

# Hardware and Software | Product Terms

## Terms and Conditions

### 1. Conditions

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- 1.1. Each sale of goods is made upon and subject to these Terms & Conditions of sale and to the exclusion of any other terms and conditions (whether express or implied, oral or written) unless otherwise stated or acknowledged in writing by BRENNAN IT PTY LIMITED.
- 1.2. BRENNAN IT PTY LIMITED reserves the right to refuse an order.

### 2. Price

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- 2.1. Unless otherwise stated in writing all sales will be invoiced at the prices ruling at the date of delivery.
- 2.2. If not expressly included in the price of the goods the cost of the delivery of goods shall be BRENNAN IT PTY LIMITED "Delivery Charge" at the date of delivery.
- 2.3. All deliveries will be done by the courier service employed by BRENNAN IT PTY LIMITED from time to time, unless otherwise authorised by BRENNAN IT PTY LIMITED.
- 2.4. Any additional packaging required will be applied at the Buyers request and at the Buyer's expense.
- 2.5. Each delivery of goods whether whole or part only of the goods contracted for shall be deemed a separate contract and be paid for accordingly. A minimum Delivery Charge at the prevailing rate at the time of delivery may apply to deliveries of small orders.

### 3. Delivery

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- 3.1. The responsibility of BRENNAN IT PTY LIMITED for delivery ceases at the receiving dock, office or street frontage of the address nominated for delivery.
- 3.2. If the Buyer requests delivery at any other point, it is the Buyer's responsibility to provide adequate and safe access for that purpose and to bear all risks of loss, damage including damage to the delivery vehicle or injury to persons or property including private or public property premises and vehicles.
- 3.3. The driver of the delivery vehicle may in his or her absolute discretion refuse to proceed beyond the street frontage.

### 4. Credit Terms

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- 4.1. BRENNAN IT PTY LIMITED Terms of Business are strictly cash with order, unless otherwise arranged. In replacement of cash, payment by credit card is also accepted. (Mastercard, Visa, Bankcard). If Payment by credit card is not received and approved by the card provider within 7 days than a 2% surcharge will be applied.
- 4.2. Buyers wishing to pay for goods by cheque should arrange this in advance with this company's credit department, or provide a bank cheque or postal order.
- 4.3. Companies wishing to gain credit terms with BRENNAN IT PTY LIMITED should complete BRENNAN IT PTY LIMITED Credit Application. BRENNAN IT PTY LIMITED reserves the right to refuse credit to any client.
- 4.4. Overdue accounts may be charged interest at the interest rate charged by the National Australia Bank to its prime commercial customers, which shall be calculated from the day in which the account becomes overdue.
- 4.5. Companies who exceed their credit terms will be charged interest at the interest rate charged by the National Australia Bank to its prime commercial customers, which shall be calculated from the day on which the account becomes overdue.

### 5. Claims

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- 5.1. Subject to paragraph 6, no claims will be recognised in respect of goods after goods have been placed, attached to other goods or incorporated in a structure or computer network.
- 5.2. Goods are not returnable except within 10 days of receipt by prior agreement and goods in first condition only will be accepted for return.

- 5.3. Acceptance of goods is subject to BRENNAN IT PTY LIMITED's visual inspection.
- 5.4. Inward and outward freight and administration fees where charged is to the Buyers account.
- 5.5. Any charges/costs incurred as a result of Buyer error or negligence shall be borne by the Buyer.
- 5.6. When goods are delivered and a receipt for the delivery cannot be obtained by the carrier/courier, BRENNAN IT PTY LIMITED will not hold itself responsible to meet subsequent claims for shortages.
- 5.7. The Buyer is deemed to have accepted goods on delivery.

