customer's account must be paid within 30 days of receipt of Invoice, unless otherwise stated.
- 6.6 Subject to clause 6.5, payment is otherwise payable on:
- (a) Delivery; or
  - (b) Erection; or
  - (c) Test,
- of the Goods, as applicable.
- 6.7 Where payment of the Invoice is made contingent in accordance with clause 6.6 and any of these stages are delayed to suit the Customer's wishes or convenience, payments are to be made within the time in which they ordinarily would fall due, had there been no such delays, with the Goods being stored (if necessary) at the Customer's risk and expense and in accordance with clause 8.4.
- 6.8 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and PLCH.
- 6.9 PLCH may in its discretion allocate any payment received from the Customer towards any invoice of the Customer that PLCH determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer, PLCH may re-allocate any payments previously received and allocated. In the absence of any payment allocation by PLCH, payment will be deemed to be allocated in such manner as preserves the maximum value of PLCH Purchase Money Security Interest (as defined in the PPSA) in the Parts.
- 6.10 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by PLCH nor to withhold payment of any Invoice because part of that invoice is in dispute.
- 6.11 Unless otherwise stated, the price does not include GST. In addition to the price, the Customer must pay to PLCH an amount equal to any GST PLCH must pay for any supply by PLCH under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the price except where they are expressly included in the Quotation.
- 6.12 PLCH reserves the right to:
- (a) render partial Invoices and require the Customer to make progressive payments;
  - (b) provide Invoices to the Customer electronically and receive payment of Invoices by way of electronic funds transfer; and
  - (c) subject to clause 6.8, payment by credit card is subject to credit card validation and authorisation, both at the time of agreement and immediately prior to Delivery.
- 6.13 The Customer acknowledges and agrees that it must make all payments that become due and payable in accordance with this Contract without any set-off, counterclaim, deduction or condition, unless otherwise agreed in writing by PLCH.
- 6.14 The Customer will be responsible for the cost of shipping returned Goods (in accordance with clause 14.18), and PLCH will be responsible for the cost of shipping replacements for returned Goods under clause 14 and will match the Customer's shipping method.
- 6.15 The Customer acknowledges that the following minimum values will apply to orders supplied by PLCH:
- (a) \$35.00 for deliveries to locations in Queensland, New South Wales, Victoria and South Australia; and
  - (b) \$60.00 for deliveries to locations in Western Australia, Northern Territory and New Zealand.
- 6.16 For new Customer first orders, the Customer will be required to make an up-front payment for any Purchase Orders. Following the first order, the Customer can set up a thirty-day account for future orders,

