

# SALES TERMS AND CONDITIONS



ABN: 87 621 283 921

All orders are accepted by ELLENEX subject to the Terms and Conditions of Sale set out below:

## 1) General Terms and Definitions

### Definitions:

- **Seller** means ELLENEX Pty. Ltd.
- **Buyer** means any person, body corporate or entity which purchases or orders the Products and/or Services from the Seller.
- **Products** mean all goods described in any invoice issued by the Seller to the Buyer and supplied, or to be supplied, by the Seller to the Buyer.
- **Services** mean all services or support described in any invoice issued by the Seller to the Buyer and provided, or to be provided, by the Seller for the Buyer.
- **These Terms** means these terms and conditions for the supply of the Products and/or Services by the Seller to the Buyer as mentioned below or amended or varied in within by the Seller. Seller reserves the right to amend these terms and conditions at any time.

**Acceptance:** Any contract or order for Products or Services based on this or any other tender or quotation is only accepted subject to These Terms of sale which are to have full force and effect as if incorporated into the Buyer's order. Unless expressly accepted in writing by Seller, any variations of, additions to or purported substitution for these Conditions of Sale in a Buyer's order or order form will be deemed to be inapplicable to the supply of Products and services.

References to the "ELLENEX catalogue" include ELLENEX's paper catalogue, ELLENEX's website and any other catalogue of products published by ELLENEX in any medium. Descriptions of the Products and Services in the Seller catalogue or otherwise communicated to the Buyer are approximate only. They shall not form any part of the contract with the Buyer. ELLENEX shall not be liable to the Buyer for any errors or omissions in its Catalogue. The advertising of products and services in the ELLENEX catalogue is not an offer capable of acceptance; it merely constitutes an invitation by Seller for the Buyer to make an offer.

### Formation and Scope of Contract:

- A Contract for the sale of the Products or Services by the Seller to the Buyer will be formed upon the acceptance by the Seller of an order (which needs to be communicated to the Buyer to be effective).
- The Buyer acknowledges that These Terms will bound it.
- Upon the formation of the contract These Terms constitute the entire agreement between the Buyer and the Seller for the supply of the Products and Services in the event of any inconsistency between These Terms and any other terms which may have accompanied the order, These Terms prevail to the extent of such inconsistency except in so far as the Seller expressly varies these Terms in writing.
- These Terms and the current price list issued from time to time by the Seller supersede all terms and conditions of sale and price lists previously issued by the Seller.

## 2) Ordering



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Seller reserves the right to decline to trade with any company or person and may decline to accept an order. Seller will not substitute an ordered Product for another unless requested by the Buyer, or unless the Product has been superseded by the latest version. If the Buyer confirms telephone, fax or internet orders, the confirmation must be marked 'confirmation only' to avoid duplication. If the Buyer orders the wrong Product or quantity, or duplicates orders, clause 11 will apply.

## 3) Price and Payment

The price of Products is as set out in the latest version of ELLENEX price list that is current at the date of despatch of the Products or provision of the Services. Products which are not listed in the ELLENEX catalogue will be sold at the prices set out in the relevant ELLENEX quotation. ELLENEX reserves the right to change prices without prior notice at any time. ELLENEX sales department will reply by email or telephone to fully confirm your order has been processed. Orders placed on account are subject to credit approval and verification. Unless otherwise expressly agreed in writing the terms of payment shall be 100% with the purchase order. Credit terms, subject to satisfactory references and ELLENEX's absolute discretion, are available. If credit has been granted, the Buyer must pay within 30 days of the invoice date. All payments must be made without any set-off, deduction or counterclaim.

