



# *Applied Resolution Technologies*

A Division of JATCO Australia PTY. LTD

ABN 11 052 440 829

## **JATCO (Australia) Pty. Ltd. Terms and Conditions**

JATCO (Australia) Pty. Ltd. (“the Vendor”) provides the following Standard Terms and Conditions which apply to all quotations and sales made by the Vendor. All purchases by the customer, owner or its agent (“the Buyer”) are expressly limited and conditional upon acceptance by the Buyer of the following terms and conditions and any provision, printed or otherwise contained in any purchaser order, confirmation or acknowledgment inconsistent with, different from or in addition to the following Standard Terms and Conditions are not accepted by the Vendor, unless specifically agreed to in writing :-

### **1. Quotations**

The Vendor’s quotation is valid for 30 days from the date of quotation, unless otherwise stated. This quotation supersedes all other quotations or correspondence concerning the transaction or enquiry. Quotations contain proprietary information of the Vendor and are provided to the Buyer strictly on the understanding that the Buyer will use the information solely for internal purposes and not disclose it to any third party without the prior written approval of the Vendor.

### **2. Price Modification, GST and other charges :**

The Vendor’s price does not include excises, duties, tariffs, goods and services taxes or any other governmental charges which the Vendor may be required to pay or collect under any future law, with respect to the sale, transportation, delivery, storage, installation or use of any of the goods (“Products”) sold or services provided (“Services”) by the Vendor. The Buyer must pay all such excises, duties, tariffs, taxes and charges.

The Vendor reserves the right to price modification at the discretion of the Vendor.

### **3. Payment and Credit Terms :**

Unless otherwise specified in writing by the Vendor payment for Products and Services furnished by the Vendor will be made prior to shipment, unless prior arrangements are made with the Vendor, in which case payment is normally required within 30 Days from end of the month of the date of invoice.

#### **4. SERVICE, REPAIR AND MAINTENANCE**

Many products manufactured and supplied by the Vendor are subject to special compliance and conformity to Certification. The Vendor is a Certified Service Facility for Intrinsically Safe equipment, particularly the equipment manufactured by the Vendor. Unless specifically authorized by the Vendor, service or maintenance or repair of the product may invalidate the intrinsic safety or may render the product into non-conformity with the requirements of the IECEx standards. All service, repair and maintenance other than that performed by the end user themselves according to the guidelines provided in the User Manual, shall be performed by the Vendor.

The Vendor accepts no liability whatsoever for the Product upon service, repair or maintenance by third parties, whether they consider themselves to be competent or not.

#### **5. Limited Warranty :**

- a) For the Product supplied by the Vendor which is not manufactured by the Vendor the warranty of the original manufacturer, if any, shall be the only warranty given in respect of the Product.
- b) For the Product supplied by the Vendor which is manufactured by the Vendor the Product carries a 1 (one) year warranty. If within 1 (one) year after the date of receipt of the Product by the Buyer the Product proves to be defective in material or workmanship or fails to produce results consistent with the Vendor's specifications for the Product in question upon examination by the Vendor, the Vendor will repair the product.
- c) The Vendor will not be responsible for the costs of removal, installation or re-installation of the Product. Furthermore, the Vendor will not be responsible for and assumes no liability for materials or workmanship or any transportation charges, labour costs or other related expenses for any work performed by third parties in the repair or replacement of defective products or workmanship, without the Vendor's written consent. The Vendor will not be responsible for any consequential costs or losses.
- d) Except as provided in these Standard Terms and Conditions, all warranties, undertakings, conditions or representations (whether innocent or negligent), including without limitation those with respect to merchantability, fitness for any purpose, quality or durability, whether express, implied, statutory or arising from a course of dealing, usage of the trade or otherwise with respect to any equipment or order, are expressly excluded. No express or implied warranty is given as to the capacity, efficiency or performance of any equipment, except as may be provided in a written agreement signed by the Vendor.