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- in accordance with clause 6.5.
- 6.17 The Customer acknowledges that any Purchase Orders that exceed \$20,000.00 will require the Customer to pay a 50% deposit.
- 6.18 All payments made to PLCH must be made in Australian Dollars.
- 6.19 The Customer acknowledges that any payments made by VISA will attract a 1.5% fee.
- 7. Distribution Rights and Disclosures**
- 7.1 PLCH discloses that it is a registered distributor for the following brands:
- (a) DA Vision;
  - (b) Hitachi; and
  - (c) Cermate/SMART HMI,
- (together, **Registered Brands**).
- 7.2 PLCH discloses and the Customer acknowledges that PLCH is not, and does not claim to be a registered distributor of the following brands, or any other brand (with the exception of the Registered Brands):
- (a) Allen Bradley;
  - (b) Siemens;
  - (c) Schneider;
  - (d) Omron;
  - (e) Mitsubishi;
  - (f) Panasonic; and
  - (g) GE/Fanuc.
- 7.3 The Customer acknowledges and accepts that, with the exception of the Registered Brands, when purchasing Goods from PLCH, they are purchasing a parallel import.
- 7.4 PLCH discloses and the Customer acknowledges that Automation products purchased from PLCH will already have firmware installed, and makes no representations as to:
- (a) whether the product will or will not have firmware;
  - (b) if the product has firmware installed, whether the firmware is the revision level the Customer requires for their application; and
  - (c) the Customer's ability or right to download or otherwise obtain firmware for the product from Rockwell, its distributors or any other source or the right to install any such firmware on the product.
- 7.5 PLCH will not obtain or supply firmware on the Customer's behalf and it is the Customer's obligation to comply with the terms of any End-User Licence Agreement or similar documents related to obtaining or installing firmware.
- 7.6 If requested by the Customer, specific firmware revision levels can be ordered from PLCH, if required and available.
- 8. Provision of the Goods**
- 8.1 Any time specified by PLCH for provision of the Goods is an estimate only and PLCH will not be liable for any loss or damage incurred by the Customer as a result of any delay. However, both parties agree that they shall use best endeavours to enable the Goods to be provided at the time and place as was arranged between both parties. In the event that PLCH is unable to provide the Goods as agreed solely due to any action or inaction of the Customer then PLCH shall be entitled to charge a reasonable fee for re-providing the Goods at a later time and date.
- 8.2 The Delivery Period noted on the Quotation ("**Delivery Period**") of the Goods commences from the later of:
- (a) the date PLCH receives sufficient information to proceed with the supply; or
  - (b) from the date PLCH receives the Purchase Order, and provides the Customer with order confirmation.
- 8.3 The Delivery Period provided on the Quotation is subject to confirmation by PLCH, when placing the Customer's Purchase Order.
- 8.4 Any time specified by PLCH for Delivery of the Goods is an estimate only and cannot be construed as a commitment of PLCH. The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. PLCH will not be liable for any loss or damage incurred by the Customer, including loss of profit, as a result of Delivery being late, or any non-delivery of the Goods or part of the Goods.
- 8.5 If the Customer requests a delayed shipment, then PLCH may request an upfront full or partial payment of the Invoice.
- 8.6 In respect of any non-stock items ("**Non-Stock Items**") ordered at the Customer's specific request, PLCH may refuse any cancellation or variation request by the Customer in respect of the Non-Stock Items, and the Customer will not be entitled to return the Non-Stock Items following Delivery.
- 8.7 Where the Customer requests a particular method of delivery ("**Nominated Delivery**") and PLCH agrees in writing, the Customer must pay for the costs of the Nominated Delivery from the point of dispatch of the Goods by the Customer. If, prior to delivery, the Customer notifies PLCH in writing that it does not accept the costs payable for the Nominated Delivery, PLCH may select the method and service level of Delivery at the Customer's expense.
- 8.8 The Customer must notify PLCH of any shortages in deliveries, in writing, within seven (7) days of Delivery.
- 8.9 The Customer acknowledges that any material services will be provided in accordance with the published service rates and costings as disclosed in clause 23.
- 8.10 Billable service time includes travel time to and from the job site and all time that PLCH's representatives are available for work and waiting, whether on or off the job site, to perform any services, including any services disclosed at clause 23.
- 9. Risk**
- 9.1 The Customer acknowledges that risk in the Goods will pass to the Customer upon Delivery of the Goods and it will be the Customer's responsibility to ensure that the Goods are insured against all possible damage.
- 9.2 Unless otherwise specified, PLCH disclose that the Goods will be delivered to the Customer ex warehouse/ex works (EXW Incoterms 2000).
- 9.3 If the Customer nominates their own courier for Delivery, the Customer will be liable for all risk in the Goods at the time that the Goods are loaded onto the transport deck.
- 9.4 The Customer acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions and weights furnished by PLCH or otherwise contained in PLCH's publications including price lists, brochures, catalogues, electronic media, and other advertising material of PLCH are approximate only and are intended to be by way of a general description of the Goods and shall not form part of the agreement between PLCH and the Customer, unless otherwise specified in writing by PLCH, in which case, shall be subject to recognised tolerances and rejection limits.
- 9.5 The Customer further acknowledges that PLCH does not agree to comply with any specifications and drawings referred to in any Purchase Order or Quotation, unless such specifications and drawings have been produced by PLCH to the Customer prior to the delivery of the Goods and have been agreed to in writing and signed by a duly authorised representative of PLCH.
- 10. Compliance with Laws**
- 10.1 The Customer and PLCH shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods, including any work health and safety laws (WHS) relating or any other relevant safety standards or legislation pertaining to the Goods.
- 10.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Goods.
- 10.3 Prior to Delivery, PLCH may, at its own expense, carry out any tests on the Goods in accordance with PLCH's standards and testing procedures. Any additional tests, procedures and associated documentation required by the Customer, will be at the Customer's own expense.
- 10.4 The Customer must comply with all instructions of PLCH in relation to the fitting, installation and use of the Goods.