## **6. Consumer Protection**

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- 6.1. Nothing herein contained shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting, or modifying the application in relation to the supply of any goods pursuant to the contract of all or any of the provisions of Part V of the Trade Practices Act 1974 (as amended) or any relevant State Act (hereunder collectively referred to as the 'Acts') which by law cannot be excluded, restricted or modified.
- 6.2. Provided that to the extent that any of the Acts permits BRENNAN IT PTY LIMITED to limit its liability for the breach of any condition or warranty applying under or by the virtue of any of the Acts then BRENNAN IT PTY LIMITED's liability for any such breach shall be limited to the extent permitted by such Acts and subject thereto.
- 6.3. In the case of goods, such one or more of the following as BRENNAN IT PTY LIMITED in its absolute discretion determines:
  1. The replacement of the goods or the supply of equivalent goods;
  2. The repair of goods;
  3. The re-supply of services;
  4. The payment of the cost of replacing the goods or of acquiring equivalent goods;
  5. The payment of the cost of having the goods repaired.
- 6.4. It is the Buyer's responsibility to satisfy itself that the goods are of a description, quality and character suitable for the purpose for which they are purchased or any other purpose and subject to any provision of the Acts to the contrary, BRENNAN IT PTY LIMITED shall not be liable in any way whatsoever for any loss or damage (including direct, indirect, special, general or consequential) however so arising from the sale or from the failure of the Buyer to satisfy itself.

## **7. GST and Other Taxes**

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- 7.1. In addition to the price specified the Buyer agrees with BRENNAN IT PTY LIMITED to pay to BRENNAN IT PTY LIMITED any taxes (both Federal & State) imposed upon the supplier under this contract including but not limited to, a Goods & Services Tax ("GST").
- 7.2. If the GST, or any existing taxes, duties or charges are varied (the Tax charge), during the term of this agreement, the cost of the Tax, or the cost of any increase in taxes, to BRENNAN IT PTY LIMITED, will be borne by the Buyer as an increase in the price of the goods; and.
- 7.3. The appropriate GST is payable by the Buyer to BRENNAN IT PTY LIMITED with respect to and at the same time as all amounts which become payable by the Buyer to BRENNAN IT PTY LIMITED under this Agreement.
- 7.4. For the purpose of the GST Act the ABN for BRENNAN IT PTY LIMITED is (29 082 699 367)

## **8. Force Majeure**

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- 8.1. The parties shall be excused from the timely performance of obligations under this Agreement where and the extent that any performance is prevented or delayed by any cause beyond the reasonable control of the party concerned including, without limiting the generality of the foregoing:
  1. Any act of God;
  2. Any statutory obligations;
  3. War or civil commotion;
  4. Labour disturbances or strikes; and
  5. Business failure or shut down.

## **9. Customised Goods**

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- 9.1. This applies to goods that are customised to the requirements specified by the Buyer, which can no longer be considered to be off the shelf goods, which are those goods ordinarily sold.

- 9.2. This includes but is not limited to modifications to computer hardware to suit Buyer modifications, pre-loading of software as specified by the customer, configuration of computer hardware or communication devices.
- 9.3. A surcharge applies to all customised goods and is detailed within the quote provided; this surcharge is not refundable if the order is cancelled.
- 9.4. Customised goods are not returnable nor can any refund be made.
- 9.5. The Buyer acknowledges that it accepts full liability for quantities ordered by the Buyer and that no variation to quantities ordered can be made. A new quotation must be requested.
- 9.6. A request by a Buyer for the cancellation of an order for customised goods is at the sole discretion of BRENNAN IT PTY LIMITED.

## **10. Colour**

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- 10.1. BRENNAN IT PTY LIMITED will use its best endeavours to provide the Buyer with the colour of the good as specified by the Buyer.
- 10.2. The Buyer acknowledges that where the colour of good/s are not as specified, that the Buyer is obliged to accept the good.
- 10.3. Printed colours samples as detailed in any brochure provided by BRENNAN IT PTY LIMITED are only a guide and not indicative of the goods final colour.