- If any sum is not paid on the due date for payment, all sums then outstanding from the Buyer will immediately become due and payable notwithstanding that such sums would not otherwise be due until a later date;
- If no time or manner of payment is stipulated in the invoice, the Buyer must pay the purchase price for the Products and/or Services within 30 days from the date of invoice. If the purchase price for Products and Services is not paid in full by the due date, interest will accrue from day to day on the purchase price at the rate of 2% above the Westpac Bank's overdraft rate for any monies outstanding for the period between the due date for payment and the actual date payment is received by the Seller and may be capitalised by the Seller at monthly intervals and is payable upon demand. The Seller may without prejudice to its own rights, either suspend further deliveries, require payment in advance for all such deliveries or terminate any contract immediately by written notice to the Buyer.
- The Buyer will be liable to pay all expenses and legal costs incurred by ELLENEX in relation to obtaining or seeking to obtain an appropriate remedy; and
- We are pleased to accept most major credit cards, including MasterCard and VISA. If the Buyer makes default in any payment or goes into administration or a petition is presented for its winding up, or if any similar events occur then all monies owing and outstanding to the Seller on any account whatsoever and irrespective of whether the due date as per the Invoice of Account has occurred shall become immediately due and payable.

The Seller will invoice the Buyer upon delivery of the Products and/or Services provided. The Buyer must pay the purchase price of the Products and Services stated in the invoice. Payment must be made without set-off, counterclaim or deduction to the Seller as stated in the invoice.



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Prices do not include GST unless otherwise stated. Prices for Products and/or services to be supplied by an external Supplier are based on prices quoted to the Seller by its Suppliers and the rates of freight, currency exchange, insurance, customs, duties and other costs of importation known to the Seller at the time of quotation. Unless otherwise stated, any major change in these rates or the price of the Products or Services before acceptance of any order may necessitate a revised quotation.

For overseas Buyers, any sales excise, value-added, or other tax, imposts or customs duty and charges must be paid by the Buyer, and the Buyer must not deduct any tax, imposts or duty from the price payable to the Seller.

## 4) Delivery

The Products and Services shall be delivered to the Buyer at the premises of the Seller. If a product is not in stock when Buyer places the order, Seller will provide the best estimate of when the Product will be available.

The Seller will make all reasonable efforts to have the Products delivered and Services provided to the Buyer on or before the date agreed between the parties as to the Delivery Date, but the Seller shall be under no liability whatsoever should delivery or the provision of services not be made by this date.

The Seller may, at its option, deliver the Products by instalments in which case each instalment will be deemed to be the subject of a separate contract governed by These Terms for which the Buyer must separately pay.

Any time or date of delivery specified by the Seller is an estimate only as to when the Products may be available for delivery, and the Seller will not be liable in any way for failure or delay to deliver or for any loss or damage resulting directly or indirectly from any failure or delay in delivery of the Products irrespective of whether such failure or delay is negligent or within the Sellers control or otherwise. The Buyer must accept and pay for the Products and Services if and when tendered, notwithstanding any such failure or delay to deliver within the stated time, unless the Seller has given a guarantee in writing providing a stipulated penalty as liquidated damages for such failure to deliver within a stated time and the Buyer has suffered loss by the failure to deliver within that time.

If the Buyer's order requests delivery of the Products and Services to a particular destination and the Seller agrees to deliver to that destination, the Seller will, as agent for the Buyer, arrange for the delivery of the Products and Services to the Buyer at that destination at the cost of the Buyer.

The Buyer agrees to accept delivery of the Products and Services during normal business hours or at such other times as agreed between the Buyer and Seller.

The Seller reserves the right to withhold deliveries if:

- The Seller in its sole discretion considers that the financial condition of the Buyer so warrants and that such action is advisable to protect the Seller's interest



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- The terms of payment for any Products and Services are not strictly adhered to by the Buyer. ELLENEX shall not be liable for any other losses, damages or expenses.

Deliveries may be totally or partially suspended by the Seller during any period in which the Seller may be prevented or hindered from the delivery by the Seller's normal means of supply or delivery by a normal route through any circumstances outside its reasonable control, including but not limited to strikes, lockouts, raw material, shortages, accidents or breakdowns of plant machinery.