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## 11. Title

- 11.1 PLCH and the Customer agree that legal title of and ownership of the Goods shall not pass to the Customer until:
- (a) the Customer has paid PLCH all amounts owing to PLCH, including any other Goods purchased under different Purchase Orders, in full to PLCH; and
  - (b) the Customer has met all of its other obligations to PLCH, including under this agreement.
- 11.2 The Customer agrees that, until PLCH has received payment in full:
- (a) the Customer holds the Goods as a fiduciary agent and bailee for PLCH;
  - (b) the Customer must store the Goods separately from its own property (as well as the property of any third party), so as to clearly identify the Goods that are owned by PLCH; and
  - (c) the Customer must deliver the Goods to PLCH on demand, and if failing to do so upon demand, then clause 11.2(b) shall apply.
- 11.3 Receipt by PLCH of any form of payment shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 11.4 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 11.1:
- (a) the Customer holds the benefit of the Customer's insurance of the Goods on trust for PLCH and must pay to PLCH the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - (b) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for PLCH and must pay or deliver the proceeds to PLCH on demand;
  - (c) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of PLCH; and
  - (d) PLCH may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

## 12. Personal Property Securities Act 2009 ("PPSA")

- 12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 12.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to PLCH for Goods – that have previously been supplied and that will be supplied in the future by PLCH to the Customer.
- 12.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which PLCH reasonably require to:
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, PLCH for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of PLCH;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without

the prior written consent of PLCH; and

- (e) immediately advise PLCH of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 12.4 PLCH and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 12.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by PLCH, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Customer must unconditionally ratify any actions taken by PLCH under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

## 13 Security And Charge

- 13.1 In consideration of PLCH agreeing to supply the Goods in accordance with the Quotation and Purchase Order, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under this Contract (including, but not limited to, the payment of any money).
- 13.2 The Customer indemnifies PLCH from and against all PLCH costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising PLCH's rights under this clause.
- 13.3 The Customer irrevocably appoints PLCH and each director of PLCH as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customer's behalf.

## 14.1 Defects, Warranties And Returns, Competition And Consumer Act 2010 (CCA)

- 14.2 Where Delivery is the responsibility of PLCH, PLCH will repair or replace at their own expense and discretion, all Goods lost or damaged in transit to Delivery, provided that the Customer provides PLCH with written notice within three (3) days of Delivery (or expected delivery), or within such reasonable times that will allow PLCH to comply with the carrier's conditions of delivery applicable to loss or damage in transit.
- 14.3 Prior to receiving the Goods upon Delivery, the Customer must ensure that the entirety of Goods (in accordance with the carrier's delivery note) has been received. If there is a shortage in Goods or visible damage to the outer packaging of the Goods, the Customer must notify the carrier accordingly.
- 14.4 The Customer acknowledges the disclosures that PLCH make in clause 7.3 and that the Goods purchased from PLCH may be packed by a third party. PLCH is not responsible for any loss or damage to Goods caused by, or arising from, the Delivery or transport of the Goods, if the Customer has nominated the carrier to be used for Delivery, and any claims for damage or loss during Delivery must be made against the carrier in the prescribed manner of that company.
- 14.5 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 14.6 PLCH acknowledges that nothing in this Contract purports to modify or exclude the Non-Excluded Guarantees.
- 14.7 Except as expressly set out in this Contract or in respect of the Non-Excluded Guarantees, PLCH makes no warranties or other representations under these terms and conditions including but not limited to the quality, suitability or fitness for purpose of the Goods.



