

## Realtime Distribution ABN 91 732 154 697

### Customer Terms

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

Words with special meaning are defined in clause 1. A reference in these terms to: (a) the singular includes the plural and vice versa; and (b) the word "including" means "including, but not limited to," and the word "includes" means "including, without limitation.". These Terms may also be viewed at RD's website at [www.realtime.net.au](http://www.realtime.net.au).

### 1. Definitions

In these Terms:

"**Customer**" means the person, business or company that is the purchaser of the Products; "**Products**" means the products (including software) supplied to the Customer by RD and described in RD's invoice; "**Sales Contract**" means any sales contract entered into by Customer and RD in respect of the Products and Services supplied to Customer and which these terms are deemed to be incorporated; and "**RD**" means Realtime Distribution (ABN 91 732 154 697).

### 2. Orders

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

### 3. Payment

- (a) The price of the Products will be RD's quoted price.
- (b) Payment is required prior to delivery of the Products to Customer unless agreed otherwise by RD or its authorised representative. If Customer fails to make payment in accordance with this clause 3(b) after demand for payment by RD, all amounts owing by Customer to RD on any account will immediately become due and payable.
- (c) RD 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 an annual rate of 2% above the prevailing base lending rate quoted by the Australia and New Zealand Bank. Interest will accrue daily from the date the payment became overdue until RD has received payment of the overdue amount, together with any interest

accrued.

- (e) Unless stated otherwise in these terms (or in writing by RD's authorised representative), all prices quoted for Products and Services are inclusive of GST but exclusive of all other handling, delivery, agent's charges and any other charge, duty or import.
- (f) Customer must pay RD, 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 transactions contemplated by these Terms, including any goods and services or value-added tax, customs 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 RD 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 RD by Customer under this clause 3 must leave in the hands of RD following payment of any relevant tax or other amount, the same amount, whether tax or other amount is payable or not.

### 4. Delivery

Delivery times advised to Customer are estimates only and RD 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

RD 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 license agreement applicable to it.
- (b) Software license 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 accordance with the terms and conditions of the relevant license 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 license 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 Product 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 RD for downloading by Customer,

and must, within 7 days of delivery or downloading (as the case may be), give written notice to RD 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 RD to Customer will be at Customer's risk immediately upon delivery of the Products to a recognised carrier for transport to Customer or into Customer's custody and control (whichever is sooner).
- (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 RD on the insurance policy; and
  - (iii) produce a certificate of currency of the insurance effected by Customer under this clause 8(b) to RD, upon request.
- (c) Risk in the Products will remain with Customer at all times unless RD retakes possession of the Products in accordance with clause 8(f)(ii).
- (d) Title in the Products supplied by RD to Customer will not pass to Customer until those Products are paid for, and funds cleared. Title to those products which are software remains with RD and/or the applicable third party licensor(s) at all times. In the event that Customer uses the Products in some manufacturing or construction process of its own or some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to the Products in trust for RD. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to RD at the time of the receipt of such proceeds.
- (e) Until the Products have been paid for:
  - (i) Customer must store the Products in such manner as to clearly indicate that they are the property of RD; and
  - (ii) Customer may sell the Products and keep records of the Products in the ordinary course of its business as agent for RD and must account to RD for the proceeds of sale (including any proceeds from insurance claims). These proceeds must be kept in a separate bank account.
- (f) If Customer has breached these Terms or the terms of any relevant Sales Contract, Customer authorises RD, at any time, to enter onto any premises upon which RD's Products are stored to enable RD to:
  - (i) inspect the Products; and/or
  - (ii) reclaim the Products
- (g) Customer agrees that the provisions of this clause 8 apply despite any arrangement under which RD grants credit to Customer.

### 9. Returns

Customer must notify RD in writing of any

Products it wishes to return within 30 days from the date of the invoice relating to those Products.

Returns will be subject to RD's returns policy as advised to Customer and amended by RD from time to time, the current version of which is set out on RD's website ("**Returns Policy**").

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 RD to the Customer by ordinary freight pre-paid.

RD 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 RD's products.

- (e) The provisions of this clause 9 do not extend to any Products which have been added to, or varied by, any person other than RD.

#### 10. Loss or damage in transit

RD is not liable for any loss or damage to Products in transit.

#### 11. Force majeure

If the performance of RD'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 RD, RD 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.