## 5) Title and Risk

Risk of loss or damage to the Products shall pass to the Buyer on delivery. Ownership of the Products shall not pass to the Buyer until all sums due to ELLENEX from the Buyer for those Products have been received by ELLENEX, and until that time ELLENEX shall be entitled to the immediate return of all Products if the Buyer is late in paying any sum to ELLENEX.

The Buyer assumes all risk of loss and damage to the Products and Services upon the delivery of the Products and Services by the Seller in accordance with delivery of the Products and/or Services by the Seller to the carrier:

- Refrain from selling or encumbering the Products and/or Services
- Hold the Products as bail for the Seller
- Store, mark and keep appropriate records for the Products and Services so that they can at all times be identified and distinguished as the property of the Seller and in particular must refrain from mixing the Products and Services with any Products and Services owned by the Buyer or any other person.

## 6) Buyers Representations and Acknowledgements

The Buyer acknowledges that:

- Descriptions and specifications set out in the Sellers price list are given for identification purposes only and are not descriptive of the quality of the Products and/or Services, and to the extent permitted by law, the Seller has not given any written undertaking or made any statement as to the quality of, or fitness for any purpose, of the Products and Services.
- It is the Buyers responsibility to inform the Seller in writing of all requirements the Buyer has, including requirements consequent upon legislation and regulations relating to the end use of the Products and Services in the country or state of intended use including all statutory or other like requirements relating to the marking, labelling and/or packaging of products. Any failure by the Buyer to inform the Seller in writing of any such requirements will not entitle the Buyer to refuse to accept the Products and Services or pay the purchase price nor will the Seller be liable in any way whatsoever. If the Products and Services fail to comply with any such requirements not disclosed in writing by the Buyer to the Seller prior to the formation of the contract governed by These Terms



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and the Buyer will indemnify the Seller in full against any loss or damage suffered by the Seller however arising out of any failure to comply.

- Unless any particular purpose for which the Buyer is acquiring the Products and Services is stated in writing prior to the formation of the contract governed by These Terms, the Buyer warrants it has not advised the Seller of any particular purpose.

## 7) Liabilities

To the extent permitted by law all statutory and other implied conditions, warranties and other provisions relating to the Products and Services of their delivery being provisions that might otherwise form part of the contract governed by These Terms are excluded. The liability of the Seller pursuant to any provision of relevant legislation of Australia or any State or Territory or pursuant to any other potential liability whether arising from negligence or not, including any consequential loss which the Buyer may sustain or incur will be limited to one of the following at the election of the Seller:

- Replacement of the Products or supply of equivalent Products
- Repair of the Products
- Payment of the cost of replacing the Products or acquiring equivalent Products and Services
- Payment of the cost of having the Products repaired.

To the extent permitted by law, the Seller will not be liable for any claim whatsoever in respect of the Products and Services unless made in writing.

Except as expressly provided in These Terms, the Seller will not be liable to the Buyer, its employees, agents or contractors for any direct, indirect, incidental or consequential damages of any nature howsoever caused (whether based in tort or contract or otherwise) including any damage to property owned by the Buyer or any other claim whatsoever arising directly or indirectly out of or in any way attributable to the Products and Services, or their delivery, or the performance of the contract for the sale of Products upon These Terms.

Where the Seller elects to replace Products and Services the Seller will credit the cost of the Products and/or Services being replaced and will replace them as soon as possible with others of the same or equivalent kind at a price charged for the original Products and Services and otherwise upon the same terms and conditions as those to which the original Products and/or Services were subject.

The Buyer must inspect all Products as soon as reasonably possible after delivery and shall, within seven days of delivery, give written notice to ELLENEX of:

- Any defect in a Product that is apparent on reasonable examination. In this case, Seller shall, at Seller's discretion, replace the Product or refund the purchase price
- Any shortfall in Products delivered. In this case, Seller shall, at its discretion, deliver the undelivered Products or refund the price of the undelivered Products.