- e) The Vendor's liability for a breach of a condition or warranty implied by Division 2 of Part V of the Trade Practices Act 1974 (other than Section 69) is hereby limited to:
- i. in the case of the Product, any one or more of the following:
    - 1. the replacement of the Product or the supply of equivalent Product;
    - 2. the repair of the Product;
    - 3. the payment of the cost of replacing the Product or of acquiring equivalent Product
    - 4. the payment of the cost of having the Product repaired; or
  - ii. in the case of services:
    - 1. the supplying of the services again; or
    - 2. the payment of the cost of having the services supplied again.
- f) The Vendor's liability under Section 74H of the Trade Practices Act 1975 is expressly limited to a liability to pay to the purchaser an amount equal to:
- i. the cost of replacing the Product;
  - ii. the cost of obtaining equivalent Product;
  - iii. the cost of having the Product repaired;
- whichever is the lowest amount.

## **6. Retention of Title**

- a) The Vendor reserves the following rights in relation to the Product until all accounts owed by the Buyer to the Vendor are fully paid:
- i. legal ownership of the Product;
  - ii. to enter the Buyer's premises (or the premises of any associated company or agent where the Product are located) without liability for trespass or any resulting damage and retake possession of the Product; and
  - iii. to keep or resell any Product repossessed.
- b) If the Buyer resells the Product the Buyer shall hold such part of the proceeds of sale as represents the invoice price of the Product sold in a separate identifiable account as the beneficial property of the Vendor and shall pay such amount to the Vendor upon request. Notwithstanding the provisions above the Vendor shall be entitled to maintain an action against the Buyer for the purchase price and the risk of the Product shall pass to the Buyer upon delivery.
- c) In the event that the Buyer uses the Product in some manufacturing or construction process of its own or some third party then the Buyer shall hold such part of the proceeds of such manufacturing or construction process as

relates to the Product in a separate identifiable account as the beneficial property of the Vendor and shall pay such amount to the Vendor upon request. Such part shall be deemed to equal in dollar terms the amount owing by the Buyer to the Vendor at the time of receipt of such proceeds.

#### **7. Buyer's Property**

Any property of the Buyer under the custody or control of the Vendor shall be entirely at the Buyer's risk as regards loss or damage caused to the property or by it. Transportation of Products on the Buyer's account assumes that the property has transferred to the Buyer at the time of shipment.

#### **8. Performance**

Any performance figures given by the Vendor are estimates only. The Vendor shall be under no liability for damages for failure to attain such performance figures unless specifically guaranteed in writing and any such written guarantee shall be subject to the recognised tolerances applicable to such figures in the industry.

The Vendor explicitly does not state the fitness of any Product as being diagnostic or accurate other than within the data and specifications provided by the Vendor. All Products are provided by the Vendor as TOOLS towards useful guidance in the application of the Buyer with no explicit warranty of result in the application of the Buyer.

#### **9. Trade Practices Act**

Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Trade Practices Act 1974) and which by law cannot be excluded, restricted or modified.

#### **10. Limitation of Liability, Indemnity**

- a) The Vendor's liability is limited to the price applicable to the Product or Services determined defective, and in no event will the Vendor's cumulative liability be in excess of the total sales order price, whether arising under warranty, contract, negligence, strict liability, indemnification or any other cause or combination of causes whatsoever.
- b) Except as otherwise provided in these Standard Terms and Conditions, the Vendor will not be liable for general, special, direct, indirect, incidental or consequential damages, including without limitation loss of profits, revenues or other economic losses whether arising under warranty, contract, negligence (including negligent misrepresentation) strict liability, indemnification, or any other cause or combination of causes, including any claim of concurrent liability arising from a duty of care by operation of law or otherwise. These limitations

shall apply notwithstanding any fundamental breach or failure of essential purpose of a limited remedy.

- c) Buyer's remedies are specifically limited to the repair or replacement of the Product and are exclusive of all other remedies.
- d) The use of Products and Services supplied by the Vendor are at the sole risk of the Buyer. The Vendor provides Products and Services without any representation, warranty or condition of any kind, other than Certified fitness for hazardous environments in the case of IECEx Certified Products, regarding the fitness, durability or suitability for any application. The Vendor provides Products as tools for applications and does not provide any claims of accuracy or diagnostic capability.