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- PLCH's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.8 If the Customer is a consumer within the meaning of the CCA, PLCH's liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.9 PLC Hardware warrants that new & current PLC processors, power supplies, chassis, and both local and remote IO, when installed according to the manufacturer's recommendations, shall be subject to a two-year warranty. All other components shall be subject to a one-year warranty.
- 14.10
- 14.11 Subject to the CCA, the warranty at 14.8 will be effective and impose liability on PLCH to give effect to such warranty, only if:
- the Customer provides PLCH with written notice of the circumstances giving rise to the claim, within thirty (30) days of the occurrence;
  - PLCH is permitted to inspect the Goods before they are repaired or replaced;
  - the Customer provides PLCH with the invoice or proof of purchase;
  - the Customer provides the original packaging of the Goods, where possible;
  - the Customer returns the Goods to PLCH's premises, at the Customer's own expense; and
  - PLCH is satisfied, upon examination of the Goods, that any alleged circumstances giving rise to the claim have not been caused by:
    - improper use, installation, operation, damage due to accident, neglect, lightning, or from improper repair, alteration, modification, or adjustment of the Goods; or
    - unusual deterioration or degradation due to physical, electrical, electromagnetic or noise environments.
- 14.12 The Company's liability for any loss, injury or damage shall be limited to making good, by replacement or repair, at PLCH's option, and at the Customer's expense in relation to any costs over and above the direct costs of replacing or repairing the Goods (or component parts of the Goods) at PLCH's Premises, any defects which appear under proper use.
- 14.13 PLCH warrants that any repairs that PLCH undertake to the Goods, shall, for a period of twelve (12) months from the date of completion of the repair, be free of faulty workmanship, materials, but only in respect of the component of the Goods that are the subject of the repair.
- 14.14 The Customer acknowledges that any repairs, alterations or other work carried out to the Goods by any party other than an authorised representative of PLCH, shall render the warranty invalid.
- 14.15 If the Customer insists that a warranty service provided under this clause 14 is to be carried out on-site at the Customer's premises, then any costs over and above the direct costs of replacing or repairing the Goods (or component parts of the Goods) at PLCH's premises will be at the Customer's expense.
- 14.16 PLCH makes no representation or warranty in respect of any standard or custom software and firmware supplied in connection with the Goods, including that:
- any such software shall be uninterrupted and free of errors; or
  - the functions contained therein shall meet or satisfy the Customer's intended use or requirements,
- except as stated expressly within this Contract or as otherwise required by law.
- 14.17 If PLCH are unable to provide a replacement product, then a full refund or credit will be provided to the Customer.
- 14.18 PLCH discloses that:
- PLCH only sells genuine, new products, unless otherwise stated when offering refurbished or generic products; and
  - to ensure that the Customer receives only genuine products, PLCH enforces a strict policy with all suppliers and any failure of the suppliers to comply with PLCH's policies will result in the issue of a non-conformance letter.
- 14.19 Where the Customer returns the Goods for repair and they are not covered by warranty under this clause 14, PLCH may, at its discretion, charge a fee for inspection and preparation of a repair quotation, with this fee being payable even if the Customer does not proceed with the repair. Any repairs that PLCH undertakes in accordance with this clause 14.17 are guaranteed for a period of ninety (90) days, from the date of repair completion, and only applying to any replacement components that were used in the repair. Despite this clause 14.17, the Customer acknowledges that PLCH is under no obligation to repair any Goods that are not covered by warranty.
- 14.20 PLCH may in its absolute discretion accept unused and resaleable Goods that are not under warranty, for return for credit, which are listed in PLCH's published price lists, brochures and catalogues, electronic media and other advertising material, provided that the Goods are:
- returned within fourteen (14) days of Delivery to PLCH's premises, at the Customer's expense;
  - accompanied by a delivery docket, stating PLCH's original Invoice number and a valid reason for the return;
  - returned in an unused, undamaged and resaleable condition, in original packaging, with the factory seal affixed and unbroken; and
  - the Invoiced value of the Goods is greater than \$200.00 excl GST.
- 14.21 If PLCH grant the Customer a return in accordance with clause 14.18, then the Customer will be liable to pay a restocking fee of the greater of \$50.00 (excl GST) or 15% of the Price, and will provide the Customer with a refund for the balance of the Price. PLCH reserves the right to refuse the return of any Goods that do not comply with clause 14.18.
- 14.22 Where PLCH have supplied Goods on a manufactured/assembled to order basis or in accordance with clause 8.8, PLCH will not accept returns except where such Goods or Non-Stock Items have been wrongly delivered against PLCH specification sheets that have been signed off by the Customer prior to manufacture or the Goods or Non-Stock items are faulty, requiring replacement or repair.
- ### 15.1 Intellectual Property
- 15.2 Where PLCH has submitted drawings, studies or other documents to the Customer, as well as any copyright, patents, design rights, trademarks, software, licences in or related to Goods supplied by PLCH, these items shall remain the property of PLCH and constitute Confidential Information and Intellectual Property of PLCH. The Customer must not use PLCH's Intellectual Property for any purpose, other than in accordance with this Contract and must not transmit, disclose, or make available to any third parties, without PLCH's prior written consent.
- 15.3 The Customer warrants that any designs, specifications or instructions given to PLCH will not cause PLCH to infringe any patent, registered design or trademark in the execution of the Customer's Purchase Order and the Customer agrees to indemnify PLCH against any action taken by a third party against PLCH in respect of any such infringement.
- 15.4 The Customer agrees that PLCH may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which PLCH has created for the Customer.
- 15.5 Any software supplied by PLCH must only be used by the Customer on the Goods and equipment configuration specified by PLCH.
- 15.6 The Customer acknowledges that, the use of Goods that contain, or are to be used with, standard or custom software or firmware may be subject to the Customer's acceptance of additional terms and conditions in separate PLCH or third-party licence agreements ("**Third Party Licence Agreement**").
- 15.7 Where there is any conflict between this Contract and a Third Party Licence Agreement, the Third Party Licence Agreement will prevail to the extent of the inconsistency.
- 15.8 In the absence of any Third Party Licence Agreement, PLCH grants the Customer a non-exclusive, non-transferable and royalty-free licence to use the purchased software or firmware only in object code form and solely in conjunction with the Goods, with no rights to sublicense, disclose, disassemble, decompile, reverse engineer or otherwise modify the software and firmware. The Customer must not do