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- Any delivery of Products not in accordance with the order. In this case, Seller shall, at Seller's discretion, replace the Products or refund the purchase price.
- Any non-delivery of the Products. In this case, Seller shall deliver the undelivered Products or refund the price of the undelivered Products.

To the extent permitted by the law, Seller shall not be under any liability for damage, losses (whether direct, indirect or consequential), expenses, liabilities, injuries, loss of profits, business or economic loss, depletion of goodwill, costs (including legal costs), claims, demands, proceedings, judgments or otherwise resulting from the failure to give advice or information or the giving of incorrect advice or information (including through the Seller's technical helpline) whether or not due to its negligence or that of its employees, agents or sub-contractors.

Seller shall not be liable for economic loss, punitive damages, loss of revenue, loss of profits or expected future business, damage to reputation or goodwill, loss of any order or contract or any consequential or indirect loss or damage, as may result from, or be connected with:

- Any express or implied terms of the contract between Seller and the Buyer, or of any order accepted by Seller;
- Any duty of any kind imposed on Seller by law; or
- Any defect in the Products or Services.

## 8) Warranties

The Seller warrants the Products to be free from defects in workmanship and material under normal use and service. Warranty is limited to repair or replacement of any Products which prove to be defective within that time or repayment of the purchase price at the option of the Seller provided the Products have been returned, transportation prepaid within one year from date of purchase. All technical advice, recommendations and services in respect of the Products and/or Services are based on technical data and information which the Seller believes to be reliable and which are intended for use by persons having skill in and knowledge of the business at their own discretion. In no case is the Seller liable beyond repair or replacement of the Products. To the extent permitted by law, this warranty is in lieu of and excludes all other representations made by advertisements or by agents and except as expressly provided in These Terms all other warranties both expressed and implied in respect of the Products and/or Services.

All Products supplied are subject to this warranty only and any liability arising out of or in respect of the supply, resupply, use or reuse whether singly or otherwise of these Products in contract or in tort, and whether for consequential loss or otherwise, is hereby excluded.

Any liability incurred by the Seller to the Buyer is limited to the replacement of Products or in the case of services to the supplying of the services again, or (at the option of the Seller) refund of the price paid to the Buyer and in particular does not extend to consequential loss and is conditional upon the Buyer within 90 days of delivery or within 30 days of a claim arising during any warranty period specified in this quotation



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making a written claim to the Seller setting out the full particulars of such claim and making the Products and/or Services available to the Seller to enable a proper examination.

These warranties shall not apply to any defect which arises from improper use, failure to follow the product instructions, or any repair, modification, change the settings, removing or changing the product label, made without the consent of Seller. The Buyer must deal with the defective Products in accordance with Seller's instructions.

The Buyer must notify Seller in advance of the return of any Products and obtain a returns number, to be quoted on all paperwork. Returned Products must be accompanied by an advice note stating the invoice number and the nature of the defect. Where the Buyer does not return Products in accordance with this clause, ELLENEX may refuse such Products and return them to the Buyer at the Buyer's cost.

The Buyer acknowledges that it is responsible for ensuring that the Products and/or Services it orders are fit for the purposes for which it intends to use them.

In giving the warranties set out above, Seller does not exclude or limit any application of the Trade Practices Act 1974 (TPA) were to do so would contravene the TPA or cause any term of these conditions to be void ("Non-Excludable Condition"). These warranties are in addition to any Non-Excludable Conditions.

## 9) Termination

Without prejudice to any of its other rights, powers or remedies, the Seller may cancel any order of the delivery of Products and/or Services and terminate any Contract governed by these Terms if:

- Any payment due by the Buyer to the Seller is not made within the specified time
- The Buyer defaults under any of its obligations under These Terms
- The Buyer becomes insolvent, commits an act of bankruptcy, or being a company, a receiver or receiver and manager or administrator is appointed, a mortgagee goes into the possession of the Buyer's assets or business, an application is made to appoint a liquidator or to have the company wound up is made subject to the supervision of a court or enters into a scheme of arrangement with its creditors, in which case the Seller will be released from all liability under the contract.