The Buyer shall use the Products and Services at their OWN RISK, and in their own way towards their application. JATCO (Australia) Pty Ltd, its Certification Body, suppliers of components that comprise part of the Products and Services, and resellers, in no case shall be held liable for any injury, loss, claim or any form of damages arising from the Buyer's use or mis-use of the Product. The Products are supplied as non-diagnostic products, and the Buyer is responsible for, and indemnifies the Vendor and its Suppliers against, any claims by the Buyer for accuracy or diagnostic value of the Products.

The Buyer agrees to indemnify the Vendor (including the Directors, employees, suppliers, licensors) from any claim made against the Buyer by any Third Party due to or arising out of the Buyer's use of the Products. The Buyer is responsible for complying with all and any laws within States and jurisdictions in which the Product is used and indemnifies the Vendor against any breaches of State or jurisdictional laws.

- e) All software, APPs (Android Applications) and firmware (herein collectively referred to as "Software") used in the Products is used at the discretion of the Buyer. The Software is developed by the Vendor using industry compliant modules and Software Development Kits ("SDK's") provided or licensed by the Vendor's suppliers. Whilst all care has been taken to provide integrated Software, the Vendor relies on feedback from the Buyer relating to improvements and Software issues and will, from time-to-time, update the Software at the Vendor's discretion.

The Buyer agrees to indemnify the Vendor and its Software suppliers from all and any claims relating to the Software, and to abide by the License Agreements of the Vendor's Software Suppliers. The License Agreement Terms from each of the Vendors suppliers are available to the Buyer on special request to the Vendor, relating to Bluetooth compatibility, Android APP and tablet use, and InfraRed camera use.

The Vendor and its Software Suppliers do not warrant the Software to be useful for diagnostic purposes, and recommend that indications provided by the Software and products be referred to appropriately Certified or Registered devices for any formal diagnosis or measurement.

The Software is Licensed free of cost to the Buyer for explicit use with the Products, and is limited in its use specifically to the Products under the terms of the original Software Suppliers. The Buyer will not copy, reproduce or sell the Software in any form without permission from the Vendor. The Vendor is not liable for any attempts to use the Software with any other product or application other than for which the Vendor provides.

#### 11. **Back-charges**

No back-charges will be paid or allowed by the Vendor, unless the Vendor is notified in writing of any products defect claim pursuant to Clause 4 Limited Warranty. All back-charges must be approved in writing before any Product is repaired, replaced or altered in any manner by the Buyer or its nominee, or returned to the Vendor.

#### 12. **Cancellation fee**

The Buyer may not cancel any order except under written notice and payment to the Vendor of all reasonable costs arising from the cancellation, plus a cancellation fee of 2.5%.

#### 13. **Force Majeure**

The Vendor will be excused from its obligations in the event and to the extent that its performance is delayed or prevented:

- a) by any circumstance (except financial) reasonably under its control (eg. failure by a third party such as a manufacturer to repair a defective Product for whatever reason); or
- b) by fire, explosion, breakdown of machinery or equipment, plant shutdown, strikes or other labour disputes, riots or other civil disturbances, or voluntary or involuntary compliance with any law, order, regulation, recommendations or request of any governmental authority. In addition, The Vendor will be excused in the event of the partial or total failure of any of its usual means of transportation of the products.

Any costs incurred as a result of the above are to be reimbursed to the Vendor by the Buyer.

#### 14. **Assignment**

No claim against the Vendor arising directly or indirectly out of or in connection with the Products furnished by the Vendor may be assigned by the Buyer or by operation of law without the prior consent in writing of the Vendor.

15. **Severability**

Invalidity of any of these Terms and Conditions will not affect the validity of any other provision and the remaining provisions will remain in force.

16. **Waiver**

Failure to enforce any of these Standard Terms and Conditions in a particular instance will not constitute a waiver of or preclude subsequent enforcement of any of these provisions.

17. **Applicable Law**

The agreement of the parties shall be construed and enforced with the laws of the State of New South Wales, Australia.