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anything to alter, remove or otherwise tamper with any Intellectual Property rights (including but not limited to trademarks), whether registered or unregistered, that PLCH or any of its suppliers attach to or place on the Goods.

## 16.1 Default And Consequences Of Default

- 16.2 If the Customer owes PLCH any money the Customer shall indemnify PLCH from and against all costs and disbursements incurred by PLCH in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, PLCH's contract default fee, and bank dishonour fees).
- 16.3 Further to any other rights or remedies PLCH may have under this Contract, if a Customer has made payment to PLCH, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by PLCH under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 16.4 Where the Customer's account is in arrears, PLCH may demand payment of the arrears as well as payment in advance for any undelivered Goods before proceeding with manufacture or Delivery of the Goods, in accordance with this Contract.
- 16.5 Without prejudice to PLCH's other remedies at law PLCH shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to PLCH shall, whether or not due for payment, become immediately payable if:
- any money payable to PLCH becomes overdue, or in PLCH's opinion the Customer will be unable to make a payment when it falls due;
  - the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

## 17. Variation and Cancellation

- 17.1 The Customer acknowledges that any cancellation of Purchase Orders will generally not be accepted by PLCH once same have been placed with PLCH's suppliers. Any request for cancellation of orders made by the Customer must be made in writing, to PLCH.
- 17.2 In respect of any Customer requested order changes, including those affecting the identity, scope and Delivery of the Goods, must be documented in writing, and are subject to PLCH's prior written agreement. The Customer acknowledges that such changes may result in adjustments in Price, scheduling and other affected terms and conditions.
- 17.3 PLCH reserves the right to reject any change requested in accordance with clause 17.2, particularly where such change is deemed unsafe, technically inadvisable or inconsistent with the established engineering or quality guidelines and standards, or incompatible with PLCH's design or manufacturing capabilities.
- 17.4 The Customer acknowledges that PLCH reserves the right to substitute the Goods with the latest superseding revision or series or equivalent Goods having comparable form, fit and function.
- 17.5 In the event that PLCH agrees to accept a Customer requested cancellation (as in clause 17.1), then the Customer acknowledges that PLCH may charge the Customer any reasonable cancellation or restocking fees, in accordance with clause 14.19, including PLCH's direct costs incurred in connection with the cancellation. PLCH may charge the Customer cancellation fees associated with the any Goods ordered on a manufactured/assembled to order, or specifically-made basis, up to the actual selling price of the Goods.
- 17.6 Without prejudice to any other remedies PLCH may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under this Contract, PLCH may suspend or terminate the supply of Goods to the Customer. PLCH will not be liable to the Customer for any loss or damage the Customer suffers because PLCH has exercised its rights under this clause.