## 10) Governing Law

These Terms shall be governed by and interpreted in accordance with the laws of Victoria, Australia.

The contract between Seller and the Buyer as applicable to each Buyer order shall be governed by and interpreted in accordance with Australian law, and the Buyer submits to the non-exclusive jurisdiction of the courts of Australia, but ELLENEX may enforce the contract in any court of competent jurisdiction.

## 11) Cancellations and Returns



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The Seller reserves the right to charge the Buyer a cancellation fee of a minimum of 30% for cancellation or rescission by the Buyer at any time of any contract or order based on any tender or quotation. Where specifically identifiable costs in excess of 30% have been incurred by the Seller in performing any said contract or order; the cancellation fee will equal the value of such costs.

The Buyer may not cancel orders once accepted by Seller. Seller may allow an order to be cancelled at its discretion, subject to Seller recovering from the Buyer the costs incurred by Seller. The Buyer may only return Products to Seller for a change of mind or for incorrect ordering, and receive a credit or refund, on the following conditions:

- The Buyer must contact Seller in advance and obtain the prior consent of Seller and obtain a returns number (to be quoted on all returned paperwork);
- Return must be made within 30 days of the date of delivery. Products must be returned to Seller in their original packaging, unused and in a condition which will enable them to be immediately fit for re-sale.
- Products must be adequately packed and dispatched freight prepaid, clearly labelled, to the closest ELLENEX Sales Department

Products accepted for return will be credited at invoice value. ELLENEX reserves the right to apply a handling charge of 30% or more of the invoice value.

This returns policy excludes DVDs, Software, calibrated Products, scheduled orders, custom-made Products, and production packaging format Products. ELLENEX will accept the return of products in its sole discretion.

## 12) Services

ELLENEX offers software integration, repair and calibration services in respect of Products. ELLENEX may quote a turnaround time target for these services but will be under no liability if it fails to comply with such a target. The conditions which apply to each of the Services are set out below.

**Repairs:** The Repair Service is subject to the availability of parts and is only available if the Product has not suffered excessive physical or electrical damage and is free from modifications (other than those detailed in the Product literature). ELLENEX may at its absolute discretion either repair the Product or replace it with a substitute Product. Any Buyer-generated software returned with a Product will be erased, and ELLENEX shall not be under any liability whatsoever in respect of any data contained in such Software.

**Calibration:** ELLENEX will check the Product for compliance with the published specification at appropriate points, using working standards which are periodically verified and which are traceable to international and national standards. ELLENEX will issue a dated and signed certificate of testing, which gives details of the measurements made. If ELLENEX has to carry out more than the minor adjustments appropriate to a normal recalibration routine, ELLENEX will either return the Product to the Buyer or, on



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receipt of the appropriate order, will repair the Product subject to ELLENEX' Repair Service conditions, before further calibration. In this case, the Repair Service charge will be payable by the Buyer in addition to the Calibration Service charge.

These service obligations apply where the general obligations of ELLENEX under the Warranties and Non-Excludable Conditions do not apply to a given circumstance.

**Advice Assistance and Installation:** Any advice, recommendation, information, assistance or service provided by the Seller, its employees, agents and representatives in relation to Products and/or Services sold or installed, or their use or application is given in good faith and is believed by the Seller to be appropriate and reliable. However, any such advice, recommendation, information, assistance or service is provided without liability or responsibility on the part of the Seller.

The determination as to the suitability or adaptability of any of ELLENEX's products to the specific needs of the purchaser is solely the Buyer's prerogative and responsibility. ELLENEX is glad to offer suggestions on the use of its various products. However, there are no warranties given except such expressed written warranties offered in connection with the sale of a particular product.

