

ETEX AUSTRALIA PTY LTD

STANDARD TERMS AND CONDITIONS OF SALE

1. THESE CONDITIONS

- 1.1 These conditions apply to each order and purchase made by the Buyer for goods unless Etex agrees otherwise in writing. To the extent permissible by law, the Buyer waives any terms and conditions of purchase inconsistent with these conditions.
- 1.2 The following definitions apply in these conditions:
- **Buyer** means the person named in the credit application or the addressee of any tax invoice issued by Etex in respect of goods supplied by Etex and includes any servant, agent, partner, contractor or employer of that person. Where the Buyer is two or more persons **Buyer** also means each of them jointly and separately;
 - **GST** means a tax in the nature of a supply or goods and services tax levied or imposed by the Commonwealth of Australia; and
 - Etex means Etex Australia Pty Ltd, its employees and agents and related corporate entities.
- 1.3 These conditions are governed by the law in force in the location where the goods are collected by, or delivered to, the Buyer. The Buyer submits to the non-exclusive jurisdiction of the courts of that place and courts competent to hear appeals from those courts.

2. ORDERS AND PRICING

- 2.1 An order may only be varied or cancelled with Etex's written approval.
- 2.2 All sales are at Etex's price relevant to the specific customer at time of delivery. The Buyer acknowledges that an invoice's price on delivery may be different to the price prevailing at the time of order.
- 2.3 Unless otherwise agreed in writing, all invoices prices are exclusive of GST.

3. LIABILITY

- 3.1 To the extent permissible by law, Etex will not be liable for any claim, loss or expense of any person in connection with the goods or their delivery, regardless how arising (and the Buyer indemnifies Etex for such claims, losses or expenses) unless notified to Etex within seven days from the date the goods are collected from, or delivered by Etex.
- 3.2 Etex will not in any case be liable for such claim, loss or expense:
- for amounts which exceed, in aggregate, the total replacement value of the goods; or
 - being for any special, indirect, consequential, economic or punitive damages; or
 - for the unavailability of the goods or the delay in or failure of delivery of the goods.
- 3.3 The Buyer acknowledges that it has not relied on, nor been induced by, any representations made by Etex in deciding to purchase the goods. The Buyer agrees, to the extent permitted by law, that any advice, information, recommendation or representation by or on behalf of Etex as to the quality, performance or suitability of the goods for any purchase or otherwise relating to the goods is given in good faith and without any liability or responsibility on Etex's behalf.

- 3.4 In the event that the supply of goods to the Buyer is a supply of goods to a customer as defined in the *Competition and Consumer Act 2010* (Cth) (“**the Act**”), nothing contained in these conditions excludes or restricts any condition, warranty, right or remedy which, pursuant to the Act, applies to a sale of goods to the Buyer, provided that, to the extent the Act permits Etex to limit its liability for a breach of a condition or warranty implied by the Act, then Etex’s liability for such a breach shall be limited to, at Etex’s option, replacement or repair of the goods or payment of the costs of replacing or repairing the goods.

4. PAYMENT

- 4.1 All prices are strictly net, and unless otherwise agreed in writing, all payments are due by the time specified in the clause 5 below.
- 4.2 If payment is not made in accordance with the standard trading terms being by a due date of the last business banking day in the month following the month of invoicing (where, if end of month falls on a weekend, the due date will be the Friday prior), Etex:
- is entitled to charge interest on the full overdue balance of the Buyer’s account at the published ANZ Bank Reference Rate plus a margin of 1.00%. The interest rate may be found at <http://www.anz.com/auxiliary/rates-fees-terms/interest-rates> under the ANZ Business Variable Rates product name, or on such other part of its website as may be reorganized from time to time. This interest charge will be calculated on a daily basis and will appear on the Buyer’s next statement;
 - has the right to charge the Buyer any and all costs and expenses (including bank fees, legal costs (on the indemnity basis) and commissions paid by Etex) incurred by Etex in connection with the recovery of overdue amounts and/or the enforcement of any clauses under either the credit application or these conditions; and
 - reserves the right to stop supply of all products and services to the Buyer and to any related entity (as that term is defined in the *Corporations Act 2001* (Cth)) of the Buyer if payment is not received by the due date.

5. PAYMENT OPTIONS

5.1 PAYMENT BY CASH OR CHEQUE

Etex must receive payment on or before the last business-banking day (prior to month end) of the month following the month of invoicing (i.e. if invoice date is in April, payment is due on or before the last business-banking day in May).