- 17.7 PLCH may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice PLCH shall repay to the Customer any money paid by the Customer for the Goods. PLCH shall not be liable for any loss or damage whatsoever arising from such cancellation.

- 17.8 In the event that the Customer cancels provision of the Goods, the Customer shall be liable for any and all loss incurred (whether direct or indirect) by PLCH as a direct result of the cancellation (including, but not limited to, any loss of profits).

## 18. Privacy Policy

- 18.1 All emails, documents, images or other recorded information held or used by PLCH is Personal Information, as defined and referred to in clause 18.3, and therefore considered Confidential Information. PLCH acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). PLCH acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by PLCH that may result in serious harm to the Customer, PLCH will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 18.2 Notwithstanding clause 18.1, privacy limitations will extend to PLCH in respect of Cookies where the Customer utilises PLCH's website to make enquiries. PLCH agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- IP address, browser, email client type and other similar details;
  - tracking website usage and traffic; and
  - reports are available to PLCH when PLCH sends an email to the Customer, so PLCH may collect and review that information ("collectively **Personal Information**")
- If the Customer consents to PLCH's use of Cookies on PLCH's website and later wishes to withdraw that consent, the Customer may manage and control PLCH's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 18.3 The Customer agrees that PLCH may exchange information about the Customer (such as name, address, date of birth, occupation, previous credit applications, credit history) with those credit providers and with related body corporates for the following purposes:
- to assess an application by the Customer; and/or
  - to notify other credit providers of a default by the Customer; and/or
  - to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 18.4 The Customer consents to PLCH being given a consumer credit report to collect overdue payment on commercial credit.
- 18.5 The Customer agrees that personal credit information provided may be used and retained by PLCH for the following purposes (and for other agreed purposes or required by):
- the provision of Goods; and/or
  - analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - enabling the collection of amounts outstanding in relation to the Goods.

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18.6 PLCH may give information about the Customer to a CRB for the following purposes:

- (a) to obtain a consumer credit report;
- (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.

18.7 The information given to the CRB may include:

- (a) Personal Information as outlined in 18.3 above;
- (b) name of the credit provider and that PLCH is a current credit provider to the Customer;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults (provided PLCH is a member of an approved QAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and PLCH has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of PLCH, the Customer has committed a serious credit infringement;
- (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

18.8 The Customer shall have the right to request (by e-mail) from PLCH:

- (a) a copy of the Personal Information about the Customer retained by PLCH and the right to request that PLCH correct any incorrect Personal Information; and
- (b) that PLCH does not disclose any Personal Information about the Customer for the purpose of direct marketing.

18.9 PLCH will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

18.10 The Customer can make a privacy complaint by contacting PLCH via e-mail. PLCH will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

## 19. Service Of Notices

19.1 Any written notice given under this Contract shall be deemed to have been given and received:

- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.

19.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

## 20. Trusts

20.1 If the Customer at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not PLCH may have notice of the Trust, the Customer covenants with PLCH as follows:

- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (b) the Customer has full and complete power and authority under

the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;

- (c) the Customer will not without consent in writing of PLCH (PLCH will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
  - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
  - (ii) any alteration to or variation of the terms of the Trust;
  - (iii) any advancement or distribution of capital of the Trust; or
  - (iv) any resettlement of the trust property.

## 21. Performance

21.1 The PLCH discloses that any performance figures given by PLCH to the Customer, are based on the Customer's experience and are figure that PLCH expects to obtain on testing. Despite any representation by a representative of PLCH to the contrary, PLCH is under no liability whatsoever for damages, for failure to attain such performance figures.