## **11. Warranty**

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- 11.1. In consideration of the terms of this agreement, I/We hereby covenant and agree that I/We will be jointly with the Company (as stated in this agreement), and each of us severally liable to you for the payment for all such goods as may be sold to us aforesaid and for the due performance and observance of any such terms and conditions as may be agreed in respect of any such sale and I/We expressly acknowledge and agree that this indemnity is unlimited and that I/We require no notice of the amount of credit from time to time extended to the Company or the conditions whether as to interest, time for payment or otherwise whatsoever attaching to the sale of any goods and further that this indemnity will not be revoked except after the expiration of three (3) months notice in writing to you.

## **12. PPS Law**

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- 12.1. This clause applies to the extent that the agreement we have with you provides for or contains a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPS Law") (or part of it). The security interest granted to us is a 'purchase money security interest' ("PMSI") to the extent that it can be under section 14 of the PPS Law.
- 12.2. We may register our security interest. You must do anything (such as obtaining consents and signing documents) which we require for the purposes of:
  - 12.2.1. ensuring that our security interest is enforceable, perfected and otherwise effective under the PPS Law;
  - 12.2.2. enabling us to gain first priority (or any other priority agreed to us in writing) for our security interest; and
  - 12.2.3. enabling us to exercise rights in connection with the security interest.
- 12.3. Our rights under our agreement with you are in addition to and not in substitution for our rights under other law (including the PPS Law) and we may choose whether to exercise rights under our agreement and/or under such other law, as we see fit.
- 12.4. The following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of our agreement with you in respect of goods that are not used predominantly for personal, domestic or household purposes:
  - 12.4.1. sections 95 (notice of removal of accession to the extent it requires us to give a notice to you), 96 (retention of accession), 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires us to give a notice to you); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security agreement).
- 12.5. The following provisions of the PPS Law:

- 12.5.1. section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral), confer rights on us. You agree that in addition to those rights, we shall, if there is default by you, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any hardware and/or Loan Equipment, not only under those sections but also, as additional and independent rights, under our agreement with you and you agree that we may do so in any manner we see fit including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 12.6. You waive your rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.
- 12.7. We and you agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. You must do everything necessary on your part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to us the benefit of section 275(6)(a) and we shall not be liable to pay damages or any other compensation or be subject to injunction if we breach this sub-clause.
- 12.8. You must not create, purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the hardware and/or Loan Equipment other than with our express written consent.
- 12.9. You must not lease, hire, bail or give possession of ('sub-hire') the equipment to anyone else unless we (in our absolute discretion) first consent in writing. Any such sub-hire must be in writing in a form acceptable to us and must be expressed to be subject to our rights under our agreement with you.
- 12.10. You must take all steps including registration under PPS Law as may be required to:
  - 12.10.1. ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
  - 12.10.2. enabling us to gain (subject always to our rights) first priority (or any other priority we agree to in writing) for the security interest; and
  - 12.10.3. enabling each of us to exercise our respective rights in connection with the security interest.
- 12.11. We may recover from you the cost of doing anything under this clause, including registration fees and the costs of notification.

### **13. Third party materials**

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- 13.2. In providing a service we may supply you with materials (including software) licensed by third parties.
- 13.3. You must comply with the terms of the third party license and you indemnify us against any loss, damage, claim, liability or demand we incur due to your breach of a third party license.

### **14. Title and Risk**

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- 14.2. Property in each unit of the goods shall pass to the Buyer when payment in full is received by BRENNAN IT PTY LIMITED or on attachment to land or on the sale of the goods in the ordinary course of trade or on the merger of those goods with other goods, whichever occurs first.
- 14.3. Unless title passes the Buyer holds the goods as bailee for BRENNAN IT PTY LIMITED.
- 14.4. The Buyer assumes all risk in and for goods from the time of delivery.

**BRENNAN IT PTY LIMITED reserves the right to change the details in this publication without notice.**