5.2 DIRECT DEPOSIT

Direct deposits can be made over the counter at a bank or by using internet transfers, payment to be made by the last business banking day (prior to month end) of the month following the month of invoicing (i.e. if invoice date is in April, payment is due on or before the last business banking day in May).

5.3 PAYMENT BY CREDIT CARD

- 5.3.1 Payment by authorised credit card is to be made on or before the last business-banking day (prior to month end) of the month following the month of invoicing (i.e. if invoice date is in April, payment is due on or before the last business-banking day in May).
- 5.3.2 An administration fee, inclusive of the merchant card fee payable by Etex, will be charged to the Buyer (plus GST).

6. PROPERTY AND RISK

- 6.1 Property in the goods will remain with Etex until the price of those goods has been paid to Etex in full.
- 6.2 The risk in the goods will transfer to the Buyer upon delivery to, or collection by the Buyer or the Buyer’s agent or

nominated carrier.

6.3 The Buyer may effect sale of the goods or part thereof in the usual course of business upon the following conditions:

6.3.1 that the Buyer holds all proceeds of sale relating to Etex's goods on trust for Etex until Etex has been paid in full; and

6.3.2 that the Buyer agrees to assign to Etex any rights to any outstanding monies relating to the sale or disposal of Etex's goods to the Buyer's customers.

6.4 If Etex's written demand for payment is unsatisfied for a period of seven days from the date of demand, Etex shall be entitled, without liability for trespass and damage, to enter any premises owned or occupied by the Buyer to recover any goods which are the property of Etex which Etex reasonably believes to be on such premises. This right of entry and to retake possession of goods is irrevocable.

7. DELIVERY

7.1 Etex is not liable for any claim or loss arising from the loading, transporting or unloading of the goods that the Buyer collects.

7.2 If the Buyer asks Etex to arrange for delivery of goods outside Etex's normal arrangements:

7.2.1 Etex will determine the transport and delivery method, and may suspend or cancel delivery without liability for doing so;

7.2.2 the Buyer must pay the delivery charges. If it necessarily takes more than thirty minutes to effect or attempt delivery at the specified delivery site, the Buyer must pay all associated costs and expenses; and

7.2.3 the Buyer must provide proper access to the specified delivery site. If the delivery site is unattended, delivery will be deemed to have been made in accordance with the Buyer's order by leaving the goods at the site with a delivery docket, at which point the Buyer becomes responsible for the goods.

8. RETURNS

8.1 The Buyer will immediately notify Etex in writing upon discovery of any defect in goods delivered as soon as possible after delivery. The Buyer will not carry out any remedial work to the alleged defective goods without first obtaining the written consent of Etex to do so.

8.2 Etex will refund or exchange goods where authorised by a Etex representative before the return and provided that the goods are in a reasonable condition (unless otherwise agreed by the Etex representative).

8.3 At the discretion of Etex, the Buyer must pay a re-stocking fee (equal to the greater of \$50 and 10% of the total invoice amount) at the time of return. Any associated freight cost is the responsibility of the Buyer.

8.4 Etex will not refund or exchange custom-made, custom-cut, custom-processed or custom-acquired goods, where not required to do so by law.

9. TERMINATION

9.1 If the Buyer:

9.1.1 fails to comply with any of these conditions; or

- 9.1.2 being an individual, commits any act of bankruptcy; or
- 9.1.3 being a corporation, passes a resolution for its winding up or liquidation or voluntary administration; or
- 9.1.4 enters into any composition or arrangement with creditors or if a receiver or manager is appointed to any property assets of the Buyer; or
- 9.1.5 is or becomes insolvent or liable to be wound up by reason of insolvency or if any petition is presented for its winding up,

Etex may, in addition to exercising any of its other rights against the Buyer under these conditions or at law, do one or more of the following:

- 9.1.6 suspend or cancel any further deliveries of goods; or
- 9.1.7 suspend or cancel the Buyer's rights to purchase further goods on credit; or
- 9.1.8 immediately recover possession of any goods not paid for in full (and the Buyer authorises, or will procure relevant authority for, Etex and its agents to enter upon any property owned, leased or under the control of the Buyer to permit the recovery and taking possession of such goods by Etex); or
- 9.1.9 sell any such goods recovered and apply the proceeds of sale in reduction of any money owing by the Buyer to Etex.

10. VARIATION

- 10.1 Etex may vary or replace these conditions by providing not less than seven days' prior written notice to the Buyer specifying the changes and the date on which the new terms becomes effective. Notice of the variation or replacement of the conditions need not be sent separately and may be sent with an invoice or as part of any other correspondence.
- 10.2 Any notice in writing required to be given under these conditions is deemed given two business days after posting if posted to the last known address of the addressee by prepaid post.