21.2 Following submission of a Purchase Order or Quotation, PLCH is not required to comply with any additional standards, specifications, rules or other requirements subsequently proposed by the Customer. If any such additional standards, specifications, rules or other requirements are proposed by the Customer, PLCH reserves its right to decline to proceed with any resultant order, or vary the Price accordingly.

## 22. Loan And Hire

22.1 PLCH may, from time to time, loan or hire out Goods to the Customer (**Loaned Goods**).

22.2 The Customer acknowledges that, any Loaned Goods that are not returned to PLCH within the specific loan period (**Loan Return Date**), shall be deemed to have been sold by the Customer and the list price of the Goods as at the Loan Return Date shall become due and payable by the Customer to PLCH.

22.3 The Customer must return any Loaned Goods to PLCH in the original condition and packaging, with fair and reasonable wear and tear excepted.

22.4 The Customer agrees that, any Loaned Goods that are returned damaged or defective for reasons not covered by PLCH's warranty conditions at clause 14 of this Contract, will result in the Customer being charged the lesser of repair charges or the cost of the Loaned Goods.

22.5 In respect of the Loaned Goods, any return freight, if applicable, must be prepaid by the Customer prior to receiving the Loaned Goods.

## 23. Training And Engineering Assistance

23.1 The Customer acknowledges that, where training forms a supply of the Goods, the Customer will be charged as follows:

- (a) training at a rate of an 8-hour day (or part thereof) for a specified number of trainees;
- (b) costs for the provision of training equipment, training instructor, and course handouts;
- (c) where training is carried out external to PLCH's Premises, the cost of transporting equipment and instructor's airfares, hire car for site transportation, meals, accommodation and miscellaneous out-of-pocket expenses (where applicable) at a cost to PLCH, plus 15%; and
- (d) any applicable travel time and stand-by/waiting time charged in accordance with PLCH's labour rate applying at the time of supply.

23.2 PLCH discloses that basic technical assistance is provided free of charge on Core Products, depending on availability of resources.

23.3 At PLCH's discretion, PLCH may render free technical assistance for non-Core Product enquiries, if possible.

23.4 Subject to this Contract, any detailed engineering or technical assistance provided by PLCH, will be charged at PLCH's labour rate, applying at the time assistance is provided to the Customer, including

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travel and stand-by/waiting time, plus expenses at the cost to PLCH, plus 15%, and any applicable expenses as defined at clause 23.1.

- 23.5 Any required miscellaneous materials purchased by PLCH as a requirement of any training or engineering assistance, shall be charged to the Customer at cost to PLCH, plus 25%.
- 23.6 Any assistance provided in accordance with this clause 23 shall be at the sole risk of the Customer.
- 23.7 It is the Customer's responsibility to review and approve any suggested solutions or support given by PLCH and PLCH will not be held liable for any incorrect information inadvertently provided.

### **24. Liability**

- 24.1 Notwithstanding anything else in this Contract, and to the extent permissible by law, PLCH's aggregate liability arising out of the performance or non-performance of its services, whether under the law of contract, tort, statute or otherwise, shall be limited to the extent permissible by law to the price paid by the Customer to PLCH, for the Goods giving rise to the claim.
- 24.2 PLCH shall not be liable for any business interruption, loss of profit, revenue, materials, anticipated savings, data contract, goodwill or the like, whether direct or indirect, or for any other form of incidental or consequent damage of any kind.
- 24.3 Subject to legislation, PLCH shall not be liable for any loss or damage where an action is commenced after a period of eighteen (18) months has lapsed, after the circumstances on which the alleged cause of action occurred. This clause shall apply regardless of any other contrary provision of this Contract and of the form of action.
- 24.4 Each provision of this Contract which provides for a limitation of liability, disclaimer of warranty, or condition or exclusion of damages is separate and independent.
- 24.5 PLCH is not liable for product damages that may occur in transit during return of Goods, in accordance with clause 14 and returned products must be properly packed for shipping. To minimise the possibility of damage of Goods In transit, Customer must:
  - (a) properly place the Goods (including the original manufacturer's box if applicable), in a shipping box with packing materials;
  - (b) ensure that the Goods are properly surrounded with bubble wrap or packing foam; and
  - (c) ensure that Goods are never shipped without packing foam, bubble wrap or an antistatic bag.