#### 12. Customer's cancellation

- (a) Unless otherwise agreed in writing, Customer may not cancel an order which has been accepted by RD.
- (b) If Customer's right of cancellation is agreed to by the parties in writing, the right must be exercised by notice in writing from Customer to RD not later than 7 days before the estimated date of shipment by the manufacturer or RD (as the case may be).
- (c) Unless otherwise agreed between Customer and RD, upon cancellation prior to shipment, any deposit paid by Customer will be forfeited to RD.

#### 13. Default of Customer

Without prejudice to any of RD's other rights under these Terms, if Customer fails to make any payment due to RD under these Terms, RD may, in its sole discretion, and without further liability to Customer:

- (a) refuse to make further supplies to Customer under the relevant Sales Contract; and/or
- (b) terminate the Sales Contract without notice.

#### 14. Warranty

- (a) RD will notify Customer of any applicable manufacturers' warranty in relation to the Products. To the extent permitted by law, RD's entire responsibility with respect to warranties for the Products is to pass on to Customer the benefit of 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 license agreement that govern their use.
- (b) To the extent permitted by law, the manufacturers' warranties referred to in clause(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 RD 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 RD 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 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.

#### 15. Liability

- (a) To the extent permitted by law, RD will not be liable to Customer or any other person under any circumstance for any loss of use, profit, revenue, interest, goodwill or data, 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 RD or its employees or agents;
  - (ii) the supply, performance or use of any Products or services; or
  - (iii) any breach by RD of its obligations under these Terms or any relevant Sales Contract.
- (b) RD does not promise that repair facilities or parts will be available in respect of the Products.

#### 16. Credit assessment.

- (a) If any Products are supplied to Customer on credit, RD 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 RD. Customer authorises RD to disclose such information to a credit reporting agency for these purposes.
- (b) Subject to RD's obligations under the Privacy Act 1988 and other applicable laws, RD may give 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 and maintain a credit information file about Customer. Customer agrees that RD any disclose a credit report about it to any credit provider, debt collecting agency or RD's insurers for the purposes of assessing Customer's credit-worthiness or to collect any overdue payments (as the case may be).
- (c) RD any 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 account;
  - (iii) the amount of any payments which are overdue for at least 30 days;
  - (iv) where an overdue payment has been previously reported, advice that the payment is no longer overdue;
  - (v) cheques or credit card payments which have been dishonoured;
  - (vi) information that, in the opinion of RD, Customer has committed a serious credit infringement; and
  - (vii) information that RD has ceased to supply the Products and services to Customer.
- (d) Customer agrees that RD may obtain information about Customer from any business which provides information about the commercial credit-worthiness of persons for the purposes of assessing Customer's application to purchase the Products on credit and collecting any overdue payment.
- (e) RD may refuse to supply the Products to Customer on credit on the basis of RD's credit assessment of Customer.

#### 17. Privacy

- (a) Customer agrees to RD collecting, using and disclosing information about Customer of the kind referred to in clause 16(c) for various purposes, including to:
  - (i) assess credit-worthiness as outlined in clause 16;
  - (ii) supply the Products and service to Customer and the management of Customer's account;
  - (iii) communicate with Customer about the Products and services which RD or its partners or affiliates may provide to Customer;
  - (iv) implement these Terms and any Sales Contract; and
  - (v) comply with relevant laws.
- (b) RD, at the written request if Customer will;
  - (i) provide Customer with access to any personal information relating to Customer held by RD; and
  - (ii) correct or amend any personal information relating to Customer held by RD which is inaccurate or out of date.
- (c) RD will handle Customer's personal information in accordance with relevant laws.

#### 18. Intellectual property

- (a) Customer acknowledges that:
  - (i) all trademarks, copyrights 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 RD or its suppliers; and
  - (ii) all Intellectual Property of RD or its suppliers may only be used by customer with the consent of RD 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 supplied to Customer will immediately cease upon expiry or termination of the relevant license 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 RD or its suppliers, register or use any trade marks, trade name, domain name, trading style or commercial designation or design used by RD or its suppliers in connection with the Products.
- (c) Customer will indemnify RD against all liabilities, damages, costs and expenses which RD 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 RD, and which results in the infringement of any Intellectual Property of any person.

#### 19. Confidentiality

- (a) Customer acknowledges that RD has disclosed and may from time to time disclose to Customer certain confidential information and documentation of RD 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 RD'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 RD may instruct) RD'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 or confidentiality);
  - (iii) approved to be disclosed by RD; or
  - (iv) required to be disclosed by a government authority or by relevant laws.

**20. General**

- (a) RD may amend these Terms at any time, by giving Customer notice by mail, email or by posting a notice on RD'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 Western Australia.

**Version: August 2002.**