**Installation of Products:** Where the Seller has undertaken to install equipment, it will be installed and placed in operating condition using test procedures and programs established by the Seller. The Seller shall not be under any obligation to install the equipment unless the Buyer has made the equipment and the installation site available to the Seller for installation and has so notified the Seller if it has mentioned in the contract and accepted by the Seller.

## 13) Product and Availability Information

ELLENEX reserves the right to discontinue any Product or to change its design at any time. Unless otherwise confirmed, nothing in the Catalogue is to be taken as a representation of the source of origin, manufacture, or production of any Products or any part of them.

## 14) Force Majeure

A force majeure event is any event beyond the reasonable control of Seller (including strikes, traffic congestion, pandemic, the downtime of any external line, or ELLENEX's inability to procure services, materials or articles required for the performance of the contract except at enhanced prices). If ELLENEX is prevented or restricted from carrying out all or any of its obligations by reason of any force majeure event, then ELLENEX shall be relieved of its obligations during the period that such event continues and shall not be liable for any delay and/or failure in the performance of its obligations during such period. If the force majeure event continues for a period longer than 14 days, ELLENEX may cancel the affected order or cancel the whole or any part of these terms and conditions, without any liability to the Buyer.

## 15) Privacy and Buyer Information

ELLENEX respects the privacy of Buyers.



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The terms of the Privacy Policy are hereby incorporated into these conditions. Excepting if it would otherwise create or allow a breach of the law, the provisions of these conditions of sale nevertheless prevail over any inconsistency between these conditions of sale and our Privacy Policy.

ELLENEX may send to the Buyer and its employee's details of other products and services offered by the group that may be of interest. If the Buyer or its employees do not wish to receive details of these other offers or wish to amend or correct their details, then they should contact ELLENEX. The Buyer consents to ELLENEX disclosing the Buyer's name to affiliated companies of ELLENEX for market research and marketing purposes.

## 16) Intellectual Property

### Software Licence:

Software furnished to the Buyer as a service or under a licence for use on a single account can be copied (with the inclusion of the Seller's copyright notice) only for use in one account, except as may otherwise be provided in writing by the Seller.

The Buyer agrees to ensure that no other copies are made of any of the Seller's Software. In addition, the Buyer will take all reasonable precautions to keep the Software secret, including procuring secrecy agreements from its employees and any other party required to have access to the Software.

All the intellectual property of the ELLENEX software platform and all customised, rebranded or operated on the customer account are completely belongs to ELLENEX unless with prior written consent of ELLENEX authorised person.

### Patents:

To the best of the Seller's knowledge Products, and/or Services sold to the Buyer will not infringe any patent, trademark, registered design or copyright of any third party but the Seller shall in no circumstances be liable to the Buyer in respect of any such infringement constituted by the sale or use of the Products and/or Services.

### Rights in the Catalogue, Specs Sheets, Flyers and Digital Contents:

The Buyer acknowledges that ELLENEX and its licensors own the intellectual property rights in the Catalogue, the catalogue content and the stock numbers and that their whole or partial reproduction without ELLENEX's prior written consent is prohibited.

### Re-branding

Any change (whole or partial) on the product shape, configurations, labels, whole or partial reproduction without ELLENEX's prior written consent is prohibited.



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## 17) Waiver or Alteration

No waiver or alteration of these Terms will be binding upon the Seller unless a duly authorised officer of the Seller agrees in writing.

## 18) Notices

Any notice from one party to the other will be in writing and delivered personally or sent by prepaid post or transmitted by facsimile or email to that party's address, email address or facsimile number as set out in the invoice or order form or otherwise noted by the party. If mailed the notice will be deemed delivered on the expiration of two business days after posting, if emailed within 2 hours of an email being sent and if faxed on confirmation of despatch if transmitted on a working day, or if not, then at 9:00 a.m. on the next working day.



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